

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: CS/SB 2866

INTRODUCER: Health Regulation Committee and Senators Diaz de la Portilla, Constantine, and Baker

SUBJECT: Practice of Medicine

DATE: April 16, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HR	Fav/CS
2.			HE	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill prohibits the Department of Health from registering a person as a resident physician, intern, or fellow, or issuing a license to practice medicine to a person, who is a United States citizen or resident and who has traveled to Cuba for medical training or a medical degree. The prohibition applies to allopathic physicians and osteopathic physicians. The bill specifies that the prohibition does not apply to any native or citizen of Cuba who received his or her medical training or medical degree prior to immigrating to the United States.

This bill creates ss. 458.3096 and 459.0052, Florida Statutes.

II. Present Situation:

Medicine and Osteopathic Medicine

Chapter 458, Florida Statutes, governs the practice of medicine. Section 458.311, F.S., outlines the requirements for a person to obtain a license to practice as a medical physician in Florida. The applicant must be at least 21 years of age; have good moral character; have not committed any act or offense in Florida or any other jurisdiction which would constitute the basis for

physician discipline; if graduated from medical school after October 1, 1992, have completed the equivalent of 2 academic years of preprofessional, postsecondary education which covers certain science curricula as specified by rule of the Board of Medicine before entering medical school; meet specified medical education and postgraduate training requirements from recognized U.S. or foreign allopathic medical schools or colleges; and completion of an approved residency of specified duration.

Florida law provides a “fifth pathway” licensure option that allows a foreign medical graduate to sit for the medical licensing examination without first obtaining the certification of the Educational Commission for Foreign Medical Graduates.¹ In addition to the fifth pathway, Florida law has provided alternate licensing requirements for Cuban and Nicaraguan medical physicians² who immigrated as political refugees and who practiced medicine in their countries before immigrating to the United States.³ The law providing an alternate medical licensing pathway for Cuban exiles was repealed on October 1, 1993.⁴ Section 458.3115, F.S., requires the Department of Health to provide procedures under which certain physicians who are or were foreign-licensed and have practiced medicine no less than 2 years to take the United States Medical Licensing Examination (USMLE) or an examination developed by the Department of Health to qualify for a restricted license to practice in Florida.⁵

Section 458.3124, F.S., allows certain persons who were trained in a medical school listed in the World Directory of Medical Schools and are located in a country other than the United States, Canada, or Puerto Rico to apply and take Step III of the USMLE up to 5 times within 5 years after meeting specified requirements. The applicant under s. 458.3124, F.S., may apply for a restricted license to practice under the supervision of a licensed physician approved by the Board of Medicine, with the first year of licensure under direct supervision and the second year in community service under indirect supervision. The applicant would then be eligible for full licensure after successful passage of the USMLE.

Section 458.345, F.S., specifies requirements for the registration with the Board of Medicine of resident physicians, interns, and fellows in fellowship training.

Chapter 459, F.S., similarly governs the practice of osteopathic medicine. The chapter specifies licensing requirements for persons to become licensed to practice osteopathic medicine in Florida. Section 459.021, F.S., specifies requirements for the registration with the Board of Osteopathic Medicine of resident physicians, interns, and fellows in fellowship training.

Physician Supply

Recently, the Council on Graduate Medical Education, a national advisory organization that makes recommendations on the adequacy of the supply and distribution of physicians, predicted

¹ See s. 458.311(3), F.S.

² See s. 458.311(10), F.S. (1989), created by s. 1, ch. 89-266, Laws of Florida.

³ See ch. 74-105, Laws of Florida, ch. 75-177, Laws of Florida, ch. 77-255, Laws of Florida, ch. 86-90, Laws of Florida, and ch. 86-245, Laws of Florida.

⁴ See s. 458.311(8), F.S. (1992 Supp.).

⁵ See s. 3, ch. 96-197, Laws of Florida.

that the demand for physicians, nationally, would significantly outpace the supply.⁶ In Florida, the costs of medical malpractice insurance, the recent adoption of a constitutional amendment that prohibits licensure or continued licensure of physicians who have committed three or more incidents of medical malpractice, displacement of medical students and licensed physicians by natural disasters, and other variables, may affect the number of students applying to medical schools in Florida and the number of allopathic and osteopathic physicians applying for licensure and practicing in Florida. Floridians' access to necessary health care services could be adversely affected by a shortage of licensed physicians practicing in Florida.

Cuban Medical Schools

According to the U.S. Department of State, Cuba is a totalitarian police state, which relies on repressive methods to maintain control. These methods include intense physical and electronic surveillance of Cubans.⁷ Medical outreach is one of the Cuban government's express methods of international diplomacy -- Cuba sends physicians throughout the world to provide services to the underserved of many countries in Africa and to respond to natural disasters. For the past several years, about 100 U.S. students, of which more than half have been black, have enrolled in a Cuban government scholarship program at the Latin American School of the Medical Sciences.⁸ The Interreligious Foundation for Community Organization, has a program targeting underprivileged students to train as medical students for six years in Cuba at the Latin American Medical School of Medical Sciences and to return to the United States to work in underserved areas. The Congressional Black Caucus obtained a special license to provide an exception to the U.S. blockade and tightened travel rules that would have forced the students to leave the Cuban program.⁹ Eight U.S. students graduated from the program in 2007.

The program of the Latin American School of Medical Sciences is based on intensive advising and tutoring designed to help every student succeed. Students must pass competency exams at appropriate points in their course of study. The 6-year medical school program, which follows the pre-med program, begins every September and is divided into 12 semesters.¹⁰ Students study at the Latin American School of Medical Sciences campus for the first two years, and then go to another of Cuba's 21 medical schools, which are located throughout the island, to complete their studies. The Cuban medical training model combines theory and practice and is oriented toward primary care, community medicine and hands-on internships.

