



Health Care Appropriations Committee

Meeting Packet

**April 6, 2010
1:00 p.m. – 3:00 p.m.
212 Knott**



AGENDA

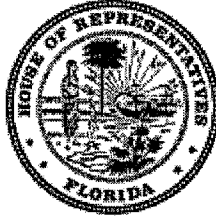
Health Care Appropriations Committee

April 6, 2010

1:00 p.m. – 3:00 p.m.

212 Knott

- I. Call to Order/Roll Call
- II. Opening Remarks
- III. Consideration of the following bills:
 - CS/HB 195 Relief/Pierreisna Archille/DCFS by Civil Justice & Courts Policy Committee, Nehr
 - CS/HB 197 Mobile Home and Recreational Vehicle Parks by Military & Local Affairs Policy Committee, Gonzalez
 - CS/HB 225 Controlled Substances by Health Care Regulation Policy Committee, Legg
 - CS/HB 729 Practice of Tattooing by Health Care Regulation Policy Committee, Brandenburg
 - HB 1383 Pregnant Children and Youth in Out-of-Home Care by Weinstein
- VI. Closing Remarks/Adjournment



STORAGE NAME: h0195.CJCP.doc

DATE: 3/18/2010

March 18, 2010

SPECIAL MASTER'S FINAL REPORT

The Honorable Larry Cretul
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 195 - Representative Nehr
Relief of Pierreisna Archille/DCFS

THIS IS AN UNCONTESTED CLAIM FOR \$1,200,000 PREDICATED ON THE SETTLEMENT AGREEMENT ENTERED BETWEEN PIERREISNA ARCHILLE, BY AND THROUGH HER LIMITED GUARDIAN OF PROPERTY AT THE TIME, PATRICK WEBER, AND THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES, BASED ON THE NEGLIGENCE OF THE DEPARTMENT, WHO FAILED TO CARE FOR AND PROTECT MS. ARCHILLE, A MODERATELY MENTALLY RETARDED FOSTER CHILD, FROM PHYSICAL AND SEXUAL ABUSE, RESULTING IN HER EVENTUAL IMPREGNATION AND THE BIRTH OF A CHILD. THE DEPARTMENT HAS ALREADY PAID \$100,000 PURSUANT TO SECTION 768.28, F.S.

FINDING OF FACT:

Procedural History: Patrick Weber, as the limited guardian of Pierreisna Archille at the time, filed suit in the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida against Bonifacio Velazquez, the Estate of Josephine Velazquez, and the State of Florida, Department of Children and Family Services (DCF) in 2002. The initial Amended Complaint alleged: 1) battery against Benny Velazquez for the sexual molestation, battery, and abuse of Ms. Archille from approximately June 1998, through June 24, 1999; 2) negligence against Josephine Velazquez for failing to protect Ms. Archille from Benny Velazquez when she knew or should have known that he was sexually abusing Pierreisna; 3) violation of the Bill of Rights of Persons with Developmental

Disabilities contained in section 393.13, Florida Statutes, by both Benny and Josephine Velazquez for violating Ms. Archille's right of dignity and humane care, her right to be free from sexual abuse, and her right to be free from harm and abuse; and 4) negligence against the department for failing to monitor and supervise the placement of Ms. Archille in the Velazquez home, and for failing to detect and prevent her sexual abuse.

In July, 2007, the claimant and the department entered into a Settlement Agreement, whereby the department agreed to pay the claimant \$1.3 million. Of this amount, \$100,000 has already been paid pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. Claimant's attorney agreed to defer payment of attorney's fees and costs on the \$100,000 received by the claimant.

DCF fully supports passage of this claim bill, and notes, "[t]he department believes this is a reasonable settlement given that Pierreisna, a mentally-retarded foster child, was sexually abused by the foster father and now has the responsibility to raise a child that was a result of that abuse."

Findings: Pierreisna Archille, a 28 year-old woman possessing the cognitive ability of a 5 or 6 year old and an IQ below 40, was born on September 5, 1981, to Justine Archille in Spartanburg, South Carolina, the eldest of six brothers and sisters. Ms. Archille has a daughter, Takeisha, who was born to her on January 25, 2000, and is presently 8 years old and in the first grade. Pierreisna and Takeisha reside with Pierreisna's sister, Darlene Achille,¹ in Lee County, Florida. Darlene was awarded legal custody of Takeisha by the dependency court in Collier County, Florida, on December 29, 2004.

1997 Placement in the Velazquez Home; Alleged Molestation of S.A., a Toddler Residing at Velazquez Home

In 1993, and in response to claims of neglect by the children's biological mother and stepfather, Pierreisna and her siblings were all placed in foster care by DCF. Pierreisna resided in a foster home with two of her sisters, Darlene and Muriel, until 1997, when Darlene was removed from this placement and placed in the foster home of Josephine and Bonifacio "Benny" Velazquez.

A few months after Darlene moved in, on July 30, 1997, Pierreisna and Muriel were also transferred to the Velazquez home. Upon arriving at the Velazquez home, Darlene indicated that she was informed by other foster children at the home that Benny "liked to touch girls."

Also residing in the Velazquez home at this time was a toddler,

¹ Darlene has her last name listed on her birth certificate as "Achille", and Pierreisna has her last name listed on her birth certificate as "Archille".

S.A., who was later adopted by Mr. and Mrs. Velazquez. Darlene and her sister, Muriel, believing that they had seen Benny molesting S.A. on separate occasions, informed a friend's mother, who in turn alerted Child Protection investigators to the allegations. As a result, Darlene was sent for a Child Protection Team interview.

1997 Child Protection Team Interview with Darlene Achille

In the subsequent videotaped Child Protection investigation interview from September, 1997, Darlene told investigators that Benny would frequently blow kisses towards her and touch her inappropriately, and that she had begun refusing to let him in her door when he asked to come in. During this same interview, Darlene commented to Child Protection workers that Mr. Velazquez had even offered the child money, and requested that she not inform Josephine about his conduct.

As to her initial claims that Mr. Velazquez had molested a toddler in foster care at his residence, Darlene indicated to investigators that Benny would frequently take the toddler to a bedroom in the house, whereupon Darlene and several of the other children in the house, looking through an adjoining bedroom window, believed they witnessed Mr. Velazquez molesting the toddler with his digits. Despite the allegations, there was no physical damage noted in a subsequent medical examination of S.A. conducted by members of the Child Protection Team, and since the toddler was only 2 years old at the time of the alleged abuse, S.A. was not verbal enough to verify the abuse to investigators.

DCF investigators closed the case, and no new report was generated by the department to investigate Darlene's claim to investigators that Benny had groped her and offered to pay the child money. Subsequent to its investigation, DCF removed Darlene and Muriel from the Velazquez home, leaving Pierreisna as the only member of her family still residing in the home.

Allegations of Sexual Abuse Against Bonifacio Velazquez by Pierreisna Archille

It was at this time that Pierreisna, alone in the Velazquez home for the first time without her sisters, and who by this time was being referred to as "Christmas" by Mr. Velazquez, claims to have been the victim of roughly a year's worth of sexual molestation, battery, and abuse at the hands of Benny Velazquez, from June 1998, to June 24, 1999. When the alleged abuse began, Pierreisna was 16 years old.

In a deposition taken in January, 2007, Pierreisna claimed to have reported the abuse to Mrs. Velazquez, as well as to DCF caseworkers, however, nothing was done to address the allegations during this time. Ms. Archille explained that her room in the Velazquez home did not have a door knob, and that Benny would frequently push in the door to gain entry to her room.

Claiming to have been raped more than six times by Mr. Velazquez, Pierreisna indicated that Benny also frequently bit, choked and pushed her around, took inappropriate pictures of the child, and that he often attempted to look under the dresses of girls in his foster home. In fact, Pierreisna claimed that some of the abuse occurred in front of Mrs. Velazquez, who refused to respond or intervene, according to Pierreisna.

A subsequent deposition of one of the psychologists having evaluated Pierreisna characterized Velazquez's sexual abuse of Pierreisna as "sadistic and vicious". The psychiatrist noted that, in addition to sexually abusing the child, Mr. Velazquez frequently terrorized her.

Moreover, Pierreisna claimed to have observed Mr. Velazquez's molestation of S.A. and indicated that, on one occasion, she forcibly removed the toddler from Benny and refused to return S.A., despite Benny's objections.

Missing DCF Case Notes, 6/98 – 6/99

One of the caseworkers Pierreisna claimed to have contacted to report the abuse she was allegedly experiencing at the hands of Mr. Velazquez was Yves Benoit, a foster counselor employed by DCF. Mr. Benoit had been Pierreisna's foster counselor since 1993.

As a foster care counselor, Mr. Benoit was required by law to record his observations of Pierreisna in the Velazquez home in a set of chronological case notes.²

In preparation for trial, claimant's counsel filed a Request for Production dated February 13, 2003, in which the claimant requested the complete foster care file for Pierreisna Archille from DCF. The department responded to this request to produce records, but failed to produce additional foster care counselor progress notes or even evidence of contact between Mr. Benoit and Pierreisna between June, 1998 and June, 1999 (the period of time alleged in the Amended Complaint filed by the claimant during which Pierreisna was the victim of sexual abuse by Benny Velazquez). It was the department's contention that foster counselor visits to the Velazquez home were completed during this time period, and that chronological case notes were generated and maintained, but that such records were lost. The notes do not begin again until the latter half of June, 1999, near the time that Pierreisna was removed from the Velazquez home.

In a Recommended Order of the Magistrate of the Twentieth Judicial Circuit on the issue, the Magistrate noted that "(1) [t]he foster care progress notes from June, 1998 to June 14, 1999

² DCF Operating Procedure 174-42 Case Chronological Documentation; see also F.A.C. Rules 65C-15.030 and 65C-15.031 (1999), CF Operating Procedure 1751-41 Family Assessment, and CF Operating Pamphlet 15-7 Records Retention Schedules.

should have been made and retained by the defendant, DCF, should therefore exist, and therefore should have been produced by DCF. (2) DCF had a duty imposed by law to create and retain said notes, and has failed to produce said notes. (3) As a result, plaintiff has been hindered in its ability to establish a prima facie case." The Magistrate then permitted a jury instruction indicating that, if members of the jury believed that such case notes would have been material in its fact-finding process, then such members were permitted to infer that such evidence would have been unfavorable to DCF.

Removal from Velazquez Home; Pregnancy; Incarceration of Mr. Velazquez

On June 14, 1999, Josephine Velazquez died, and Pierreisna was removed from the home on June 24, 1999, at which time she was discovered to be four months pregnant. Although initially denying having sexual relations with Pierreisna, Mr. Velazquez ultimately admitted to having sex with the child. Subsequent DNA testing confirmed that Benny Velazquez was her father. In a deposition taken on June 23, 2006, Velazquez indicates that he and Yves Benoit had several conversations regarding the sexual molestation allegations against him, but that Mr. Benoit did not believe that the allegations were true.

Moreover, in July, 1999, S.A., now a more-verbal 4 year old, was re-examined by the Medical Director of the Collier County Child Protection Team, and was determined to have experienced genital trauma in the interval since her initial 1997 medical examination.

Bonifacio Velazquez pled guilty to the sexual battery of Pierreisna Archille, and also pled guilty to the charge of lewd and lascivious assault upon S.A. He was adjudicated guilty on both charges, and sentenced to Florida state prison. Mr. Velazquez was released from prison in 2008.

Custody Dispute; Pierreisna's Current Functional Abilities

Following the birth of her daughter, Takeisha, Pierreisna was residing in the home of Erica Lynne, with Takeisha having been placed in the long-term custody of Ms. Lynne by Court Order on February 1, 2002. By all accounts, this living arrangement worked out for a while; however, Pierreisna became frustrated and left because she felt that Ms. Lynne was usurping her role as Takeisha's mother.

Pierreisna subsequently moved in with her sister, Darlene. By this time, Darlene was employed and was attending Edison College.³ In a separate Court Order dated December 29, 2004, the circuit court directed all parties involved to comply with a Settlement Agreement dated October 28, 2004, which designated Darlene as the long-term care custodian of

³ Darlene has since received her A.A. from Edison College, and is presently a full-time student at Florida Gulf Coast University. She has an internship, and holds two jobs – one at Sweet Bay supermarket, and another at K-Mart.

Takeisha and permitted Erica Lynne to have custody of the child on weekends, vacations, and shared holidays. At the Special Masters Hearing in December, 2007, the parties indicated that this remained the current custody arrangement for Takeisha.

Kathryn Kuehnle, a licensed psychologist having evaluated Pierreisna, has noted that Pierreisna, by virtue of her cognitive deficiencies and learning limitations, will need a lot of guidance and a great deal of assistance in taking care of her child. Further, Dr. Kuehnle indicated that "Pierreisna is also vulnerable to involvement and abuse of exploitative male relationships because of her sexual and physical abuse in foster care. She's never had a healthy male father figure ... she's had either no father figure or she's had this very sadistic abusive man [in her life]."

Factual Conclusion

A preponderance of the evidence shows that the department removed Pierreisna Archille from her natural parents and placed her into its custody. Ultimately, Pierreisna was placed in a family foster home operated by Josephine and Bonifacio Velazquez. As a result of complaints against Mr. Velazquez dating back to 1993, and specifically as a result of its Child Protection Team investigation into the alleged molestation of S.A., a toddler at the Velazquez home, and revelations during this investigation indicating that Pierreisna's sister, Darlene, might also have been the victim of molestation by Mr. Velazquez, the department knew or should have known that Pierreisna was at risk of herself being molested. Instead, the department chose not to conduct a follow-up investigation into the claims that Darlene Achille had been inappropriately touched or propositioned by Mr. Velazquez, electing to remove both Darlene and her sister, Muriel, from the Velazquez home, leaving only Pierreisna. Between the period June, 1998 and June, 1999, the department failed to perform its required monthly foster care counselor visits or maintain chronological case notes that may have indicated Pierreisna was in danger of, or was in fact the victim of, sexual abuse by Benny Velazquez. Mr. Velazquez impregnated Pierreisna during this period, and Pierreisna gave birth to a daughter, Takeisha, who is now 9 years old. Subsequently, Mr. Velazquez pled guilty to the sexual battery of Pierreisna Archille, and also pled guilty to the charge of lewd and lascivious assault upon S.A. He was adjudicated guilty on both charges, and sentenced to Florida state prison.

Standards for Findings of Fact

Findings of fact must be supported by a preponderance of evidence. The Special Master may collect, consider, and include in the record, any reasonably believable information that the Special Master finds to be relevant or persuasive in the matter under inquiry. The claimant has the burden of proof on each required element.

CONCLUSION OF LAW:

DUTY: Whether or not there is a jury verdict or a Settlement Agreement, as there is here, every claim bill must be based on facts sufficient to meet the preponderance of evidence standard. From the review of the evidence, I find that the DCF had a duty to protect and care for Pierreisna Archille while she was under the care of her foster parents, Josephine and Bonifacio Velazquez, while a foster child at the Velazquez foster home.

Specifically, DCF had a duty to place Ms. Archille in a safe, caring, and well-operated foster home; to regularly inspect and monitor the foster home, and to ensure the proper care and absence of abuse or neglect; to document all efforts of monitoring Pierreisna, her foster parents, and their care of Pierreisna; and to generally exercise reasonable care under the circumstances.

DCF and Pierreisna's state-licensed foster parents had a duty to recognize, comply with, and take reasonable steps to ensure compliance with the rights and privileges of the developmentally-disabled as set forth under the Bill of Rights of the Developmentally Disabled, under section 393.13, Florida Statutes. Such Bill of Rights guarantees that developmentally disabled individuals have the right to dignified and humane care, including the right to be free from sexual abuse in a residential facility, the right to be free from harm, and the right to receive prompt and appropriate medical care and treatment.

Further, Pierreisna's state-licensed foster parents had a duty not to abuse or neglect Pierreisna. Further, they had a duty to exercise reasonable care to protect foster children in their care from abuse and neglect; to exercise reasonable care to discover abuse or neglect of Pierreisna; to exercise reasonable care to ensure that Pierreisna received prompt and appropriate medical care and treatment; to provide Pierreisna with a reasonably safe foster home; and to generally exercise reasonable care under the circumstances.

BREACH: A preponderance of the evidence establishes that DCF and Josephine Velazquez breached their duty to properly care for and protect Pierreisna Archille. Further, DCF and Josephine Velazquez breached their duty to Pierreisna with respect to compliance with the rights and privileges afforded the developmentally disabled pursuant to the Bill of Rights of the Developmentally Disabled.

PROXIMATE CAUSE: The negligence of the department and Josephine Velazquez was the legal proximate cause of the damages suffered by Pierreisna Archille. Further, the sexual, physical, and emotional abuse experienced by Ms. Archille constituted a violation of her rights as guaranteed under the Bill of Rights for the Developmentally Disabled.

DAMAGES: Damages in the amount of \$1,300,000 are reasonable under these circumstances, and fully supported by the weight of the evidence. As noted above, the department has indicated that it believes this amount represents a reasonable settlement.

A life care continuum was formulated by Larry Forman of Comprehensive Rehabilitation Consultants, Inc., to determine the funds necessary to provide for the counseling and supports needed by Pierreisna as a direct consequence of the sexual abuse she experienced, as well as to support Pierreisna's care for her daughter, Takeisha, considering her profound disability. Dr. Fred Raffa, an economist, reduced said costs to the present value of the life care needs of Ms. Archille, which was calculated to be \$4,067,431. This amount does not factor in the substantial non-economic damages suffered by Ms. Archille.

In reaching a determination regarding the adequacy of the damages sought through filing of this claim bill, the availability of governmental benefits has been taken into account. Pierreisna receives \$474 per month from SSI, and Takeisha receives \$476 per month from SSI. As part of the Settlement Agreement, the department has agreed not to reduce the benefits and services received by Pierreisna and her daughter as of the date of the settlement.

DRAFTING COMMENTS : The bill appropriates the awarded funds from the General Revenue Fund. However, DCF has stated that it can pay the claim from funds set aside in the DCF Federal Grants Trust Fund. Therefore, the bill should be amended to award the claim from the DCF Federal Grants Trust Fund in order to avoid any impact on the General Revenue Fund.

**ATTORNEY'S/
LOBBYING FEES:**

Claimant's attorneys have acknowledged in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorneys' fees. The attorney for the claimant has acknowledged that attorneys' fees are inclusive of a lobbyist fee of 5% of the gross amount recovered.

Claimant's attorney deferred collecting attorneys' fees and costs on the initial \$100,000 paid to the claimant pursuant to the statutory cap on liability imposed by section 768.28, Florida Statutes. A verified statement of costs incurred in the prosecution of the action has also been filed by claimant's attorney in the amount of \$47,978.10.

PRIOR LEGISLATIVE
HISTORY:

HB 915 (2008) was filed by Rep. Nehr, and died on second reading calendar. The Senate companion, SB 48 (2008), by Sen. Aronberg, was never heard in any Senate Committee.

HB 223 (2009) was filed by Rep. Nehr and died in Human Services Appropriations Committee. SB 12 (2009) by Sen. Haridopolos was never heard in any Senate Committee.

RECOMMENDATIONS:

Accordingly, I recommend that House Bill 195 be reported FAVORABLY, with the amendment suggested to pay the claim from the DCF Federal Grants Trust Fund.

Respectfully submitted,

TOM THOMAS
Special Master
Florida House of Representatives

cc: Representative Nehr, House Sponsor
Senator Storms, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

29 | also molesting S.A., a toddler, and

30 | WHEREAS, after these complaints were made, both Darlene and
31 | Muriel were removed from the Velazquez home, but Pierreisna
32 | Archille remained in the home, and

33 | WHEREAS, between June of 1998 through June of 1999,
34 | Bonifacio Velazquez repeatedly raped and molested Pierreisna
35 | Archille, resulting in her impregnation and subsequent birth of
36 | a daughter, and

37 | WHEREAS, after the birth of Pierreisna Archille's daughter,
38 | Takeisha, Pierreisna Archille's younger sister, Darlene, then 19
39 | years old, undertook the responsibility of helping Pierreisna
40 | Archille take care of her daughter, and

41 | WHEREAS, as a developmentally disabled person, Pierreisna
42 | Archille is in need of funds necessary for her to care for her
43 | daughter with the assistance of her sister, Darlene, and

44 | WHEREAS, Pierreisna Archille continues to suffer nightmares
45 | and extreme emotional and psychological trauma as a result of
46 | the actions giving rise to this claim, and

47 | WHEREAS, a life-care continuum was formulated by
48 | comprehensive rehabilitation consultants detailing the funds
49 | necessary to provide treatment to Pierreisna Archille, as well
50 | as to help provide for the support necessary for Pierreisna
51 | Archille to take care of her daughter, and

52 | WHEREAS, Dr. Fred Raffa, an economist, reduced such cost to
53 | present value in the amount of \$4,067,431, and

54 | WHEREAS, the dependency court appointed a Limited Guardian
55 | of Property for Pierreisna Archille for the purpose of assisting
56 | in obtaining compensation for her damages, and

57 WHEREAS, a lawsuit was filed on behalf of the Limited
 58 Guardian of Property for Pierreisna Archille in Naples, Florida,
 59 against the Department of Children and Family Services, and

60 WHEREAS, Pierreisna Archille, by and through her previous
 61 Limited Guardian of Property, Patrick Weber, and the Department
 62 of Children and Family Services agreed to mediation to resolve
 63 this matter and entered into a settlement agreement to
 64 compensate Pierreisna Archille for her damages and to provide a
 65 basis for this claim bill, and

66 WHEREAS, as a result of good-faith negotiations between the
 67 parties at a court-sanctioned mediation, the Department of
 68 Children and Family Services and the Limited Guardian of
 69 Property agreed that \$1.3 million is reasonable and fair
 70 compensation for Pierreisna Archille's damages, and

71 WHEREAS, the Department of Children and Family Services has
 72 already paid \$100,000 in accordance with the provisions of s.
 73 768.28, Florida Statutes, and

74 WHEREAS, with respect to the \$100,000 already paid by the
 75 department, the appropriate parties agreed to deferred payment
 76 of attorney's fees and costs of plaintiff's counsel so that
 77 Pierreisna Archille could immediately have access to needed
 78 funds, and

79 WHEREAS, the Department of Children and Family Services
 80 desires to make good on its promise to Pierreisna Archille which
 81 was made in the Settlement Agreement to compensate her for the
 82 irreparable harm she suffered in the foster care system, and

83 WHEREAS, the Department of Children and Family Services
 84 recognizes that Pierreisna Archille was not only victimized by

85 her caretaker, but that employees of the department broke a
 86 sacred trust to her to oversee her safety and care, and

87 WHEREAS, the Department of Children and Family Services
 88 supports a claim bill in the amount of \$1.2 million, NOW,
 89 THEREFORE,

90

91 Be It Enacted by the Legislature of the State of Florida:

92

93 Section 1. The facts stated in the preamble to this act
 94 are found and declared to be true.

95 Section 2. (1) There is appropriated from the Federal
 96 Grants Trust Fund within the Department of Children and Family
 97 Services the sum of \$1.2 million for the relief of Pierreisna
 98 Archille, by and through Darlene Achille, Limited Guardian of
 99 Property for Pierreisna Archille, for injuries and damages
 100 sustained. After payment of attorney's fees and costs, lobbying
 101 fees, and other similar expenses relating to this claim as
 102 provided for in this section, outstanding medical liens, and
 103 other immediate needs, the remaining funds shall be placed in a
 104 special needs trust created for the exclusive use and benefit of
 105 Pierreisna Archille. Any funds remaining in the special needs
 106 trust upon the death of Pierreisna Archille, after payment of
 107 any outstanding Medicaid liens, shall become available solely to
 108 benefit Pierreisna Archille's daughter, Takeisha Archille. If
 109 Takeisha Archille predeceases her mother, Pierreisna Archille,
 110 all such sums shall revert to the General Revenue Fund of the
 111 State of Florida.

112 (2) Any amount awarded under this act pursuant to the

113 waiver of sovereign immunity permitted under s. 768.28, Florida
 114 Statutes, and this award are intended to provide the sole
 115 compensation for all present and future claims arising out of
 116 the factual situation described in the preamble to this act
 117 which resulted in the injury to Pierreisna Archille. The total
 118 amount paid for attorney's fees, lobbying fees, costs, and other
 119 similar expenses relating to this claim may not exceed 25
 120 percent of the amount awarded under subsection (1).

121 Section 3. The Chief Financial Officer is directed to draw
 122 a warrant in the sum of \$1.2 million payable to Pierreisna
 123 Archille, by and through Darlene Achille, Limited Guardian of
 124 Property for Pierreisna Archille, upon funds in the State
 125 Treasury to the credit of the Department of Children and Family
 126 Services, and the Chief Financial Officer is directed to pay the
 127 same out of such funds in the State Treasury not otherwise
 128 appropriated.

129 Section 4. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 197 Mobile Home and Recreational Vehicle Parks
SPONSOR(S): Military & Local Affairs Policy Committee and Gonzalez
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 354

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N, As CS	Nelson	Hoagland
2)	Health Care Appropriations Committee		Clark <i>HC</i>	Massengale <i>dm</i>
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Florida Department of Health is responsible for enforcing laws and rules relating to sanitation and the control of communicable diseases in mobile home parks, lodging parks, recreational vehicle parks and recreational camps. The bill amends statutory provisions relating to the department's regulation of mobile home and recreational vehicle parks by:

- revising the definition of "mobile home," and providing a new definition of the term "occupancy" relating to recreational vehicles;
- specifying uniform laws and rules to be enforced by the department;
- requiring local governmental actions, ordinances and resolutions to be consistent with the department's uniform standards and specifying that the authority of a local government to adopt and enforce land use, building, fire safety, and other unspecified regulations is not limited;
- requiring construction and renovation plans for parks and camps to be submitted to the department for review and approval;
- changing the deadline for applying for an operating permit from before the date of a transfer to within 30 days of a sale;
- requiring the department to assess unspecified late fees for failure to pay an annual operating permit fee in a timely manner;
- requiring the department to permit temporary events and to charge a new fee, not to exceed \$1,000, for such a permit;
- repealing provisions requiring the posting and advertising of site rates;
- requiring separation and setback distances to be established at the time of initial park approval;
- repealing a provision requiring guest registers to be made available for inspection by the department;
- providing for the disposal of unclaimed titled property;
- providing that a person who fails to depart from a park immediately under certain circumstances commits a misdemeanor of the second degree;
- protecting a park operator from liability for abandoned property in certain circumstances; and
- providing the department with additional rulemaking authority.

This bill requires an insignificant expenditure of funds associated with rule promulgation by the department, and provides for new fees to be paid by the public; however, these fees will be used to offset by the cost of department regulation.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Department of Health is responsible under chapter 513, Florida Statutes, for enforcing laws and rules relating to sanitation and the control of communicable diseases in mobile home parks, lodging parks, recreational vehicle parks and recreational camps. These parks and camps are licensed annually through the Department's county health departments in accordance with rule 64E-15, Florida Administrative Code. The county health departments provide direct services in the operational aspect of the program through routine inspections, plan reviews, educational programs, and enforcement actions.

The objective of this program is to minimize the risk of injury and illness in this residential environment. Department rules address minimum area requirements for each space, the water supply, sewage disposal, sanitary facilities, plumbing, garbage and refuse disposal, insect and rodent control, recreational camp standards, permits and fees, and owner's and operator's responsibilities.

