

STORAGE NAME: h1659.hr.doc
DATE: April 11, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HEALTH REGULATION
ANALYSIS**

BILL #: HB 1659
RELATING TO: Electrologists/Laser/Light Devices
SPONSOR(S): Representative Kallinger
TIED BILL(S): None.

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH REGULATION
 - (2) STATE ADMINISTRATION
 - (3) COUNCIL FOR HEALTHY COMMUNITIES
 - (4)
 - (5)
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I. SUMMARY:

This bill changes the definition of "electrolysis or electrology" to specifically permit the use of lasers and light-based equipment designed for hair removal. It removes the Board of Medicine's ability to approve specific devices for use by electrologists and substitutes the approval of protocols by the board with approval of protocols by the council.

The bill prohibits electrologists from using laser or light-based devices for hair removal unless they complete a board-approved training course on the use of these devices. It also specifies that the electrologist must work under the general supervision of a physician licensed under chapters 458 or 459 when performing laser or light-based hair removal. This changes the supervision requirement from "direct" to "general." The bill states that the supervision requires "written protocols that require easy accessibility and communication between the electrologist and the physician and that ensure patient safety when the physician is not physically present during the procedures."

There is no fiscal impact on the Department of Health.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | 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. PRESENT SITUATION:

Chapter 478, Florida Statutes, governs the practice of Electrology in Florida, and is referred to as the "Electrolysis Practice Act" in s. 478.40, F.S. The practice act sets forth definitions, requirements for licensure in Florida, requirements for renewal of license, requirements for electrolysis facilities to be permitted and inspected, grounds for discipline, penalties for violating the practice act, and powers and duties of the Board of Medicine and the Electrolysis Council.

Section 478.42(4), F.S., defines an "electrologist" as a person who engages in the practice of electrolysis.

Section 478.42(5), F.S., was amended in 1999 to define "electrolysis or electrology" as being "the permanent removal of hair by destroying the hair-producing cells of the skin and vascular system, using equipment and devices approved by the board which have been cleared by and registered with the United States Foods and Drug Administration and that are used pursuant to protocols approved by the board."

Prior to the 1999 change, the definition of electrology was narrow, referring to the traditional needle-type epilation devices used by electrologists prior to the additional availability of lasers. The old definition found in s. 478.42(5), F.S. (1997), defined "electrolysis or electrology" as "the permanent removal of hair by introducing, into and beneath the skin, ionizing (galvanic current) or nonionizing radiation (thermolysis or high-frequency current) to destroy the hair-producing cells of the skin and vascular system, using needle-type epilation devices that are registered with the United States Food and Drug Administration and used pursuant to protocols approved by the council and the board."

Section 478.43, F.S., sets forth the general powers and duties of the Board of Medicine with regard to Electrology, stating:

- (1) The board, with the assistance of the Electrolysis Council, is authorized to establish minimum standards for the delivery of electrolysis services and to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.
- (2) The board may administer oaths, summon witnesses, and take testimony in all matters relating to its duties under this chapter.

(3) The board may delegate such powers and duties to the council as it may deem proper.

(4) The board, in consultation with the council, shall recommend proposed rules, and the board shall adopt rules for a code of ethics for electrologists and rules related to the curriculum and approval of electrolysis training programs, sanitary guidelines, the delivery of electrolysis services, continuing education requirements, and any other area related to the practice of electrology.

Section 478.44, F.S., creates an Electrolysis Council under the supervision of the Board of Medicine. Presently, the Board of Medicine must approve all proposed rules by the Electrolysis Council.

Based on the change in the definition in 1999, the Board of Medicine and the Electrolysis Council began the rulemaking process. As part of rule 64B8-56.002, F.A.C., the board and council proposed to require indirect supervision of electrologists by physicians when lasers were used.

During the 2000 Legislative session, s. 458.348(3), F.S., was created to override the proposed board rule and reads, “[A]ll protocols relating to electrolysis or electrology using laser or light-based hair removal or reduction by persons other than physicians licensed under this chapter or chapter 459 shall require the person performing such service to be appropriately trained and work only under the direct supervision and responsibility of a physician licensed under this chapter or chapter 459.”

Thereafter, the Board of Medicine amended its proposed rule 64B8-56.002, F.A.C. However, there remains a dispute relating to the appropriate level of supervision and how to define “direct” supervision. According to information provided by the Department of Health and the Board of Medicine, the amended rule is currently under challenge by the Florida Society of Dermatology and is pending a hearing by the Division of Administrative Hearings.

C. EFFECT OF PROPOSED CHANGES:

The bill changes the definition of “electrolysis or electrology” to specifically permit the use of lasers and light-based equipment designed for hair removal.

It removes the Board of Medicine’s ability to approve specific devices for use by electrologists and substitutes the approval of protocols by the board with approval of protocols by the council.

It prohibits electrologists from using laser or light-based devices for hair removal unless they complete a board-approved training course on the use of these devices.

The bill also specifies that the electrologist must work under the general supervision of a physician licensed under chapters 458 or 459 when performing laser or light-based hair removal. This changes the supervision requirement from “direct” to “general.” The bill states that the supervision requires “written protocols that require easy accessibility and communication between the electrologist and the physician and that ensure patient safety when the physician is not physically present during the procedures.”

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 478.42, F.S., to specifically include lasers and light-based equipment as devices that may be used by electrologists when performing electrology or electrolysis.

Section 2. Amends s. 478.49, F.S., to require electrologists using lasers or light-based devices to complete a board-certified training course in the use of such devices and to allow electrologists to work under general supervision of an allopathic or osteopathic physician.

Section 3. Amends s. 478.50, F.S., to specify that the board, with the assistance of the council, shall approve criteria for and the content of electrolysis training programs, including the use of lasers and light-based devices.

Section 4. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill changes the authority to approve protocols from the Board of Medicine to the Electrolysis Council. The Department of Health has indicated that the protocols would be handled through the rulemaking process, as opposed to reviewing each individual protocol between an electrologist and the supervising physician. It is unclear whether there is specific authority for the protocol approval process to be handled by rule.

The bill also requires the board to amend rules relating to training program requirements. The board currently has rulemaking authority under ss. 478.43(4) and 478.45(1)(e), F.S., to approve rules relating to training programs for electrologists.

C. OTHER COMMENTS:

The bill does not amend or delete s. 458.348(3), F.S., which requires direct supervision and responsibility of a physician licensed under chapter 458 or 459 for persons using laser or light-based hair removal devices. Thus, if this bill passes, there will be a conflict between s. 458.348, F.S., and s. 478.49, F.S. Based on rules of statutory construction, it is likely that the law would be interpreted that the more specific and most recent statutory provision would control, thereby requiring general supervision of electrologists when they are using lasers or light-based devices, instead of direct supervision.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON HEALTH REGULATION:

Prepared by:

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