

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/CS/HB 115 Keep Our Graduates Working Act

SPONSOR(S): Commerce Committee and Health Quality Subcommittee and Business & Professions Subcommittee, Duran and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 356

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/CS/HB 115 passed the House on January 29, 2020, and subsequently passed the Senate on February 12, 2020.

The Florida Department of Health (DOH) is authorized to discipline a health care practitioner's license for failing to repay a government-backed student loan. Every month, DOH must obtain a list of Florida health care practitioners who have defaulted on their government-backed student loans from the United States Department of Health and Human Services (USHHS). Upon learning that a health care practitioner has defaulted on such a loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or DOH will issue an emergency order suspending the practitioner's license.

If DOH makes a finding in a disciplinary case that a health care practitioner has defaulted on student a loan, DOH, at a minimum, must take the following disciplinary action:

- Suspend the practitioner's license until he or she agrees to new payment terms;
- Place the licensee on probation for the duration of the student loan period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

The bill:

- Prohibits any state authority, including DOH, from denying the issuance of, refusing to renew, suspending, or revoking a professional license based solely on the licensee being delinquent on a payment of or defaulting on his or her student loans;
- Repeals authorization for DOH to discipline a health care practitioner for failing to repay a student loan and the associated mandatory discipline;
- Repeals the requirement that DOH issue an emergency order suspending a health care practitioner's license for a student loan default, absent timely proof of a new repayment plan; and
- Repeals the requirement that DOH obtain a monthly list from the USHHS of the health care practitioners who have defaulted on their student loans.

The bill may have an indeterminate fiscal impact on state government. The bill is not expected to have a fiscal impact on local governments.

The bill was approved by the Governor on June 29, 2020, ch. 2020-125, L.O.F., and will become effective on July 1, 2020.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Student Loans

Student loans are funds that are lent to students or parents to pay for higher education. Student loans may come from private sources, such as banks or other financial institutions, or from a state or the federal government.¹

The Office of Student Financial Assistance (OSFA) within the Florida Department of Education (DOE) is responsible for administering state and federally funded programs and serves as the guarantor agency for certain federally-backed student loans.² The DOE is directed to exert every lawful and reasonable effort to collect all delinquent unpaid and uncanceled student loans.³

Increase in Defaults on Student Loans

An estimated 41.5 million Americans owe more than \$1.2 trillion in outstanding federal loan debt. This is more than triple the \$340 billion in student loan debt owed by Americans in 2001.⁴ With this increase in student loan debt owed by Americans, there has been an increase in the number of people who are defaulting on or failing to pay their student loans. For most federal loans, default generally occurs when a payment has not been made for 270 days.⁵ In 2018, 41,013 borrowers who attended Florida schools ranging from universities to trade schools had defaulted on their federal student loans.⁶

Professional Licenses

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work.⁷ Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.⁸

Approximately one-quarter of workers nationwide require a license to practice their profession, and an estimated 28.7 percent of the Florida workforce requires a license from the state.⁹

¹ Consumer Financial Protection Bureau, *Student Loans: Choosing a loan that's right for you*, <https://www.consumerfinance.gov/paying-for-college/choose-a-student-loan/#o1> (last visited Dec. 4, 2019).

² Office of Student Financial Assistance, *Mission Statement*, http://www.floridastudentfinancialaid.org/FFELP/mission_statement/mission_statement_052606.html (last visited on Nov. 26, 2019).

³ S. 1009.95, F.S.

⁴ Laura Feiveson, Alvaro Mezza, and Kamila Sommer, *Student Loan Debt and Aggregate Consumption Growth*, Board of Governors of the Federal Reserve System, (February 21, 2018), <https://www.federalreserve.gov/econres/notes/feds-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm> (last visited on Nov. 26, 2019).

⁵ United States Department of Education, Federal Student Aid, *Glossary, Default*, https://studentaid.ed.gov/sa/glossary#letter_d (last visited Nov. 26, 2019).

⁶ Florida Business Daily, *41,013 borrowers in default on student loans after attending Florida schools*, May 17, 2018, <https://flbusinessdaily.com/stories/511416784-41-013-borrowers-in-default-on-student-loans-after-attending-florida-schools> (last visited Nov. 26, 2019).

⁷ The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015) https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Dec. 30, 2019).

⁸ Bureau of Labor Statistics, *Frequently asked questions about data on certifications and licenses*, <https://www.bls.gov/cps/certifications-and-licenses-faqs.htm>, (last visited on Nov. 26, 2019).

