

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 2354

SPONSOR: Senator Campbell

SUBJECT: General Regulatory Administration of the Health Care Professions

DATE: March 29, 2000 REVISED: _____

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

I. Summary:

This bill amends various administrative provisions relating to the regulation of health care professions within the Department of Health (DOH or department). The bill: revises licensure procedures for health professionals; authorizes DOH to process licensure applications for persons who do not have a social security number at the time of initial licensure application but are otherwise qualified for licensure; eliminates duplicate fingerprinting submissions by health care practitioners to other state agencies; requires, pursuant to a schedule, all health care practitioners, as a condition of initial licensure or licensure renewal, to submit specified information, under procedures adopted by DOH, for practitioner profiling and to submit a set of fingerprints and information required for conducting a criminal history check; requires DOH to compile the information submitted by health care practitioner applicants into practitioner profiles; modifies provisions relating to licensure disqualification for sexual misconduct; requires DOH or the appropriate regulatory board to set by rule examination fees no greater than the actual per-applicant cost to purchase an examination plus the examination fee set forth in the applicable practice act as of October 1, 1999; requires the boards to set fees to cover actual costs of regulation; revises the grounds for which a licensed health professional is subject to discipline to add being unable to practice with reasonable skill and safety to patients by reason of impairment and testing positive for any drug, as defined in s. 112.0455, F.S., on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason; requires DOH or boards to assess a fine and issue citations for first-time violations of unprofessional conduct if no actual harm to the patient occurred; repeals the Impaired Practitioners Committee and makes minor technical changes regarding the role of the consultant for treatment programs of impaired practitioners; authorizes licensees to change licensure status at any time; provides that only the appropriate regulatory board, or the Department of Health when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07, F.S.; creates a Public Records exemption by allowing DOH to obtain expunged criminal history records for licensure and employment purposes; appropriates \$230,000 to the Agency for Health Care Administration to fund a review of the quality and effectiveness of kidney dialysis treatment as well as the

utilization and business arrangements related to kidney dialysis centers; revises provisions relating to unlicensed practice of health care professions; creates criminal penalties for unlicensed activity and requires minimum mandatory sentences for such offenses; and requires advertisements for surgery to include certain information.

This bill amends ss. 455.564, 455.565, 455.5651, 455.5653, 455.5654, 455.567, 455.574, 455.587, 455.624, 455.707, 310.102, 455.711, 455.587, 455.714, 455.637, 921.0022, and 943.0585, Florida Statutes.

This bill reenacts, for purposes of incorporating references, ss. 455.577, 455.631, 455.651, 455.712, 458.347, 459.022, 468.1755, 468.719, 468.811, and 484.056, Florida Statutes.

This bill creates one undesignated section and ss. 455.56505, 455.665, and 455.719, Florida Statutes.

This bill repeals ss. 455.704 and 455.641, Florida Statutes.

For purposes of incorporating references to s. 455.637, F.S., the bill reenacts ss. 455.574, 468.1295, 484.014, and 484.056, F.S.

II. Present Situation:

General Regulatory Provisions for Health Care Professions

Part II, ch. 455, F.S., provides the general regulatory provisions for the health care professions within the Division of Medical Quality Assurance within DOH. Subsections (1) and (11) of s. 455.564, F.S., require any person applying for licensure for a profession regulated under the department to include his or her social security number on the application pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, providing requirements for child support enforcement. Section 317 of the federal law requires states to adopt procedures for the recording of the social security number of any applicant for a professional license, commercial driver's license, occupational license, or marriage license on the application. The federal law also requires States to record the social security number of any individual who is subject to a divorce decree, support order, or paternity determination. The social security number must be recorded on the death records and death certificate of any individual who has died.

Section 455.574, F.S., requires DOH to provide, contract, or approve services for the development, preparation, administration, scoring, score reporting, and evaluation of all licensure examinations, in consultation with the appropriate board. Section 455.587, F.S., requires each board to set licensure fees within statutory fee caps and based upon long-range estimates from DOH. The department must provide each board with an annual report of revenue and direct and allocated expenses related to the operation of that profession.

Section 455.621, F.S., provides procedures to be used for the discipline of health care practitioners. Disciplinary complaints and all information obtained by the department are confidential and exempt from the public records and meetings laws until 10 days after probable

cause is found or the subject of the complaint waives confidentiality. Section 455.647, F.S., provides that all information required by the department from any applicant shall be a public record and shall be open to public inspection pursuant to the public records law, except financial information, medical information, school transcripts, examination questions, answers, papers, grades, and grading keys, which remain confidential and exempt from the public records law and may not be discussed with anyone except members of the board, the department, and staff thereof, who have a bona fide need to know such information. Section 455.711, F.S., provides procedures for placing a license in inactive or delinquent status.

Unlicensed Activity

Part II, ch. 455, F.S., provides the general regulatory provisions for health care professions regulated under the Department of Health. Section 455.637, F.S., authorizes the Department of Health to issue and deliver a notice of cease and desist to any person when the department has probable cause to believe that that person is not licensed by the department or the appropriate regulatory board, and has violated any provision of part II, ch. 455, F.S., or any statute that relates to the practice of a profession regulated by the department, or any administrative rule adopted thereto. The department may issue a notice of cease and desist to any person who aids and abets the unlicensed practice of a profession by employing the unlicensed person. To enforce a cease and desist order the Department of Health may file a proceeding in the name of the state seeking issuance of an injunction or a *writ of mandamus* against any person who violates any provisions of such order. In addition, the Department of Health may impose an administrative penalty not to exceed \$5,000 per incident of unlicensed activity. The Department of Health may seek the imposition of a civil penalty through a circuit court for any violation for which the department may not issue a notice of cease and desist. The civil penalty may not be less than \$500 or greater than \$5,000 for each offense. The court may award court costs and reasonable attorney's fees to the prevailing party, and the court may award to the department reasonable costs of investigation.