There are approximately 5,700 mobile home parks, lodging parks, recreational vehicle parks, and recreational camps in Florida.¹ Permit fees are set by rule at \$4 per space and cumulatively must not be less than \$100 or more than \$600 annually.² The statutory range is \$3.50-\$6.50 per space and cumulatively not less than \$50 or more than \$600 annually.³

The recreational vehicle (RV) industry has indicated that individual counties and cities have enacted ordinances relating to permitting, lot sizes, and allowable sizes of vehicles in RV parks. The industry is heavily dependent upon tourism from other states, and believes that the RV traveling public should be able to camp from Pensacola to Key West under consistent standards. Out-of-state investment firms have advised the industry that uniform permitting and operation standards for camps and parks make the industry more attractive. Currently, a number of large pension fund and insurance investment firms have become involved in the industry through larger publicly-traded operating companies. Those firms have purchased and are operating RV parks and campgrounds in the state.⁴

¹ The Department of Health, Division of Environmental Health, Mobile Home and Recreational Vehicle Parks website found at: <http://www.doh.state.fl.us/environment/community/mobileindex.html>.

² Rule 64E-15.010, F.A.C.

³ Section 513.045(2), F.S.

⁴ March 17, 2010, e-mail from David Eastman, attorney for the Florida Association of RV Parks and Campgrounds.

Effect of Proposed Changes

Section 1 amends section 513.01, Florida Statutes, to revise the definition of “mobile home” and to define the term “occupancy.” The definition of “mobile home” is modified to exclude a structure originally sold as a recreational vehicle. This language is directly derived from the definition of a “mobile home” in section 723.003(3), Florida Statutes, relating to the landlord/tenant relationship in mobile home parks, and is meant to clarify that a recreational vehicle cannot “evolve” into a mobile home. The term “occupancy” is defined to mean the length of time that a recreational vehicle is occupied by a transient guest and not the length of time that such a vehicle is located on the leased recreational site. This new definition came from the language in the definition of “recreational vehicle” in chapter 513, Florida Statutes, and contains language relating to the storage and tie-down of vehicles.

Section 2 amends section 513.012, Florida Statutes, specifying that the department is responsible for establishing uniform laws under chapter 513, Florida Statutes, and specifying instances where the department is required to establish uniform standards for permitting and operation of lodging parks, recreational vehicle parks and camps, and mobile home parks, including:

- the design, location and sizes for sites in parks and camps;
- sanitary standards for permitting and the operation of parks and camps;
- occupancy standards for transient rentals in recreational vehicle parks and camps;
- permitting of parks and camps as required by the chapter, including temporary events at unlicensed locations;
- inspection of parks and camps to enforce compliance with the chapter;
- permit requirements, including late fees and penalties for operating without a permit; and
- the maintenance of guest registers.

This section also provides that chapter 513, Florida Statutes, establishes uniform standards for recreational vehicle parks and camps which apply to:

- the liability for property of guests left at sites;
- separation and setback distances established at the time of approval;
- unclaimed property;
- conduct of transient guests;
- theft of personal property;
- evictions of transient guests; and
- writs of distress.

The bill requires that local government actions, ordinances and resolutions be consistent with the department’s uniform standards, providing an exception for the authority of local governments to adopt and enforce local land use, building, fire safety, and other unspecified regulations.

Section 3 amends section 513.014, Florida Statutes, to remove a redundant provision stating that a mobile home park renting spaces to recreational vehicles for long-term leases must comply with the laws relating to mobile home parks in chapter 723, Florida Statutes. The referenced law is the “Florida Mobile Home Act” and relates to mobile home tenancies.

Section 4 amends section 513.02, Florida Statutes, to modify the terminology related to permits to designate such as *operating* permits. Inconsistent references to the transfer of permits are eliminated as these permits are not transferrable. The bill requires that prior to the commencement of construction of a new park or camp, or any change to an existing park or camp which requires construction or new sanitary facilities or additional permitted sites, a person who operates or maintains such facility must contact the department to receive a review and approval. The department is required to identify by rule the procedures and items to be submitted for review and approval. The purchaser of a park or camp must apply for an operating permit within 30 days after the date of sale, rather than before the date of the sale, as was previously required.

Section 5 amends section 513.03, Florida Statutes, to add information that must be submitted in an application for an operating permit to include the number of buildings and sites set aside for group camping, including barracks, cabins, cottages and tent spaces. The department must issue the necessary approval if it is satisfied, after reviewing the application and conducting an inspection, that the park or camp is not a source of danger to the health of the general public within the criteria established by chapter 513, Florida Statutes.

Section 6 amends section 513.045, Florida Statutes, to remove obsolete language regarding permit fees as rules have been adopted by the Department. The bill authorizes a person to submit plans related to a proposed park or camp to the department for an assessment of whether the plans meet the requirements of the chapter. A person constructing a new park or camp or adding spaces or renovating an existing park or camp is required to submit plans to the department for review and approval. These provisions appear to expand the department's authority with regard to construction review and approval.

The bill requires the department to assess late fees if annual operating permit fees are not paid in a timely manner. No parameters are provided for the amount of late fees to be charged, or what is considered to be "timely payment." The department suggested these fees because there currently are no consequences associated with late payment or nonpayment.⁵ Nonetheless, it appears that section 513.054, Florida Statutes, providing that failure to pay a permit fee is a misdemeanor of the second degree would apply to these circumstances.

The bill also requires the department to establish a new fee of no more than \$1,000 for an operating permit for temporary events. The bill states that the amount of the fee will be based upon the size, duration and location of the event and the sanitary facilities and services available or to be provided at the location, and that the fee will be based solely upon the projected costs of review of the permit application and inspections by the department. There is no definition in the bill with regard to what is considered a "temporary event" and no language that indicates how this requirement would be enforced. However, this section requires the department to promulgate rules.

Section 7 amends section 513.05, Florida Statutes, authorizing the department to adopt rules related to temporary events at unlicensed locations. It also specifies the department's authority to adopt rules related to reviewing plans that consolidate or expand space or capacity.

Section 8 amends section 513.054, Florida Statutes, specifying that a person who does not obtain an *operating* permit for a mobile home park, lodging park, recreational vehicle park, or recreational camp or refuses to pay the *operating* permit fee commits a second degree misdemeanor.

Section 9 amends section 513.055, Florida Statutes, specifying that the permit referred to in this section related to the revocation or suspension of a permit is an *operating* permit.

Section 10 amends section 513.10, Florida Statutes, specifying that a person who maintains or operates a mobile home park, lodging park, recreational vehicle park, or recreational camp without first obtaining an *operating* permit or maintains or operates a park or camp after revocation of the operating permit commits a misdemeanor of the second degree.

Section 11 repeals section 513.111, Florida Statutes, relating to posting or publishing site rates for a recreational vehicle park that rents by the day or week.

Section 12 creates section 513.1115, Florida Statutes, which requires the spacing of recreational vehicles to be maintained at the distances established at the time of the initial approval of the recreational vehicle park by the department and local government. In addition, this section requires setback distances from the exterior property boundary of a recreational vehicle park to be maintained in accordance with those established at the time of the initial approval. The purpose of this language is to specify that local governments do not have the authority to impose new setback or separation distances

⁵ Id.

on existing, permitted parks and camps. The implications of this requirement with regard to future land use within local governments are unclear.

The bill also specifies that both of these sections do not limit the regulation of the uniform fire safety standards under section 633.022, Florida Statutes.

Section 13 amends section 513.112, Florida Statutes, to eliminate the requirement that the guest registry of a recreational vehicle park be made available to the department for inspection. These registries will continue to be maintained, but the department will no longer have what it considers to be a duty within the realm of landlord/tenant issues.⁶

Section 14 amends section 513.115, Florida Statutes, authorizing an operator of a recreational vehicle park to dispose of property unclaimed by a guest who has vacated the premises without notice to the operator and who has an outstanding account. An owner of a park is no longer required to provide written notice to any guest or owner of property left at the park prior to disposing of the property;⁷ however, the property must be held by the park for 90 days prior to disposal. The bill specifies that any titled property, including a boat, recreational vehicle, or other vehicle, shall be disposed of in accordance with the requirements of chapter 715, Florida Statutes, which contains provisions relating to the sale or disposition of abandoned property.

Section 15 amends section 513.13, Florida Statutes, specifying that if an operator of a recreational vehicle park notifies a person to leave the park for a permissible reason, by either posting or personal delivery, in the presence of a law enforcement officer, and the person fails to depart from the park immediately, the person commits a misdemeanor of the second degree. Permissible reasons include: possessing or dealing in controlled substances, disturbing the peace and comfort of other persons, causing harm to the physical park, or failing to pay the rental rate as agreed. This provision will ensure that law enforcement has personal knowledge that notice was given, and can take appropriate action if the person refuses to leave the premises.

Finally, the bill specifies that an operator is not liable for damages to personal property left on the premises by a guest who has been arrested for the failure to leave the park after being notified to leave for a permissible reason.

Section 16 provides an effective date for the bill of July 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends ss. (3) of s. 513.01, F.S., renumbering ss. (5) through (11) and creating a new ss. (5), relating to definitions.

Section 2: Amends s. 513.012, F.S., relating to the enforcement of public health laws.

Section 3: Amends s. 513.014, F.S., relating to applicability of recreational vehicle park provisions to mobile home parks.

Section 4: Amends s. 513.02, F.S., relating to permits.

Section 5: Amends s. 513.03, F.S., relating to application for and issuance of permits.

Section 6: Amends ss. (1) of s. 513.045, F.S., relating to permit fees.

Section 7: Amends s. 513.05, F.S., relating to rules.

Section 8: Amends s. 513.054, F.S., relating to penalties.

Section 9: Amends s. 513.055, F.S., relating to revocation or suspension of permits.

⁶ Id.

⁷ This provision seems logical given the difficulty of providing notice to a transient person who has disappeared.

Section 10: Amends ss. (1) of s. 513.10, F.S., relating to operating without permit.

Section 11: Repeals s. 513.111, F.S., relating to the posting of site rates.

Section 12: Creates: s .513.1115, F.S., relating to placement of recreational vehicles on lots in permitted parks.

Section 13: Amends ss. (1) of s. 513.112, F.S., relating to maintenance of guest registers.

Section 14: Amends s. 513.115, F.S., relating to unclaimed property.

Section 15: Amends ss. (2) and (4) of s. 513.13, F.S., relating to eviction in recreational vehicle parks.

Section 16: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires the Department of health to assess late fees if annual operating permit fees are not paid in a timely manner. The department estimates that approximately 10 percent of the existing 5,594 parks/camps will have to pay a late fee of \$25. This will generate revenue of approximately \$13,985 per year.

Additionally, the bill establishes a new fee of no more than \$1,000 for an operating permit for temporary events. The department estimates that there will be two temporary events per year per county at a projected fee of \$500 per event. The department has estimated this fee revenue to be approximately \$67,000 per year. The bill requires that the fee be based solely upon the projected costs of review of the permit application and inspections by the department; therefore, this revenue will be used to pay the cost of the department regulatory activities.

2. Expenditures:

This bill requires the Department of Health to adopt additional rules. The department has estimated that this will cost approximately \$4,015 for staff and associated costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires a fee for the late payment of the annual operating permit fee, but does not set the amount of such fee.

This bill will create a new fee, not to exceed \$1,000, for temporary events held in unlicensed locations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health with additional rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Military & Local Affairs Policy Committee adopted the Proposed Committee Substitute for HB 197. The PCS departs from HB 197 in the following areas:

- Removes a new definition for "recreational vehicle."
- Removes language providing for state preemption of regulatory and permitting authority for sanitary and other standards for parks and camps, while substituting language which provides for uniform laws and standards for permitting and operation of parks and camps;
- Specifies that the law will not limit the authority of a local government to adopt and enforce land use, building, fire safety, and other regulations.
- Removes language that authorized the Department of Health to charge a fee for review of plans for a proposed park or camp.
- Adds language that requires that the Department of Health to establish a fee not to exceed \$1,000 for a temporary operating permit.
- Removes language with regard to separation distances between recreational vehicles that would have allowed for such distances as historically applied by a local government.
- Adds language that specifies that any unclaimed titled property (such as a boat, car or recreational vehicle) must be disposed of in accordance with chapter 175, Florida Statutes.

This analysis is drafted to the committee substitute.

1 A bill to be entitled
 2 An act relating to mobile home and recreational vehicle
 3 parks; amending s. 513.01, F.S.; providing and revising
 4 definitions; amending s. 513.012, F.S.; specifying laws
 5 and rules to be enforced by the Department of Health;
 6 requiring the department to establish uniform standards
 7 for permitting and operation of lodging parks,
 8 recreational vehicle parks and camps, and mobile home
 9 parks; providing application; providing construction;
 10 amending s. 513.014, F.S.; revising applicability of
 11 recreational vehicle park requirements to mobile home
 12 parks; amending s. 513.02, F.S.; revising permit
 13 requirements; providing requirements for review and
 14 approval for construction of or changes to parks and
 15 camps; requiring the department to adopt rules; amending
 16 s. 513.03, F.S.; revising requirements for permit
 17 applications; amending s. 513.045, F.S.; revising fees
 18 charged to operators of certain parks or camps; providing
 19 for the assessment of late fees; authorizing persons to
 20 request from the department a review of plans for a
 21 proposed park or camp; requiring certain plans to be
 22 submitted to the department for review and approval;
 23 requiring the department to establish a fee for a
 24 temporary operating permit for certain events; providing
 25 for calculation of the fee; providing exemptions; amending
 26 s. 513.05, F.S.; providing the department with additional
 27 rulemaking authority; amending s. 513.054, F.S.; providing
 28 that an operator of a mobile home or recreational vehicle

29 park or camp who refuses to pay the operating permit fee
 30 required by law or who fails, neglects, or refuses to
 31 obtain an operating permit for the park or camp commits a
 32 misdemeanor of the second degree; providing penalties;
 33 amending s. 513.055, F.S.; conforming permit terminology;
 34 amending s. 513.10, F.S.; providing that a person who
 35 operates a mobile home, lodging, or recreational vehicle
 36 park or camp without an operating permit commits a
 37 misdemeanor of the second degree; providing penalties;
 38 repealing s. 513.111, F.S., relating to the posting and
 39 advertising of certain site rates; creating s. 513.1115,
 40 F.S.; providing requirements for the establishment of
 41 separation and setback distances; amending s. 513.112,
 42 F.S.; deleting a provision requiring guest registers to be
 43 made available for inspection by the department at any
 44 time; amending s. 513.115, F.S.; revising requirements for
 45 the handling of unclaimed property; amending s. 513.13,
 46 F.S.; providing a penalty for failure to depart from a
 47 park under certain circumstances; barring an operator from
 48 certain liability; providing an effective date.

49

50 Be It Enacted by the Legislature of the State of Florida:

51

52 Section 1. Subsection (3) of section 513.01, Florida
 53 Statutes, is amended, present subsections (5) through (11) of
 54 that section are renumbered as subsections (6) through (12),
 55 respectively, and a new subsection (5) is added to that section,
 56 to read:

57 513.01 Definitions.—As used in this chapter, the term:

58 (3) "Mobile home" means a residential structure that is
 59 transportable in one or more sections, which structure is 8 body
 60 feet (2.4 meters) or more in width, over 35 feet in length with
 61 the hitch, built on an integral chassis, ~~and~~ designed to be used
 62 as a dwelling when connected to the required utilities, and not
 63 originally sold as a recreational vehicle, and includes the
 64 plumbing, heating, air-conditioning, and electrical systems
 65 contained in the structure.

66 (5) "Occupancy" means the length of time that a
 67 recreational vehicle is occupied by a transient guest and not
 68 the length of time that such vehicle is located on the leased
 69 recreational vehicle site. A recreational vehicle may be stored
 70 and tied down on site when not in use to accommodate the needs
 71 of the guest. The attachment of a recreational vehicle to the
 72 ground by way of tie-downs or other removable fasteners and the
 73 attachment of carports, porches, screen rooms, and similar
 74 appurtenances by way of removable attaching devices do not
 75 render the recreational vehicle a permanent part of the
 76 recreational vehicle site.

77 Section 2. Section 513.012, Florida Statutes, is amended
 78 to read:

79 513.012 Public health laws; enforcement.—

80 (1) It is the intent of the Legislature that mobile home
 81 parks, lodging parks, recreational vehicle parks, and
 82 recreational camps be regulated under this chapter. As such, the
 83 department shall administer and enforce, with respect to such
 84 parks and camps, uniform laws and rules relating to sanitation,

85 control of communicable diseases, illnesses and hazards to
86 health among humans and from animals to humans, and the general
87 health of the people of the state.

88 (2) The department shall establish uniform standards for
89 permitting and operation of lodging parks, recreational vehicle
90 parks and camps, and mobile home parks, which include:

91 (a) The design, location, and sizes of sites in parks and
92 camps.

93 (b) Sanitation standards for parks and camps.

94 (c) Occupancy standards for transient rentals in
95 recreational vehicle parks and camps.

96 (d) Permitting of parks and camps as required by this
97 chapter, including temporary events at unlicensed locations.

98 (e) Inspection of parks and camps to enforce compliance
99 with this chapter.

100 (f) Permit requirements, including late fees and penalties
101 for operating without a permit.

102 (g) The maintenance of guest registers.

103 (3) This chapter establishes uniform standards for
104 recreational vehicle parks and camps which apply to:

105 (a) The liability for property of guests left on sites.

106 (b) Separation and setback distances established at the
107 time of initial approval.

108 (c) Unclaimed property.

109 (d) Conduct of transient guests.

110 (e) Theft of personal property.

111 (f) Eviction of transient guests.

112 (g) Writs of distress.

113 (4) Local governmental actions, ordinances, and
 114 resolutions must be consistent with the uniform standards
 115 established pursuant to this chapter and as implemented by rules
 116 of the department. This chapter does not limit the authority of
 117 a local government to adopt and enforce land use, building,
 118 firesafety, and other regulations.

119 (5) However, Nothing in this chapter qualifies a mobile
 120 home park, a lodging park, a recreational vehicle park, or a
 121 recreational camp for a liquor license issued under s.
 122 561.20(2)(a)1. Mobile home parks, lodging parks, recreational
 123 vehicle parks, and recreational camps regulated under this
 124 chapter are exempt from regulation under the provisions of
 125 chapter 509.

126 Section 3. Section 513.014, Florida Statutes, is amended
 127 to read:

128 513.014 Applicability of recreational vehicle park
 129 provisions to mobile home parks.—A mobile home park that has
 130 five or more sites set aside for recreational vehicles shall,
 131 for those sites set aside for recreational vehicles, comply with
 132 the recreational vehicle park requirements included in this
 133 chapter. This section does not require a mobile home park with
 134 spaces set aside for recreational vehicles to obtain two
 135 licenses. ~~However, a mobile home park that rents spaces to~~
 136 ~~recreational vehicles on the basis of long term leases is~~
 137 ~~required to comply with the laws and rules relating to mobile~~
 138 ~~home parks including but not limited to chapter 723, if~~
 139 ~~applicable.~~

140 Section 4. Section 513.02, Florida Statutes, is amended to

141 read:

142 513.02 Permits ~~Permit~~.—

143 (1) A person may not establish or maintain a mobile home
 144 park, lodging park, recreational vehicle park, or recreational
 145 camp in this state without first obtaining an operating ~~a~~ permit
 146 from the department.

147 (2) Prior to commencement of construction of a new park or
 148 camp, or any change to an existing park or camp which requires
 149 construction of new sanitary facilities or additional permitted
 150 sites, a person who operates or maintains such park or camp must
 151 contact the department to receive a review and approval. The
 152 items required to be submitted and the process for issuing a
 153 review and approval shall be set by department rule.

154 (3) (a) An operating ~~Such~~ permit is not transferable from
 155 one place or person to another. Each permit must be renewed
 156 annually.

157 (b) ~~(2)~~ The department may refuse to issue an operating ~~a~~
 158 permit to, or refuse to renew the operating permit of, any park
 159 or camp that is not constructed or maintained in accordance with
 160 law and with the rules of the department.

161 (c) ~~(3)~~ The department may suspend or revoke an operating ~~a~~
 162 permit issued to any person who ~~that~~ operates or maintains such
 163 a park or camp if such person fails to comply with this chapter
 164 or the rules adopted by the department under this chapter.

165 (d) ~~(4)~~ An operating ~~A~~ permit for ~~the operation of~~ a park
 166 or camp may not be renewed ~~or transferred~~ if the permittee has
 167 an outstanding fine assessed pursuant to this chapter which is
 168 in final-order status and judicial reviews are exhausted, ~~unless~~

169 | ~~the transferee agrees to assume the outstanding fine.~~

170 | ~~(e)(5)~~ When a park or camp regulated under this chapter is
 171 | sold ~~or its ownership transferred~~, the purchaser ~~transferee~~ must
 172 | apply to the department for an operating a permit within 30 days
 173 | ~~after to the department before~~ the date of sale ~~transfer~~. The
 174 | applicant must provide the department with a copy of the
 175 | recorded deed or lease agreement before the department may issue
 176 | an operating a permit to the applicant.

177 | Section 5. Section 513.03, Florida Statutes, is amended to
 178 | read:

179 | 513.03 Application for and issuance of permit.—

180 | (1) An application for an operating a permit must be made
 181 | in writing to the department, on a form prescribed by the
 182 | department. The application must state the location of the
 183 | existing or proposed park or camp; the type of park or camp;
 184 | the number of mobile homes or recreational vehicles to be
 185 | accommodated; ~~or~~ the number of recreational campsites,
 186 | buildings, and sites set aside for group camping, including
 187 | barracks, cabins, cottages, and tent spaces; the type of water
 188 | supply; the method of sewage disposal; and any other
 189 | information the department requires.

190 | (2) If the department is satisfied, after reviewing the
 191 | application of the proposed or existing park or camp and causing
 192 | an inspection to be made, that the park or camp complies with
 193 | this chapter and is so located, constructed, and equipped as not
 194 | to be a source of danger to the health of the general public,
 195 | the department shall issue the necessary approval or operating
 196 | permit, in writing, on a form prescribed by the department.

197 Section 6. Paragraph (b) of subsection (1) of section
 198 513.045, Florida Statutes, is amended to read:

199 513.045 Permit fees.—

200 (1)

201 (b) Fees established pursuant to this subsection must be
 202 based on the actual costs incurred by the department in carrying
 203 out its responsibilities under this chapter.

204 1. The fee for an annual operating a permit may not be set
 205 at a rate that is more than \$6.50 per space or less than \$3.50
 206 per space. ~~Until rules setting these fees are adopted by the~~
 207 ~~department, the permit fee per space is \$3.50.~~ The annual
 208 operating permit fee for a nonexempt recreational camp shall be
 209 based on an equivalency rate for which two camp occupants equal
 210 one space. The total fee assessed to an applicant for an annual
 211 operating permit may not be more than \$600 or less than \$50,
 212 except that a fee may be prorated on a quarterly basis. Failure
 213 to pay an annual operating permit fee in a timely manner shall
 214 result in the assessment of late fees by the department.

215 2. A person who seeks department review of plans for a
 216 proposed park or camp may submit such plans to the department
 217 for an assessment of whether such plans meet the requirements of
 218 this chapter and the rules adopted under this chapter.

219 3. A person constructing a new park or camp or adding
 220 spaces to or renovating an existing park or camp shall, prior to
 221 such construction, renovation, or addition, submit plans to the
 222 department for department review and approval.

223 4. The department shall, by rule, establish a fee, not to
 224 exceed \$1,000, for a temporary operating permit for a temporary

225 event subject to this section. The amount of the fee shall be
 226 based upon the size, duration, and location of the event and the
 227 sanitary facilities and services available or to be provided at
 228 that location. The fee shall be based solely upon the projected
 229 costs of review of the permit application and inspections by the
 230 department to achieve compliance with the requirements of the
 231 department. Licensed parks and camps are exempt from this fee
 232 and the temporary event permit requirement.

233 Section 7. Section 513.05, Florida Statutes, is amended to
 234 read:

235 513.05 Rules.—The department may adopt rules pertaining to
 236 the location, construction, modification, equipment, and
 237 operation of mobile home parks, lodging parks, recreational
 238 vehicle parks, and recreational camps, except as provided in s.
 239 633.022, as necessary to administer this chapter. Such rules may
 240 include definitions of terms; requirements for temporary events
 241 at unlicensed locations which may require a temporary operating
 242 permit under this chapter; plan reviews of proposed and existing
 243 parks and camps; plan reviews of parks that consolidate or
 244 expand space or capacity or change space size; water supply;
 245 sewage collection and disposal; plumbing and backflow
 246 prevention; garbage and refuse storage, collection, and
 247 disposal; insect and rodent control; space requirements; heating
 248 facilities; food service; lighting; sanitary facilities;
 249 bedding; an occupancy equivalency to spaces for permits for
 250 recreational camps; sanitary facilities in recreational vehicle
 251 parks; and the owners' responsibilities at recreational vehicle
 252 parks and recreational camps.

253 Section 8. Section 513.054, Florida Statutes, is amended
 254 to read:

255 513.054 Penalties for specified offenses by operator.—

256 (1) Any operator of a mobile home park, lodging park, ~~or~~
 257 recreational vehicle park, or a recreational camp who obstructs
 258 or hinders any agent of the department in the proper discharge
 259 of the agent's duties; who fails, neglects, or refuses to obtain
 260 an operating a permit for the park or camp or refuses to pay the
 261 operating permit fee required by law; or who fails or refuses to
 262 perform any duty imposed upon the operator by law or rule
 263 commits is guilty of a misdemeanor of the second degree,
 264 punishable as provided in s. 775.082 or s. 775.083.

265 (2) On each day that such park or camp is operated in
 266 violation of law or rule, there is a separate offense.

267 Section 9. Section 513.055, Florida Statutes, is amended
 268 to read:

269 513.055 Revocation or suspension of operating permit;
 270 fines; procedure.—

271 (1) (a) The department may suspend or revoke an operating a
 272 permit issued to any person for a mobile home park, lodging
 273 park, recreational vehicle park, or recreational camp upon the
 274 failure of that person to comply with this chapter or the rules
 275 adopted under this chapter.

276 (b) An operating A permit may not be suspended under this
 277 section for a period of more than 12 months. At the end of the
 278 period of suspension, the permittee may apply for reinstatement
 279 or renewal of the operating permit. A person whose operating
 280 permit is revoked may not apply for another operating permit for

281 that location prior to the date on which the revoked operating
 282 permit would otherwise have expired.

283 (2) (a) In lieu of such suspension or revocation of an
 284 operating a permit, the department may impose a fine against a
 285 permittee for the permittee's failure to comply with the
 286 provisions described in paragraph (1) (a) or may place such
 287 licensee on probation. No fine so imposed shall exceed \$500 for
 288 each offense, and all amounts collected in fines shall be
 289 deposited with the Chief Financial Officer to the credit of the
 290 County Health Department Trust Fund.

291 (b) In determining the amount of fine to be imposed, if
 292 any, for a violation, the department shall consider the
 293 following factors:

294 1. The gravity of the violation and the extent to which
 295 the provisions of the applicable statutes or rules have been
 296 violated.