⁹ White House, *supra* note 7, at 3.

Disciplining Professional Licenses for Defaulting on Student Loans

In the 1990s, as a result of a rising number of students defaulting on their federally-backed student loans, the federal government urged state legislators to send a message to students, postsecondary institutions, and lenders that high levels of default would not be tolerated. The federal government recommended that states take the following steps to curb student loan default:¹⁰

- Enact a state tax-refund offset program;
- Enact a wage garnishment program;
- Deny professional licenses to defaulters until they take steps towards repayment;
- Screen potential applicants for state jobs to prevent the hiring of loan defaulters who have not entered into repayment agreements; and
- Ensure that certain identifying information is available to the state's guarantee agency.

As a result, many states, including Florida, began adopting various forms of disciplinary licensing laws related to defaulting on government-backed student loans. By 2010, about half of the states had some form of disciplinary licensing law based on default on government-backed student loans. Since then, based on shifting concerns, there has been a trend to reduce or eliminate such laws. Currently, approximately 15 states, including Florida, still have some form of such laws.¹¹

Proponents of such disciplinary licensing laws argue that:

- The threat of losing a professional license is a powerful tool to ensure borrowers stay current on their student loans, and as a result, these laws reduce the number of borrowers who default;
- It is in the taxpayers' interest to ensure borrowers are repaying their government-backed student loans because the state or federal government foots the bill if borrowers default; and
- Disciplinary licensing laws do not require people who have defaulted on their student loans to completely repay their loans to prevent their licenses from being suspended, only that they enter into a new repayment plan.¹²

Opponents of such disciplinary licensing laws argue that states are using their licensing authority as a punitive debt collection tool, and that the purpose of licensing laws are to protect the health and safety of the public, not to operate as defacto debt collectors.¹³ Opponents also argue that "if people are unable to work in their chosen field – the one they went to school for and presumably took out loans to fund – how can they be expected to pay their debt?"¹⁴

Federal Attempts to Prohibit State Disciplinary Licensing Laws

Recently, there have been attempts at the national level to prohibit state disciplinary licensing laws for defaulting on government-backed student loans. Bills were introduced, but did not pass, in the United States Congress in 2018 and 2019 that would prohibit states from disciplining or denying state issued licenses for defaulting on government-backed student loans.¹⁵

Health Care Practitioner Licensing

¹⁰ Mary Farrell, *Reducing Student Loan Defaults: A Plan for Action*, Department of Education at 63 (March 21, 1991) <https://files.eric.ed.gov/fulltext/ED323879.pdf> (last visited Nov. 26, 2019).

¹¹ Andrew Wagner, *Licensing Suspension for Student Loan Forgiveness*, NCSL (Oct. 1, 2018) <http://www.ncsl.org/research/labor-and-employment/license-suspension-for-student-loan-defaulters.aspx> (last visited Nov. 26, 2019).

¹² Jessica Silver-Greenberg, Stacey Cowley, & Natalie Kitroeff, *When Unpaid Student Loan Bills Mean You Can No Longer Work*, *The New York Times* (Nov. 18, 2017) https://www.nytimes.com/2017/11/18/business/student-loans-licenses.html?_r=0 (last visited on Nov. 26, 2019).

¹³ *Id.*

¹⁴ Courtney Nagle, *Student Loan Debt Could Affect Your Job in 13 States*, U.S. News, <https://www.usnews.com/education/blogs/student-loan-ranger/articles/2019-04-10/these-states-could-revoke-your-professional-license-over-student-loan-debt> (last visited Jan. 10, 2020).

¹⁵ Protecting JOBS Act, S.3065, 115th Congress (2017-2018); Protecting JOBS Act, H.R.6156 115th Congress (2017-2018); Protecting JOBS Act, S.609, 116th Congress (2019-2020).