Criminal Penalties

Three basic levels of regulation are used to regulate professions. The least restrictive level of occupational regulation is registration. Under registration, practitioners are only required to file certain information as it relates to services that they offer the public. An intermediate level of occupational regulation is regulation by a title act. Under a title act, the use of certain titles or descriptions is limited to a group of practitioners who have met certain minimum qualifications. A title act, however, does not prohibit anyone from offering comparable services to those offered by the practitioners licensed under the title act. A practice act limits the performance of certain activities to those licensed to practice. The practice acts for the various health care professions regulated by the Department of Health or the boards within the department contain criminal penalties. Section 458.327, F.S., provides that each of the following acts constitutes a felony of the third degree, punishable by imprisonment of up to 5 years and a fine of up to \$5,000: (1) the practice of medicine or an attempt to practice medicine without a license to practice in Florida; (2) the use or attempted use of a license which is suspended or revoked to practice medicine; (3) attempting to obtain or obtaining a license to practice medicine by knowing misrepresentation; or (4) attempting to obtain or obtaining a position as a medical practitioner or medical resident in a clinic or hospital through knowing misrepresentation of education, training, or experience.

Other health care professional practice acts contain similar provisions making the unlicensed practice of the profession a third degree felony: s. 459.013, F.S., for osteopathic medicine; s. 460.411, F.S., for chiropractic medicine; s. 461.012, F.S., for podiatric medicine; s. 462.17, F.S., for naturopathy; s. 463.015, F.S., for optometry; s. 464.016, F.S., for nursing; s. 465.015, F.S., for pharmacy; s. 466.026, F.S., for dentistry and dental hygiene; s. 467.201, F.S., for midwifery; s. 468.366, F.S., for respiratory care services; s. 468.828, F.S., for clinical lab personnel; s. 483.901, F.S., for medical physics; and s. 484.053, for hearing aid specialists.

The practice acts of the following health care professions make the unlicensed practice of the profession a first degree misdemeanor punishable by imprisonment for up to 1 year and a fine of up to \$1,000: s. 468.517, F.S., for dietetics and nutrition practice and s. 468.717, F.S., for athletic training; s. 468.53, F.S., for electrology or electrolysis; s. 468.047, F.S., for massage; s. 486.151, F.S., for physical therapy; s. 490.012, F.S., for psychology or school psychology; and s. 491.012, F.S., for clinical social work, marriage and family therapy, and mental health counseling.

The practice acts of the following health care professions make the unlicensed practice of the profession a second degree misdemeanor punishable by imprisonment of up to 60 days and a fine of up to \$500: s. 468.1285, F.S., for audiology and speech and language pathology; s. 468.1745, F.S., for nursing home administration; s. 468.223, F.S., for occupational therapy; s. 468.809, F.S., for orthotics, prosthetics, and pedorthics; and s. 484.013, F.S., for opticianry.

Section 455.634, F.S., requires the Department of Health or the appropriate board to report any criminal violation of any statute relating to the practice of a profession regulated by the department or appropriate board to the proper prosecuting authority for prompt prosecution. Under s. 455.641, F.S., the Department of Health or the appropriate board may earmark \$5 of each licensee's renewal fee to fund efforts to combat unlicensed activity.

Offense Level Ranking

Under the Criminal Punishment Code (or Code) codified in ch. 921, F.S., all felony offenders whose offenses were committed on or after October 1, 1998, must be sentenced pursuant to the Code. The Code allows the trial judge to sentence any felony offender to the statutory maximum for the offense degree. A third degree felony is punishable by a maximum prison sentence of 5 years and a maximum fine of \$5,000 under ss. 775.082 and 775.083, F.S. Section 921.0024, F.S., provides for a "lowest permissible sentence" below which the judge may not sentence an offender without providing written reasons. Section 921.0024, F.S., provides that the minimum sentence is calculated by computing various factors like victim injury and prior record. Section 921.0022, F.S., sets forth an offense severity ranking chart which ranks most felony offenses from levels 1 to 10. The severity ranking is the primary factor which is used with the minimum sentence calculation. A level 10 offense scores highest; level 1 and level "M" score lowest.

Section 921.0022(3)(a), F.S., ranks the offenses of the unlicensed practice of medicine and the unlicensed practice of dentistry or dental hygiene as level 1 offenses. A first time offender who has committed no additional offense and did not injure his or her victim, scores a "lowest permissible sentence" of any non-state prison sanction which may include probation, community control, or a county jail sentence of less than 1 year. Offenses relating to the unlicensed practice of other health care professions which constitute a third degree felony, although not specifically listed in the

offense severity ranking chart, are ranked as a level 1 offense by virtue of the default provision in s. 921.0023, F.S.

Impaired Practitioner Treatment Program

Various practice acts regulating health care professions under DOH contain provisions establishing grounds for disciplinary action which may be taken against licensed health care practitioners who are unable to practice their profession with reasonable skill and safety as a result of the misuse or abuse of alcohol, drugs or due to a mental or physical condition. Section 455.707, F.S., provides for the impaired practitioner treatment program. By entering and successfully completing the impaired practitioner program, the practitioner may avoid formal disciplinary action, if the only violation of the licensing statute under which the practitioner is regulated is the impairment. The department must retain one or more impaired practitioner consultants to administer and implement the impaired practitioner treatment program. The consultant works closely with approved treatment providers regarding the intervention, evaluation, and treatment of impaired practitioners participating in the program.

If in the opinion of the consultant, after consultation with the treatment provider, the impaired practitioner fails to satisfactorily progress in a treatment program, all information regarding the practitioner's impairment and participation in the treatment program must be disclosed to DOH. The disclosure constitutes a disciplinary complaint under s. 455.621, F.S.