297 2. Any action taken by the operator to correct the
 298 violation.

299 3. Any previous violation.

300 Section 10. Subsection (1) of section 513.10, Florida
 301 Statutes, is amended to read:

302 513.10 Operating without permit; enforcement of chapter;
 303 penalties.-

304 (1) Any person who maintains or operates a mobile home
 305 park, lodging park, recreational vehicle park, or recreational
 306 camp without first obtaining an operating a permit as required
 307 by s. 513.02, or who maintains or operates such a park or camp
 308 after revocation of the operating permit, commits ~~is guilty of~~ a

309 misdemeanor of the second degree, punishable as provided in s.
 310 775.082 or s. 775.083.

311 Section 11. Section 513.111, Florida Statutes, is
 312 repealed.

313 Section 12. Section 513.1115, Florida Statutes, is created
 314 to read:

315 513.1115 Placement of recreational vehicles on lots in
 316 permitted parks.-

317 (1) Separation distances between recreational vehicles
 318 shall be the distances established at the time of initial
 319 approval of the recreational vehicle park by the department and
 320 the local government.

321 (2) Setback distances from the exterior property boundary
 322 of the recreational vehicle park shall be the setback distances
 323 established at the time of initial approval of the recreational
 324 vehicle park by the department and the local government.

325 (3) This section does not limit the regulation of the
 326 uniform firesafety standards established under s. 633.022.

327 Section 13. Subsection (1) of section 513.112, Florida
 328 Statutes, is amended to read:

329 513.112 Maintenance of guest register and copy of laws.-

330 (1) It is the duty of each operator of a recreational
 331 vehicle park that rents to transient guests to maintain at all
 332 times a register, signed by or for guests who occupy rental
 333 sites within the park. The register must show the dates upon
 334 which the rental sites were occupied by such guests and the
 335 rates charged for the guests' occupancy. This register shall be
 336 maintained in chronological order ~~and shall be available for~~

337 ~~inspection by the department at any time.~~ An operator is not
 338 required to retain a register that is more than 2 years old.

339 Section 14. Section 513.115, Florida Statutes, is amended
 340 to read:

341 513.115 Unclaimed property.—Any property having an
 342 identifiable owner which is left in a recreational vehicle park
 343 by a guest, including, but not limited to, ~~other than~~ property
 344 belonging to a guest who has vacated the premises without notice
 345 to the operator and with an outstanding account, which property
 346 remains unclaimed after having been held by the park for 90 days
 347 ~~after written notice was provided to the guest or the owner of~~
 348 ~~the property,~~ may be disposed of by ~~becomes the property of the~~
 349 park. Any titled property, including a boat, recreational
 350 vehicle, or other vehicle, shall be disposed of in accordance
 351 with chapter 715.

352 Section 15. Subsections (2) and (4) of section 513.13,
 353 Florida Statutes, are amended to read:

354 513.13 Recreational vehicle parks; eviction; grounds;
 355 proceedings.—

356 (2) The operator of any recreational vehicle park shall
 357 notify such guest that the park no longer desires to entertain
 358 the guest and shall request that such guest immediately depart
 359 from the park. Such notice shall be given in writing. If such
 360 guest has paid in advance, the park shall, at the time such
 361 notice is given, tender to the guest the unused portion of the
 362 advance payment. Any guest who remains or attempts to remain in
 363 such park after being requested to leave commits ~~is guilty of~~ a
 364 misdemeanor of the second degree, punishable as provided in s.

365 775.082 or s. 775.083. If the notice is given in the presence of
 366 a law enforcement officer by posting or personal delivery and
 367 the person fails to depart from the park immediately, the person
 368 commits a misdemeanor of the second degree, punishable as
 369 provided in s. 775.082 or s. 775.083.

370 (4) If any person is illegally on the premises of any
 371 recreational vehicle park, the operator of such park may call
 372 upon any law enforcement officer of this state for assistance.
 373 It is the duty of such law enforcement officer, upon the request
 374 of such operator, to place under arrest and take into custody
 375 for violation of this section any guest who violates subsection
 376 (1) or subsection (2) in the presence of the officer. If a
 377 warrant has been issued by the proper judicial officer for the
 378 arrest of any violator of subsection (1) or subsection (2), the
 379 officer shall serve the warrant, arrest the person, and take the
 380 person into custody. Upon arrest, with or without warrant, the
 381 guest is deemed to have given up any right to occupancy or to
 382 have abandoned the guest's right to occupancy of the premises of
 383 the recreational vehicle park, ~~+~~ and the operator of the park
 384 shall employ all reasonable and proper means to care for any
 385 personal property left on the premises by such guest and shall
 386 refund any unused portion of moneys paid by such guest for the
 387 occupancy of such premises. The operator is not liable for
 388 damages to personal property left on the premises by a guest who
 389 violates subsection (1) or subsection (2) and is arrested by a
 390 law enforcement officer.

391 Section 16. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 197 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Gonzalez offered the following:

4

5 **Amendment**

6 Remove line 214 and insert:

7 result in the assessment of late fees, not to exceed \$100, by
8 the department.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 197 (2010)

Amendment No. 2

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee
3 Representative(s) Skidmore offered the following:

4
5 **Amendment**

6 Remove lines 135-139 and insert:
7 licenses. However, a mobile home park that rents spaces to
8 recreational vehicles, and the tenants are nontransient guests
9 as defined in this chapter, ~~on the basis of long-term leases~~ is
10 required to comply with the laws and rules relating to mobile
11 home parks including but not limited to chapter 723, if
12 applicable.

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 197 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee
3 Representative(s) Skidmore offered the following:

4
5 **Amendment**

6 Remove lines 103-112
7

Amendment No. 4

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee
3 Representative(s) Skidmore offered the following:
4

Amendment (with title amendment)

6 Remove lines 311-312
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 38-39 and insert:
13 creating s. 513.1115,

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 197 (2010)

Amendment No. 5

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee
3 Representative(s) Skidmore offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 327-338
7
8
9

10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 41-44 and insert:
13 separation and setback distances; amending s. 513.115, F.S.;
14 revising requirements for

COUNCIL/COMMITTEE AMENDMENT

Bill No. CS/HB 197 (2010)

Amendment No. 6

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Skidmore offered the following:

4

5 **Amendment**

6 Remove lines 347-348 and insert:

7 after written notice was provided to the guest or the owner of
8 the property, may be disposed of by ~~becomes the property of the~~

Amendment No. 7

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Skidmore offered the following:
4

5 **Amendment (with directory amendment)**

6 Remove lines 356-390 and insert:

7 (2) The operator of any recreational vehicle park shall
8 notify such transient guest that the park no longer desires to
9 entertain the transient guest and shall request that such
10 transient guest immediately depart from the park. Such notice
11 shall be given in writing. If such transient guest has paid in
12 advance, the park shall, at the time such notice is given,
13 tender to the transient guest the unused portion of the advance
14 payment. Any transient guest who remains or attempts to remain
15 in such park after being requested to leave commits is guilty of
16 a misdemeanor of the second degree, punishable as provided in s.
17 775.082 or s. 775.083.

18 (3) If a transient guest has accumulated an outstanding
19 account in excess of an amount equivalent to three nights' rent

Amendment No. 7

20 at a recreational vehicle park, the operator may disconnect all
21 utilities of the recreational vehicle and notify the transient
22 guest that the action is for the purpose of requiring the
23 transient guest to confront the operator or permittee and
24 arrange for the payment of the transient guest's account. Such
25 arrangement must be in writing, and a copy shall be furnished to
26 the transient guest. Upon entering into such agreement, the
27 operator shall reconnect the utilities of the recreational
28 vehicle.

29 (4) If any person is illegally on the premises of any
30 recreational vehicle park, the operator of such park may call
31 upon any law enforcement officer of this state for assistance.
32 It is the duty of such law enforcement officer, upon the request
33 of such operator, to place under arrest and take into custody
34 for violation of this section any transient guest who violates
35 subsection (1) or subsection (2) in the presence of the officer.
36 If a warrant has been issued by the proper judicial officer for
37 the arrest of any violator of subsection (1) or subsection (2),
38 the officer shall serve the warrant, arrest the person, and take
39 the person into custody. Upon arrest, with or without warrant,
40 the transient guest is deemed to have given up any right to
41 occupancy or to have abandoned the transient guest's right to
42 occupancy of the premises of the recreational vehicle park; and
43 the operator of the park shall employ all reasonable and proper
44 means to care for any personal property left on the premises by
45 such transient guest and shall refund any unused portion of
46 moneys paid by such transient guest for the occupancy of such
47 premises. The operator is not liable for damages to personal

Amendment No. 7

48 property left on the premises by a transient guest who violates
49 subsection (1) or subsection (2) and is arrested by a law
50 enforcement officer.

51

52

53

54

D I R E C T O R Y A M E N D M E N T

55

Remove line 352 and insert:

56

Section 1. Subsections (2), (3), and (4) of section

57

513.13, Florida Statutes, are amended to read:

58

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 225 Controlled Substances
SPONSOR(S): Health Care Regulation Policy Committee
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Regulation Policy Committee	12 Y, 1 N, As CS	Calamas	Calamas
1)	Health Care Appropriations Committee		Clark <i>DC</i>	Massengale <i>AM</i>
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

The Committee Substitute for House Bill 225 increases regulation and provides for public-private partnerships to address prescription drug abuse.

The bill requires pharmacies to participate in a multi-state electronic prescribing network, and requires pharmacies to transmit dispensing information for controlled substances through the network. The bill makes these provisions effective July 1, 2012, and January 1, 2013, for new and existing pharmacies, respectively. The bill requires the Agency for Health Care Administration to negotiate access for law enforcement and state regulatory entities to controlled substance information through a multi-state electronic prescribing network.

The bill adds new requirements for pain clinic registration by prohibiting the Department of Health from registering pain clinics owned by non-physicians, pain clinics employing or contracting with a physician against whom regulatory action has been taken related to drug or alcohol abuse, and pain clinics with owners who have certain felony drug convictions. The bill also amends the definition of "clinics" to make it applicable to entities that are primarily engaged in the treatment pain by prescribing or dispensing controlled substances, as opposed to other methods of pain treatment.

The bill adds practitioner regulations and penalties. It makes physician advertising of controlled substances and practicing medicine in an unregistered clinic, which is required to be registered, grounds for licensure action. It prohibits dispensing practitioners from dispensing more than a 72-hour supply of controlled substances listed in Schedules II and III. Certain medication samples are exempt from the dispensing limit, and the bill does not prohibit physicians from prescribing controlled substances in any way. Under the bill's provisions, patients who receive prescriptions for controlled substances would fill them at pharmacies, rather than in physician offices or clinics. The bill makes violation of the dispensing limit a felony of the third degree.

The bill appears to have no fiscal impact on local government. The fiscal impact to the state as a result of the enforcement felony of the third degree would be insignificant. The Agency for Health Care Administration is authorized to seek private grants and donations to establish state access to the private multi-state electronic prescribing network data.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Controlled Substance Dispensing

Chapter 893, Florida Statutes, sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act.¹ Controlled substances are classified into five schedules to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Pharmacists and Pharmacies

Section 893.04, Florida Statutes, authorizes a pharmacist, in good faith and in the course of professional practice to dispense controlled substances upon a written or oral prescription under specified conditions:

- An oral prescription must be promptly reduced to writing by the pharmacist;
- The written prescription must be dated and signed by the prescribing practitioner on the date issued; and
- The face of the prescription or written record for the controlled substance must include:
 - The full name and address of the person for whom, or the owner of the animal for which, the controlled substance is dispensed;
 - The full name and address of the prescribing practitioner and the prescriber's federal controlled substance registry number;
 - If the prescription is for an animal, the species of animal for which the controlled substance is prescribed;
 - The name of the controlled substance prescribed and the strength, quantity, and directions for the use thereof;

¹ See, also, the federal Controlled Substances Act, 21 U.S.C. 812.

- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filed; and
- The initials of the pharmacist filling the prescription and the date filled.

Section 893.04(1)(d), Florida Statutes, requires the pharmacy in which a prescription for controlled substances is filled to retain the prescription on file for a period of 2 years. The original container in which a controlled substance is dispensed must bear a label with the following information:

- The name and address of the pharmacy from which the controlled substance was dispensed;
- The date on which the prescription for the controlled substance was filled;
- The number of the prescription, as recorded in the prescription files of the pharmacy in which it is filled;
- The name of the prescribing practitioner;
- The name of the patient for whom, or of the owner and species of the animal for which, the controlled substance is prescribed;
- The directions for the use of the controlled substance prescribed in the prescription; and
- A clear, concise warning that it is a crime to transfer the controlled substance to any person other than the patient for whom prescribed.

Chapter 893, Florida Statutes, imposes other limitations on controlled substance prescriptions. A prescription for a Schedule II controlled substance may be dispensed only upon a written prescription of a practitioner, except in an emergency situation, as defined by rule of the department. No prescription for a Schedule II controlled substance may be refilled.² No prescription for a controlled substance listed in Schedules III, IV, or V may be filled or refilled more than five times within a period of 6 months after the date on which the prescription was written unless the prescription is renewed by a practitioner.³ A pharmacist may dispense a one-time emergency refill of up to a 72-hour supply of a prescribed medication, except for those listed in Schedule II.⁴

In addition to these requirements for dispensing controlled substances, pharmacies must comply with regulations that apply to all dispensing. A pharmacy cannot dispense a medication if the prescription is not based on a "valid practitioner-patient relationship." Such a relationship includes "a documented patient evaluation, including history and a physical examination adequate to establish the diagnosis for which any drug is prescribed."⁵ Department of Health rules apply this standard to controlled substances.⁶

The following criteria shall cause a pharmacist to question whether a prescription was issued for a legitimate medical purpose:

- (a) Frequent loss of controlled substance medications;
- (b) Only controlled substance medications are prescribed for a patient;
- (c) One person presents controlled substance prescriptions with different patient names;
- (d) Same or similar controlled substance medication is prescribed by two or more prescribers at same time; and
- (e) Patient always pays cash and always insists on brand name product.

If any of those criteria are met, the pharmacy must copy the patient's photo identification for its records, and confirm the prescription with the physician. The Department of Health inspects pharmacies at least once a year to ensure compliance with statutory and regulatory requirements.⁷

² s. 893.04(1)(f), F.S.

³ s. 893.04(1)(g), F.S.

⁴ See 21 C.F.R. 1306.11(d)(1), which provides that in an emergency situation, a pharmacist may dispense a Schedule II controlled substance upon receiving oral authorization of a prescribing practitioner if the quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period.

⁵ S. 465.023(1)(h), F.S.

⁶ Rule 64B16-27.831, F.A.C.

⁷ Rule 64B16-28.101, F.A.C.

Physicians

Section 893.05, Florida Statutes, allows a practitioner, in good faith and in the course of professional practice only, to prescribe, administer, dispense, mix, or otherwise prepare a controlled substance. "Practitioner" means a licensed medical physician, a licensed dentist, a licensed veterinarian, a licensed osteopathic physician, a licensed naturopathic physician, or a licensed podiatrist, if such practitioner holds a valid federal controlled substance registry number.⁸ Physician dispensing is regulated by the relevant medical boards within the Department of Health.

To dispense medications, rather than just prescribe them, physicians must register with the department and pay a fee of \$100.⁹ Physicians who only dispense complimentary medications, and who receive no direct or indirect payment or remuneration for the medications, are not required to register.¹⁰ There are 7,108 registered dispensing practitioners in Florida.¹¹

The Department must inspect any facility in which a physician dispenses medication, such as a physician office or medical clinic, with the same frequency as it inspects pharmacies, that is, at least once a year (see above).¹² Dispensing physicians are required to comply with all state and federal laws and regulations applicable to pharmacists and pharmacies (see above).¹³ For example, a pharmacy is not permitted to dispense a drug if the prescription is not based on a valid practitioner-patient relationship, which requires a patient history and a physical examination adequate to establish the diagnosis. This requirement also applies to dispensing physicians.

Dispensing Prohibitions

Currently, Florida law allows registered physicians to dispense any prescribed drug. Other states have varying degrees of regulation. Twenty states allow dispensing and require some form of dispensing license.¹⁴ Twenty-three states allow dispensing, but do not require any license. One state allows dispensing, but requires a license to dispense controlled substances.

Some states prohibit physician dispensing entirely.¹⁵ Montana, Texas and Utah prohibit all physician dispensing; Massachusetts allows physicians to dispense only a 72-hour supply for emergencies. These states do not distinguish between controlled substances and other medications; all are included in the prohibition.

Electronic Prescribing

Electronic prescribing is the electronic generation and transmission of a patient's prescription by a health care practitioner at the point of care. It includes two major functions: two-way electronic communication between physicians and pharmacies regarding new prescriptions, refills, change requests, prescription cancellations, and patient compliance; and communication with other health care partners, like payers, related to eligibility, formularies and medication history.¹⁶

Electronic prescribing involves a secure, electronic connection between the physician and the pharmacy. In addition, electronic prescribing software generally allows a healthcare practitioner to not only securely access the patient's health plan formulary, but also the patient's medication history, all at the point of care. Medication history is generally available in an 11- to 24-month rolling window, and it generally includes both written and electronically transmitted prescriptions. Numerous software companies offer stand-alone

⁸ S. 893.02, F.S.

⁹ S. 465.0276(2)(a), F.S.; Rule 64B8-3.006, F.A.C.

¹⁰ S. 465.0276(5), F.S.

¹¹ Provided by the Department of Health via email to committee staff, dated February 1, 2010, on file with the committee. This number includes 935 advanced registered nurse practitioners, 230 dentists, 4,925 medical doctors, 855 osteopathic physicians, 119 podiatric physicians, and 44 optometrists.

¹² S. 465.0276(3), F.S.

¹³ S. 465.0276(2)(a), F.S.

¹⁴ Dispensing Regulations by State, American Academy of Urgent Care Medicine, see

<http://aaucm.org/Professionals/MedicalClinicalNews/DispensingRegulations/default.aspx> (last viewed January 30, 2010).

¹⁵ *Id.*

¹⁶ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, 2, see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010).

electronic prescribing products. While the cost of the product varies, some products are available at no cost to the healthcare practitioner.¹⁷

Section 408.0611, Florida Statutes, created in 2007, requires AHCA to work with private-sector initiatives and relevant stakeholders to create a "clearinghouse" of information on electronic prescribing for healthcare practitioners, facilities, and pharmacies. AHCA developed a website that provides information on the process and advantages of electronic prescribing, the availability of electronic prescribing software, including no-cost and low-cost software, and state and federal electronic prescribing incentive programs.¹⁸ AHCA also reports annually to the Governor and Legislature on the implementation of electronic prescribing by health care practitioners, facilities and pharmacies.

According to AHCA and the Institute of Medicine, electronic prescribing offers numerous benefits, including:¹⁹

- Reduced health care and legal costs by preventing medication prescription errors caused by events such as illegible hand writing, look-alike or sound-alike drugs, drug-to-drug interactions, incorrect dosing, drug allergy reactions, duplication of drugs, etc.;
- Real-time communications between doctors, pharmacies and patients;
- Provision of drug pricing, payer coverage and preferred drug information;
- Improved clinical outcomes by creating complete patient medication history and providing critical drug alerts and patient specific information at the health care professionals' fingertips; and
- Reduction of fraud and crime by increasing the security of prescriptions.

According to AHCA's most recent report, E-prescribing improved prescription security by providing a complete audit trail of each transaction, from the prescribing physician's office to the dispensing pharmacy, to the patient picking up the prescription. E-prescribing requires a secure log-in process for prescribing practitioners and pharmacies, which must be credentialed and approved before they can participate.^{20,21} E-prescribing provides an additional back-up for prescription records, which makes it useful in situations of natural disaster when paper records may be destroyed.²²

The use of e-prescribing is rising. Of the 6,157 pharmacies in Florida in 2008, 71.33 percent were activated to receive electronic prescriptions, an increase from 63 percent in 2007.²³ Similarly, in 2007 the highest monthly total of e-prescribing healthcare professionals was 2,331. The highest monthly total of e-prescribing physicians in 2008 was 4,492, an increase of 92.75 percent.²⁴ Among e-prescribers, the number of e-prescriptions issued per month rose 72 percent between 2007 and 2008.²⁵

¹⁷ See e.g., <http://www.nationalerx.com/> and <http://www.iscribe.com/> (offering free web-based electronic prescribing software) (last viewed February 23, 2010); Florida ePrescribe Clearinghouse, Products and Services, see <http://www.fhin.net/eprescribe/Technology/products.shtml> (last viewed February 23, 2010).

¹⁸ Florida E-Prescribe Clearinghouse, see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010); Agency for Health Care Administration, see <http://ahca.myflorida.com/dhit/ElectronicPrescribing/ePrescribeIndex.shtml> (last viewed February 23, 2010).

¹⁹ Agency for Health Care Administration, Advantages of ePrescribing, see <http://www.fhin.net/eprescribe/Benefits/Benefits.shtml> (last viewed February 23, 2010), citing Institute of Medicine, Committee on Identifying and Preventing Medication Errors, "Preventing Medication Errors: Quality Chasm Series" (2006).

²⁰ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010): "Secure access is possible using a virtual private network (VPN) connection over the Internet, which creates a protected electronic channel for the safe transmission of encrypted medication information. Infrastructure technology partners, vendors and others are bound through strong contracts to ensure the authentication of users, the integrity of prescriptions, and the privacy and security of personal health information that passes through the secure networks. Unwarranted prescription activity can be identified much more readily in the electronic system through the use of embedded auditing features."

²¹ *Id.* at 7.

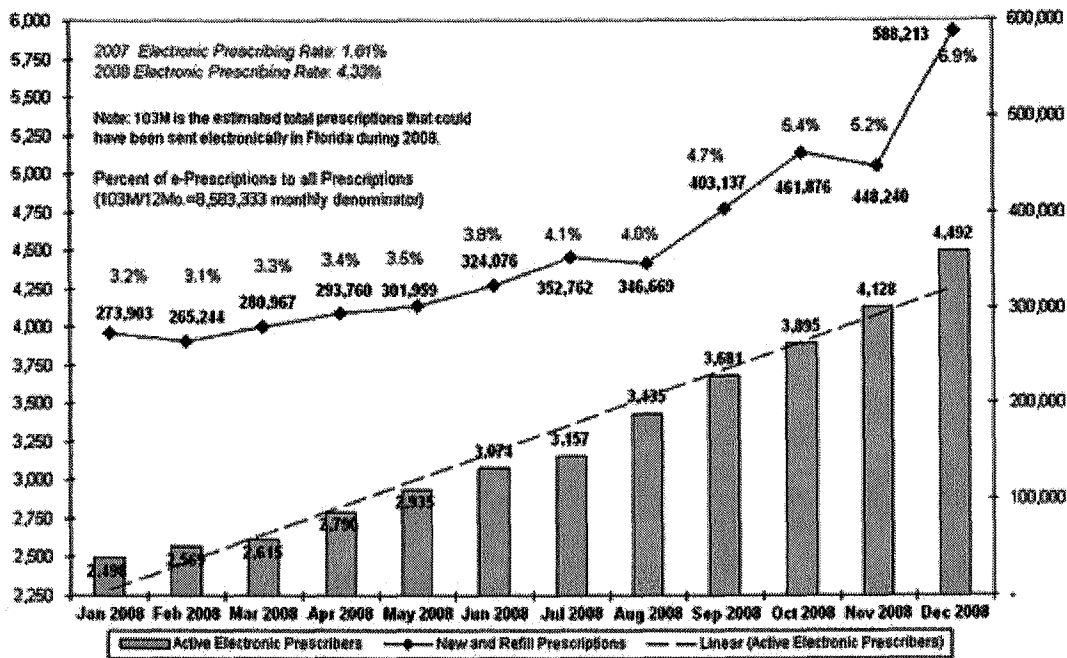
²² *Id.*

²³ Agency for Health Care Administration, ePrescribing Clearinghouse, ePrescribing Dashboard 2008 Metrics, see <http://www.fhin.net/eprescribe/Dashboard/FLmetrics.shtml> (last viewed February 23, 2010).

²⁴ *Id.*

²⁵ *Id.*

**Electronic Prescriptions and Electronic Prescribing Healthcare Providers,
January to December 2008**



Source: SureScripts-RxHub, cited in, Agency for Health Care Administration, ePrescribing Clearinghouse, ePrescribing Dashboard 2008 Metrics.

Controlled Substance E-Prescribing

The Drug Enforcement Administration (DEA) requires every person who dispenses controlled substances to register with the DEA and obtain a unique registration number.²⁶ All prescriptions for controlled substances must include the DEA registration number of the prescribing practitioner.²⁷ The DEA prohibits the use of electronic prescribing for controlled substances.²⁸ On June 27, 2008, the DEA proposed rules that would allow practitioners to issue electronic prescriptions for controlled substances.²⁹ The proposed rules delineate system requirements for prescribing practitioners e-prescribing vendors, pharmacies, pharmacists, and others. Public comments on the proposed rules were due September 25, 2008, and the DEA received more than 500 comments.³⁰

Federal Incentives and Penalties

The 2008 Medicare Improvements for Patients and Providers Act created a Medicare program to encourage physicians to adopt e-prescribing systems.³¹ From 2009 through 2014, Medicare will provide incentive payments to eligible health care practitioners who demonstrate “meaningful use” of electronic prescribing. Practitioners will receive a 2 percent incentive payment in 2009 and 2010; a 1 percent incentive payment in 2011 and 2012; and a .5 percent incentive payment in 2013.

Beginning in 2012, Medicare health care practitioners not using electronic prescribing will receive reduced payments for Medicare-covered services: Reimbursements will be reduced 1 percent in 2012, 1.5 percent in 2013, and 2 percent in 2014 and ongoing.³² Exemptions may be awarded on a case-by-case basis if it is determined that compliance would result in significant hardship for the practitioner.³³

²⁶ 21 C.F.R. 1301.11 (2010).

²⁷ 21 C.F.R. 1306.05 (2010).

²⁸ 21 C.F.R. 1306.05 (2010).

²⁹ Electronic Prescriptions for Controlled Substances, 73 Fed. Reg. 125 (June 27, 2008), (to be codified at 21 C.F.R. pts. 1300, 1304, 1306, 1311), see <http://www.gpoaccess.gov/fr/index.html>, last viewed February 23, 2010.

³⁰ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, see <http://www.fhin.net/eprescribe/index.shtml> (last viewed February 23, 2010).

³¹ Pub. L. No. 110-275 (2008).

³² *Id.*

³³ Agency for Health Care Administration, ePrescribing Clearinghouse, ePrescribing Initiatives and Incentive Programs, see <http://www.fhin.net/eprescribe/ePrescribingInitiatives/NationalIncentivePrograms.shtml> (last viewed February 23, 2010).

The 2009 American Recovery and Investment Act (ARRA)³⁴ authorized approximately \$19 billion for additional Medicare and Medicaid incentives to assist providers in adopting health information technology, and for state loan programs. The incentives will be available for five years, starting in 2011.

