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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09

SPONSOR Giannini LAST UPDATED 2/20/09 HB 477/aHBIC

SHORT TITLE Occupational Therapy License Background Check SB \_\_\_\_\_

ANALYST Sanchez, C.

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)  
 Regulation and Licensing Department (RLD)  
 Commission on Higher Education (CHE)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business and Industry Committee's Amendment of HB477 (HB477a) includes the following:

- Page 1, line 21, replaces the word "may" with "shall", thereby requiring the Counseling and Therapy Practice Board to adopt rules that permit criminal background checks for licensees.
- Page 1, line 22, the word "new" is stricken from the bill, thereby regarding all licenses.

#### Synopsis of Original Bill

House Bill 477 amends the Counseling and Therapy Practice Act, NMSA 1978, §§ 61-9A-1 *et seq.* by adding a new section on criminal background checks. Under the new section, the Counseling and Therapy Board Practice Board ("Board") may adopt rules to require criminal background checks of all new applicants for licensure. Pursuant to this section, the Board may require applicants to be fingerprinted and it may allow the use of live fingerprint scans. The resulting background check record may be challenged by an applicant. The fee of this fingerprint and background check may not exceed \$75.00 and will be paid by the new applicant.

## **FISCAL IMPLICATIONS**

According to the AGO, denial of applicants for licensure based on the results of a criminal background check or fingerprinting card may lead to more referrals from the Board to the Attorney General for administrative prosecution, which may result in additional staff time dedicated to a few additional prosecutions a year.

## **SIGNIFICANT ISSUES**

According to RLD, the requirement of background checks is a public safety concern. Licensees in this profession frequently work in closed-door areas with vulnerable patients, including minors.

HB 477 will not alter the board's current adherence to the Criminal Offender Employment Act which allows applicants with a criminal conviction to receive a license as long as the offense was not of a violent nature, related to drug trafficking, or closely related to their profession.

The current requirement for disclosure of previous convictions does not adequately protect the public.

Background checks are currently required by the State Medical Board, the Gaming Control Board, the Accountancy Board, and the Private Investigations Advisory Board.

According to RLD, the legislature should add language to this bill that would allow Board to request criminal background checks for all new and current licensees.

## **PERFORMANCE IMPLICATIONS**

Enforcing the mandates of this legislation will require close cooperation between RLD, DPS, AGO and the FBI. Because RLD staff already implements background checks for the boards and commissions division, the process is in place and would not require additional staff to continue meeting the current performance measures.

## **ADMINISTRATIVE IMPLICATIONS**

Costs associated with this requirement will be covered by the applicant not to exceed \$75. The current cost is approximately \$30.

## **DUPLICATION,**

House Bill 477 is identical to House Bill 414 which amends the Occupational Therapy Act allowing for fingerprint and background checks of all applicants.

## **TECHNICAL ISSUES**

This bill requires background checks only for new licensees, and not for those seeking renewal of their license.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The board will not have statutory authority to conduct background checks and will continue to rely on the applicant to disclose criminal activity.

CS/mt:mc