Section 455.704, F.S., provides for the Impaired Practitioners Committee to be composed of one representative appointed by each board under the jurisdiction of the Division of Medical Quality Assurance, one addictionologist, and one lay member having a background in the area of impairment. The members of the committee are appointed by the agency head of the agency having jurisdiction over the professions, and one representative appointed by the Secretary of Health. The committee is required to: establish policies and guidelines for use in approving treatment providers for preventive and rehabilitative programs for impaired practitioners; act as a liaison between approved treatment providers and the department; advise DOH on the continuation or expansion of treatment programs; and disseminate information concerning the program.

Practitioner Profiling

Section 455.565, Florida Statutes, requires each licensed physician, osteopathic physician, chiropractic physician, and podiatric physician to submit specified information which, beginning July 1, 1999, will be compiled into practitioner profiles to be made available to the public. The information includes: graduate medical education; hospitals at which the physician has privileges; specialty certification; year the physician began practice; a description of any criminal offense committed; a description of any final disciplinary action taken within the most recent 10 years; professional liability closed claims reported to the Department of Insurance within the most recent 10 years exceeding \$5,000; professional awards and publications; languages, other than English, used by the physician to communicate with patients; and an indication of whether the physician participates in the Medicaid program. Each person who applies for initial licensure as a medical physician, osteopathic physician, chiropractic physician, or podiatric physician must, at the time of application, and each medical physician, osteopathic physician, chiropractic physician, or podiatric

physician must, in conjunction with the renewal of the license, submit the information required for practitioner profiles.

Section 455.565, F.S., requires medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit fingerprints for a national criminal history check as part of initial licensure. The section also requires already licensed medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians to submit, on a one-time-basis, a set of fingerprints for the initial renewal of their licenses after January 1, 2000, to DOH. The department must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after January 1, 2000. For any subsequent renewal of the applicant's license, DOH must submit the required information for a statewide criminal history check of the applicant.

Section 455.5651, F.S., requires DOH to indicate if the criminal history information reported by a physician is not corroborated by a criminal history check. The department or the board having regulatory authority over the practitioner must investigate any information it receives when it has reasonable grounds to believe that the practitioner has violated any law that relates to the practitioner's practice. Each practitioner's profile must include the following statement: "The criminal history information, if any exists, may be incomplete; federal criminal history information is not available to the public."

Medical physicians, osteopathic physicians, chiropractic physicians, and podiatric physicians applying for licensure renewal must submit the information required for the practitioner profiles, however, an applicant who has submitted fingerprints to DOH for a national criminal history check upon initial licensure and is renewing his or her license for the first time, only needs to submit the information and fee required for a statewide criminal history check.

Section 455.5653, F.S., requires DOH to develop by the year 2000, a schedule and procedures for other licensed health care practitioners to submit relevant information for inclusion in practitioner profiles.

Sexual Misconduct

Section 455.567, F.S., requires DOH and each board within the department to refuse to admit a candidate to any licensure examination and to refuse to issue a license to any candidate who has had any license to practice any profession revoked or surrendered based on a violation of sexual misconduct in the practice of that profession under the laws of any other state or any territory or possession of the United States. The licensure disqualification also applies to any person who has committed any act in any other state or any territory or possession of the United States which if committed in this state would constitute sexual misconduct. The licensure disqualification is restricted to examination candidates or license applicants whose license has not been reinstated by the licensing authority of the jurisdiction that revoked the license based on a violation of sexual misconduct. The section provides that a licensing authority's acceptance of a candidate's relinquishment of a license that is offered in response to or in anticipation of the filing of administrative charges against the candidate's license constitutes the surrender of the candidate's license.

Background Screening

Chapter 435, F.S., relating to employment screening, provides for two levels of review of an individual's past. Level 1 screening requires criminal history screening through FDLE's database and screening for a history of abuse, neglect, or exploitation through the Department of Children and Family Services. Level 2 screening, which is more comprehensive in that it is a national search involving use of a fingerprint card, includes search of delinquency records, and requires FBI screening.

Certified nursing assistants working in nursing homes are required to undergo background screening. Certified nursing assistants are subject to criminal history screening and abuse and neglect screening in accordance with s. 400.215, F.S. A CNA who is disqualified from employment because of screening results may request a hearing from DOH to determine whether he or she may be exempted, as provided in s. 435.07, F.S. If an exemption is granted, the CNA may be employed by a nursing home. Professionals licensed by DOH, Division of Medical Quality Assurance, are exempt from nursing home-based employment screening.

Section 400.512, F.S., requires the Agency for Health Care Administration to require employment or contractor Level 1 screening under ch. 435, F.S., for home health agency personnel, persons referred for employment by nurse registries, and persons employed by registered companion or homemaker services. The Agency for Health Care Administration is authorized to grant exemptions from employment or contracting as provided in s. 435.07, F.S. The costs of processing the statewide correspondence criminal records checks and the search of the Department of Children and Family Services central abuse hotline must be borne by the home health agency, the nurse registry, or the registered companion or homemaker service, or by the person being screened. The section provides a first degree misdemeanor for any person who willfully, knowingly, or intentionally uses information from criminal records or the central abuse hotline for any purpose other than screening that person for employment as specified in this section or releases such information to any other persons for any reason other than screening under this section.

Office Surgery

Chapter 458, F.S., authorizes the Board of Medicine to regulate the practice of medicine. Section 458.309, F.S., authorizes the board to adopt rules pursuant to provisions within the Administrative Procedure Act to implement the provisions of the chapter conferring duties upon it. Chapter 458, F.S., provides grounds for which a physician may be subject to disciplinary action by the board. Section 458.331(1)(g), F.S., prohibits a physician from failing to perform any statutory or legal obligation placed upon the physician. Section 458.331(1)(t), F.S., requires physicians to practice with a minimum standard of care.