Restrictions on the Use of Currency in Cuba

The Cuban Assets Control Regulations¹¹ are enforced by the U.S. Treasury Department and the U.S. Attorney General and affect all U.S. citizens and permanent residents wherever they are

⁶ See Report by the Council on Graduate Medical Education, "Physician Workforce Policy Guidelines for the United States, 2000-2020 Sixteenth Report January 2005."

⁷ Since 1992, the Interreligious Foundation for Community Organization has worked to bring an end to the U.S. economic blockade of Cuba. See the website for the Interreligious Foundation for Community Organization at <www.ifconews.org> (Last visited on April 13, 2008).

⁸ Ataiyero, Kayce T. "America's no. 1 Cuban import: Blacks go to medical school abroad and return to the U.S. to practice." Black Enterprise, July 1, 2007.

⁹ Id.

¹⁰ See <<http://www.ifconews.org/MedicalSchool/main.htm>> (Last visited on April 13, 2007).

¹¹ Cuban Assets Control Regulations are codified in part 515 of title 31 CFR.

located, all people and organizations physically in the United States, and all branches and subsidiaries of U.S. organizations throughout the world. The Cuban Assets Control Regulations require that persons subject to U.S. jurisdiction be licensed to engage in any travel-related transactions pursuant to travel to, from, and within Cuba. Transactions related to tourist travel are not licensable. This restriction includes tourist travel to Cuba from or through a third country such as Mexico or Canada. U.S. law enforcement authorities have increased enforcement of these regulations at U.S. airports and pre-clearance facilities in third countries. Travelers who fail to comply with Department of Treasury regulations could face civil penalties and criminal prosecution upon return to the United States.

III. Effect of Proposed Changes:

The bill creates s. 458.3096, F.S., to prohibit the Department of Health from registering a person as a resident physician, intern, or fellow, or issuing a license to practice allopathic medicine to a person, who is a United States citizen or resident and who has traveled to Cuba for medical training or a medical degree. The bill creates s. 459.0052, F.S., to prohibit the Department of Health from registering a person as a resident physician, intern, or fellow, or issuing a license to practice osteopathic medicine to a person, who is a United States citizen or resident and who has traveled to Cuba for medical training or a medical degree.

The bill specifies that the prohibitions do not apply to any native or citizen of Cuba who received his or her medical training or medical degree prior to immigrating to the United States.

The effective date of the bill is July 1, 2008.

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.

D. Other Constitutional Issues:

The right to practice a profession is subject to the state's police power and is not an absolute or unqualified right. The state's interest in asserting its police power is to protect the public and control aspects of professional practice -- including admission to practice.

A state's authority to regulate admission to the practice of a profession is well documented.¹²

An attorney denied comity admission to North Carolina bar brought a § 1983 action against the state's board of law examiners and board's director and members, challenging the constitutionality of the state's requirements for comity admissions.¹³ A federal court in North Carolina held that a state-specific reciprocity provision restricting comity admission to the state bar to those attorneys who had practiced in another jurisdiction offering comity to North Carolina attorneys for at least four of the past 6 years was not narrowly tailored to serve the state's legitimate interest in restricting comity admissions to only the most competent attorneys given the low probability that a lawyers' experience in practicing in a non-comity jurisdiction would adversely affect his professional competence, and therefore violated the attorney's Fourteenth Amendment right to travel.¹⁴ When state action implicates the Fourteenth Amendment right to travel, to survive a constitutional challenge, a state must justify the action's purpose and means by showing that it is necessary to serve a compelling state interest; if that justification is insufficient, the state action may be deemed unconstitutional.

The Due Process Clauses of the Florida and United States Constitutions generally require notice and an opportunity to be heard prior to deprivation of life, liberty, or property. The bill appears to implicate the Due Process Clause of the Florida and United States Constitutions because it prohibits, among other activities, the practice of medicine in Florida for a U.S. citizen or resident who travels to Cuba to receive medical training or a medical degree. To the extent that such a person is already licensed in Florida to "practice medicine", the bill may nullify his or her professional license without any notice or an opportunity to be heard. Additionally, the due process and equal protection clauses of the United States Constitution require licensing boards to apply the same standards to foreign applicants that would apply to individuals educated and trained in the United States.¹⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

U.S. citizens or residents who travel to Cuba to receive medical training or a medical degree from the Latin American School of Medical Sciences will incur costs to seek licensure in another state because the bill prohibits them from receiving a license to practice medicine in Florida.

¹² See *Dent v. West Virginia* 129 U.S. 114 (1889).

¹³ *Morrison v. Board of Law Examiners of the State of North Carolina*, 360 F.S7uoo.2d 751 (2004).

¹⁴ *Id.*

¹⁵ See *Suarez v. Junhta Dental Examinadora*, 580 F.Supp. 334 (1984).

C. Government Sector Impact:

The Department of Health indicates that there may be a minimal increase in workload associated with the investigation of citizenship status of applicants. If this is the case, the cost can be absorbed with current resources.¹⁶

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.)

CS by Health Regulation on April 15, 2008:

The committee substitute prohibits the Department of Health from registering or licensing persons who have traveled to Cuba to receive medical training or a medical degree, rather than prohibiting the person from undertaking his or her medical residency in Florida, from being licensed to practice medicine in Florida, and from practicing medicine in any capacity in Florida.

The committee substitute applies the prohibition to allopathic physicians licensed under ch. 458, F.S., and osteopathic physicians licensed under ch. 459, F.S.

B. Amendments:

None.

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

¹⁶ Department of Health analysis of HB 685, the companion bill to SB 2866.