Electronic Prescribing Networks

To manage health care costs, private sector health care entities established secure internet-based networks for electronically connecting prescribers, dispensers, payers, and pharmacy benefits managers across the country. These e-prescribing networks use private contracting mechanisms to ensure that their technology partners and other affiliates properly authenticate users, maintain prescription integrity, and protect the privacy and security of the health information transmitted through the network. E-prescribing networks use national standards to certify e-prescribing software for use by physicians and pharmacies to participate in the networks.³⁵

Until 2008, the two largest e-prescribing networks were RxHub and Surescripts. Both companies were established in 2001. RxHub was founded by three pharmacy benefits management companies, CVS Caremark Corporation, Express Scripts, Inc., and Medco Health Solutions.³⁶ RxHub focused on providing services related to the delivery of medication information to e-prescribing physicians.³⁷ Surescripts was created by the National Association of Chain Drug Stores and the National Community Pharmacists Association.³⁸ Surescripts focused on the provision of services related to electronic communication of prescription information between physicians and pharmacies.³⁹ In 2008, the two companies merged under the name Surescripts-RxHub, later Surescripts, and became the single largest e-prescribing network, nationally.

According to AHCA, Surescripts does not develop or endorse specific e-prescribing software. Rather, it works with vendors that supply electronic health record and e-prescribing applications to connect their applications to the network.⁴⁰ Both stand-alone e-prescribing systems and full electronic medical records systems can be used to connect to the network. There are more than 30 Surescripts-certified technology partners available in Florida.⁴¹

According to 2009 Surescripts' data, the network has access to 27 payer sources, 49 states have patient accessibility rates of 50 percent or more, and the network accesses more than 220 million patient records annually.⁴² Nationally, the network includes major chain pharmacies like Walgreens, CVS, and Wal-Mart, and over 10,000 independent pharmacies.⁴³ In Florida, more than 8,000 physicians have access to the network, as do the majority of pharmacies. By agreement with AHCA, Florida Medicaid prescription drug data will be added this year.⁴⁴ According to Surescripts, the network now includes cash and paper transactions, rather than just electronic and third-party-paid transactions, if the prescribing or dispensing entity uses the network for that purpose.

Prescription Drug Diversion and Abuse

According to the Substance Abuse and Mental Health Services Administration, more than 6.3 million Americans reported using prescription drugs for nonmedical reasons in 2003.⁴⁵ Most people who take prescription medications take them responsibly; however, the nonmedical use or abuse of prescription

³⁴ Public Law 111-05 (2009).

³⁵ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, 7, see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010).

³⁶ See, <http://www.surescripts.com/the-company.html>.

³⁷ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, 24 see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010).

³⁸ See, <http://www.surescripts.com/the-company.html>.

³⁹ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, Second Annual Florida Electronic Prescribing Report, January 2009, 24 see <http://www.fhin.net/eprescribe/Index.shtml> (last viewed February 23, 2010).

⁴⁰ *Id* at 2.

⁴¹ Presentation by Tom Groom, Senior Vice President, Surescripts, to the Health Regulation Policy Committee, March 25, 2009.

⁴² Presentation by Tom Groom, Senior Vice President, Surescripts, to the Health Regulation Policy Committee, March 25, 2009.

⁴³ See, <http://www.surescripts.com/the-company.html>; <http://www.surescripts.com/connected-pharmacies.html>.

⁴⁴ Presentation by Tom Groom, Senior Vice President, Surescripts, to the Health Regulation Policy Committee, March 25, 2009.

⁴⁵ Overview of Findings from the 2003 National Survey on Drug Use and Health, see <http://oas.samhsa.gov/nhsda/2k3nsduh/2k3Overview.htm> (last viewed January 30, 2010).

drugs remains a serious public health concern in the United States. Certain prescription drugs—opioid substances, central nervous system depressants, and stimulants—when abused can alter the brain’s activity and lead to dependence and possible addiction.

Prescription drug abuse also occurs when a person illegally obtains a legal prescription drug for nonmedical use. People obtain these drugs in a variety of ways, including "doctor shopping," in which the person continually switches physicians so that they can obtain enough of the drug to feed their addiction. By frequently switching physicians, the doctors are unaware that the patient has already been prescribed the same drug and may be abusing it. Some physicians prescribe and dispense medically unjustifiable amounts of controlled substances, and are aware of their patients’ abuse.⁴⁶

Use of prescription pain relievers without a doctor’s prescription or only for the experience or feeling they cause (“nonmedical” use) is, after marijuana use, the second most common form of illicit drug use in the United States.⁴⁷ According to the Drug Abuse Warning Network (DAWN), approximately 324,000 emergency department visits in 2006 involved the nonmedical use of pain relievers (including both prescription and over-the-counter pain medications).⁴⁸

According to research by the National Institute on Drug Abuse,⁴⁹ the three most abused classes of prescription drugs are:

- Opioids, used to treat pain. Examples include codeine (Schedules II, III, V), oxycodone (OxyContin, Percocet – Schedule II), and morphine (Kadian, Avinza -Schedule II);
- Central nervous system depressants, used to treat anxiety and sleep disorders. Examples include barbiturates (Mebaral, Nembutal) and benzodiazepines (Valium, Xanax) (all in Schedule IV); and
- Stimulants, used to treat ADHD, narcolepsy, and obesity. Examples include dextroamphetamine (Dexedrine, Adderall) and methylphenidate (Ritalin, Concerta) (all in Schedule II).

The most commonly abused drugs (highlighted below) are found in all four prescribable controlled substance Schedules.⁵⁰

Substance	Other Names
Schedule II - high potential for abuse; severely restricted medical use	
1-Phencyclohexylamine	Precursor of PCP
1-Piperidinocyclohexanecarbonitrile	PCC, precursor of PCP
Alfentanil	Alfenta
Alphaprodine	Nisentil
Amobarbital	Amytal, Tuinal
Amphetamine	Dexedrine, Biphphetamine
Anileridine	Leritine
Benzoylcegonine	Cocaine metabolite
Bezitramide	Burgodin
Carfentanil	Wildnil

⁴⁶ See, Press Release, U.S. Att’y No. Dist. Fla., Destin Physician Sentenced to Life Imprisonment for Illegal Distribution of Controlled Substances, see <http://www.justice.gov/usao/fln/press%20releases/2010/jan/webb.html> (last viewed January 30, 2010); The Oxycontin Express (Vanguard, 2009) see <http://www.hulu.com/watch/100279/vanguard-the-oxycotin-express> (last viewed January 30, 2010).

⁴⁷ Substance Abuse and Mental Health Services Administration, Office of Applied Studies, Results from the 2007 National Survey on Drug Use and Health: National findings (DHHS Publication No. SMA 08-4343, NSDUH Series H-34) (2008), see <http://oas.samhsa.gov/p0000016.htm> (last viewed January 30, 2010); cited in, The NSDUH Report, Trends in Nonmedical Use of Prescription Pain Relievers: 2002 to 2007, Feb. 5, 2009, see <http://www.oas.samhsa.gov/2k9/painRelievers/nonmedicalTrends.cfm> (last viewed January 30, 2010).

⁴⁸ Substance Abuse and Mental Health Services Administration, Office of Applied Studies, Drug Abuse Warning Network, 2006: National Estimates of Drug-Related Emergency Department Visits, (August 2008), see <http://dawninfo.samhsa.gov/files/ED2006/DAWN2K6ED.pdf> (last viewed January 30, 2010), cited in, The NSDUH Report, Trends in Nonmedical Use of Prescription Pain Relievers: 2002 to 2007, Feb. 5, 2009, see <http://www.oas.samhsa.gov/2k9/painRelievers/nonmedicalTrends.cfm> (last viewed January 30, 2010).

⁴⁹ National Institutes of Health, National Institute on Drug Abuse, see, <http://www.drugabuse.gov/Researchreports/Prescription/prescription2.html>.
⁵⁰ National Institutes of Health, National Institute on Drug Abuse, see, <http://www.drugabuse.gov/DrugPages/DrugsOfAbuse.html> (last viewed January 30, 2010); U.S. Drug Enforcement Administration, see, <http://www.justice.gov/dea/pubs/scheduling.html> (last viewed January 30, 2010). This is a very basic list which describes the parent chemicals, not the salts, isomers and salts of isomers, esters, ethers and derivatives which may also be controlled substances.

Coca Leaves	
Cocaine	Methyl benzoylcegonine, Crack
Codeine	Morphine methyl ester, methyl morphine
Dextropropoxyphene, bulk (non-dosage forms)	Propoxyphene
Dihydrocodeine	Didrate, Parzone
Diphenoxylate	
Diprenorphine	M50-50
Ecgonine	Cocaine precursor, in Coca leaves
Ethylmorphine	Dionin
Etorphine HCl	M 99
Fentanyl	Innovar, Sublimaze, Duragesic
Glutethimide	Doriden, Dorimide
Hydrocodone	dihydrocodeinone
Hydromorphone	Dilaudid, dihydromorphinone
Isomethadone	Isoamidone
Levo-alphaacetylmethadol	LAAM, long acting methadone, levomethadyl acetate
Levomethorphan	
Levorphanol	Levo-Dromoran
Meperidine	Demerol, Mepergan, pethidine
Meperidine intermediate-A	Meperidine precursor
Meperidine intermediate-B	Meperidine precursor
Meperidine intermediate-C	Meperidine precursor
Metazocine	
Methadone	Dolophine, Methadose, Amidone
Methadone intermediate	Methadone precursor
Methamphetamine	Desoxyn, D-desoxyephedrine, ICE, Crank, Speed
Methylphenidate	Ritalin
Metopon	
Moramide-intermediate	
Morphine	MS Contin, Roxanol, Duramorph, RMS, MSIR
Nabilone	Cesamet
Opium extracts	
Opium fluid extract	
Opium poppy	Papaver somniferum
Opium tincture	Laudanum
Opium, granulated	Granulated opium
Opium, powdered	Powdered Opium
Opium, raw	Raw opium, gum opium
Oxycodone	OxyContin, Percocet, Tylox, Roxicodone, Roxicet,
Oxymorphone	Numorphan
Pentobarbital	Nembutal
Phenazocine	Narphen, Prinadol
Phencyclidine	PCP, Sernylan
Phenmetrazine	Preludin
Phenylacetone	P2P, phenyl-2-propanone, benzyl methyl ketone
Piminodine	
Poppy Straw	Opium poppy capsules, poppy heads
Poppy Straw Concentrate	Concentrate of Poppy Straw, CPS
Racemethorphan	
Racemorphan	Dromoran
Remifentanil	Ultiva

Secobarbital	Seconal, Tuinal
Sufentanil	Sufenta
Thebaine	Precursor of many narcotics
Schedule III - (less potential for abuse than Schedules I or II substances; some accepted medical use)	
Amobarbital & noncontrolled active ingred.	Amobarbital/ephedrine capsules
Amobarbital suppository dosage form	
Anabolic steroids	"Body Building" drugs
Aprobarbital	Alurate
Barbituric acid derivative	Barbiturates not specifically listed
Benzphetamine	Didrex, Inapetyl
Boldenone	Equipoise, Parenabol, Vebonol, dehydrotestosterone
Buprenorphine	Buprenex, Temgesic
Butabarbital	Butisol, Butibel
Butalbital	Fiorinal, Butalbital with aspirin
Chlorhexadol	Mechloral, Mecoral, Medodorm, Chloralodol
Chlorotestosterone (same as clostebol)	if 4-chlorotestosterone then clostebol
Chlorphentermine	Pre-Sate, Lucofen, Apsedon, Desopimom
Clortermine	Voranil
Clostebol	Alfa-Trofodermin, Clostene, 4-chlorotestosterone
Codeine & isoquinoline alkaloid 90 mg/du	Codeine with papaverine or noscapine
Codeine combination product 90 mg/du	Empirin, Fiorinal, Tylenol, ASA or APAP w/codeine
Dehydrochlormethyltestosterone	Oral-Turinabol
Dihydrocodeine combination product 90 mg/du	Synalgos-DC, Compal
Dihydrotestosterone (same as stanolone)	see stanolone
Dronabinol in sesame oil in soft gelatin capsule	Marinol, synthetic THC in sesame oil/soft gelatin
Drostanolone	Drolban, Masterid, Permastril
Ethylestrenol	Maxibolin, Orabolin, Durabolin-O, Duraboral
Ethylmorphine combination product 15 mg/du	
Fluoxymesterone	Anadroid-F, Halotestin, Ora-Testryl
Formebolone (incorrect spelling in law)	Esiclene, Hubernol
Hydrocodone & isoquinoline alkaloid 15 mg/du	Dihydrocodeinone+papaverine or noscapine
Hydrocodone combination product 15 mg/du	Tussionex, Tussend, Lortab, Vicodin, Hycodan, Anexsia ++
Ketamine	Ketaset, Ketalar, Special K, K
Lysergic acid	LSD precursor
Lysergic acid amide	LSD precursor
Mesterolone	Proviron
Methandienone (see Methandrostenolone)	
Methandranone	
Methandriol	Sinesex, Stenediol, Troformone
Methandrostenolone	Dianabol, Metabolina, Nerobol, Perbolin
Methenolone	Primobolan, Primobolan Depot, Primobolan S
Methyltestosterone	Android, Oreton, Testred, Virilon
Methypylon	Noludar
Mibolerone	Cheque
Morphine combination product/50 mg/100 ml or gm	
Nalorphine	Nalline
Nandrolone	Deca-Durabolin, Durabolin, Durabolin-50
Norethandrolone	Nilevar, Solevar
Opium combination product 25 mg/du	Paregoric, other combination products
Oxandrolone	Anavar, Lonavar, Provitar, Vasorome
Oxymesterone	Anamidol, Balnimax, Oranabol, Oranabol 10
Oxymetholone	Anadrol-50, Adroyd, Anapolon, Anasteron, Pardroyd

Pentobarbital & noncontrolled active ingred.	FP-3
Pentobarbital suppository dosage form	WANS
Phendimetrazine	Plegine, Prelu-2, Bontril, Melfiat, Statabex
Secobarbital & noncontrolled active ingred	various
Secobarbital suppository dosage form	various
Stanolone	Anabolex, Andractim, Pesomax, dihydrotestosterone
Stanozolol	Winstrol, Winstrol-V
Stimulant compounds previously excepted	Mediatric
Sulfondiethylmethane	
Sulfonethylmethane	
Sulfonmethane	
Talbutal	Lotusate
Testolactone	Teslac
Testosterone	Android-T, Androlan, Depotest, Delatestryl
Thiamylal	Surital
Thiopental	Pentothal
Tiletamine & Zolazepam Combination Product	Telazol
Trenbolone	Finaplix-S, Finajet, Parabolan
Vinbarbital	Delvinal, vinbarbitone
Schedule IV - (less potential for abuse than Schedules I, II, or III substances; some accepted medical use)	
Alprazolam	Xanax
Barbital	Veronal, Plexonal, barbitone
Bromazepam	Lexotan, Lexatin, Lexotanil
Butorphanol	Stadol, Stadol NS, Torbugesic, Torbutrol
Camazepam	Albego, Limpidon, Paxor
Cathine	Constituent of "Khat" plant
Chloral betaine	Beta Chlor
Chloral hydrate	Noctec
Chlordiazepoxide	Librium, Libritabs, Limbitrol, SK-Lygen
Clobazam	Urbadan, Urbanyl
Clonazepam	Klonopin, Clonopin
Clorazepate	Tranxene
Clotiazepam	Trecalmo, Rize
Cloxazolam	Enadel, Sepazon, Tolestan
Delorazepam	
Dexfenfluramine	Redux
Dextropropoxyphene dosage forms	Darvon, propoxyphene, Darvocet, Dolene, Propacet
Diazepam	Valium, Valrelease
Dichloralphenazone	Midrin, dichloralantipyrine
Diethylpropion	Tenuate, Tepanil
Difenoxin 1 mg/25 ug AtSO4/du	Motofen
Estazolam	ProSom, Domnamid, Eurodin, Nuctalon
Ethchlorvynol	Placidyl
Ethinamate	Valmid, Valamin
Ethyl loflazepate	
Fencamfamin	Reactivan
Fenfluramine	Pondimin, Ponderal
Fenproporex	Gacilin, Solvolip
Fludiazepam	
Flunitrazepam	Rohypnol, Narcozep, Darkene, Roipnol
Flurazepam	Dalmane
Halazepam	Paxipam

Haloxazolam	
Ketazolam	Anxon, Loftran, Solatran, Contamex
Loprazolam	
Lorazepam	Ativan
Lormetazepam	Noctamid
Mazindol	Sanorex, Mazanor
Mebutamate	Capla
Medazepam	Nobrium
Mefenorex	Anorexic, Amexate, Doracil, Pondinil
Meprobamate	Miltown, Equanil, Deprol, Equagesic, Meprospan
Methohexital	Brevital
Methylphenobarbital (mephobarbital)	Mebaral, mephobarbital
Midazolam	Versed
Modafinil	Provigil
Nimetazepam	Erimin
Nitrazepam	Mogadon
Nordiazepam	Nordazepam, Demadar, Madar
Oxazepam	Serax, Serenid-D
Oxazolam	Serenal, Convertal
Paraldehyde	Paral
Pemoline	Cylert
Pentazocine	Talwin, Talwin NX, Talacen, Talwin Compound
Petrichloral	Pentaerythritol chloral, Periclor
Phenobarbital	Luminal, Donnatal, Bellerger-S
Phentermine	Ionamin, Fastin, Adipex-P, Obe-Nix, Zantryl
Pinazepam	Domar
Pipradrol	Detaril, Stimolag Fortis
Prazepam	Centrax
Quazepam	Doral, Dormalin
Sibutramine	Meridia
SPA	1-dimethylamino-1,2-diphenylethane, Lefetamine
Temazepam	Restoril
Tetrazepam	
Triazolam	Halcion
Zaleplon	Sonata
Zolpidem	Ambien, Stilnoct, Ivadal
Schedule V - (low potential for abuse compared to Schedule IV substances; some accepted medical use)	
Codeine preparations - 200 mg/100 ml or 100 gm	Cosanyl, Robitussin A-C, Cheracol, Cerase, Pediacof
Difenoxin preparations - 0.5 mg/25 ug AtSO4/du	Motofen
Dihydrocodeine preparations 10 mg/100 ml or 100 gm	Cophene-S, various others
Diphenoxylate preparations 2.5 mg/25 ug AtSO4	Lomotil, Logen
Ethylmorphine preparations 100 mg/100 ml or 100 gm	
Opium preparations - 100 mg/100 ml or gm	Parepectolin, Kapectolin PG, Kaolin Pectin P.G.
Pyrovalerone	Centroton, Thymergix

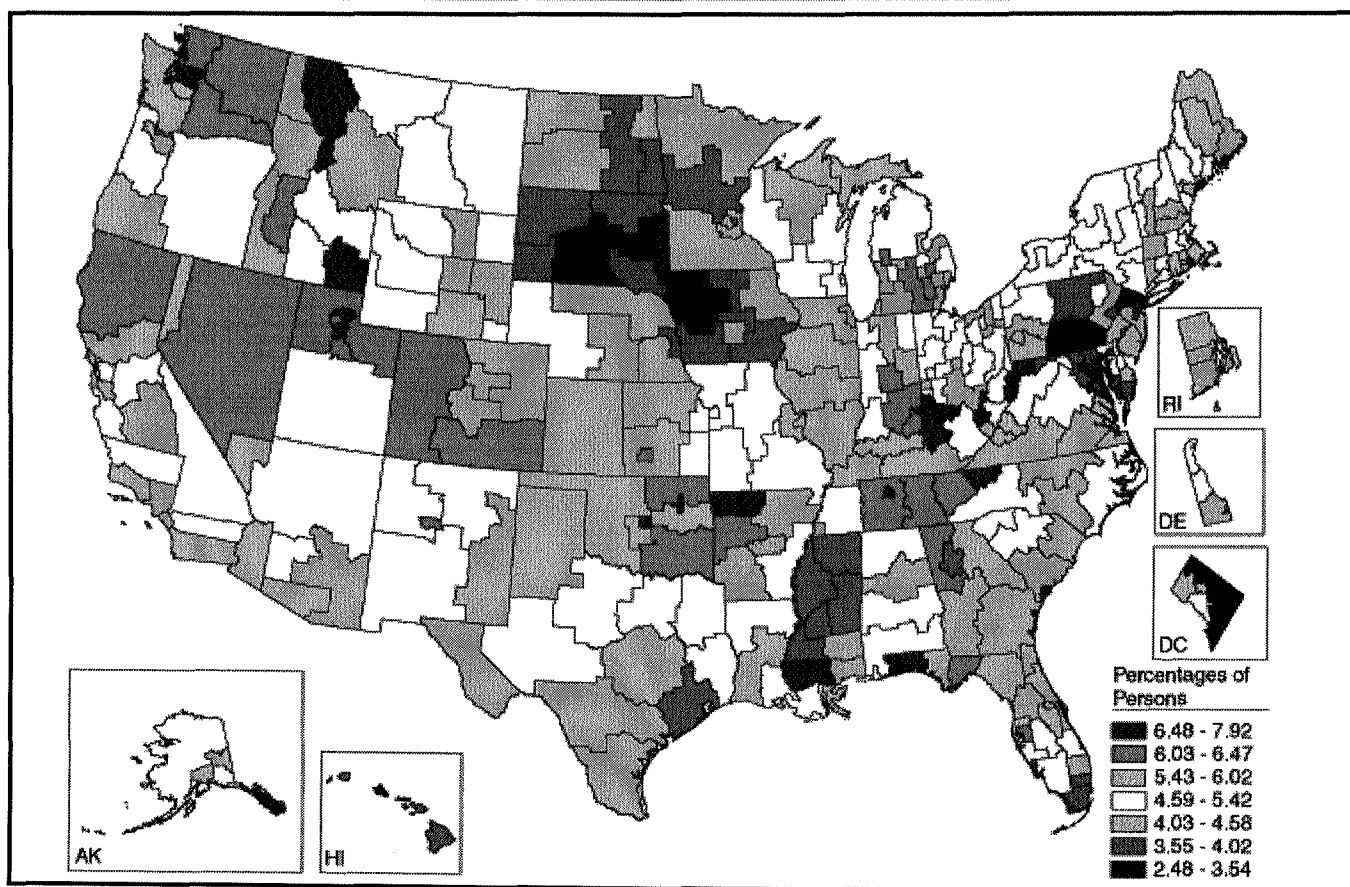
The Substance Abuse and Mental Health Services Administration (SAMHSA) sponsors an annual national survey on drug use and health. The most recent survey⁵¹ indicates there are 7.0 million (2.8 percent) persons aged 12 or older who used prescription-type psychotherapeutic drugs nonmedically in the past month. Of these, 5.2 million used pain relievers, an increase from 4.7 million in 2005.

⁵¹ 2006 National Survey on Drug Use and Health, U.S. Substance Abuse and Mental Health Services Administration, see <http://www.oas.samhsa.gov/nsduh/2k6nsduh/2k6Results.cfm#High> (last viewed January 30, 2010).

Of those 7 million people who used pain relievers nonmedically in a 12-month period, 55.7 percent reported they received the drug from a friend or relative for free. Another 9.3 percent bought the drugs from a friend or family member. Another 19.1 percent reported they obtained the drug through just one doctor. Only 3.9 percent got the pain relievers from a drug dealer or other stranger, and only 0.1 percent reported buying the drug on the Internet. Among those who reported getting the pain reliever from a friend or relative for free, 80.7 percent reported in a follow-up question that the friend or relative had obtained the drugs from just one doctor, while only 1.6 percent reported that the friend or relative had bought the drug from a drug dealer or other stranger.⁵²

National data indicate that the percent of the population using prescription pain relievers for nonmedical purposes in the past year ranged from a low of 2.48 percent in area of the District of Columbia to a high of 7.92 percent in northwest Florida. In Florida, for example, Palm Beach County measured 4.53 percent; Broward County measured 3.82 percent; Miami-Dade and Monroe Counties measured 3.59 percent; and Escambia, Okaloosa, Santa Rosa and Walton Counties combined measured 7.92 percent.⁵³

Figure 1. Nonmedical Use of Pain Relievers in the Past Year among Persons Aged 12 or Older, by Substate Region*: Percentages, Annual Averages Based on 2004, 2005, and 2006 NSDUHs



Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (June 19, 2008). The NSDUH Report: Nonmedical Use of Pain Relievers in Substate Regions: 2004 to 2006.

The Florida Medical Examiners Commission reports on drug-related deaths in Florida, and specifically tracks deaths caused by abuse of prescriptions drugs⁵⁴. According to the commission, prescription drugs are found in deceased persons in lethal amounts more often than illicit drugs.⁵⁵ According to the

⁵² *Id.*

⁵³ Substance Abuse and Mental Health Services Administration, Office of Applied Studies, The NSDUH Report: Nonmedical Use of Pain Relievers in Substate Regions: 2004 to 2006, June 19, 2008, see <http://www.oas.samhsa.gov/2k8/pain/substate.cfm> (last viewed January 30, 2010).

⁵⁴ Florida Department of Law Enforcement, Medical Examiners Commission, Drugs Identified in Deceased Persons Interim Report, November 2009, see <http://www.fdle.state.fl.us/content/getdoc/036671bc-4148-4749-a891-7e3932e0a483/Publications.aspx> (last viewed January 30, 2010).

⁵⁵ *Id.*

commission's data, 1,157 deaths in Florida from January 2009 through June 2009 were caused by prescription drugs, or about 6.3 deaths per day.⁵⁶

According to recent U.S. DEA statistics, the top 25 pain management clinics for dispensing of time release opioids and other pain relievers are all located in Florida.⁵⁷ The U.S. Drug Enforcement Administration identified the 50 practitioners who dispense the most Oxycodone in the country. All 50 top-dispensing practitioners are in Florida, and 33 are in Broward County.⁵⁸

Physician Dispensing of Oxycodone, by County⁵⁹

County	Units Oxycodone
Broward	6,584,200
Palm Beach	1,809,400
Miami-Dade	450,000
Pinellas	308,400
Hillsborough	277,300
Lake	220,400
Orange	111,200
Seminole	109,760

Physician Dispensing of Oxycodone in Palm Beach, Broward, Miami-Dade Counties, by Zip Code⁶⁰

Zip Code	Units Oxycodone
33311	1,235,700
33309	775,400
33334	727,600
33407	575,100
33313	442,800
33324	436,600
33009	396,000
33312	340,900
33020	329,000
33162	314,800
33301	285,900
33463	277,500
33417	241,700
33431	227,600
33325	198,800
33483	193,600
33323	186,800
33021	153,600
33487	151,200
33321	143,200
33445	142,700
33016	135,200
33024	130,200
33069	126,600
33023	122,800
33063	118,000
33073	111,900
33317	109,100
33308	107,000
33064	106,300

⁵⁶ *Id.*

⁵⁷ Data drawn from the Automation of Reports and Consolidated Orders System, U.S. Department of Justice Drug Enforcement Administration, provided by the Florida Office of Drug Control via email March 22, 2009, on file with the Health Regulation Policy Committee, see <http://www.deadiversion.usdoj.gov/arcos/index.html> (last viewed January 30, 2010).