Section 458.331(1)(v), F.S., prohibits a medical physician from practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or delegating professional responsibilities to any person that the physician has reason to know is not qualified by training, experience, or licensure to perform. Section 458.331(1)(v), F.S., also authorizes the board to establish by rule standards of practice and standards of care for particular

practice settings, including, but not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.

Section 458.309, F.S., authorizes the board to adopt rules to require all physicians who perform level 2 procedures lasting more than 5 minutes and all level 3 surgical procedures in an office setting to register the office with the Department of Health, unless that office is licensed as a hospital or ambulatory surgical center. The department must inspect the physician's office annually, unless the office is accredited by a nationally recognized accrediting agency or an accrediting organization subsequently approved by the board. The actual costs for registration and inspection or accreditation must be paid by the person seeking to register and operate the office setting in which office surgery is performed.

The Board of Medicine adopted an administrative rule, 64B-8.9009, Florida Administrative Code, on January 28, 2000, and it became effective on February 17, 2000. The administrative rule establishes standards for all medical physicians who perform office surgery. The rule expands requirements: for informed consent, medical records and logs of surgical procedures; equipment and supplies; qualifications of assisting personnel; and monitoring of patients during recovery. The rule imposes limitations on liposuction procedures; requires offices to post a sign showing that the office is regulated by the Board of Medicine; and requires policy and procedure manuals. At its February 2000 meeting the board also approved new rules (64B-8.9001 and 64B-8.90092, F.A.C.) relating to incident reporting and the approval of accrediting organizations. On March 9, 2000, Rule 64B-8.9001, F.A.C., requiring Florida physicians to report any adverse incidents occurring in their offices and Rule 64B-8.90092, F.A.C., regarding the approval of accrediting organizations became effective. Rule 64B-8.90091, F.A.C., relating to inspection of physician offices was adopted by the board on March 16 and will take effect May 15, 2000.

Licensed medical physicians may perform surgery in their medical offices, ambulatory surgical centers, or hospitals. Sections 458.351 and 459.028, F.S., require any medical physician, osteopathic physician, or physician assistant to notify the Department of Health of any adverse incident that involved the physician or physician assistant which occurred on or after January 1, 2000, in any office maintained by the physician for the practice of medicine that is not licensed under chapter 395, F.S., relating to licensure for hospitals and ambulatory surgical centers. The sections require any medical physician, osteopathic physician, or physician assistant to notify the department in writing and by certified mail of the adverse incident within 15 days after the adverse incident occurred. The notice must be postmarked within 15 days after the adverse incident occurred.

“Adverse incident” is defined under ss. 458.351 and 459.028, F.S., to mean an event over which the physician or physician assistant could exercise control and which is associated in whole or in part with a medical intervention, rather than the condition for which such intervention occurred, and which results in the following patient injuries: death of a patient; brain or spinal damage to a patient; performance of a surgical procedure on the wrong patient; any condition that required the transfer of a patient to a hospital licensed under chapter 395, F.S., from an ambulatory surgical center licensed under chapter 395, F.S., or any facility or any office maintained by a physician for the practice of medicine which is not licensed under chapter 395; or performance of a procedure

to remove unplanned foreign objects remaining from a surgical procedure. Under the definition of adverse incident, a medical physician, osteopathic physician, or physician assistant must provide notice of patient injuries only if they result in death, brain or spinal damage, permanent disfigurement, fracture or dislocation of bones or joints, a limitation of neurological, physical or sensory function, or any condition that required the transfer of the patient. The Department of Health must review each adverse incident and determine whether the incident potentially involved conduct by a health care professional who is subject to disciplinary action, and provides that the procedures for handling disciplinary complaints under s. 455.621, F.S., apply.

Kidney Dialysis Study

Section 187, ch. 99-397, Laws of Florida, required the Agency for Health Care Administration to conduct a detailed study of clinical laboratory services for kidney dialysis patients in Florida. The study must among other things, include an analysis of utilization rates of clinical laboratory services for dialysis patients, and financial arrangements among kidney dialysis centers, their medical directors, and any business relationship and affiliations with clinical laboratories. The Agency for Health Care Administration was required to report its findings to the Legislature by February 1, 2000.

The agency submitted a report, as required. The report noted that the agency was not able to comment on two of the issues the Legislature had requested them to study because of the lack of data and investigative resources. The report recommended that the Legislature give the agency broad subpoena power and the direction to work with the Attorney General's Medicaid Fraud Control Unit, as well as the Insurance Commissioner's office. Additionally, the report recommended that funding be provided so that the study can be performed through one of the state's public universities or a private consultant. The agency estimated the cost for such a study to be approximately \$230,000.

III. Effect of Proposed Changes:

Section 1. Amends s. 455.564, F.S., relating to general licensing provisions, to allow DOH to process licensure applications for persons who are not citizens or residents of this country, and therefore, do not have social security numbers at the time of initial licensure application but are otherwise qualified for licensure. The department may issue a temporary license for 30 days so that the applicant may obtain a social security number. The temporary license expires automatically after 30 days unless a social security number is obtained and given to the department in writing. Upon receipt of the social security number, the department must issue a regular license to the applicant.

The time period in which a licensure application must be granted or denied is tolled until 15 days after the receipt of the final results of an investigation or prosecution of the applicant in any jurisdiction. The board, or department when there is no board, may require applicants with criminal histories relating to the applicant's ability to practice any health care profession, to prove that the applicant's civil rights have been restored before granting a license. Part II, ch. 455, F.S., currently defines "profession" to mean any activity, occupation, profession, or vocation regulated by the department. Each board or DOH may require applicants to make a personal appearance before the board or the department. If the applicant is required to appear, the time period in which

the licensure application must be granted or denied must be tolled until the applicant appears before the board or department. If the applicant fails to appear, the time period in which a licensure application must be granted or denied is tolled for the next two regularly scheduled board meetings or for 30 days if there is no board. If the applicant fails to personally appear before the board or department within those time frames, the application must be denied.