The Division of Medical Quality Assurance (MQA) within the Florida Department of Health (DOH) is responsible for the licensing and regulation of health care practitioners in the state. The MQA works in conjunction with 22 boards and four councils to license and regulate seven types of health care facilities and more than 200 license types in over 40 health care professions. Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA.¹⁶ The MQA regulates the following categories of professionals:¹⁷

- Acupuncturists;
- Athletic Trainers;
- Chiropractors;
- Clinical Laboratory Personnel;
- Clinical Social Workers, Marriage and Family Counselors, and Mental Health Counselors;
- Dentists;
- Hearing Aid Specialists;
- Massage Therapists;
- Medical Doctors;
- Nurses;
- Nursing Home Administrators;
- Occupational Therapists;
- Opticians;
- Optometrists;
- Orthotists and Prosthetists;
- Osteopathic Doctors;
- Pharmacists;
- Physical Therapists;
- Podiatrists;
- Psychologists;
- Respiratory Care Practitioners;
- Speech-Language Pathologists and Audiologists;
- Dietetics and Nutrition Practitioners;
- Electrologists;
- Licensed Midwives;
- Physician Assistants;
- Certified Master Social Workers;
- Emergency Medical Technicians;
- Medical Physicists;
- Paramedics;
- Radiologic Technicians; and
- School Psychologists.

¹⁶ S. 456.001(4), F.S.; Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2018-2019*, 6, <http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/documents/annual-report-1819.pdf> (last visited on Nov. 26, 2019).

¹⁷ *Id.* at 7.

DOH Disciplinary Licensing Laws

In 2002, Florida passed a law allowing DOH to discipline a health care practitioner's license for defaulting on a government-backed student loan. The law was founded on the United States Department of Health and Human Services (USHHS) report that there were 9,454 health care practitioners in the nation who defaulted on their student loans, 556 of them being in Florida. Those loan defaults were costing taxpayers over \$694 million, of which \$45.6 million was attributable to Florida health care practitioners.¹⁸

Every month, DOH must obtain the List of Excluded Individuals and Entities (LEIE) by the USHHS and through DOE as it relates to Florida licensed health care practitioners.¹⁹ If an individual is on the LEIE, they cannot receive payment from federal healthcare programs for any items or services they furnish, order, or prescribe. Health practitioners and applicants may be placed on the LEIE for many reasons, including being convicted of Medicare or Medicaid fraud, and for defaulting on health education student loans.²⁰

DOH is required to deny or refuse to renew a license if an applicant or licensee is on the LEIE.²¹

Also, upon learning that a health care practitioner is on the list and has defaulted on a student loan, DOH must notify the practitioner that he or she has 45 days to provide DOH with proof of a new repayment plan, or such practitioner will be subject to an emergency order suspending the practitioner's license. DOH may proceed with additional disciplinary action against the practitioner, even if they provide proof of entering a new repayment plan.²²

Section 456.072(1)(k), F.S., provides that DOH may discipline a health care practitioner for failing to perform any statutory or legal obligation placed upon a health care practitioner, which specifically includes failing to repay a government-backed student loan or comply with a service scholarship obligation. If DOH finds that a health care practitioner has defaulted on his or her student loans or failed to comply with a service scholarship, at a minimum, DOH must:²³

- Suspend the practitioner's license until he or she agrees to new loan repayment terms or resumes the scholarship obligation;
- Place the practitioner on probation for the duration of the student loan or scholarship obligation period; and
- Impose a fine equal to 10 percent of the defaulted loan amount.

¹⁸ Ch. 2002-254, Laws of Fla.

¹⁹ S. 456.072(1), F.S.

²⁰ United States Department of Health and Human Services, Office of Inspector General, *Exclusions Program*, <https://oig.hhs.gov/exclusions/index.asp> (last visited Jan. 15, 2020).

²¹ S. 456.0635(2)(e), (3)(e), F.S.

²² S. 456.074(4), F.S.

²³ S. 456.072(1)(k), F.S.

During the 2017-2018 Fiscal Year, DOH handled 247 cases against health care practitioners for defaulting on student loans, and during the 2018-2019 Fiscal Year, DOH handled 722 cases:²⁴

Case Status	2017-18 FY	2018-19 FY
Mediated	88	332
Dismissed	27	75
Discipline Imposed	23	36
No Probable Cause Found	9	41
Licensee is No Longer Licensed	54	55
Licensee is Deceased	3	2
Still Open	43	160
Complaint Withdrawn by DOE	0	21
Total	247	722

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR), through several divisions, regulates and licenses various businesses and professionals in Florida. DBPR has authority over licensees under the following professional boards and programs:²⁵

- Board of Architecture and Interior Design;
- Board of Auctioneers;
- Barbers' Board;
- Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program;
- Mold-related services licensing program;
- Florida Board of Professional Engineers;
- Board of Accountancy;
- Florida Real Estate Commission; and
- Florida Real Estate Appraisal Board.