⁵⁸ Data drawn from the Automation of Reports and Consolidated Orders System, July-December 2008, U.S. Department of Justice Drug Enforcement Administration, provided by the Florida Office of Drug Control via email March 22, 2009, on file with the Health Regulation Policy Committee, see <http://www.deadiversion.usdoj.gov/arcos/index.html> (last viewed January 30, 2010)

⁵⁹ *Id.*

⁶⁰ *Id.*

In 2009, the State Attorney for the Seventeenth Judicial Circuit (Broward County) empanelled a grand jury to consider the proliferation of pain clinics in Broward County and their effect on the community, and to make recommendations on what can be done to protect the public from the dangers of pain clinics. The grand jury interim report found that physicians in pain clinics dispense controlled substances directly to patients, rather than the patient going to a pharmacy to fill the prescription. Among other things, the grand jury recommended the state prohibit dispensing prescription drugs in pain clinics.⁶¹

Prescription Drug Monitoring Program and Pain Clinic Regulation

In the 2009 Regular Session, the Legislature passed Senate bill 462 (chapter 2009-198, Laws of Florida) to address the problem of prescription drug abuse. The bill:

- required the Department of Health to establish a database of controlled substances dispensed to all patients in Florida;
- required all pharmacies and all dispensing physicians to report all controlled substance dispensing to the department within 15 days of dispensing;
- required the department to load the reported dispensing information into the database, and make it available to practitioners, regulators, and criminal justice entities upon their request;
- required all pain clinics, defined as entities that advertise for pain management services or employ a physician who is primarily engaged in the treatment of pain by prescribing or dispensing controlled substances, to register with the department;
- required the medical boards to adopt rules for the standards of medical practice in pain clinics;
- created a task force within the Executive Office of the Governor, chaired by the Office of Drug Control, to monitor and report on the implementation of the database; and
- authorized the Office of Drug Control within the Executive Office of the Governor to establish a direct support organization to solicit public and private funding for the database.

As of January 2010, the department has implemented the clinic registration requirement, and the boards have begun rulemaking on the standards of practice.⁶² The Office of Drug Control has established the direct support organization. To date, \$400,000 has been generated to fund the database, via a grant from the U.S. Department of Justice awarded to the Department of Children and Families prior to the passage of the bill. Current cost projections for the program are \$449,665 in nonrecurring first year costs, and \$480,486 in recurring annual costs.⁶³

Effect of Proposed Changes

The Committee Substitute for House Bill 225 makes several regulatory changes to address the problem of prescription drug abuse, related to pharmacies, physicians, pain clinics, and access to controlled substance dispensing information.

The bill amends sections 465.018 and 465.023, Florida Statutes, to require pharmacies to participate in a multi-state electronic prescribing network, and require pharmacies to transmit dispensing information for controlled substances through the network. The bill also makes failure to so transmit controlled substance dispensing information grounds for pharmacy permit disciplinary action. The bill makes these provisions effective July 1, 2012, for new pharmacies and January 1, 2013, for existing pharmacies.

The bill creates section 408.0513, Florida Statutes, which requires the Agency for Health Care Administration to negotiate access to controlled substance information through a multi-state electronic prescribing network for law enforcement and state regulatory entities. Access to the information available in the network is limited to criminal justice agencies, as defined in section 119.011, Florida Statutes, engaged in an active investigation involving a specific violation of law, and the department or relevant

⁶¹ The Proliferation of Pain Clinics in South Florida, Interim Report of the Broward County Grand Jury, Circuit Court of the Seventeenth Judicial Circuit, November 19, 2009.

⁶² See, Rules 64B8-9.0131, 64B8-9.0132, 64B8-9.0133, F.A.C., under development.

⁶³ PL2009-198 Implementation of the Prescription Drug Monitoring Program & Pain Clinic Registration Florida Department of Health, Florida Department of Health, presentation to the House Health Regulation Policy Committee, January 12, 2010; Prescription Drug Monitoring Program PL2009 – 198 Implementation Status Plan, Florida Office of Drug Control, Executive Office of the Governor, presentation to the House Health Regulation Policy Committee, January 12, 2010.

regulatory board involved in a specific investigation involving a regulated person. Section 119.011 defines "criminal justice agency" as:

- Any law enforcement agency, court, or prosecutor;
- Any other agency charged by law with criminal law enforcement duties;
- Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting law enforcement agencies in the conduct of certain investigations; and
- The Department of Corrections.

The bill amends sections 458.309 and 459.005, Florida Statutes, to add pain clinic registration requirements. It prohibits the Department of Health from registering pain clinics owned by non-physicians, pain clinics employing or contracting with a physician against whom regulatory action has been taken related to drug or alcohol abuse, and pain clinics with owners who have certain felony drug convictions. The bill also amends the definition of "clinics" to make it applicable only to entities that are primarily engaged in the treatment pain by prescribing or dispensing controlled substances, as opposed to other methods of pain treatment.

The bill amends sections 458.331, 459.015 and 465.0276, Florida Statutes, to add practitioner regulations and penalties. It makes advertising controlled substances and practicing medicine in an unregistered clinic which is required to be registered grounds for physician licensure action. It prohibits dispensing practitioners from dispensing more than a 72-hour supply of controlled substances listed in Schedules II and III. The bill exempts medication samples from the dispensing limit, if they are provided with no direct or indirect remuneration. The bill does not prohibit physicians from prescribing controlled substances in any way. Under the bill's provisions, patients who receive prescriptions for controlled substances would fill them at pharmacies, rather than in physician offices or clinics. The bill makes violation of the dispensing limit a felony of the third degree.⁶⁴

The bill authorizes the Agency for Health Care Administration to adopt rules to implement section 408.0513, Florida Statutes.

The bill appears to have no fiscal impact on state or local government. The Agency for Health Care Administration is authorized to seek private grants and donations to implement section 408.0513, Florida Statutes.

The bill provides an effective date of July 1, 2010.

B. SECTION DIRECTORY:

- Section 1. Creates s. 408.0513 related to access to prescription drug medication history.
- Section 2. Amends s. 458.309, F.S., related to rulemaking authority.
- Section 2. Amends s. 458.331, F.S., related to grounds for disciplinary action and action by the board and department.
- Section 3. Amends s. 459.005, F.S., related to rulemaking authority.
- Section 4. Amends s. 459.015, F.S., related to grounds for disciplinary action and action by the board and department.
- Section 5. Amends s. 465.018, F.S., related to community pharmacies and permits.
- Section 6. Amends s. 465.023, F.S., related to pharmacy permittees and disciplinary action.
- Section 7. Amends s. 465.0276, F.S., related to dispensing practitioners.
- Section 8. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁶⁴ Third degree felonies are punishable by up to 5 years in prison or up to a \$5,000 fine (ss. 775.082 and 775.083, F.S.).

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments. According to the Department of Health, which regulates dispensing practitioners, the dispensing limit provisions of the bill have no fiscal impact on the department.

The fiscal impact to the Department of Corrections as a result of the third degree felony for physicians that dispense Schedule II or III controlled substances beyond the 72-hour limit is indeterminate at this time. This is a likely low volume offense and is therefore anticipated to have an insignificant fiscal effect.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires pharmacies to participate in, and transmit controlled substance dispensing information through, a multi-state electronic prescribing network as a condition of permitting. According to the Agency for Health Care Administration, more than 70 percent of pharmacies in Florida are activated to receive electronic prescriptions. Such pharmacies may incur transmission transaction costs if they do not currently use these systems for controlled substance prescriptions. The approximately 30 percent of pharmacies in Florida that are not activated to participate in a multi-state e-prescribing network will incur activation costs, which may include computer upgrades, software purchases, licensing agreements, and the above-mentioned transaction costs. These costs will vary with each pharmacy.

D. FISCAL COMMENTS:

The costs of access to information contained in an existing multi-state network are unknown, and are subject to negotiation by the Agency for Health Care Administration. The agency is authorized to seek private grants and donations to implement this provision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULEMAKING AUTHORITY:

No additional rulemaking authority is required to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 1, 2010, the Health Care Regulation Policy Committee adopted a proposed committee substitute for House Bill 225. The proposed committee substitute made the following changes to HB 225:

- Amended current law to clarify that the pain management clinic registration requirement only applies to clinics that primarily treat pain by prescribing or dispensing controlled substances;
- Deleted the requirement that medical directors of pain management clinics be board-certified in pain management in order to register the clinic with the Department of Health;
- Deleted Schedule IV controlled substances from the list of controlled substances banned from physician dispensing by the bill;
- Made it a felony of the third degree for physicians to dispense Schedule II or III controlled substances beyond the 72-hour limit;
- Excepted unremunerated medication samples from the dispensing prohibition;
- Deleted the requirement for pharmacies not using the multi-state electronic prescribing network for controlled substance dispensing to report that dispensing to the Agency for Health Care Administration;
- Required pharmacies to use the multi-state electronic prescribing network to transmit information on all controlled substance dispensing as a condition of licensure;
- Delayed the effective date for new pharmacies to demonstrate the ability to participate in and transmit information through a multi-state electronic prescribing network to July 1, 2012; and
- Delayed the effective date for existing pharmacies to transmit dispensing information on Schedule II and III controlled substances to January 1, 2013.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

1 A bill to be entitled
 2 An act relating to controlled substances; creating s.
 3 408.0513, F.S.; requiring the Agency for Health Care
 4 Administration to contract with a multistate electronic
 5 prescribing network to provide certain agencies with
 6 access to certain controlled substance information;
 7 requiring the Agency for Health Care Administration to
 8 adopt rules and seek grants and donations; amending ss.
 9 458.309 and 459.005, F.S.; revising requirements for the
 10 registration of pain-management clinics; requiring the
 11 Department of Health to refuse to register pain-management
 12 clinics under certain circumstances; amending ss. 458.331
 13 and 459.015, F.S.; specifying additional grounds for
 14 disciplinary action against practitioners licensed under
 15 ch. 458 or ch. 459, F.S.; amending s. 465.018, F.S.;
 16 requiring community pharmacy permit applicants to
 17 demonstrate the ability to participate in and transmit
 18 dispensing information through a multistate electronic
 19 prescribing network; requiring community pharmacy
 20 permittees to transmit dispensing information through such
 21 a network for prescriptions of certain controlled
 22 substances; amending s. 465.023, F.S.; specifying an
 23 additional ground for disciplinary action against
 24 community pharmacy permittees; amending s. 465.0276, F.S.;
 25 prohibiting registered dispensing practitioners from
 26 dispensing more than a specified amount of certain
 27 controlled substances; providing penalties; providing
 28 exceptions; reenacting ss. 458.303, 458.311(1)(d) and (5),

29 458.313(6), 458.3135(2)(d), 458.3137(2)(e),
 30 458.3145(1)(g), and 458.345(1)(b) and (2), F.S., relating
 31 to provisions not applicable to certain practitioners,
 32 licensure of physicians by examination, licensure of
 33 physicians by endorsement, temporary certificates for
 34 visiting physicians practicing in approved cancer centers,
 35 temporary certificates for visiting physicians in
 36 conjunction with certain plastic surgery training programs
 37 and educational symposiums, medical faculty certificates,
 38 and registration of resident physicians, interns, and
 39 fellows, respectively, to incorporate the amendment made
 40 by this act to s. 458.331, F.S., in references thereto;
 41 reenacting s. 459.021(8), F.S., relating to the
 42 registration of resident osteopathic physicians, interns,
 43 and fellows, to incorporate the amendment made by this act
 44 to s. 459.015, F.S., in a reference thereto; providing an
 45 effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Section 408.0513, Florida Statutes, is created
 50 to read:

51 408.0513 Access to prescription drug medication history.-

52 (1) By December 1, 2010, the agency shall contract with an
 53 entity that operates a multistate electronic prescribing network
 54 to provide the following agencies with access to the controlled
 55 substance information available on such network for the
 56 controlled substances listed in Schedules II and III of s.

57 | 893.03:

58 | (a) A criminal justice agency as defined in s. 119.011
 59 | that enforces the laws of this state or the United States and
 60 | that initiates an active investigation involving a specific
 61 | violation of law.

62 | (b) The Department of Health or the relevant health
 63 | regulatory board responsible for the licensure, regulation, or
 64 | discipline of practitioners, pharmacists, or other persons who
 65 | are authorized to prescribe, administer, or dispense controlled
 66 | substances and who are involved in a specific investigation
 67 | involving a designated person.

68 | (2) The agency shall adopt rules under ss. 120.536(1) and
 69 | 120.54 to administer this section, including the method and
 70 | terms of access to the information provided under subsection
 71 | (1).

72 | (3) The agency shall seek federal grants and donations
 73 | from private entities to implement this section.

74 | Section 2. Subsection (4) of section 458.309, Florida
 75 | Statutes, is amended to read:

76 | 458.309 Rulemaking authority.—

77 | (4) All privately owned pain-management clinics,
 78 | facilities, or offices, hereinafter referred to as "clinics,"
 79 | primarily engaged in the treatment of pain by prescribing or
 80 | dispensing controlled substances, which advertise in any medium
 81 | for any type of pain-management services, or employ a physician
 82 | who is primarily engaged in the treatment of pain by prescribing
 83 | or dispensing controlled substance medications, must register
 84 | with the department by January 4, 2010, unless that clinic is

85 licensed as a facility pursuant to chapter 395. The department
 86 shall refuse to register any clinic not wholly owned by a
 87 physician or group of physicians; any clinic owned by or having
 88 any contractual or employment relationship with a physician
 89 whose federal Drug Enforcement Administration registration
 90 number has ever been suspended or revoked or against whom the
 91 board has taken final administrative action relating to the
 92 physician's impairment due to the misuse or abuse of alcohol or
 93 drugs; or any clinic the ownership or any controlling interest
 94 of which is held by any person who has been convicted of, or has
 95 entered a plea of guilty or nolo contendere to, regardless of
 96 adjudication, a felony under chapter 893. A physician may not
 97 practice medicine in a pain-management clinic that is required
 98 to register but has not registered with the department. Each
 99 clinic location shall be registered separately regardless of
 100 whether the clinic is operated under the same business name or
 101 management as another clinic. If the clinic is licensed as a
 102 health care clinic under chapter 400, the medical director is
 103 responsible for registering the facility with the department. If
 104 the clinic is not registered pursuant to chapter 395 or chapter
 105 400, the clinic shall, upon registration with the department,
 106 designate a physician who is responsible for complying with all
 107 requirements related to registration of the clinic. The
 108 designated physician shall be licensed under this chapter or
 109 chapter 459 and shall practice at the office location for which
 110 the physician has assumed responsibility. The department shall
 111 inspect the clinic annually to ensure that it complies with
 112 rules of the Board of Medicine adopted pursuant to this

113 subsection and subsection (5) unless the office is accredited by
 114 a nationally recognized accrediting agency approved by the Board
 115 of Medicine. The actual costs for registration and inspection or
 116 accreditation shall be paid by the physician seeking to register
 117 the clinic.

118 Section 3. Paragraph (nn) of subsection (1) of section
 119 458.331, Florida Statutes, is redesignated as paragraph (pp),
 120 and new paragraphs (nn) and (oo) are added to that subsection to
 121 read:

122 458.331 Grounds for disciplinary action; action by the
 123 board and department.—

124 (1) The following acts constitute grounds for denial of a
 125 license or disciplinary action, as specified in s. 456.072(2):

126 (nn) Practicing medicine in a clinic that is required to
 127 register but has not registered with the department pursuant to
 128 s. 458.309.

129 (oo) Promoting or advertising through any communication
 130 media the use, sale, or dispensing of any controlled substance
 131 appearing on any schedule in chapter 893.

132 Section 4. Subsection (3) of section 459.005, Florida
 133 Statutes, is amended to read:

134 459.005 Rulemaking authority.—

135 (3) All privately owned pain-management clinics,
 136 facilities, or offices, hereinafter referred to as "clinics,"
 137 primarily engaged in the treatment of pain by prescribing or
 138 dispensing controlled substances, which advertise in any medium
 139 for any type of pain-management services, or employ a physician
 140 who is licensed under this chapter and who is primarily engaged

141 | in the treatment of pain by prescribing or dispensing controlled
 142 | substance medications, must register with the department by
 143 | January 4, 2010, unless that clinic is licensed as a facility
 144 | under chapter 395. The department shall refuse to register any
 145 | clinic not wholly owned by a physician or group of physicians;
 146 | any clinic owned by or having any contractual or employment
 147 | relationship with a physician whose federal Drug Enforcement
 148 | Administration registration number has ever been suspended or
 149 | revoked or against whom the board has taken final administrative
 150 | action relating to the physician's impairment due to the misuse
 151 | or abuse of alcohol or drugs; or any clinic the ownership or any
 152 | controlling interest of which is held by any person who has been
 153 | convicted of, or has entered a plea of guilty or nolo contendere
 154 | to, regardless of adjudication, a felony under chapter 893. A
 155 | physician may not practice osteopathic medicine in a pain-
 156 | management clinic that is required to register but has not
 157 | registered with the department. Each clinic location shall be
 158 | registered separately regardless of whether the clinic is
 159 | operated under the same business name or management as another
 160 | clinic. If the clinic is licensed as a health care clinic under
 161 | chapter 400, the medical director is responsible for registering
 162 | the facility with the department. If the clinic is not
 163 | registered under chapter 395 or chapter 400, the clinic shall,
 164 | upon registration with the department, designate a physician who
 165 | is responsible for complying with all requirements related to
 166 | registration of the clinic. The designated physician shall be
 167 | licensed under chapter 458 or this chapter and shall practice at
 168 | the office location for which the physician has assumed

169 responsibility. The department shall inspect the clinic annually
 170 to ensure that it complies with rules of the Board of
 171 Osteopathic Medicine adopted pursuant to this subsection and
 172 subsection (4) unless the office is accredited by a nationally
 173 recognized accrediting agency approved by the Board of
 174 Osteopathic Medicine. The actual costs for registration and
 175 inspection or accreditation shall be paid by the physician
 176 seeking to register the clinic.

177 Section 5. Paragraph (pp) of subsection (1) of section
 178 459.015, Florida Statutes, is redesignated as paragraph (rr),
 179 and new paragraphs (pp) and (qq) are added to that subsection to
 180 read:

181 459.015 Grounds for disciplinary action; action by the
 182 board and department.—

183 (1) The following acts constitute grounds for denial of a
 184 license or disciplinary action, as specified in s. 456.072(2):

185 (pp) Practicing osteopathic medicine in a clinic that is
 186 required to register but has not registered with the department
 187 pursuant to s. 459.005.

188 (qq) Promoting or advertising through any communication
 189 media the use, sale, or dispensing of any controlled substance
 190 appearing on any schedule in chapter 893.

191 Section 6. Section 465.018, Florida Statutes, is amended
 192 to read:

193 465.018 Community pharmacies; permits.—Any person desiring
 194 a permit to operate a community pharmacy shall apply to the
 195 department. If the board office certifies that the application
 196 complies with the laws of the state and the rules of the board

197 governing pharmacies, the department shall issue the permit. A
 198 ~~No permit may not shall~~ be issued unless a licensed pharmacist
 199 is designated as the prescription department manager responsible
 200 for maintaining all drug records, providing for the security of
 201 the prescription department, and following such other rules as
 202 relate to the practice of the profession of pharmacy. The
 203 permittee and the newly designated prescription department
 204 manager shall notify the department within 10 days of any change
 205 in prescription department manager. Effective July 1, 2012, a
 206 permit may not be issued unless the applicant demonstrates the
 207 ability to participate in and transmit dispensing information
 208 through a multistate electronic prescribing network. Effective
 209 January 1, 2013, a permittee must transmit dispensing
 210 information through a multistate electronic prescribing network
 211 for each prescription of a controlled substance listed in
 212 Schedule II or Schedule III of s. 893.03.

213 Section 7. Subsection (1) of section 465.023, Florida
 214 Statutes, is amended to read:

215 465.023 Pharmacy permittee; disciplinary action.—

216 (1) The department or the board may revoke or suspend the
 217 permit of any pharmacy permittee, and may fine, place on
 218 probation, or otherwise discipline any pharmacy permittee if the
 219 permittee, or any affiliated person, partner, officer, director,
 220 or agent of the permittee, including a person fingerprinted
 221 under s. 465.022(3), has:

222 (a) Obtained a permit by misrepresentation or fraud or
 223 through an error of the department or the board;

224 (b) Attempted to procure, or has procured, a permit for

225 any other person by making, or causing to be made, any false
 226 representation;

227 (c) Violated any of the requirements of this chapter or
 228 any of the rules of the Board of Pharmacy; of chapter 499, known
 229 as the "Florida Drug and Cosmetic Act"; of 21 U.S.C. ss. 301-
 230 392, known as the "Federal Food, Drug, and Cosmetic Act"; of 21
 231 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse
 232 Prevention and Control Act; or of chapter 893;

233 (d) Been convicted or found guilty, regardless of
 234 adjudication, of a felony or any other crime involving moral
 235 turpitude in any of the courts of this state, of any other
 236 state, or of the United States;

237 (e) Been convicted or disciplined by a regulatory agency
 238 of the Federal Government or a regulatory agency of another
 239 state for any offense that would constitute a violation of this
 240 chapter;

241 (f) Been convicted of, or entered a plea of guilty or nolo
 242 contendere to, regardless of adjudication, a crime in any
 243 jurisdiction which relates to the practice of, or the ability to
 244 practice, the profession of pharmacy;

245 (g) Been convicted of, or entered a plea of guilty or nolo
 246 contendere to, regardless of adjudication, a crime in any
 247 jurisdiction which relates to health care fraud; ~~or~~

248 (h) Dispensed any medicinal drug based upon a
 249 communication that purports to be a prescription as defined by
 250 s. 465.003(14) or s. 893.02 when the pharmacist knows or has
 251 reason to believe that the purported prescription is not based
 252 upon a valid practitioner-patient relationship that includes a

253 | documented patient evaluation, including history and a physical
 254 | examination adequate to establish the diagnosis for which any
 255 | drug is prescribed and any other requirement established by
 256 | board rule under chapter 458, chapter 459, chapter 461, chapter
 257 | 463, chapter 464, or chapter 466; or

258 | (i) Failed to transmit dispensing information through a
 259 | multistate electronic prescribing network pursuant to s. 465.018
 260 | for any prescription of a controlled substance listed in
 261 | Schedule II or Schedule III of s. 893.03.

262 | Section 8. Subsection (1) of section 465.0276, Florida
 263 | Statutes, is amended to read:

264 | 465.0276 Dispensing practitioner.—

265 | (1) (a) A person may not dispense medicinal drugs unless
 266 | licensed as a pharmacist or otherwise authorized under this
 267 | chapter to do so, except that a practitioner authorized by law
 268 | to prescribe drugs may dispense such drugs to her or his
 269 | patients in the regular course of her or his practice in
 270 | compliance with this section.

271 | (b) A practitioner registered under this section may not
 272 | dispense more than a 72-hour supply of a controlled substance
 273 | listed in Schedule II or Schedule III of s. 893.03. A
 274 | practitioner who violates this paragraph commits a felony of the
 275 | third degree, punishable as provided in s. 775.082, s. 775.083,
 276 | or s. 775.084. This paragraph does not apply to the dispensing
 277 | of complimentary packages of medicinal drugs to the
 278 | practitioner's own patients in the regular course of her or his
 279 | practice without the payment of a fee or remuneration of any
 280 | kind, whether direct or indirect, as provided in subsection (5).

281 This paragraph does not apply to a controlled substance
 282 dispensed in the health care system of the Department of
 283 Corrections.

284 Section 9. For the purpose of incorporating the amendment
 285 made by this act to section 458.331, Florida Statutes, in
 286 references thereto, section 458.303, Florida Statutes, is
 287 reenacted to read:

288 458.303 Provisions not applicable to other practitioners;
 289 exceptions, etc.—

290 (1) The provisions of ss. 458.301, 458.303, 458.305,
 291 458.307, 458.309, 458.311, 458.313, 458.315, 458.317, 458.319,
 292 458.321, 458.327, 458.329, 458.331, 458.337, 458.339, 458.341,
 293 458.343, 458.345, and 458.347 shall have no application to:

294 (a) Other duly licensed health care practitioners acting
 295 within their scope of practice authorized by statute.

296 (b) Any physician lawfully licensed in another state or
 297 territory or foreign country, when meeting duly licensed
 298 physicians of this state in consultation.

299 (c) Commissioned medical officers of the Armed Forces of
 300 the United States and of the Public Health Service of the United
 301 States while on active duty and while acting within the scope of
 302 their military or public health responsibilities.

303 (d) Any person while actually serving without salary or
 304 professional fees on the resident medical staff of a hospital in
 305 this state, subject to the provisions of s. 458.321.

306 (e) Any person furnishing medical assistance in case of an
 307 emergency.

308 (f) The domestic administration of recognized family

309 remedies.

310 (g) The practice of the religious tenets of any church in
311 this state.

312 (h) Any person or manufacturer who, without the use of
313 drugs or medicine, mechanically fits or sells lenses, artificial
314 eyes or limbs, or other apparatus or appliances or is engaged in
315 the mechanical examination of eyes for the purpose of
316 constructing or adjusting spectacles, eyeglasses, or lenses.

317 (2) Nothing in s. 458.301, s. 458.303, s. 458.305, s.
318 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.319, s.
319 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s.
320 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347 shall
321 be construed to prohibit any service rendered by a registered
322 nurse or a licensed practical nurse, if such service is rendered
323 under the direct supervision and control of a licensed physician
324 who provides specific direction for any service to be performed
325 and gives final approval to all services performed. Further,
326 nothing in this or any other chapter shall be construed to
327 prohibit any service rendered by a medical assistant in
328 accordance with the provisions of s. 458.3485.

329 Section 10. For the purpose of incorporating the amendment
330 made by this act to section 458.331, Florida Statutes, in
331 references thereto, paragraph (d) of subsection (1) and
332 subsection (5) of section 458.311, Florida Statutes, are
333 reenacted to read:

334 458.311 Licensure by examination; requirements; fees.—

335 (1) Any person desiring to be licensed as a physician, who
336 does not hold a valid license in any state, shall apply to the

337 department on forms furnished by the department. The department
 338 shall license each applicant who the board certifies:

339 (d) Has not committed any act or offense in this or any
 340 other jurisdiction which would constitute the basis for
 341 disciplining a physician pursuant to s. 458.331.

342 (5) The board may not certify to the department for
 343 licensure any applicant who is under investigation in another
 344 jurisdiction for an offense which would constitute a violation
 345 of this chapter until such investigation is completed. Upon
 346 completion of the investigation, the provisions of s. 458.331
 347 shall apply. Furthermore, the department may not issue an
 348 unrestricted license to any individual who has committed any act
 349 or offense in any jurisdiction which would constitute the basis
 350 for disciplining a physician pursuant to s. 458.331. When the
 351 board finds that an individual has committed an act or offense
 352 in any jurisdiction which would constitute the basis for
 353 disciplining a physician pursuant to s. 458.331, then the board
 354 may enter an order imposing one or more of the terms set forth
 355 in subsection (8).

356 Section 11. For the purpose of incorporating the amendment
 357 made by this act to section 458.331, Florida Statutes, in
 358 references thereto, subsection (6) of section 458.313, Florida
 359 Statutes, is reenacted to read:

360 458.313 Licensure by endorsement; requirements; fees.—

361 (6) The department shall not issue a license by
 362 endorsement to any applicant who is under investigation in any
 363 jurisdiction for an act or offense which would constitute a
 364 violation of this chapter until such time as the investigation

365 is complete, at which time the provisions of s. 458.331 shall
 366 apply. Furthermore, the department may not issue an unrestricted
 367 license to any individual who has committed any act or offense
 368 in any jurisdiction which would constitute the basis for
 369 disciplining a physician pursuant to s. 458.331. When the board
 370 finds that an individual has committed an act or offense in any
 371 jurisdiction which would constitute the basis for disciplining a
 372 physician pursuant to s. 458.331, the board may enter an order
 373 imposing one or more of the terms set forth in subsection (7).