Section 2. Amends s. 455.565, F.S., relating to information required of physicians for practitioner profiles, to eliminate duplicate fingerprinting submissions by a health care practitioner to other state agencies for employment or licensure if the applicant has undergone a criminal history check as a condition of initial licensure or licensure renewal as a health care practitioner. The Agency for Health Care Administration, the Department of Juvenile Justice, and the Department of Children and Family Services must obtain criminal history information for employment or licensure purposes from the Department of Health's credentialing system.

Section 3. Creates s. 455.56505, F.S., to provide legislative intent that consumers be given access to information about health care practitioners to enable consumers to make informed decisions about their health care. Further legislative intent is provided regarding the responsibility of health care practitioners who have provided information which is false, misleading, or incorrect. The department must collect, compile, and publish practitioner information in accordance with the following schedule: beginning July 1, 2001, advanced registered nurse practitioners, physicians, or licensure applicants under the practice acts for these professions, with specified exceptions must comply with the practitioner profiling requirements; beginning July 1, 2002, practitioners licensed or applying for licensure under the practice act for optometry, dentistry, midwifery, massage, psychology, and clinical social work, marriage and family therapy, and mental health counseling must comply with the practitioner profiling requirements; beginning July 1, 2003, practitioners licensed or applying for licensure under the practice act for acupuncture, naturopathy, pharmacy, electrology, opticianry, and hearing aid dispensing must comply with the practitioner profiling requirements; beginning July 1, 2004, practitioners licensed or applying for licensure under the practice act for speech-language pathology and audiology, nursing home administration, occupational therapy, radiologic technology, respiratory therapy, dietetics and nutrition, athletic trainers, orthotics, prosthetics, and pedorthics, certified nursing assistants, clinical laboratory personnel, medical physicists, and physical therapy; beginning July 1, 2005, nursing licensees or applicants must comply with the practitioner profiling requirements; and beginning July 1, 2006, all other licensed practitioners within the Division of Medical Quality Assurance and licensure applicants must comply with the practitioner profiling requirements.

The section requires all health care practitioners, as a condition of initial licensure or licensure renewal, to submit specified information, under procedures adopted by DOH, for practitioner profiling, to electronically update that information within 45 days after any change of status, and to submit a set of fingerprints and information required for conducting a criminal history check if the licensee has not already done so for purposes of licensure. In addition to the issuance of a citation, the section provides penalties for failure to submit the required information: the applicant's license is delinquent until all requirements are met; and the department may refuse to issue a license to any person who fails to submit the required information. The applicants must submit: the name of each school or training program that the applicant attended; a description of all graduate professional education completed by the applicant and the month and year of graduation; the name of each location at which the applicant practices; any certification or

designation the applicant has received from a specialty or certification board recognized or approved by the regulatory board or department to which the applicant is applying; year of initial certification and year the applicant began practicing; faculty appointments; a description of any criminal offense; a description of any final disciplinary action taken within the previous 10 years; and malpractice settlements or judgments.

An initial licensure applicant must submit fingerprints and pay the costs for a federal criminal history check once after the effective date of the bill and must undergo and pay the costs for a statewide criminal history check for every license renewal. The section requires a health care practitioner who is already licensed, to submit, on a one-time-basis, a set of fingerprints for the initial renewal of his or her license after the effective date of the section, to the Department of Health. The Department of Health must submit the fingerprints of licensure renewal applicants to the Florida Department of Law Enforcement (FDLE) and FDLE then must forward the fingerprints to the Federal Bureau of Investigation for a national criminal history check for the initial renewal of the applicant's license after July 1, 2000. For any subsequent renewal of the applicant's license, the Department of Health must submit the required information for a statewide criminal history check of the applicant. All information must be electronically submitted by the practitioner, except fingerprints, along with a payment equal to costs incurred by the department to collect, verify, and publish the information through a secure on-line licensing program.

Section 4. Amends s. 455.5651, F.S., relating to practitioner profiles, to require the Department of Health to compile the information submitted by all other health care practitioner applicants under s. 455.56505, F.S., into a practitioner profile of the applicant submitting the information. Conforming changes are made to authorize the addition of all other health care practitioners regulated by DOH to the practitioner profiling program. An exemption to the Public Records Law is created which would prevent the Department of Health from publishing in the practitioner profile any conviction that has been sealed, expunged, or pardoned.

Section 5. Amends s. 455.5653, F.S., relating to requirements for the Department of Health to develop or contract for a computer to accommodate a data collection and storage system for practitioner profiles, to delete obsolete language and to make conforming changes to authorize the addition of the remaining health care practitioners to the practitioner profiling program.

Section 6. Amends s. 455.5654, F.S., relating to the Department of Health's rulemaking authority for the form of a practitioner profile, to add a cross-reference to newly-created s. 455.56505, F.S., to allow the Department of Health to adopt rules for profiling the remaining professions.

Section 7. Amends s. 455.567, F.S., relating to licensure disqualification for sexual misconduct, to add patient guardians and patient representatives to the list of persons that a health care practitioner may not engage in sexual activity outside the scope of the professional practice of the practitioner's profession.

Section 8. Amends s. 455.574, F.S., relating to examinations, to require DOH or the appropriate regulatory board to set by rule examination fees no greater than the actual per-applicant cost to purchase an examination plus the examination fee set forth in the applicable practice act as of October 1, 1999, notwithstanding any other law.

