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## FISCAL IMPACT REPORT

SPONSOR: Fidel DATE TYPED: 03/04/03 HB \_\_\_\_\_

SHORT TITLE: Sanctions for Certain Unlicensed Persons SB 665/aSPAC

ANALYST: Geisler

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		Minimal	Minimal	Recurring	OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Regulation and Licensing Department (RLD)  
 Attorney General (AG)  
 Board of Medical Examiners (BMD)

### SUMMARY

#### Synopsis of SPAC Amendments

The Senate Public Affairs Committee amendments to SB 665 makes technical adjustments and add a section to require notice of contemplated board action and provide for request and notice of hearing.

#### Synopsis of Original Bill

SB665 proposes to amend the Uniform Licensing Act (ULA) to accomplish two things:

1. To bring unlicensed activity in any occupation or profession governed by the ULA under the jurisdiction of the appropriate licensing board.
2. To clarify when the two-year statute of limitations on administrative prosecutions under the ULA begins.

Significant Issues

1. RLD states the effort to bring unlicensed activity under the jurisdiction of the appropriate licensing board stems from long-standing frustration by licensing boards over the unwillingness, or inability, of local district attorneys and the Attorney General's Office to prosecute cases of unlicensed activity. Most licensing statutes make unlicensed activity a petty misdemeanor. This means that prosecution of such cases is a low priority in view of the other demands on prosecutors' time and resources. Professional and occupational licensing acts have traditionally limited their jurisdiction to administratively prosecute individuals for violations of licensing acts to persons holding licenses. This jurisdictional boundary, in combination with the limitations on criminal prosecutions, has meant that unlicensed practitioners practice with impunity. The AG believes the amendment proposed by this bill will correct an on-going problem.
2. The effort to clarify the two-year statute of limitations on administrative prosecutions stems from widely varying interpretations by the Attorney General's Office over when the statute begins running. Current law says a licensing board cannot initiate an administrative prosecution of an individual for violation of a professional or occupational licensing act more than two years after the discovery of the "culpable conduct" leading to an administrative prosecution. However, this language has been interpreted to mean two years from when the culpable conduct occurred, to two years after the aggrieved party discovers the conduct. The proposed amendment says the statute would begin when the board discovers the culpable conduct. This would presumably occur at the time an aggrieved party files a complaint with the board of jurisdiction, thereby making the board aware of the culpable conduct. The AG believes the proposed clarification of the statute in this bill is consistent with their legal advice in this area.

**FISCAL IMPLICATIONS**

The Board of Medical Examiners states SB 665 may result in an increase in the number of disciplinary actions taken by boards with a resulting increase in the costs of investigations and hearings. The bill includes language to allow boards to assess administrative costs, but it is hard to predict how successful boards may be in recovering money from unlicensed practitioners.

**TECHNICAL ISSUES**

The actual violations are of individual practice acts, not of the Uniform Licensing Act. An amendment is suggested to clarify the issue is the actual violation of the various practice acts, not the Uniform Licensing Act.

It has also been suggested that the maximum civil penalty of \$1,000 for unlicensed activity may cause confusion since some boards have penalties that are higher. A possible fix would be language that the penalty shall not exceed \$1,000 for each violation unless a greater amount is provided by law.

**AMENDMENTS**

On Page 3, lines 8 and 9, strike the comma after the word “board” and the words “who violates a provision of the Uniform Licensing Act,” so that paragraph A reads, “A person who is not licensed to engage in a profession or occupation regulated by a board, is subject to disciplinary proceedings by the board.”

On Page 3, line 16, strike the word “conduction” and insert in lieu thereof the word “conducting.”

GG/ls/njw