DBPR licenses and regulates each of the above professions in accordance with that profession's practice act, and ch. 455, F.S., which provides general regulatory and licensure authority for DBPR.²⁶

Section 455.227, F.S., provides that DBPR may discipline a licensee for failing to perform any statutory or legal obligation placed upon a licensee. However, 455.227, F.S., does not specifically state that DBPR may discipline a licensee for defaulting on a student loan. According to DBPR, they have never disciplined a licensee for defaulting on a student loan.²⁷

²⁴ Email from Gary Landry, Office of Legislative Planning, Department of Health, Student Loan information as promised (Oct. 30, 2019).

²⁵ S. 20.165, F.S.

²⁶ *Id.*

²⁷ Email from Colton Madill, Office of Legislative Affairs, Department of Business and Professional Regulation, RE: HB 115 (Oct. 30, 2019).

Department of Agriculture and Consumer Services

In addition to regulating agriculture in Florida, the Department of Agriculture and Consumer Services (DACS) protects consumers from unfair and deceptive business practices and provides consumer information.²⁸ DACS achieves this, in part, through licensing and registering various professionals, including:

- Professional Surveyors and Mappers;
- Private Investigative, Private Security, and Repossession Services;
- Health Studios;
- Telemarketing Services;
- Intrastate Movers and Brokers;
- Sellers of Liquefied Petroleum Gas;
- Pawnbrokers;
- Motor Vehicle Repair Shops; and
- Sellers of Travel.

DACS licenses and regulates each of the above professionals in accordance with that profession's practice act. According to DACS, they do not have authority to discipline a licensee for defaulting on student loans.²⁹

Department of Financial Services

The Department of Financial Services (DFS) is the state agency responsible for regulation and licensure of professions related to insurance, fire safety, and funeral and cemetery services.³⁰ According to DFS, they do not consider the status of student loans when issuing or regulating licenses, and do not believe they have statutory authority to deny or discipline a license for defaulting on a government issued student loan.³¹

Effect of the Bill

The bill prohibits any state authority from denying the issuance of, refusing to renew, suspending, or revoking a license that it issued to a person who is in default on or delinquent in the payment of his or her student loans based solely on such default or delinquency. The bill requires DOE to comply with this provision when making an effort to collect on student loans.

The bill, related only to health care practitioners does the following:

- Specifically states that failing to repay a government-backed student loan is not a basis for DOH finding that a health care practitioner has committed a punishable offense by failing to perform a statutory or legal obligation placed on the licensee;
- Repeals the authorization for DOH to discipline a health care practitioner for failing to comply with a scholarship obligation and the associated mandatory disciplinary action;
- Repeals the requirement that DOH issue an emergency order suspending a health care practitioner's license for a student loan default absent timely proof of a new repayment plan;
- Repeals the requirement that DOH obtain a monthly list from the USHHS of the Florida health care practitioners who have defaulted on their student loans; and
- Clarifies that DOH may issue or renew a license when a health practitioner is on the LEIE for a delinquency or default on a student loan.

²⁸ S. 20.14(2), F.S.

²⁹ Florida Department of Agriculture and Consumer Services, Agency Analysis of 2020 House Bill 115, p. 2 (Sept. 9, 2019).

³⁰ Chs. 497, 626, 633, and 648, F.S.

³¹ Email from Greg Thomas, Director of Insurance Agent & Agency Services, Department of Financial Services, Student Loan Default and DFS Agent and Agency Licensing, (Mar. 18, 2019).

The bill also provides definitions for the following terms as they relate to the prohibition on disciplining licenses for student loans defaults:

- “Default” means the failure to repay a student loan according to the terms agreed to in the promissory note.
- “Delinquency” means the failure to make a student loan payment when it is due.
- “License” means any professional license, certificate, registration, or permit granted by the applicable state authority.
- “State authority” means any department, board, or agency with the authority to grant a license to any person in this state.
- “Student loan” means a federal-guaranteed or state-guaranteed loan for the purposes of postsecondary education.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

A. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Health care practitioners will no longer be subject to suspension, revocation, or emergency suspension orders solely for defaulting on their student loans, which may allow them to obtain or maintain gainful employment.

C. FISCAL COMMENTS:

According to DOH, they will experience a recurring decrease in revenue due to the loss of the mandated 10% fine imposed on student loan default cases. However, DOH will experience a recurring reduction in workload and related costs due to fewer investigations and prosecutions. Additionally, the Compliance Management Unit will no longer have to track licensees on probation due to discipline imposed by a board.³²

³² Department of Health, Agency Analysis of 2020 House Bill 115, p. 4 (Oct. 11, 2019).