Section 9. Amends s. 455.587, F.S., relating to fees, to require that, notwithstanding any other law, each board or the department if there is no board, set fees in an amount necessary to cover the actual cost of regulation, and is not restricted to the current statutory fees if the upper limit of such fees prevents the profession from generating sufficient funds to maintain a reasonable cash balance in the trust fund used for health care professional regulation. “Reasonable cash balance” means a positive cash balance that exists at the end of each fiscal year, plus sufficient funds to cover the department’s projections of revenue and expenditures for the regulation of the profession for the next 24 months following the end of each fiscal year. The department must provide detailed information about any projected fee increase to each board on January 1 of each year before the board may impose the fee increase based on the projection.

Section 10. Amends s. 455.624, F.S., relating to grounds for which a health care professional may be subject to discipline, to authorize DOH or the appropriate board to discipline any professional licensee for engaging in sexual misconduct as defined and prohibited in s. 455.567, F.S., or to consider such violation as a practice violation at the time of a licensure application for denial of licensure or other restrictions of the license. The ground for which a professional may be subject to discipline for sexual misconduct is revised to conform to the definition in s. 455.567(1), F.S. A new ground for disciplining a practitioner is added for being unable to practice with reasonable skill and safety to patients by reason of impairment. A procedure to compel licensees to submit to a mental or physical examination when probable cause exists that the licensee is unable to practice with reasonable skill and safety to patients by reason of impairment is provided. A summary proceeding in circuit court to enforce an order compelling mental or physical examination is provided. The section creates a Public Records Law exemption by providing that the name or identity of the licensee who is the subject of a summary proceeding to compel a mental or physical examination may not be made public and closes the proceedings to the public. The section makes a health care practitioner subject to discipline for testing positive for any drug, as defined in s. 112.0455, F.S., on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using such drug. The board, or the department when there is no board, may restrict a license when the licensee is found guilty of violating any of the grounds for discipline found in s. 455.624(1), F.S. The board, or department when there is no board, must assess a fine and issue citations for first-time violations of unprofessional conduct if no actual harm to the patient occurred.

Section 11. Reenacts ss. 455.577, 455.631, 455.651, 455.712, 458.347, 459.022, 468.1755, 468.719, 468.811, and 484.056, F.S., with cross-references to s. 455.624, F.S.

Section 12. Repeals s. 455.704, F.S., relating to the Impaired Practitioners Committee.

Section 13. Amends s. 455.707, F.S., relating to the treatment program for impaired practitioners, to correct terminology and delete references to the Impaired Practitioners Committee. The section provides that a report of impairment does not become a ground for discipline under s. 455.621 or the grounds for discipline within the applicable practice act of professions within the department. Other minor technical changes are made regarding the role of the consultant for treatment programs of impaired practitioners and the boards or department in the administration of the impaired practitioner treatment program.

Section 14. Amends s. 310.102, F.S., relating to treatment programs for impaired harbor pilots, to delete a reference to the Impaired Practitioners Committee.

Section 15. Amends s. 455.711, F.S., relating to inactive and delinquent status of licenses, to correct terminology relating to licensure status and to provide licensees the ability to change licensure status at any time, notwithstanding any other provision. The bill specifies which fees are supposed to be paid at the time of change of licensure status and at the time of renewal. The boards, or the department when there is no board, are granted authority to adopt rules necessary to implement this section.

Section 16. Amends s. 455.587(3), F.S., relating to fees, to correct and conform terminology relating to licensure status due to changes in authorizing licensees to change status at any time.

Section 17. Amends s. 455.714, F.S., relating to the issuance of license renewal and cancellation notices, to correct and conform terminology relating to licensure status due to changes in authorizing licensees to change status at any time.

Section 18. Creates s. 455.719, F.S., to provide that only the appropriate regulatory board, or the Department of Health when there is no board, may grant an exemption from disqualification from employment or contracting as provided in s. 435.07, F.S., when the person applying for employment or contracting is a person under the licensing jurisdiction of the board or department, as applicable.

Section 19. Amends s. 943.0585, F.S., to allow DOH to obtain expunged criminal history records for licensure and employment purposes in order to serve as a repository for other state agencies who presently receive expunged records directly from the Florida Department of Law Enforcement. An exemption to the Public Records Law for agencies which are provided expunged criminal history is created by extending the exemption to include the Department of Health.

Section 20. Appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to the Agency for Health Care Administration to fund a contract with the University of South Florida to conduct a review of the quality and effectiveness of kidney dialysis treatment as well as the utilization and business arrangements related to kidney dialysis centers. A report on the findings must be submitted to the Legislature by February 1, 2001.

Section 21. Amends s. 455.637, F.S., relating to the unlicensed practice of health care professions regulated by the Department of Health or the appropriate board, to provide legislative intent that vigorous enforcement of licensure regulation for all health care professions is a state priority. In addition to existing administrative and civil remedies for unlicensed activity in this section and the individual practice acts for each health care profession within the Department of Health, the section creates criminal offenses for unlicensed activity in subparagraphs 1., 2., and 3. of paragraph (d) of subsection (2).

1. It is a third degree felony punishable by imprisonment of up to 5 years and a fine of up to \$5,000 to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice that profession. Practicing without an active, valid

license includes practicing on a suspended, revoked, or void license but does not include practicing, attempting to practice, or offering to practice with an inactive or delinquent license for any period up to 12 months. A minimum mandatory sentence of 1 year imprisonment and a fine of \$1,000 is created for any person who violates this subparagraph.

2. It is a second degree felony punishable by imprisonment of up to 15 years and a fine of up to \$15,000 to practice, attempt to practice, or offer to practice a health care profession without an active, valid Florida license to practice when such practice results in serious bodily injury. "Serious bodily injury" is defined to mean death, brain or spinal damage, disfigurement, fracture or dislocation of bones or joints, limitation of specified functions, or any condition that requires subsequent surgical repair. A minimum mandatory sentence of 1 year imprisonment and a fine of \$1,000 is created for any person who violates this subparagraph.