374 Section 12. For the purpose of incorporating the amendment
 375 made by this act to section 458.331, Florida Statutes, in a
 376 reference thereto, paragraph (d) of subsection (2) of section
 377 458.3135, Florida Statutes, is reenacted to read:

378 458.3135 Temporary certificate for visiting physicians to
 379 practice in approved cancer centers.—

380 (2) A temporary certificate for practice in an approved
 381 cancer center may be issued without examination to an individual
 382 who:

383 (d) Has not committed any act in this or any other
 384 jurisdiction which would constitute the basis for disciplining a
 385 physician under s. 456.072 or s. 458.331;

386 Section 13. For the purpose of incorporating the amendment
 387 made by this act to section 458.331, Florida Statutes, in a
 388 reference thereto, paragraph (e) of subsection (2) of section
 389 458.3137, Florida Statutes, is reenacted to read:

390 458.3137 Temporary certificate for visiting physicians to
 391 obtain medical privileges for instructional purposes in
 392 conjunction with certain plastic surgery training programs and

393 plastic surgery educational symposiums.—

394 (2) A temporary certificate to practice medicine for
 395 educational purposes to help teach plastic surgery residents of
 396 a medical school within this state in conjunction with a
 397 nationally sponsored educational symposium may be issued without
 398 examination, upon verification by the board that the individual
 399 meets all of the following requirements:

400 (e) Has not committed an act in this or any other
 401 jurisdiction that would constitute a basis for disciplining a
 402 physician under s. 456.072 or s. 458.331.

403 Section 14. For the purpose of incorporating the amendment
 404 made by this act to section 458.331, Florida Statutes, in a
 405 reference thereto, paragraph (g) of subsection (1) of section
 406 458.3145, Florida Statutes, is reenacted to read:

407 458.3145 Medical faculty certificate.—

408 (1) A medical faculty certificate may be issued without
 409 examination to an individual who:

410 (g) Has not committed any act in this or any other
 411 jurisdiction which would constitute the basis for disciplining a
 412 physician under s. 458.331;

413 Section 15. For the purpose of incorporating the amendment
 414 made by this act to section 458.331, Florida Statutes, in
 415 references thereto, paragraph (b) of subsection (1) and
 416 subsection (2) of section 458.345, Florida Statutes, are
 417 reenacted to read:

418 458.345 Registration of resident physicians, interns, and
 419 fellows; list of hospital employees; prescribing of medicinal
 420 drugs; penalty.—

421 (1) Any person desiring to practice as a resident
 422 physician, assistant resident physician, house physician,
 423 intern, or fellow in fellowship training which leads to
 424 subspecialty board certification in this state, or any person
 425 desiring to practice as a resident physician, assistant resident
 426 physician, house physician, intern, or fellow in fellowship
 427 training in a teaching hospital in this state as defined in s.
 428 408.07(45) or s. 395.805(2), who does not hold a valid, active
 429 license issued under this chapter shall apply to the department
 430 to be registered and shall remit a fee not to exceed \$300 as set
 431 by the board. The department shall register any applicant the
 432 board certifies has met the following requirements:

433 (b) Has not committed any act or offense within or without
 434 the state which would constitute the basis for refusal to
 435 certify an application for licensure pursuant to s. 458.331.

436 (2) The board shall not certify to the department for
 437 registration any applicant who is under investigation in any
 438 state or jurisdiction for an act which would constitute grounds
 439 for disciplinary action under s. 458.331 until such time as the
 440 investigation is completed, at which time the provisions of s.
 441 458.331 shall apply.

442 Section 16. For the purpose of incorporating the amendment
 443 made by this act to section 459.015, Florida Statutes, in a
 444 reference thereto, subsection (8) of section 459.021, Florida
 445 Statutes, is reenacted to read:

446 459.021 Registration of resident physicians, interns, and
 447 fellows; list of hospital employees; penalty.-

448 (8) Notwithstanding any provision of this section or s.

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449 | 120.52 to the contrary, any person who is registered under this
450 | section is subject to the provisions of s. 459.015.

451 | Section 17. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 729 Practice of Tattooing
SPONSOR(S): Health Care Regulation Policy Committee; Brandenburg
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 942

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Regulation Policy Committee	12 Y, 0 N, As CS	Holt	Calamas
2)	Health Care Appropriations Committee		Clark <i>SK</i>	Massengale <i>SM</i>
3)	Health & Family Services Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill creates a new regulation for licensure as a tattoo artist, registration as a guest tattoo artist, licensure for tattoo establishments, and licensure for temporary tattoo establishments. A person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist.

Because the bill establishes regulation of a new profession, the Sunrise Act criteria apply. Section 11.62, Florida Statutes, states that no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage; and no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation.

The bill specifies that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo under certain circumstances.

The bill appears to have a significant fiscal impact; however, the expenditures incurred will be offset by the revenues collected (See fiscal analysis).

The bill has an effective date of January 1, 2012.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Tattooing

A tattoo is a permanent mark or design made on the skin by a process of pricking and ingraining an indelible ink pigment. Tattoos are made by using needles to inject colored ink below the skin's surface. Typically, a tattoo artist uses a hand-held machine with one or more needles piercing the skin repeatedly. With every puncture, the needles insert ink into the skin.

National Trends and Regulations

At least 38 states have implemented laws regarding tattooing and 28 states have laws that prohibit tattooing on minors without parental permission.¹ Parental permission requirements vary among states ranging from signed notarized documentation to explicit in-person consent of the child's parent or guardian. The majority of states laws establish financial penalties, incarceration time, or both for violators.

The U.S. Food and Drug Administration (USFDA) and the Department of Health and Human Services, Centers for Disease Control and Prevention's (CDC) literature speak to a variety of potential risks in acquiring a tattoo on the body. Such risks include:

- Infection – Dirty needles can pass infections, such as hepatitis and HIV.
- Allergies – Allergies to different ink pigments can cause problems.
- Scarring – Unwanted scar tissue may form on an initial or removed tattoo.

¹ Ala. Code § 420-3-23; Alaska Stat. § 08.13.217; Ariz. Rev. Stat. §13-3721; Cal. [Health & Safety] Code §119300; Col. Rev. Stat. Ann. §25-4-2103; Conn. Gen. Stat. §19a-92a; Del. Code Ann. Title 11, Ch 5 §1114(a); Ga. Code §16-12-71; Ga. Code §16-5-71; Haw. Rev. Stat. § 321-372 to 383; Idaho Code § 18-1523; Idaho Code § 39-2001; Idaho Code § 39-2003; Ill. Comp. Stat. 720§5/12-10; Ind. Code Ann. §35-42-2-7; Iowa Code §135.37; Kan. Admin. Regs. §69-15; Ky. Rev. Stat. §211.760; La. Admin. Code 29§2741-2744; Me. Rev. Stat. Ann. Title 32, Ch. 63 §4201-4301; Me. Rev. Stat. Ann. Title 32-A, Ch. 63 §4311-4317; Md. Code Regs. 09.22.02.01-03; Mich. Comp. Laws Ann. §333.131; Minn. Stat. §609.2246; Miss. Laws §73-61-1; Mo. Rev. Stat. §324.520; Mont. Code Ann. §45-5-623; Mont. Admin. R. 37.112.100; Neb. Rev. Stat. § Sec. 427 71-3; Neb. Rev. Stat. § Sec. 433 71-3; Nev. Admin. Code §29.17.080; N.H. Rev. Stat. Ann. §314-A:3; N.J. Admin. Code §8:27-8; N.Y. Codes R. & Regs. 160.7; N.C. Gen. Stat. §14-400; N.C. Gen. Stat. §130A-283; N.D. Cent. Code §12.1-31; Ohio Rev. Code Ann. §3730.02-.11; Okla. Stat. Title 21 §842.1-.2; Or. Admin. R. 331-550-0000-0020; Pa. Cons. Stat. Title 18 §4729; Pa. Cons. Stat. Title 18 §6311; RI General Laws §11-9-15; RI General Laws §23-1-39; S.C. Code Ann. §40-47-60; S.C. Code Ann. §44-34-60; S.D. Codified Laws Ann. §26-10-19; S.D. Admin. R. 44:12:01:01-35; Tenn. Code Ann. §62-38-207; Tenn. Code Ann. §39-15-403; Texas Health and Safety Code Ann. §146.012; Tex. Admin. Code §229.401; Utah Code Ann. §76-10-2201; Vt. Stat. Ann. Title 26 §4101-4108; Va. Code Ann. §18.2-371.3; Va. Code Ann. §15.2-912; Wash. Rev. Code §26.28.085; Wash. Admin. Code 246-145-010; W. Va. Code §16-38-1-7; Wis. Stat. §252.23; Wis. Stat. §948.70; Wyo. Stat. §14-3-107.

- MRI complications – Though rare, swelling or burning in the tattoo area when having a magnetic resonance image can occur.

The USFDA has not approved any tattoo pigments for injection into the skin. This applies to all tattoo pigments, including those used for ultraviolet and glow-in-the dark tattoos. Many pigments used in tattoo inks are industrial-grade colors suitable for printers' ink or automobile paint. In addition, the use of henna in temporary tattoos has also not been approved by the USFDA.

The CDC notes that a risk of HIV transmission exists if instruments contaminated with blood are not sterilized or disinfected, or are used inappropriately between clients. The CDC recommends that single-use instruments intended to penetrate the skin be used once, then discarded. In addition, reusable instruments or devices that penetrate the skin or contact a client's blood should be thoroughly cleaned and sterilized between clients. The CDC stresses that tattooists should be educated regarding HIV transmission and take precautions to prevent this transmission in their setting.

Biomedical Waste Permitting

Section 381.0098(1), Florida Statutes, establishes legislative intent relating to protecting the public's health by establishing safety standards for the packaging, transport, storage, treatment and disposal of biomedical waste. Biomedical waste is defined as "any solid or liquid waste which may present a threat of infection to humans, including waste products that include discarded disposable sharps, human blood, blood products and body fluids." A biomedical waste generator is defined as "a facility, or person that produces or generates biomedical waste." The statute directs the Department of Health (DOH) and the Department of Environmental Protection to develop an interagency agreement to ensure maximum efficiency in coordinating, administering, and regulating biomedical waste. While DOH has no authority to issue a license to a tattooist or a tattoo studio, it does have authority to issue a biomedical waste-generator permit to a tattooist and a tattoo studio.

In rule 64E-16.011, Florida Administrative Code, DOH prescribes minimum sanitary practices relating to the management of biomedical waste and the regulation of biomedical waste generators. Tattoo studios are considered biomedical waste generators and as such are required to obtain an annual permit from DOH. These studios are inspected by DOH personnel at least once a year and re-inspections may be conducted when a facility is found to be noncompliant with sanitation practices. Current law does not provide authorization for DOH to inspect these establishments relating to other sanitation aspects of tattoo studios, or to license or register tattoo artists.

DOH estimates that there are approximately 900 permanent make-up and tattoo establishments in Florida.² The American Tattooing Institute offers an on-line or mail order certification course that includes studies in skin anatomy and physiology, blood borne pathogens, Occupational Safety and Health Administration standards, food and drug administration information, and body art specialist's code of ethics training.³

Regulation of Tattooing in Florida

Section 877.04, Florida Statutes, governs the practice of tattooing. Generally, a tattoo may only be performed by:

- A physician licensed under chapters 458 and 459, Florida Statutes;
- A dentist licensed under chapter 466, Florida Statutes; or
- A person under the general supervision of a physician or dentist.

Any person who tattoos must either be licensed as, or work under the "general supervision," as defined in rule 64B8-2.002, Florida Administrative Code, of a physician or dentist. Additionally, it is unlawful for the body of a minor to be tattooed without the written notarized consent of the parent or legal guardian.

² Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

³ American Tattooing Institute, Body Art Specialist's Code of Ethics, available at: http://www.tatsmart.com/code_of_ethics (last viewed March 20, 2010).

Any person who violates this section is guilty of a misdemeanor of the second degree, punishable under sections 775.082 and 775.083, Florida Statutes.

Professional Regulation and the Florida Sunrise Act

There are three different types or levels of regulation:⁴

1. Licensure is the most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting all of the standards imposed by the state.
2. Certification grants title protection to those who meet training and other standards. Those who do not meet certification standards cannot use the title, but can still perform the services.
3. Registration the least restrictive form of regulation, and usually only requires individuals to file their name, address and qualifications with a government agency before practicing the occupation.

Section 456.003, Florida Statutes, specifies that health care professions be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

- Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation;
- The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and
- Less restrictive means of regulation are not available.

Section 11.62, Florida Statutes, the Sunrise Act, provides legislative intent regarding the regulation of new professions and occupations:⁵

- No profession or occupation is subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and
- No profession or occupation is regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, section 11.62(3), Florida Statutes, requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

⁴ Schmitt, K. & Shimberg, B. (1996). *Demystifying Occupational and Professional Regulation: Answers to Questions You May Have Been Afraid to Ask. Council on Licensure, Enforcement, and Regulation.*

⁵ s. 11.62(2), F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of regulation to submit information documenting the need for the proposed regulation. A sunrise questionnaire was submitted by the Florida Professional Tattoo Artist's Guild. The guild represents approximately 1,800 tattooists. According to the guild, they have met very little resistance to the proposed regulation contained in Committee Substitute for House Bill 729 and estimate that 75 percent of the professional tattoo industry support this legislation.

Sunrise Act Criteria

Substantial Harm or Endangerment

Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.⁶

The practice of tattooing has the potential of exposing clients and tattoo artists to blood borne pathogens if proper universal precautions⁷ are not practiced. According to the guild, there is a growth in underground tattooing (called "scratchers") where tattoo services are provided at homes, bars, flea markets, camp sites, and similar sites. Scratchers are most likely not practicing universal precautions, concerned with cross contamination, or properly disposing of biomedical waste.⁸

According to the guild, DOH has no database to document the number of complaints received. The following is a comment from an employee with the Department of Health, Division of Environmental Health, provided by the guild:

"I can say that seldom a day goes by when our staff here in Community Environmental Health do not receive a phone call or e-mail pertaining to tattoo regulations in Florida, both licensure inquiries and complaints about pertaining to unexpected outcomes." 2/2/10

Specialized Skill or Training, and Measurability

Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.⁹

Tattooing is a specialized field that is based on peer review of a tattooist artistic ability. A tattoo artist may only work with specific colors or specialize in special designs (i.e., wild life or portraits). The bill does not require tattoo artists to possess formal institutional classroom training that provides them with

⁶ s. 11.62(3), F.S.

⁷ "Universal precautions," as defined by CDC, are a set of precautions designed to prevent transmission of human immunodeficiency virus (HIV), hepatitis B virus (HBV), and other bloodborne pathogens when providing first aid or health care. Under universal precautions, blood and certain body fluids of all patients are considered potentially infectious for HIV, HBV and other bloodborne pathogens. See Centers for Disease Control and Prevention, Universal Precautions for Prevention of Transmission of HIV

and Other Bloodborne Infections, available at: http://www.cdc.gov/ncidod/dhqp/bp_universal_precautions.html (last viewed March 19, 2010).

⁸ Rule 64E-16, F.A.C., requires facilities that generate biomedical waste to ensure proper management of that waste. Biomedical waste is any solid or liquid waste which may present a threat of infection to humans, including non-liquid tissue, body parts, blood, blood products, and body fluids from humans and other primates; laboratory and veterinary wastes which contain human disease-causing agents; and discarded sharps. The following are also included: (a) used, absorbent materials saturated with blood, blood products, body fluids, or excretions or secretions contaminated with visible blood; and absorbent materials saturated with blood or blood products that have dried. (b) non-absorbent, disposable devices that have been contaminated with blood, body fluids or, secretions or excretions visibly contaminated with blood, but have not been treated by an approved method.

⁹ s. 11.62(3), F.S.

a specialized skill that is measurable or quantifiable. According to the guild, "at this time it is left up to the individual tattoo establishment to set their standards." About 90 percent of the beginner tattoo artists receive training through an apprenticeship.

The Alliance of Professional Tattooists provides a blood borne pathogen course at the majority of the conventions in the United States. This course is a total of six hours for training and an examination. According to the Guild, "this course is highly regarded in the tattoo industry as a must complete course and test." According to the guild, "there is a great deal of knowledge passed from tattooist to tattooist at some of the conventions where training seminars are offered." The guild and the alliance do have rules pertaining to codes of practice for their members; however, the only recourse for enforcement of the codes is to revoke a membership.

Unreasonable Effect on Job Creation or Job Retention

Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.¹⁰

The guild is unaware of any other unregulated occupation that performs similar services. Establishments that offer body piercing services and operate as tattoo establishments will be required to have dual licensure. According to the guild, the training in blood borne pathogens and cross contamination is a necessary requirement.

Can the Public Be Effectively Protected by Other Means?

Whether the public is or can be effectively protected by other means.¹¹

Current law¹² requires tattoo artists to work under the general supervision of a licensed medical doctor or doctor of osteopathic medicine. According to the guild, supervising doctors develop their own procedures regarding the medical conditions of individuals receiving tattoos, treatment of problems resulting during or from tattooing, and procedures in the event of an emergency situation developed during the performance or as a result of tattooing. Thus, these standards vary from doctor to doctor. If the supervising doctor is negligent in his or her duties, the Board of Medicine can review the license of the doctor and, if necessary, take disciplinary action on their license.¹³ If there is a complaint that a tattoo facility violated the terms of its biomedical waste permit, the county health department staff has the authority to investigate and enforce compliance when necessary.¹⁴

Favorable Cost-effectiveness and Economic Impact

Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.¹⁵

According to the guild, there are approximately 900 tattoo establishments and approximately 1,800 tattoo artists in Florida.¹⁶ Usually there are two tattoo artists practicing in each tattoo establishment and on average each tattoo establishment will complete 25 to 30 tattoos in one week. The average minimum cost of a tattoo is \$30. If these values are applied statewide, there is a potential of approximately one million tattoos applied annually, which the guild believes will increase as a result of the "security the public will feel because of the enforcement provisions." In addition, the guild believes the cost of regulation will cost tattoo establishments less than what they are paying to a doctor to provide his services of general supervision. Fees doctors charge for supervision vary. According to members of the guild, some doctors charge \$300 per tattoo artist.

¹⁰ *Id.*

¹¹ *Id.*

¹² s. 877.04, F.S.

¹³ ss. 458.331 and 459.015, F.S.

¹⁴ Rule 64E-16.013, F.A.C.

¹⁵ *Id.*

¹⁶ DOH supplied the Guild with a recent registration list of biomedical waste permittees to assist in calculating the number of tattoo establishments.

THE EFFECTS OF THE BILL

The bill creates definitions for active license or registration, department, guest tattoo artist, operator, stop use order, tattoo, tattoo artists, tattoo establishment, and temporary establishment.

The bill specifies that a person may not tattoo a child younger than 16 years of age unless it is performed for medical or dental purposes. A minor child over the age of 16 may receive a tattoo if the minor is accompanied by a parent or legal guardian; provides proof of identity in the form of a government issued photo identification; provides proof that he/she is the parent or legal guardian of the minor; the parent submits a written notarized consent; and the tattooing may only be performed by a tattoo artist, guest tattoo artist, medical doctor, doctor of osteopathic medicine, or dentist. The bill exempts a person from criminal prosecution if a minor falsely presents as being 18 years of age, the artist checks identification, and a person of reasonable average intelligence person would believe the minor is at least 18 years of age.

General Licensure Provisions

The bill specifies that a person may not tattoo the body of a human being in this state except in a tattoo establishment and the person performing the tattooing must be licensed as a tattoo artist or registered as a guest tattoo artist. The bill exclusively applies to the tattooing of human beings and does not apply to the tattooing of animals.

The bill exempts licensed medical doctors, doctors of osteopathic medicine, and dentists who perform tattooing exclusively for medical or dental purposes from having to be licensed as a tattoo artist. The bill specifies that these provisions do not preempt any local law or ordinance of a county or municipality that imposes regulations on tattoo establishments, temporary establishments, tattoo artists, or the practice of tattooing.

The bill authorizes DOH to enforce and discipline individuals who:

- provide false information on an a DOH application;
- violate state or local health code or ordinance;
- practice tattooing without a valid license or registration issued by DOH;
- are found guilty or plead nolo contendere to a crime in any jurisdiction that relates to the practice of tattooing or operation of a tattoo establishment;
- commit fraud, deceit, negligence, or misconduct in the practice or operation of tattooing; or
- Aid, procure, or assist a person in unlawfully practicing tattooing or operating a tattoo establishment.

The bill authorizes DOH to:

- refuse to issue a license or registration;
- suspend or revoke a license or registration;
- issue a reprimand;
- place an individual on probation;
- issue a stop-use order;
- corrective action;
- impose stricter penalties for repeat violations; or
- consider the severity of the violation distinguishing lesser violations from those that endanger public health.

The bill requires DOH to establish fees and authorizes DOH to annually adjust the maximum fees authorized according to the rate of inflation or deflation indicated by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items, as reported by the U.S. Department of Labor.

The bill authorizes DOH to promulgate rules and consult with representatives of the tattooing industry during rule development. The bill specifies that the rules adopted may include, but are not limited to: rules defining terms; prescribing educational requirements for tattoo artists and guest tattoo artists;

health and safety requirements; sanitation and sterilization practices; equipment requirements; customer notification, contents and retention of customer records; and physical plants.

The bill specifies requirements for the following:

1. licensure as a tattoo artist,
2. registration as a guest tattoo artists, and
3. licensure of tattoo establishments and temporary establishments.

Individuals who practice tattooing without a tattoo artist license, guest tattoo artist registration, tattoo establishment license, or temporary establishment license commit a misdemeanor of the second degree.¹⁷

1. Tattoo Artist Licensure

The bill specifies that a person seeking to practice as a licensed tattoo artist must apply to DOH for licensure. An applicant for licensure must:

- be at least 18 years of age;
- submit a completed application to DOH;
- pay a fee not that may not exceed \$150;
- submit proof of successful completion of a DOH approved education course in blood borne pathogens and communicable disease; and
- submit proof of passage of a DOH approved examination that tests the materials contained in the education course.

The DOH application must capture the following information:

- name and address of residence of the applicant; and
- name and address of each tattoo establishment to include temporary establishments the person intends to practice.

The bill requires a licensed tattoo artist to notify DOH within 30 days of a name or address change and of practice as a tattoo artist for more than 14 days at a tattooing establishment that was not disclosed on the most recent application for licensure.

A licensed tattoo artist must display their registration in a manner that is easily visible to the public at all times while practicing tattooing, comply with all state and local health codes, and maintain sanitary conditions at all times. The bill requires DOH to approve one or more education courses and examinations that are to be made accessible through an Internet website. Licensure as a tattoo artist is valid for one year, is not transferable, and must be renewed annually.

2. Guest Tattoo Artist Registration

The bill provides DOH is required to issue a guest tattoo artist registration to an applicant who:

- is at least 18 years of age;
- submits a completed DOH application;
- pays the applicable registration fee that may not exceed \$45; and
- holds an active license, registration, or certification issued by a jurisdiction outside of Florida that meets the education and examination requirements for licensure and submits proof of successful completion of an DOH approved education course and examination.

A guest tattoo artist must display the registration in a manner that is easily visible to the public at all times while practicing tattooing, comply with all state and local health codes, and maintain sanitary conditions at all times. Registration as a guest tattoo artist is valid for 14 days and is not transferable. A person seeking re-registration as a guest tattoo artist may re-register before or after their current registration expires.

¹⁷ Misdemeanors of the second degree are punishable by a term of imprisonment not to exceed 60 days or a fine not to exceed \$500 (ss. 775.082 and 775.083, F.S.).

3. Licensed Tattoo Establishments and Temporary Establishments

The bill specifies that a person may not operate a tattoo establishment or temporary establishment unless it is licensed by DOH. DOH must issue a tattoo establishment license to applicants if they:

- submit a completed DOH application;
- pay the applicable licensure fee that may not exceed \$250; and
- comply with all applicable local building, occupational, zoning, and health codes.

The bill requires the DOH application to capture the following information:

- name the tattoo establishment will conduct business under;
- physical address and phone number;
- name, mailing address, and telephone number of the tattoo establishment operator; and
- name and address of the tattoo establishment's registered agent for service of process.

The bill requires a licensed tattoo establishment or temporary establishment to:

- visibly display the establishment license to the public at all times when tattooing is being performed;
- ensure that all tattoo artists and guest tattoo artists practicing within the establishments meet registration or licensure requirements;
- maintain sanitary conditions at all times;
- comply with state and local health codes and ordinances;
- comply with the biomedical waste requirements in section 381.0098, Florida Statutes; and
- allow periodic inspections and enforcement by DOH.

A tattoo establishment license is only valid for the location listed on the license and the establishment must notify DOH prior to any change in location. Tattoo establishments with more than one location must obtain a separate license for each location. A tattoo establishment license is valid for one year, is not transferrable, and must be renewed annually. The bill specifies that temporary tattoo establishments must meet the same licensure requirements as permanent tattoo establishments; however, the license is only valid for 14 consecutive days.

The bill requires DOH to inspect each tattoo establishment at least annually and each temporary establishment before and, if necessary, during the event.

The bill has an effective date of January 1, 2012.

B. SECTION DIRECTORY:

Section 1. Creates s. 381.00771, F.S., relating to definitions and terms.

Section 2. Creates s. 381.00773, F.S., relating to applicability.

Section 3. Creates s. 381.00775, F.S., relating to tattoo artists; licensure; and registration of guest tattoo artists.

Section 4. Creates s. 381.00777, F.S., relating to tattoo establishments; licensure; and temporary establishments.

Section 5. Creates s. 381.00779, F.S., relating to practice requirements.

Section 6. Creates s. 381.00781, F.S., relating to fees and disposition.

Section 7. Creates s. 381.00783, F.S., relating to grounds for discipline and administrative penalties.

Section 8. Creates s. 381.00785, F.S., relating to criminal penalties.

Section 9. Transfers and renumbers s. 877.04, F.S., to s. 381.00787, F.S., relating to prohibited tattooing and penalties.

Section 10. Amends s. 381.00789, F.S., relating to rulemaking.

Section 11. Creates s. 381.00791, F.S., relating to local laws and ordinances.

Section 12. Provides an effective date of January 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DOH, Division of Environmental Health, estimates that 900 permanent tattoo establishments and 150 temporary establishments would be required to pay an annual license fee not to exceed \$250. Assuming an estimated average of two artists per tattoo establishment, 1,800 artists will be required to pay a fee not to exceed \$150 annually. An estimated 250 guest tattoo artist will be required to pay registration fee not to exceed \$45.¹⁸ These revenue estimates presented in this fiscal analysis are calculated using the maximum allowable license fee amounts. DOH has the authority to set the fee lower than the cap.