3. It is a first degree misdemeanor punishable by imprisonment of up to 1 year and a fine of up to \$1,000 to practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months. Practicing, attempting to practice or offering to practice a health care profession when that person's license has been inactive or delinquent for a period of time of 12 months or more is a third degree felony. A minimum mandatory sentence of 30 days in jail and a fine of \$500 is created for any person who violates this subparagraph.

A mechanism for the department to recover enforcement costs is created which is comparable to the provisions of s. 455.641, F.S., which is repealed in this bill.

Section 22. Creates an undesignated section, to provide that amendments to s. 455.637, F.S., by this act apply to criminal offenses committed on or after the effective date of this section.

Section 23. Repeals s. 455.641, F.S., relating to requirements for the Department of Health to collect an unlicensed activity fee.

Section 24. Reenacts for purposes of incorporating the amendment to s. 455.637, F.S., the following sections: 455.574, 468.1295, 484.014, and 484.056, F.S.

Section 25. Creates s. 455.665, F.S., to require that in the text of any written advertisement for a surgical procedure the following statement must appear in capital letters clearly distinguishable from the rest of the text: "MANY SURGICAL PROCEDURES CARRY RISKS OF UNINTENDED SERIOUS BODILY INJURY OR DEATH. CONSULT A LICENSED PRACTITIONER CONCERNING THESE RISKS BEFORE SUBMITTING TO ANY SURGERY." Any advertisement that has an audible component must orally contain this statement verbatim.

Section 26. Amends s. 921.0022, F.S., to revise the offense severity ranking chart to move the offenses for unlicensed practice of medicine and unlicensed practice of dentistry or dental hygiene and previously unspecified third degree felony offenses relating to the unlicensed practice of osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathy, optometry, nursing, pharmacy, midwifery, respiratory care services, clinical lab personnel, medical physics, and

hearing aid specialists from level 1 to level 7. In addition, offenses created by the bill relating to the unlicensed practice of a health care profession and the unlicensed practice of a health care profession which results in bodily injury are ranked as level 7 offenses on the offense severity ranking chart.

Section 27. Provides an effective date of July 1, 2000.

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:

Section 4 of the bill creates an exemption to the Public Records Law which would prevent DOH from publishing in the practitioner profile any conviction that has been sealed, expunged, or pardoned. Section 943.0585(4), F.S., provides that any criminal history record which is ordered expunged by a court of competent jurisdiction must be physically destroyed or obliterated by any *criminal justice agency* having custody of such record except the Florida Department of Law Enforcement (FDLE) must retain the record and keep it confidential and such record as maintained by FDLE is also exempt from the Public Records Law. Any person who is the subject of a criminal history that is expunged may lawfully deny or fail to acknowledge the arrests covered by the expunged record with specified exceptions. When the subject of an expunged record provides the information to a state agency subject to the Public Records Law under the exceptions specified in s. 943.0585 (4)(a), F.S., the information relating to the existence of an expunged criminal history record which is provided in accordance with paragraph (a) of that section remains confidential and exempt as maintained by that state agency and may only be used for licensing and employment purposes and provided to other criminal justice agencies which must maintain the confidentiality thereof. The Department of Health is not currently listed as one of the agencies for which this exception applies.

The bill prohibits the publication of this public record, without meeting the requirements of Section 24(a), Article I of the State Constitution that provides that a public records exemption may only become law in a bill that relates to exemptions to the public records law.

Section 10 of the bill creates a Public Records Law exemption by providing that the name or identity of the licensee who is the subject of a summary proceeding to compel a mental or physical examination may not be made public and closes the proceedings to the public. It does so, without meeting the requirements of Section 24(a), Article I of the State Constitution that provides that a public records exemption may only become law in a bill that relates to exemptions to the public records law.

In section 19 of the bill, an exemption to the Public Records Law for agencies which are provided expunged criminal history pursuant to 943.0585(4)(a), F.S., is created by extending

the exemption to include DOH without meeting the requirements of Section 24(a), Article I of the State Constitution that provides that a public records exemption may only become law in a bill that relates to exemptions to the public records law.

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:

Section 3 of the bill which creates s. 455.56505, F.S., revises the penalties for failure to submit information required for the practitioner profiles by providing that an applicant's license is delinquent until all requirements are met. To the extent that the bill creates an inconsistency with the existing penalties already required under s. 455.565, F.S., relating to information that physician licensure applicants must submit for practitioner profiling, it may be subject to legal challenges under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Florida Constitution.

The bill creates criminal offenses for the unlicensed practice of health care professions, some of which include a minimum mandatory sentence of imprisonment and a monetary fine. The bill does not define "health care profession" for purposes of the criminal offenses. Section 455.501, F.S., defines "profession" to mean any activity, occupation, profession, or vocation regulated by the Department of Health in the Division of Medical Quality Assurance. The section defines "health care practitioner" to mean a person licensed under specified professional practice acts. The bill's failure to define the term "health care profession" for purposes of the newly created criminal offenses raises some constitutional issues. Any person who performs acts which are comparable to the acts prohibited by the bill, without being licensed by the appropriate regulatory board or the department if there is no board, is subject to criminal penalties. Establishing a criminal penalty for acts that are prohibited or required, but that are not clearly defined, is likely to be void for vagueness or for overbreadth under the due process clauses of the state and federal constitutions. Both constitutions prohibit a statute from forbidding or requiring the doing of an act in terms so vague that persons of common understanding must necessarily guess at its meaning and differ as to its application. *Brock v. Hardie*, 154 So. 690 (Fla. 1934). A statute is overbroad when its proscriptive language embraces not only acts properly and legally punishable, but others which are constitutionally protected or outside the police power of the state to regulate. *Locklin v. Pridgeon*, 30 So.2d 102 (Fla. 1947).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Licensed health care professionals subject to the profiling requirements under the bill will pay a \$50 profiling fee and a \$43 fee to cover costs for a criminal history background check.

Licensed health professionals and applicants must also bear unspecified costs for electronic submission of information required for the practitioner profiling.

B. Private Sector Impact:

Licensed health care practitioners who are currently subject to duplicative criminal background screening will save costs equal to not having to do so.

Licensure applicants will have to pay the actual cost to the department for licensure examinations.

Licensed health care practitioners and applicants will pay fees set by the department or appropriate board to cover the actual costs of regulation.

C. Government Sector Impact:

The Department of Health will incur costs to add the remaining health care professionals to the existing profiling system. The department estimates that it will have non-recurring costs (salaries and benefits for 20 staff positions; consultant fees for technical support; and computer hardware) totaling \$632, 256 for fiscal year 2000-2001 and \$60,012 for fiscal year 2001-2002. The department estimates recurring costs (salaries and benefits for 10 staff positions; additional software; travel expenses; postage; printing; and outreach efforts) totaling \$4,290,140 for fiscal year 2000-2001 and \$6,472,061 for fiscal year 2001-2002. **Total costs equal \$4,922,396 (\$632,256 plus \$4,290,140) for fiscal year 2000-2001 and \$6,532,073 (\$60,012 plus \$6,472,061) for fiscal year 2001-2002.** To offset the expenditures, DOH will collect profiling fees of \$2,594,750 (51,895 licensees @ \$50) and criminal background fees of \$511,485 (11,895 licensees @\$43) for fiscal year 2000-2001; and profiling fees of \$3,531,000 (70,620 licensees @ \$50) and criminal background fees of \$3,036,660 (70,620 licensees @\$43) for year 2001-2002.

The Department of Health will no longer incur travel and per diem costs for meetings of the Impaired Practitioner Committee.

The bill requires the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Family Services to obtain criminal history for employment or licensure of health care practitioners from DOH's credentialing system, if the applicant has undergone a criminal history check for initial licensure or renewal. To the extent the costs of criminal history checks are generally borne by persons or entities other than these departments, these departments will incur unspecified costs to retrieve this information from DOH.

The bill appropriates \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to the agency to fund the study of kidney dialysis treatment and kidney dialysis treatment centers.

VI. Technical Deficiencies:

The title needs revision to provide adequate notice of the scope of the bill's contents. In addition to the general regulatory administration of the health care professions, the bill contains a provision relating to an appropriation of \$230,000 from the Agency for Health Care Administration Tobacco Settlement Trust Fund to fund a contract with the University of South Florida to conduct a review of quality and effectiveness of kidney dialysis treatment as well as the utilization and business arrangements related to kidney dialysis centers. This bill revises provisions relating to unlicensed activity and amends the law to revise the offense severity ranking chart to move the criminal offenses for unlicensed practice of medicine and unlicensed practice of dentistry or dental hygiene and previously unspecified third degree felony offenses relating to the unlicensed practice of osteopathic medicine, chiropractic medicine, podiatric medicine, naturopathy, optometry, nursing, pharmacy, midwifery, respiratory care services, clinical lab personnel, medical physics, and hearing aid specialists from level 1 to level 7.

The title of the bill is "An act relating to general regulatory administration of the health care professions."

The bill requires the Agency for Health Care Administration, the Department of Juvenile Justice, or the Department of Children and Family Services to obtain criminal history for employment or licensure of health care practitioners from the DOH's credentialing system, if the applicant has undergone a criminal history check for initial licensure or renewal. The Department of Health is not required by law to provide such information with these departments.

Section 3 of the bill creates s. 455.56505(2)(d), F.S., to require "beginning July 1, 2004, practitioners licensed or applying for licensure pursuant to *chapter 468, chapter 483, or chapter 486,*" F.S., to comply with the practitioner profiling requirements. It is unclear whether the bill extends practitioner profiling requirements to professionals who are not regulated under the Division of Medical Quality Assurance of the Department of Health.

VII. Related Issues:

Under the bill, the board, or department when there is no board, must assess a fine and issue citations in accordance with s. 455.617, F.S., for first-time violations of unprofessional conduct if no actual harm to the patient occurred. It is unclear whether all violations of the practice act, which are a "first-time violation" and no actual harm can be shown to the patient, are grounds for a fine and citation. Many acts designated as unprofessional conduct such as fraud; the filing of a false report; fraudulent obtaining or renewing of a license; aiding unlicensed activity; practicing beyond the scope of practice; improper delegating professional responsibilities; and improperly interfering with an investigation do not actually involve patients or involve actual harm to patients.

The bill requires the text of any written advertisement for a surgical procedure to include specified information. The appropriate board within the Department of Health may discipline a health care practitioner it regulates for failing to perform a statutory or legal obligation placed upon a licensed practitioner. It is unclear how this requirement will be enforced against entities not subject to health care professional licensure.

The bill creates criminal offenses for the unlicensed practice of health care professions, some of which include a minimum mandatory sentence of imprisonment and a monetary fine. Section 921.001, F.S., requires any legislation that creates a felony offense, enhances a misdemeanor offense to a felony or reclassifies an existing felony offense to a greater felony classification to result in a net zero sum impact in the overall prison population as determined by the Criminal Justice Estimating Conference, unless the legislation contains a sufficient funding source to accommodate the change, or the Legislature abrogates the application of s. 921.001, F.S. To the extent the bill creates a felony offense for the unlicensed practice of health care professions, it may have a fiscal impact based on its impact on the overall prison population as determined by the Criminal Justice Estimating Conference under procedures established in s. 216.136(5), F.S.

VIII. Amendments:

None.

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