Estimated Revenue	1st Year	2nd Year
Licenses for 1050 establishments @ \$250 each	\$262,500	\$262,500
Licenses for 1800 artists @ \$150 each	\$ 270,000	\$ 270,000
Licenses for 250 guest artists @ \$45	\$ 11,250	\$ 11,250
Total Estimated Revenue	\$543,750	\$543,750

2. Expenditures:

DOH, Division of Environmental Health, will incur the costs of rule promulgation, development, and presentation of training for DOH county health departments (CHDs) who will inspect the establishments. DOH will also incur the costs of training and examination approval for the tattoo industry. CHDs will incur the costs associated with processing applications, issuing licenses, and conducting inspections, re-inspections, and enforcement. The estimated expenditures reflect the cost of performing the inspections. Hourly rate for salaries includes the fringe benefits.

Estimated Expenditures	1st Year	2nd Year (Annualized/Recurr.)
Salaries		
Inspection of 900 permanent and 150 temporary establishments @ \$130 per inspection	\$ 136,500	\$ 136,500
Reinspection of 25% of Establishments	\$ 34,125	\$ 34,125
Complaint investigation of 20% of establishments	\$ 27,300	\$ 27,300
Processing 1050 establishment applications, 2100 artists applications/registrations, issuing 3150 licenses	\$40,000	\$ 40,000
Training development for county health department staff	\$ 2,500	\$ 1,500
Rule Promulgation	\$ 10,000	-0-
Expenses		
Travel for staff to provide training at 10 sites	\$ 5,000	-0-
Site visits from Central Office staff to perform site evaluations	-0-	\$ 5,000
Data support and information distribution	\$5,000	\$5,000
Total Estimated Expenditures	\$260,425	\$249,425

¹⁸ Department of Health, Bill Analysis, Economic Statement and Fiscal Note of House Bill 729 (February 8, 2010).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Not applicable.

2. Expenditures:

The fiscal impact to county governments as a result of the second degree misdemeanor penalty is indeterminate. This is a likely low volume offense and is therefore anticipated to have an insignificant fiscal effect to the counties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be an additional cost to tattoo artists for licensure and possibly training if they have not already taken a course.

D. FISCAL COMMENTS:

Section 216.0236, Florida Statutes, states that it is the intent of the Legislature that all costs of providing a regulatory service or regulating a profession or business be borne solely by those who receive the service or who are subject to regulation. It is also the intent of the Legislature that the fees charged for providing a regulatory service or regulating a profession or business is reasonable and takes into account the differences between the types of professions or businesses being regulated.

The bill does not include, nor does it require a fiscal appropriation for DOH to meet the requirements of the bill. Approximately 10% of the estimated expenditures incurred by DOH will be incurred by the central office and are administrative in nature. The remaining expenditures will be incurred by the county health departments for regulatory purposes. These expenditures will be offset by the revenues earned in annual licensure and registration fees. These fees will be deposited in to the County Health Department Trust Fund for use of regulatory functions of the county health departments. Approximately 10 percent of the revenues will be transferred to the Administrative Trust Fund to cover the functions of the DOH central office.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the department sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill places the provisions for regulation of tattoo artists and guest tattoo artists into chapter 381, Florida Statutes, relating to public health. Most regulated professions and persons are governed under chapter 456, Florida Statutes.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 22, 2010, the Health Care Regulation Policy Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- changes the effective date to January 1, 2012;
- reorganizes the bill by combining provisions and moving language around within the bill;
- requires licensed tattoo establishments to comply with state biomedical waste requirements;
- requires DOH to inspect tattoo establishments at least once annually;
- specifies that tattooing applies exclusively to humans, not animals;
- requires DOH to inspect temporary tattoo establishments prior to the event and, if necessary, during the event;
- decreases the penalty from a felony of the third degree to a misdemeanor of the second degree;
- authorizes specific rule making; and
- exempts artists from criminal prosecution if the minor falsely presents as being 18 years of age, the artist checks identification, and a person of reasonable average intelligence person would believe the minor is at least 18 years of age.

This analysis is drafted to the committee substitute.

1 A bill to be entitled
 2 An act relating to the practice of tattooing; creating s.
 3 381.00771, F.S.; defining terms; creating s. 381.00773,
 4 F.S.; exempting certain personnel who perform tattooing
 5 for medical or dental purposes from regulation under
 6 specified provisions; creating s. 381.00775, F.S.;
 7 prohibiting the practice of tattooing except by a person
 8 licensed or registered by the Department of Health;
 9 requiring tattoo artists to complete a department-approved
 10 education course and pass an examination; providing for
 11 the licensure of tattoo artists and the registration of
 12 guest tattoo artists licensed in jurisdictions outside
 13 this state; creating s. 381.00777, F.S.; requiring the
 14 licensure of permanent tattoo establishments and temporary
 15 establishments; creating s. 381.00779, F.S.; providing
 16 practice requirements for tattoo artists, guest tattoo
 17 artists, tattoo establishments, and temporary
 18 establishments; requiring the department to inspect the
 19 establishments at specified intervals; creating s.
 20 381.00781, F.S.; providing for fees for initial licensure
 21 or registration and the renewal or reactivation thereof;
 22 authorizing the adjustment of fees according to inflation
 23 or deflation; creating s. 381.00783, F.S.; specifying acts
 24 that constitute grounds for which the department may take
 25 disciplinary action; providing penalties; creating s.
 26 381.00785, F.S.; providing penalties for certain
 27 violations involving the practice of tattooing;
 28 transferring, renumbering, and amending s. 877.04, F.S.;

29 prohibiting the tattooing of a minor child except under
 30 certain circumstances; providing penalties; providing
 31 exceptions; creating s. 381.00789, F.S.; requiring the
 32 department to adopt rules to administer the act; creating
 33 s. 381.00791, F.S.; providing that specified provisions do
 34 not preempt certain local laws and ordinances; providing
 35 an effective date.
 36

37 Be It Enacted by the Legislature of the State of Florida:
 38

39 Section 1. Section 381.00771, Florida Statutes, is created
 40 to read:

41 381.00771 Definitions of terms used in ss. 381.00771-
 42 381.00791.—As used in ss. 381.00771-381.00791, the term:

43 (1) "Active license or registration" means a current
 44 license or registration issued by the department that is not
 45 suspended or revoked.

46 (2) "Department" means the Department of Health.

47 (3) "Guest tattoo artist" means a person who is licensed,
 48 registered, or certified to practice tattooing in a jurisdiction
 49 outside of this state who is registered with the department to
 50 practice tattooing in this state.

51 (4) "Operator" means a person designated by a tattoo
 52 establishment or temporary establishment to control the
 53 operation of the establishment.

54 (5) "Stop-use order" means a written notice from the
 55 department to a licensee or registrant requiring him or her to
 56 remove any tattooing equipment or supplies, or cease conducting

57 any particular procedures, because the equipment or supplies are
 58 not being used or the procedures are not being conducted in
 59 accordance with ss. 381.00771-381.00791 or any rule adopted
 60 under those sections.

61 (6) "Tattoo" means a mark or design made on or under the
 62 skin of a human being by a process of piercing and ingraining a
 63 pigment, dye, or ink in the skin.

64 (7) "Tattoo artist" means a person licensed under ss.
 65 381.00771-381.00791 to practice tattooing.

66 (8) "Tattoo establishment" means any permanent location,
 67 place, area, structure, or business where tattooing is
 68 performed.

69 (9) "Temporary establishment" means any location, place,
 70 area, or structure where tattooing is performed during, and in
 71 conjunction with, a convention or other similar event that does
 72 not exceed 14 consecutive days.

73 Section 2. Section 381.00773, Florida Statutes, is created
 74 to read:

75 381.00773 Application of ss. 381.00771-381.00791;
 76 exemption.-

77 (1) Except for s. 381.00787, which applies to all persons,
 78 ss. 381.00771-381.00791 do not apply to a person licensed to
 79 practice medicine or dentistry under chapter 458, chapter 459,
 80 or chapter 466 who performs tattooing exclusively for medical or
 81 dental purposes.

82 (2) Sections 381.00771-381.00791 apply exclusively to the
 83 tattooing of human beings and do not apply to the tattooing of
 84 any animal.

85 Section 3. Section 381.00775, Florida Statutes, is created
 86 to read:

87 381.00775 Tattoo artists; licensure; registration of guest
 88 tattoo artists.—

89 (1) Except as provided in s. 381.00773, a person may not
 90 tattoo the body of any human being in this state unless the
 91 person is licensed as a tattoo artist or registered as a guest
 92 tattoo artist under this section.

93 (2)(a) A person seeking licensure as a tattoo artist must
 94 apply to the department in the format prescribed by the
 95 department. An application must include:

- 96 1. The name and residence address of the applicant.
- 97 2. The name and street address of each tattoo
 98 establishment and temporary establishment at which the applicant
 99 intends to practice tattooing in this state.

100 (b) The department shall issue a license to an applicant
 101 who:

- 102 1. Is 18 years of age or older.
- 103 2. Submits a completed application.
- 104 3. Pays the applicable license fee established in s.
 105 381.00781.
- 106 4. Submits proof of successful completion of an education
 107 course approved by the department on blood-borne pathogens and
 108 communicable diseases.
- 109 5. Submits proof of passage of an examination approved by
 110 the department on the material presented in the education
 111 course.

112 (c) The department shall approve one or more education

113 | courses and examinations that allows a person to complete the
 114 | requirements of subparagraphs (b)4. and 5. in person or through
 115 | an Internet website.

116 | (d) A tattoo artist must, within 30 days after a change,
 117 | notify the department of any change in the following information
 118 | disclosed in his or her most recent application for issuance or
 119 | renewal of his or her tattoo artist license in the format
 120 | prescribed by the department:

121 | 1. The name and residence address of the tattoo artist.

122 | 2. The name and street address of each tattoo
 123 | establishment in this state at which the tattoo artist has
 124 | practiced tattooing for more than 14 days since the most recent
 125 | renewal of his or her tattoo artist license or, if the license
 126 | has not been renewed, since the license was issued.

127 | (3) (a) A person seeking registration as a guest tattoo
 128 | artist must apply to the department in the format prescribed by
 129 | the department. An application must include:

130 | 1. The name and residence address of the applicant.

131 | 2. The name and street address of each tattoo
 132 | establishment and temporary establishment at which the applicant
 133 | will practice under the guest tattoo artist registration.

134 | (b) The department shall issue a guest tattoo artist
 135 | registration to an applicant who:

136 | 1. Is 18 years of age or older.

137 | 2. Submits a completed application.

138 | 3. Pays the applicable registration fee established in s.
 139 | 381.00781.

140 | 4. Holds an active license, registration, or certification

141 issued by a jurisdiction outside this state, whether by another
 142 state, the District of Columbia, any possession or territory of
 143 the United States, or any foreign jurisdiction, if:

144 a. The education and examination requirements of the
 145 license, registration, or certification substantially meet or
 146 exceed the requirements of subparagraphs (2)(b)4. and 5.; or

147 b. The applicant submits proof of successful completion of
 148 an education course approved by the department under
 149 subparagraph (2)(b)4. and proof of passage of an examination
 150 approved by the department under subparagraph (2)(b)5.

151 (4)(a) A tattoo artist license is valid for 1 year and
 152 must be renewed annually.

153 (b) A guest tattoo artist registration is valid for 14
 154 days. A guest tattoo artist may apply for reregistration before
 155 or after expiration of his or her current registration.

156 (5) A license or registration issued by the department
 157 under this section is not transferable.

158 Section 4. Section 381.00777, Florida Statutes, is created
 159 to read:

160 381.00777 Tattoo establishments; licensure; temporary
 161 establishments.-

162 (1)(a) Except as provided in s. 381.00773, a person may
 163 not tattoo the body of any human being in this state except at a
 164 tattoo establishment or temporary establishment licensed under
 165 this section.

166 (b) A person may not operate a tattoo establishment or
 167 temporary establishment in this state unless the establishment
 168 is licensed under this section.

169 | (2) A person seeking licensure of a tattoo establishment
 170 | must apply to the department in the format prescribed by the
 171 | department. An application must include:

172 | (a) The registered business name, including any fictitious
 173 | names under which the tattoo establishment conducts business in
 174 | the state.

175 | (b) The street address and telephone number of the tattoo
 176 | establishment.

177 | (c) The name, mailing address, and telephone number of the
 178 | tattoo establishment's operator.

179 | (d) The name and address of the tattoo establishment's
 180 | registered agent for service of process in the state.

181 | (3) The department shall issue a tattoo establishment
 182 | license to an applicant, if:

183 | (a) The applicant submits a completed application.

184 | (b) The applicant pays the applicable license fee
 185 | established in s. 381.00781.

186 | (c) The establishment complies with all applicable local
 187 | building, occupational, zoning, and health codes.

188 | (4) A temporary establishment must meet the same
 189 | requirements for licensure as a permanent tattoo establishment.

190 | (5) (a) A license is valid only for the location listed on
 191 | the license. A tattoo establishment must notify the department
 192 | in the format prescribed by the department before any change of
 193 | the licensed location. A tattoo establishment with more than one
 194 | location must obtain a separate license for each location.

195 | (b) A tattoo establishment license is valid for 1 year and
 196 | must be renewed annually.

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197 (c) A temporary establishment license is valid for the
 198 duration of a convention or other similar event for which the
 199 license is issued not to exceed 14 consecutive days.

200 (6) A license issued by the department under this section
 201 is not transferable.

202 Section 5. Section 381.00779, Florida Statutes, is created
 203 to read:

204 381.00779 Practice requirements.-

205 (1) A tattoo establishment or temporary establishment
 206 must:

207 (a) Display an active license for the establishment in a
 208 manner that is easily visible to the public at all times while
 209 tattooing is performed at the establishment.

210 (b) Ensure that each tattoo artist and guest tattoo
 211 artist, while practicing tattooing at the establishment, meets
 212 all applicable requirements of ss. 381.00771-381.00791.

213 (c) Maintain sanitary conditions of the establishment at
 214 all times.

215 (d) Comply with all state and local health codes and
 216 ordinances.

217 (e) Allow the department to inspect the establishment
 218 pursuant to subsection (4).

219 (f) Comply with s. 381.0098 and rules adopted under that
 220 section.

221 (2) A tattoo artist or guest tattoo artist must:

222 (a) Display his or her active license in a manner that is
 223 easily visible to the public at all times while practicing
 224 tattooing.

225 (b) Practice tattooing exclusively at an establishment
 226 licensed under ss. 381.00771-381.00791.

227 (c) Maintain sanitary conditions of the establishment at
 228 all times.

229 (d) Comply with all state and local health codes and
 230 ordinances.

231 (3) A tattoo artist or guest tattoo artist may tattoo the
 232 body of a minor child only to the extent authorized in s.
 233 381.00787. A tattoo establishment or temporary establishment
 234 must keep, for the period prescribed by the department, each
 235 written notarized consent submitted under s. 381.00787(2)(c) by
 236 the parent or legal guardian of a minor child who is tattooed at
 237 the establishment.

238 (4) The department may inspect and investigate each tattoo
 239 establishment and temporary establishment as necessary to ensure
 240 compliance with ss. 381.00771-381.00791. However, the department
 241 shall inspect each tattoo establishment at least annually and
 242 shall inspect each temporary establishment before and, as
 243 necessary, during a convention or similar event with which the
 244 establishment is connected.

245 Section 6. Section 381.00781, Florida Statutes, is created
 246 to read:

247 381.00781 Fees; disposition.—

248 (1) The department shall establish by rule the following
 249 fees:

250 (a) Fee for the initial licensure of a tattoo
 251 establishment and the renewal of such license, which, except as
 252 provided in subsection (2), may not exceed \$250 per year.

253 (b) Fee for licensure of a temporary establishment, which,
 254 except as provided in subsection (2), may not exceed \$250.

255 (c) Fee for the initial licensure of a tattoo artist and
 256 the renewal of such license, which, except as provided in
 257 subsection (2), may not exceed \$150 per year.

258 (d) Fee for registration or reregistration of a guest
 259 tattoo artist, which, except as provided in subsection (2), may
 260 not exceed \$45.

261 (e) Fee for reactivation of an inactive tattoo
 262 establishment license or tattoo artist license. A license
 263 becomes inactive if it is not renewed before the expiration of
 264 the current license.

265 (2) The department may annually adjust the maximum fees
 266 authorized under subsection (1) according to the rate of
 267 inflation or deflation indicated by the Consumer Price Index for
 268 All Urban Consumers, U.S. City Average, All Items, as reported
 269 by the United States Department of Labor.

270 Section 7. Section 381.00783, Florida Statutes, is created
 271 to read:

272 381.00783 Grounds for discipline; administrative
 273 penalties.-

274 (1) The following acts constitute grounds for which
 275 disciplinary action specified in subsection (2) may be taken by
 276 the department against any tattoo establishment, temporary
 277 establishment, tattoo artist, guest tattoo artist, operator of a
 278 tattoo establishment, or unlicensed person engaged in activities
 279 regulated under ss. 381.00771-381.00791:

280 (a) Providing false information on an application for

281 | licensure or registration.

282 | (b) Violating a state or local health code or ordinance.

283 | (c) Violating any provision of ss. 381.00771-381.00791,

284 | rule adopted under those sections, or lawful order of the

285 | department.

286 | (d) Being found guilty of or pleading nolo contendere to,

287 | regardless of adjudication, a crime in any jurisdiction which

288 | relates to the practice of tattooing or the operation of a

289 | tattoo establishment or temporary establishment.

290 | (e) Committing fraud, deceit, negligence, or misconduct in

291 | the practice of tattooing or the operation of a tattoo

292 | establishment or temporary establishment.

293 | (f) Aiding, procuring, or assisting a person to unlawfully

294 | practice tattooing or unlawfully operate a tattoo establishment

295 | or temporary establishment.

296 | (g) Failing to keep the written notarized consent of the

297 | parent or legal guardian of a minor child who is tattooed at a

298 | tattoo establishment or temporary establishment for the period

299 | specified pursuant to s. 381.00779(3) or knowingly making false

300 | entries in a parent's or legal guardian's written notarized

301 | consent.

302 | (2) When the department determines that a person commits

303 | any of the acts set forth in subsection (1), the department may

304 | enter an order imposing one or more of the following penalties:

305 | (a) Refusal to issue a license or registration or renew a

306 | license.

307 | (b) Suspension or revocation of a license or registration.

308 | (c) Imposition of an administrative fine not to exceed

309 | \$1,500 for each count or separate violation.

310 | (d) Issuance of a reprimand.

311 | (e) Placement of the licensee or registrant on probation
 312 | for a specified period and subject to the conditions that the
 313 | department may specify.

314 | (f) Issuance of a stop-use order.

315 | (g) Corrective action.

316 | (3) The department shall impose stricter penalties for the
 317 | repetition of violations and as the severity of violations
 318 | escalate, distinguishing lesser violations from those that
 319 | endanger the public health.

320 | (4) Disciplinary proceedings shall be conducted as
 321 | provided in chapter 120.

322 | Section 8. Section 381.00785, Florida Statutes, is created
 323 | to read:

324 | 381.00785 Criminal penalties.—

325 | (1) A person may not:

326 | (a) Operate a tattoo establishment or temporary
 327 | establishment in this state without a license.

328 | (b) Practice tattooing in this state without a tattoo
 329 | artist license or guest tattoo artist registration, except as
 330 | provided in s. 381.00773.

331 | (c) Practice tattooing in this state at any place other
 332 | than a tattoo establishment or temporary establishment, except
 333 | as provided in s. 381.00773.

334 | (d) Obtain or attempt to obtain a license or registration
 335 | by means of fraud, misrepresentation, or concealment.

336 | (2) A person who violates this section commits a

337 misdemeanor of the second degree, punishable as provided in s.
 338 775.082 or s. 775.083.

339 Section 9. Section 877.04, Florida Statutes, is
 340 transferred, renumbered as section 381.00787, Florida Statutes,
 341 and amended to read:

342 381.00787 ~~877.04~~ Tattooing prohibited; penalty.-

343 (1) A ~~It is unlawful for any person may not~~ to tattoo the
 344 body of a minor child younger than 16 years of age unless the
 345 any human being; except that tattooing is ~~may be performed for~~
 346 medical or dental purposes by a person licensed to practice
 347 medicine or dentistry under chapter ~~chapters~~ 458, chapter and
 348 459, or chapter 466, ~~or by a person under his or her general~~
 349 ~~supervision as defined by the Board of Medicine.~~

350 ~~(2) Any person who violates the provisions of this section~~
 351 ~~shall be guilty of a misdemeanor of the second degree,~~
 352 ~~punishable as provided in s. 775.082 or s. 775.083.~~

353 ~~(2)(3)~~ (2) A person may not tattoo the ~~No~~ body of a minor
 354 child who is at least 16 years of age, but younger than 18 years
 355 of age, unless:

356 (a) The minor child is accompanied by his or her parent or
 357 legal guardian;

358 (b) The minor child and his or her parent or legal
 359 guardian each submit proof of his or her identity by producing a
 360 government-issued photo identification;

361 (c) The parent or legal guardian submits his or her ~~shall~~
 362 ~~be tattooed without the written notarized consent~~ in the format
 363 prescribed by the department; ~~of~~

364 (d) The parent or legal guardian submits proof that he or

365 she is the parent or legal guardian of the minor child; and
 366 (e) The tattooing is performed by a tattoo artist or guest
 367 tattoo artist licensed under ss. 381.00771-381.00791 or a person
 368 licensed to practice medicine or dentistry under chapter 458,
 369 chapter 459, or chapter 466.

370 (3) A person who violates this section commits a
 371 misdemeanor of the second degree, punishable as provided in s.
 372 775.082 or s. 775.083. However, a person who tattoos the body of
 373 a minor child younger than 18 years of age does not violate this
 374 section, if:

375 (a) The person carefully inspects what appears to be a
 376 government-issued photo identification that represents that the
 377 minor child is 18 years of age or older.

378 (b) The minor child falsely represents himself or herself
 379 as being 18 years of age or older and presents a fraudulent
 380 identification.

381 (c) A reasonable person of average intelligence would
 382 believe that the minor child is 18 years of age or older and
 383 that the photo identification is genuine, was issued to the
 384 minor child, and truthfully represents the minor child's age.

385 Section 10. Section 381.00789, Florida Statutes, is
 386 created to read:

387 381.00789 Rulemaking.—The department shall adopt rules to
 388 administer ss. 381.00771-381.00791. Such rules may include, but
 389 are not limited to, rules defining terms; prescribing
 390 educational requirements for tattoo artists and guest tattoo
 391 artists, health and safety requirements, sanitation practices,
 392 and sterilization requirements and procedures; and providing

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393 requirements for tattoo equipment, customer notification, the
 394 contents of customer records, the retention of records, and
 395 physical plants. The department shall consult with
 396 representatives of the tattooing industry in this state during
 397 the development of such rules.

398 Section 11. Section 381.00791, Florida Statutes, is
 399 created to read:

400 381.00791 Local laws and ordinances.—Sections 381.00771-
 401 381.00791 do not preempt any local law or ordinance of a county
 402 or municipality that imposes regulations on tattoo
 403 establishments, temporary establishments, tattoo artists, or the
 404 practice of tattooing which are in addition to those sections.

405 Section 12. This act shall take effect January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1383

Pregnant Children and Youth in Out-of-Home Care

SPONSOR(S): Weinstein

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Appropriations Committee		Schoonover	Massengale <i>Am</i>
2)	Criminal & Civil Justice Policy Council			
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill makes several changes to current law and creates a new section to address issues related to pregnant children and youth in out-of-home care. Specifically, the bill does the following:

- Ensures appointment of a pro bono attorney or guardian ad litem for all pregnant children and youth in out-of-home care;
- Creates a 3-year pilot program in the Fourth Judicial Circuit to provide specialty guardians ad litem for pregnant children and youth in out of home care;
- Requires community-based care providers to report information about pregnant children and youth in licensed care to the Department of Children and Family Services through the Family Safe Families Network.

The bill appears to have a significant fiscal impact on state government (See Fiscal Comments).

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A recent national study shows that by age 19 nearly half of young women in foster care have been pregnant compared to one-fifth of their peers not in foster care.¹ Additionally, youth in foster care are 2.5 times more likely to be pregnant.² Studies have also shown that foster care youth tend to have high levels of unprotected sex and have a perception that child rearing is a way to create the family the youth doesn't have or to fill an emotional void.³

Guardian Ad Litem Program

In 2003, the Statewide Guardian Ad Litem Office was created within the Justice Administrative Commission.⁴ The purpose of the Statewide Guardian Ad Litem Office is to oversee responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.⁵

Currently, a Guardian Ad Litem (GAL) must be appointed by the court at the earliest possible time to represent a child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.⁶ A GAL includes a certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney, staff members of a program office, a court-appointed attorney, or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding.⁷ In most instances, following the appointment to a dependency case by the court at a shelter hearing, the program assigns a program attorney and a volunteer and/or staff advocate to the case.⁸

The GAL volunteer, the GAL volunteer's supervisor, and the program attorney work as a team to ensure the child's well-being, best interest, and safety are considered, and that child-centered

¹ Amy Dworsky, "Preventing Pregnancy Among Youth in Foster Care: Remarks for Congressional Roundtable," (2009). <http://www.chapinhall.org/sites/default/files/DworskyFosterPregnancy-7-16-09.pdf> (last visited 3/30/10)

² *Id.*

³ *Id.*

⁴ Chapter 2003-53, L.O.F.

⁵ s. 39.8296(2)(b), F.S.

⁶ s. 39.822(1), F.S.

⁷ s. 39.820(1), F.S.

⁸ Staff Analysis, HB1383 (2010), Statewide Guardian Ad Litem Office. (On file with committee staff).

decisions are made on critical issues such as permanency, placement, visitation, and education.⁹ This team tracks cases and attends all case proceedings on behalf of the child.¹⁰ The program attorney represents the program in court by advocating on behalf of the program and also by advocating on behalf of the child when filing necessary legal motions. In 2009, GAL represented 80 percent of the children under dependency court supervision.¹¹

Foster Care

The state's child welfare program serves children and families in their homes, as well as children who have been removed from their families and placed in foster care.¹² Foster care settings include licensed foster homes, residential facilities, and placements with relatives and approved non-relatives.¹³ In 1996, the Legislature encouraged DCF to contract with community-based, not-for-profit entities to provide child welfare services, including but not limited to, prevention, child protection, licensing, placement, foster care, adoptions, and independent living.¹⁴ In 1998, the Legislature directed DCF to contract with community-based lead agencies to assume many of the management and operational responsibilities previously performed by its internal staff.¹⁵ Under this outsourced system, lead agencies are responsible for providing foster care and related services including, but not limited to, family preservation, emergency shelter, and adoption.¹⁶

The state completed the transition to community-based care during the latter part of Fiscal Year 2004-2005.¹⁷ As of March 2010, 20 community-based lead agencies provide child welfare services statewide, including foster care.¹⁸ The lead agencies contract with a large number of subcontractors for case management and direct care services to children and their families.¹⁹ In addition to DCF's contracts with 20 lead agencies, as of March 2010 the lead agencies maintained 70 subcontracts for case management services and 646 subcontracts for direct care services such as foster care placement, adoption supervision, and substance abuse and mental health intervention.²⁰

Client and Management Information System

Current law requires the Department of Children and Family Services (DCF) to establish a statewide children and families client and management information system to provide information concerning children served by DCF.²¹ Pursuant to this requirement, DCF established the Florida Safe Families Network (FSFN) to provide, at a minimum, a service information system to implement comprehensive screening, uniform assessment, case planning, monitoring, resource matching, and outcome evaluations for all programs and services related to child welfare, prevention, diversion, and child care.²² However, FSFN does not collect data and information about children or youth who become pregnant before or while residing in licensed out-of-home care.²³ Current law does specify that, whenever feasible, the information system shall have online computers and be available for data entry and retrieval at the unit level of organization by program component counselors.²⁴ Recently, DCF extracted data and learned that in January 2010, there were 130 females in out-of-home care who are listed as having children.²⁵

⁹ Guardian Ad Litem 2009 Annual Report. <http://www.guardianadlitem.org/documents/GAL-2009AnnualReport.pdf>. (last visited 3/30/10).

¹⁰ *Id.*

¹¹ *Id.*

¹² "Child Welfare System Performance Mixed in First Year of Statewide Community-Based Care," Office of Program Policy and Government Accountability (OPPAGA), Report 06-50.

¹³ *Id.*

¹⁴ s. 5, ch. 96-402, L.O.F.

¹⁵ s. 1, ch. 98-180, L.O.F.

¹⁶ OPPAGA, Report 06-50.

¹⁷ *Id.*

¹⁸ Lead Agency Contacts, Department of Children and Family Services. <http://www.dcf.state.fl.us/programs/cbc/docs/leadagencycontacts.pdf> (last visited 3/31/10).

¹⁹ OPPAGA, Report 06-50.

²⁰ Email from Alan Abramowitz, Director of Family Safety, DCF (October 31, 2010). On file with committee staff.

²¹ s. 409.146(1), F.S.

²² s. 409.146(2), F.S.

²³ Staff Analysis, HB 1383 (2010). Department of Children and Family Services. (On file with committee staff).

²⁴ s. 409.146(7), F.S.

²⁵ Staff Analysis, HB 1383 (2010). Department of Children and Family Services. (On file with committee staff). Data was collected using FSFN and adding up the amount of females in the system that had the "mother" radial checked off under the "relationship" tab. It does not appear that this method of tabulation is able to account for the amount of females currently in out-of-home care who either became pregnant or entered care while pregnant.

The Independent Living Transitional Services Checklist survey is a voluntary self-reporting survey for youth 13-17 years old in foster care and for 18-22 year olds that have aged out of foster care. The 2008 survey provided the following results related to pregnancy and parents in foster care:²⁶

- Are you Pregnant?
 - 4 percent of 13-17 year olds answered yes
 - 10 percent of 18-22 year olds answered yes
- Do you have children?
 - 15 percent of 13-22 year olds answered yes
- Are those children in your legal custody?
 - 69 percent answered yes.

Parental Notice of Abortion Act

In 2004, the Legislature passed House Joint Resolution 1 to amend the state constitution. The joint resolution, placed on the November 2004 ballot, provided:

ARTICLE X SECTION 22. Parental notice of termination of a minor's pregnancy.—
The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

The voters approved this amendment on November 2, 2004.²⁷ The amendment permitted the Legislature to create a parental notification statute notwithstanding the state right to privacy. Accordingly, in 2005, the Legislature recreated the Parental Notice of Abortion Act under section 390.01114, Florida Statutes,²⁸ which specifies the following:

Notice. A physician or the referring physician must give 48 hours actual notice of the physician's intent to perform or induce the termination of a minor's pregnancy to one of the minor's parents or to the legal guardian of the minor. If the physician is unable, after making reasonable efforts, to give actual notice, the physician may provide constructive notice by mail, overnight delivery guaranteed, return receipt requested with delivery restricted to a parent or legal guardian. This constructive notice must be mailed at least 72 hours before the procedure is commenced. The physician is required to document the efforts to provide notice and keep such records with the minor's medical file.

Notice Exceptions. Section 22 of Article X of the Florida Constitution, requires the Legislature to provide exceptions to the notice requirement. Under section 390.01114(3)(b), Florida Statutes, prior actual or constructive notice is not required in the following circumstances:

- If, in the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time to comply with the notice requirements. If a medical emergency exists, the physician may terminate the pregnancy but must document the reason for the medical necessity and provide notice after performing the procedure;
- Notice is waived by the person entitled to receive notice;
- Notice is waived by the minor who is or has been married or has had the disability of nonage removed under section 743.015, Florida Statutes;
- Notice is waived by the patient because the patient has a minor child dependent on her; or
- Notice is waived through a waiver petition granted by a circuit court.

²⁶ *Id.*

²⁷ According to the Department of State website, <http://election.dos.state.fl.us>, 4,639,635 people voted for the amendment and 2,534,910 voted against the amendment.

²⁸ An earlier Parental Notice Act (1999 Act) – s. 390.01115, F.S. – was declared unconstitutional by the Florida Supreme Court.

Judicial Waiver of Notice. Section 22 of Article X of the Florida Constitution requires the Legislature to create a procedure for a judicial waiver of notice. Accordingly, section 390.01114(4), Florida Statutes, specifies that a pregnant minor who is less than 18 years of age may petition the circuit court in the judicial circuit within the jurisdiction of the District Court of Appeal where she resides for a waiver of the notice requirement. The court must provide the minor counsel upon her request and at no cost.

The court must give court proceedings under this act precedence over other pending matters and the court must rule, and issue written findings of fact and conclusions of law, within 48 hours of the minor's request. If the court fails to rule within 48 hours, and an extension has not been granted at the request of the minor, the petition must be granted.

While the law provides that notice shall be given to parents of a minor, there are exceptions such that the court may grant a petition to waive notice if the court finds:

- By clear and convincing evidence, that the minor is sufficiently mature to terminate her pregnancy without the knowledge of her parent or guardian;
- By a preponderance of the evidence, that there is evidence of child abuse or sexual abuse by one or both of her parents or her guardian. In addition, the court must report the evidence of child abuse or sexual abuse to the Department of Children and Families' Child Abuse and Neglect hotline, in accordance with section 39.201, Florida Statutes; or
- By a preponderance of the evidence, that the notification of a parent or guardian is not in the best interest of the minor.

If one of these exceptions is not met, the court must dismiss the minor's petition.

The Office of State Court Administrator (OSCA) must report to the Governor, President of the Senate, and the Speaker of the House of Representatives on the number of petitions for judicial waiver and the timing and manner of disposal of the petitions.²⁹ According to OSCA, from July 2009 to February 2010, 14 minors from the Fourth Judicial Circuit filed petitions seeking judicial bypass of the parental notice requirements.³⁰ Of those petitions, 12 were granted. It is unclear how many, if any, of the 14 these minors were foster children.

Florida Pregnancy Support Services Program

The Florida Pregnancy Support Program is administered by two contract managers—Florida Pregnancy Care Network and the Uzzell Group—under contract with the Department of Health.³¹ The contract managers subcontract with more than 50 direct service providers throughout the state to provide counseling and other services to individuals who are suspecting or experiencing an unplanned pregnancy. Services are not limited to women, as sometimes the eligible woman's partner and family members who are directly impacted by her pregnancy are also eligible for services, and the services may continue for up to 12 months after the birth of the child.

Direct service providers administer a number of services to clients, including free pregnancy testing; counseling; and social service/medical referrals for services such as housing, employment, childcare, education, Medicaid and other support services, and mental health or other health care services. Additionally, some direct service providers have education programs for expectant families.

As of March 9, 2010, there were three direct service providers in the Fourth Judicial Circuit.

²⁹ s. 390.01114(6), F.S.

³⁰ Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County (July 2009-February 2010) Office of State Courts Administrator, Research and Data as of March 31, 2010.

³¹ The Florida Pregnancy Support Services Program also consists of the Florida Hope Line, a free hotline answered 24 hours a day, 365 days a year in order to refer women to the nearest direct service providers. The Hope Line is operated by Option Line, a nationally pregnancy helpline.

Effect of Proposed Changes

Appointment of a Guardian ad Litem for a Pregnant Child or Youth in Out-of-Home Care

The bill amends section 39.822, Florida Statutes, by requiring the court, at the first hearing after the court is notified a child or youth in out-of-home care is pregnant, to appoint to the child or youth a pro bono attorney or a guardian ad litem if a pro bono attorney is not available. The effect of this change will ensure that pregnant children and youth are provided the support they need.

Specialty Guardian Ad Litem Pilot Program

The bill creates section 38.8299, Florida Statutes, by creating a 3-year Specialty Guardian ad Litem (GAL) program in the Fourth Judicial Circuit for pregnant children and youth in out-of-home care. The pilot program's funding is subject to a specific appropriation in the General Appropriations Act.

Specifically, the bill requires the Statewide Guardian Ad Litem Office to do the following:

- Designate a GAL in the Fourth Judicial Circuit to administer the Specialty GAL program under the supervision of the executive director of Statewide GAL Office;
- Develop and implement a training program to ensure that specialty GALs receive all the training provided to GALs, as well as additional specialty training, including training about:
 - Social service programs available to pregnant women;
 - Legal requirements related to the parental notice of abortions act;
 - Availability of pregnancy counseling services in the Fourth Judicial Circuit, including providers offering services under contract under the Florida Pregnancy Support Services Program;
- Design and implement an appropriate specialty GAL program and may establish the number of specialty GALs needed to meet the needs of the pilot program. Current GALs will be prohibited from serving as Specialty GALs prior to completing the proper training requirements.

The program created in section 38.8299, Florida Statutes, also limits the specialty GAL's representation for children and youth in out-of-home care that are pregnant to dependency proceedings and other proceedings in chapter 39, Florida Statutes. The specialty GAL may, at the request of the pregnant child or youth, represent that child or youth in parental notice judicial bypass proceedings. The specialty GAL does not have the authority to accept notice of termination of pregnancy and must represent the child's best interest as long as the child or youth's wishes are consistent with the child or youth's safety and well-being. A specialty GAL is directed to represent a pregnant youth or child until 6 months after the conclusion of the child or youth's pregnancy.

Collection and Reporting of Pregnant Children and Youth in Out-of-Home Care

The bill amends section 409.146, Florida Statutes, by requiring DCF through its client and management information system, Florida Safe Families Network (FSFN), to collect and report information on pregnant children and youth in licensed care, but not those placed with relatives.

The bill directs lead community-based providers and their subcontractors to notify DCF within 72 hours of determining or discovering that a child or youth in their care is pregnant. The notification must include the following data:

- Age of pregnant child or youth;
- Whether the child or youth was pregnant prior to entering licensed care or became pregnant while in licensed care;
- The name of any entity that is providing prenatal care, counseling, or other social services; and
- Whether the child or youth has declined prenatal care, counseling, or other social services.

The bill requires lead community-based providers and their subcontractors to notify DCF, through FSFN, within 7 days after determining or discovering the pregnancy outcome of a child or youth in licensed care, but those placed with relatives. The notification may include whether the pregnancy was terminated or resulted in a live birth, still birth, or fetal death. For live births, the bill requires indication in

the reporting as to whether the infant remains in the care of the child or youth, has been placed for adoption, or has been placed in other licensed care.

The effect of these changes will create a more efficient process for collecting data on pregnant children and youth in licensed care. The changes will also provide DCF with access to reliable data on pregnant children and youth in licensed care, which will assist DCF in ensuring consistent counseling and proper prenatal medical care is provided.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.822, F.S., relating to appointment of guardian ad litem for abused, abandoned, or neglected child.

Section 2. Creates s. 39.8299, F.S., relating to Specialty Guardian Ad Litem Pilot Program for pregnant children or youth in out-of-home care.

Section 3. Amends s. 409.146, F.S., relating to children and families client and management information system.

Section 4. Creates an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

	Amount Year 1 (FY 2010-2011)	Amount Year 2 (FY 2011-2012)
A. Nonrecurring or First-Year Start-up Effects:	\$150,000 ³²	
B. Recurring or Annualized Continuation Effects:	\$55,000 ³³	\$55,000
C. Appropriations Consequences:	\$205,000	\$55,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

³² Cost associated with updating DCF's FSFN information system to make it able to collect data required by bill.

³³ Cost of one position to serve as the administrator of the Specialty Guardian Ad Litem Pilot Program in the Fourth Judicial Circuit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

Section 23 of Article 1 of the Florida Constitution provides, "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein." See also *In re T.W.*, 551 So.2d 1186 (Fla. 1989) (holding that this provision applies to minors as well as adults). Because the right to privacy is a fundamental right, the state must prove that a statute furthers a compelling state interest through the least intrusive means. *Id.*

The Florida Supreme Court has determined that Section 23 of Article I is implicated in a woman's decision to terminate or continue her pregnancy. *Id.* None of the provisions in the bill interfere with the minor's right to choose. Instead, the bill authorizes a child or youth in out-of-home care in the pilot program area to request a specialty guardian ad litem to represent the child's best interests during a judicial bypass proceeding under section 390.01114(4), Florida Statutes. This does not replace the requirement in section 390.01114(4)(a), Florida Statutes, for a minor to receive notice that the minor has a right to court appointed counsel, and does not prohibit the minor from having both a specialty guardian ad litem and counsel present, as the specialty guardian's ad litem participation is not in the capacity as a legal advisor.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to pregnant children and youth in out-of-
 3 home care; amending s. 39.822, F.S.; requiring courts to
 4 appoint by a specified time a pro bono attorney or
 5 guardian ad litem for a child or youth in out-of-home care
 6 who is pregnant; creating s. 39.8299, F.S.; requiring the
 7 Statewide Guardian Ad Litem Office to establish a
 8 Specialty Guardian Ad Litem Pilot Program in the Fourth
 9 Judicial Circuit to serve children and youth in out-of-
 10 home care who are pregnant; providing for development,
 11 implementation, administration, and supervision of the
 12 program; providing requirements for appointment of
 13 specialty guardians ad litem by the court; specifying
 14 information to be provided to the administrator after an
 15 appointment is made; requiring that a pro bono attorney or
 16 guardian ad litem be appointed if a specialty guardian ad
 17 litem is not available; limiting the specialty guardian ad
 18 litem's representation to proceedings under ch. 39, F.S.,
 19 or proceedings under s. 390.01114(4), F.S., upon the
 20 request of the child or youth; providing that the
 21 specialty guardian ad litem does not have the authority to
 22 accept notice of termination of pregnancy; providing for a
 23 guardian ad litem to be appointed at the end of the
 24 specialty guardian ad litem's representation; providing
 25 that the pilot program and specialty guardians ad litem
 26 are subject to s. 39.822, F.S., relating to the
 27 appointment of a guardian ad litem for an abused,
 28 neglected, or abandoned child; providing that funding is

29 contingent upon a specific appropriation in the General
 30 Appropriations Act; amending s. 409.146, F.S.; requiring
 31 the children and families client and management
 32 information system to include information concerning the
 33 status and outcomes of pregnant children and youth in
 34 licensed care; requiring community-based providers and
 35 subcontractors to report specified pregnancy and outcome
 36 data to the Department of Children and Family Services;
 37 specifying reporting procedures; providing an effective
 38 date.

39

40 Be It Enacted by the Legislature of the State of Florida:

41

42 Section 1. Subsection (1) of section 39.822, Florida
 43 Statutes, is amended to read:

44 39.822 Appointment of guardian ad litem for abused,
 45 abandoned, or neglected child.-

46 (1) (a) A guardian ad litem shall be appointed by the court
 47 at the earliest possible time to represent the child in any
 48 child abuse, abandonment, or neglect judicial proceeding,
 49 whether civil or criminal.

50 (b) At the first hearing after the court is notified that
 51 a child or youth in out-of-home care is pregnant, the court
 52 shall appoint a pro bono attorney, or a guardian ad litem if a
 53 pro bono attorney is not available, for the child or youth.

54 (c) Any person participating in a civil or criminal
 55 judicial proceeding resulting from an ~~such~~ appointment pursuant
 56 to this subsection shall be presumed prima facie to be acting in

57 | good faith and in so doing shall be immune from any liability,
 58 | civil or criminal, that otherwise might be incurred or imposed.

59 | Section 2. Section 39.8299, Florida Statutes, is created
 60 | to read:

61 | 39.8299 Specialty Guardian Ad Litem Pilot Program for
 62 | pregnant children or youth in out-of-home care.-

63 | (1) RESPONSIBILITIES.-

64 | (a) By October 1, 2010, the Statewide Guardian Ad Litem
 65 | Office shall establish a 3-year Specialty Guardian Ad Litem
 66 | Pilot Program in the Fourth Judicial Circuit to serve children
 67 | and youth in out-of-home care who are pregnant.

68 | (b) The Statewide Guardian Ad Litem Office shall designate
 69 | a guardian ad litem in the Fourth Judicial Circuit as the
 70 | administrator of the pilot program. The administrator must meet
 71 | the qualifications for guardians ad litem as specified in s.
 72 | 39.821 and have 5 or more years of experience in the area of
 73 | child advocacy, child welfare, or juvenile law or as a program
 74 | attorney, case coordinator, or volunteer with the Statewide
 75 | Guardian Ad Litem Office. The executive director of the
 76 | Statewide Guardian Ad Litem Office shall supervise the
 77 | administration of the pilot program.

78 | (c) The Statewide Guardian Ad Litem Office, in conjunction
 79 | with the pilot program, shall develop and implement a training
 80 | program for specialty guardians ad litem that includes all
 81 | training developed and provided for guardians ad litem pursuant
 82 | to s. 39.8296(2)(b)4. as well as training regarding:

83 | 1. Social service programs available to pregnant women in
 84 | the state.

85 2. The legal requirements of s. 390.01114.

86 3. The availability of pregnancy counseling services in
 87 the Fourth Judicial Circuit, including all providers offering
 88 services under the Florida Pregnancy Support Services Program.

89 (d) Using funds specifically appropriated for the pilot
 90 program, the Statewide Guardian Ad Litem Office, in conjunction
 91 with the pilot program, shall design and implement an
 92 appropriate specialty guardian ad litem program and may
 93 establish the number of specialty guardians ad litem needed to
 94 meet the needs of the pilot program. An existing guardian ad
 95 litem may serve as a specialty guardian ad litem only after
 96 completing the additional training requirements specified in
 97 paragraph (c).

98 (e) The court shall appoint a specialty guardian ad litem
 99 at the first hearing after the court is notified that the child
 100 or youth is pregnant. If a guardian ad litem is representing the
 101 child or youth at that time and is trained as a specialty
 102 guardian ad litem, a new specialty guardian ad litem need not be
 103 appointed. When a specialty guardian ad litem is appointed, the
 104 court shall provide to the administrator, at a minimum, the name
 105 of the child or youth, the location and placement of the child
 106 or youth, the name of the department's authorized agent and
 107 contact information, copies of all notices sent to the parent or
 108 legal custodian of the child or youth, and any other information
 109 or records concerning the child or youth. If a specialty
 110 guardian ad litem is not available, then, pursuant to s.
 111 39.822(1)(b), the court shall appoint a pro bono attorney or a
 112 guardian ad litem if a pro bono attorney is not available.

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2010

113 (f) The specialty guardian ad litem's representation shall
114 be limited to proceedings initiated under this chapter, except
115 that, upon the request of the child or youth, the specialty
116 guardian ad litem may represent the child or youth in a
117 proceeding filed pursuant to s. 390.01114(4). The specialty
118 guardian ad litem does not have the authority to accept notice
119 of termination of pregnancy pursuant to s. 390.01114.

120 (g) Upon the direction of the court, the pilot program
121 administrator shall assign a specialty guardian ad litem who
122 shall represent the child or youth until 6 months after the
123 conclusion of the child or youth's pregnancy. Once assigned, the
124 specialty guardian ad litem shall replace any existing guardian
125 ad litem appointed for the child or youth if the existing
126 guardian ad litem is not trained as a specialty guardian ad
127 litem and shall represent the child or youth's wishes for
128 purposes of proceedings under this chapter and s. 390.01114(4),
129 when applicable, as long as the child or youth's wishes are
130 consistent with the safety and well being of the child or youth.
131 Upon conclusion of the specialty guardian ad litem's
132 representation of the child or youth, a guardian ad litem shall
133 be appointed by the court at the earliest possible time.

134 (h) The pilot program is, and specialty guardians ad litem
135 assigned pursuant to the pilot program are, subject to s.
136 39.822.

137 (2) FUNDING.—The Statewide Guardian Ad Litem Office shall
138 conduct the pilot program subject to a specific appropriation in
139 the General Appropriations Act.

140 Section 3. Subsections (3) through (9) of section 409.146,
 141 Florida Statutes, are renumbered as subsections (4) through
 142 (10), respectively, and a new subsection (3) is added to that
 143 section to read:

144 409.146 Children and families client and management
 145 information system.—

146 (3) (a) The system shall include information concerning the
 147 status of pregnant children and pregnant youth in licensed care.

148 (b) Lead community-based providers and their
 149 subcontractors operating pursuant to s. 409.1671 shall notify
 150 the department within 72 hours after determining or discovering
 151 that a child or youth in licensed care is pregnant. This
 152 notification shall include the following data:

153 1. The age of the pregnant child or youth.

154 2. Whether the child or youth was pregnant prior to
 155 entering licensed care or became pregnant while in licensed
 156 care.

157 3. The name of any entity that is providing prenatal care,
 158 counseling, or other social services to the child or youth.

159 4. Whether the child or youth has declined prenatal care,
 160 counseling, or other social services.

161 (c) Lead community-based providers and their
 162 subcontractors shall notify the department within 7 days after
 163 determining or discovering the pregnancy outcome of a child or
 164 youth in licensed care, including whether the pregnancy was
 165 terminated or resulted in a live birth, stillbirth, or fetal
 166 death as defined in s. 382.002, and such data shall be entered
 167 in the system. If the pregnancy resulted in a live birth, the

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168 data shall also indicate whether the infant remains in the care
169 of the child or youth, has been placed for adoption, or has been
170 placed in other licensed care.

171 (d) Data provided to the department pursuant to this
172 subsection shall be entered, aggregated, and reported pursuant
173 to subsection (7).

174 Section 4. This act shall take effect July 1, 2010.

Amendment No. 01

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Weinstein offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 63-139 and insert:

7 (1) By October 1, 2010, the Statewide Guardian Ad Litem
8 Office shall establish a 3-year Specialty Guardian Ad Litem
9 Pilot Program in the Fourth Judicial Circuit to serve children
10 and youth in out-of-home care who are pregnant.

11 (2) The Statewide Guardian Ad Litem Office shall designate
12 a guardian ad litem in the Fourth Judicial Circuit as the
13 administrator of the pilot program. The administrator must meet
14 the qualifications for guardians ad litem as specified in s.
15 39.821 and have 5 or more years of experience in the area of
16 child advocacy, child welfare, or juvenile law or as a program
17 attorney, case coordinator, or volunteer with the Statewide
18 Guardian Ad Litem Office. The executive director of the

Amendment No. 01

19 Statewide Guardian Ad Litem Office shall supervise the
20 administration of the pilot program.

21 (3) The Statewide Guardian Ad Litem Office, in conjunction
22 with the pilot program, shall develop and implement a training
23 program for specialty guardians ad litem that includes all
24 training developed and provided for guardians ad litem pursuant
25 to s. 39.8296(2)(b)4. as well as training regarding:

26 (a) Social service programs available to pregnant women in
27 the state.

28 (b) The legal requirements of s. 390.01114.

29 (c) The availability of pregnancy counseling services in
30 the Fourth Judicial Circuit, including all providers offering
31 services under the Florida Pregnancy Support Services Program.

32 (4) Using funds specifically appropriated for the pilot
33 program, the Statewide Guardian Ad Litem Office, in conjunction
34 with the pilot program, shall design and implement an
35 appropriate specialty guardian ad litem program and may
36 establish the number of specialty guardians ad litem needed to
37 meet the needs of the pilot program. An existing guardian ad
38 litem may serve as a specialty guardian ad litem only after
39 completing the additional training requirements specified in
40 subsection (3).

41 (5) The court shall appoint a specialty guardian ad litem
42 at the first hearing after the court is notified that the child
43 or youth is pregnant. If a guardian ad litem is representing the
44 child or youth at that time and is trained as a specialty
45 guardian ad litem, a new specialty guardian ad litem need not be
46 appointed. When a specialty guardian ad litem is appointed, the

Amendment No. 01

47 court shall provide to the administrator, at a minimum, the name
48 of the child or youth, the location and placement of the child
49 or youth, the name of the department's authorized agent and
50 contact information, copies of all notices sent to the parent or
51 legal custodian of the child or youth, and any other information
52 or records concerning the child or youth. If a specialty
53 guardian ad litem is not available, then, pursuant to s.
54 39.822(1)(b), the court shall appoint a pro bono attorney or a
55 guardian ad litem if a pro bono attorney is not available.

56 (6) The specialty guardian ad litem's representation shall
57 be limited to proceedings initiated under this chapter, except
58 that, upon the request of the child or youth, the specialty
59 guardian ad litem may represent the child or youth in a
60 proceeding filed pursuant to s. 390.01114(4). The specialty
61 guardian ad litem does not have the authority to accept notice
62 of termination of pregnancy pursuant to s. 390.01114.

63 (7) Upon the direction of the court, the pilot program
64 administrator shall assign a specialty guardian ad litem who
65 shall represent the child or youth until 6 months after the
66 conclusion of the child or youth's pregnancy. Once assigned, the
67 specialty guardian ad litem shall replace any existing guardian
68 ad litem appointed for the child or youth if the existing
69 guardian ad litem is not trained as a specialty guardian ad
70 litem and shall represent the child or youth's wishes for
71 purposes of proceedings under this chapter and s. 390.01114(4),
72 when applicable, as long as the child or youth's wishes are
73 consistent with the safety and well being of the child or youth.
74 Upon conclusion of the specialty guardian ad litem's

Amendment No. 01

75 representation of the child or youth, a guardian ad litem shall
76 be appointed by the court at the earliest possible time.

77 (8) The pilot program is, and specialty guardians ad litem
78 assigned pursuant to the pilot program are, subject to s.
79 39.822.

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T I T L E A M E N D M E N T

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Remove lines 28-30 and insert:

86

neglected, or abandoned child; amending s. 409.146, F.S.;

87

requiring

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 1383 (2010)

Amendment No. 02

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Weinstein offered the following:
4

5 **Amendment**

6 Remove line 173 and insert:

7 to subsection (7) within 12 months of the Florida Safe Families
8 Network system being deployed to full production operational
9 status. In the interim, such data may be collected and reported
10 by other means.

Amendment No. 03

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Health Care Appropriations
2 Committee

3 Representative(s) Weinstein offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 173 and 174, insert:

7 Section 4. (1) For the 2010-2011 fiscal year, one full-
8 time equivalent position with associated salary rate of 32,000
9 is authorized and the sum of \$55,000 in recurring revenue from
10 the General Revenue Fund is appropriated to the Statewide
11 Guardian Ad Litem Office to implement the Specialty Guardian Ad
12 Litem Pilot Program in the Fourth Judicial Circuit.

13 (2) For the 2010-2011 fiscal year, the sum of \$150,000 in
14 nonrecurring revenue from the General Revenue Fund is
15 appropriated to the Department of Children and Family Services
16 for the purpose of modifying the children and families client
17 and management information system to accommodate the reporting
18 required under s. 409.146(3), Florida Statutes.
19

Amendment No. 03

20

21

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23

T I T L E A M E N D M E N T

24

Remove line 37 and insert:

25

specifying reporting procedures; providing appropriations;

26

providing an effective