

SUNRISE STUDY
ON THE PROPOSAL TO
ESTABLISH REGULATION OF
MARTIAL ARTS INSTRUCTION



The Honorable Jack N. Tobin, Chairman

The Honorable James Bush III, Vice-Chairman

By the Staff of the
Committee on Business and Professional Regulation
Lucretia Shaw Collins, Staff Director
November, 1994

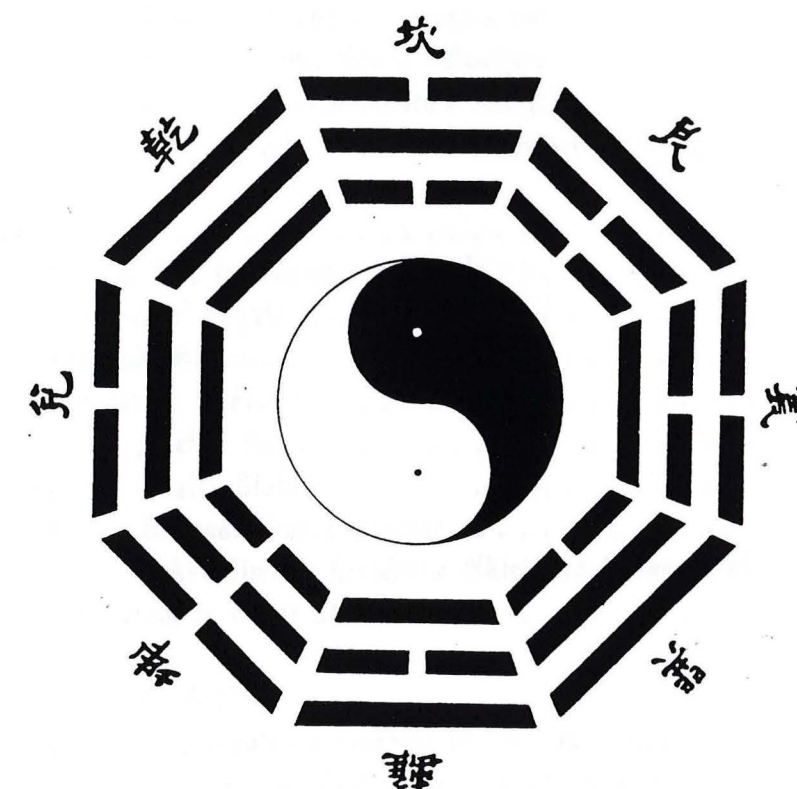
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As shown on the cover and title page, the Chinese Yin-Yang symbol surrounded by eight trigrams figuratively express nature and its changes. The Yin-Yang symbol, also called the "Double Fish" diagram, represents two opposites residing together. In the heart of Yin will always be found a small part of Yang, and vice versa. Within strength is found weakness; within hardness, softness; inactivity, activity. Inside the sleeping newborn babe there rests a strongly beating heart.



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I. Introduction

This report is a sunrise review relating to a proposal to initiate regulation of martial arts instructors and schools. Section 11.62, Florida Statutes, known as the "Sunrise Act," establishes a procedure for evaluating a proposal to initiate regulation of any occupation, trade, group, or profession.

The purpose of a sunrise review is to examine the unregulated practice of an activity to determine whether the absence of regulation poses a serious threat to the public's health, safety, and welfare. If regulation is deemed necessary to protect the public, the review must then determine the least intrusive, least costly, and lowest form of regulation which will accomplish the public protection purpose behind the regulation.

The Sunrise Act (s.11.62, Florida Statutes), specifically provides that it is the intent of the Legislature:

- 1) 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 that the police power of the state be exercised only to the extent necessary for that purpose; and
- 2) That no profession or occupation be 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.

Therefore, in order to recommend regulation at all, the research must conclude that significant and discernible harm will result from lack of regulation. Then, the level of regulation (mandatory licensure, registration, or voluntary certification) must be set at the lowest and least intrusive level that will accomplish the necessary public protection.

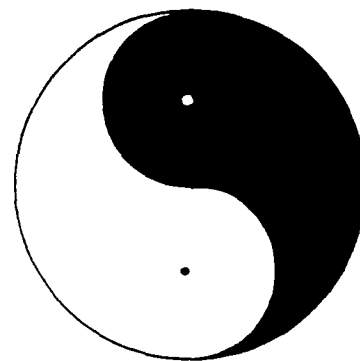
The Sunrise Act requires that the legislature consider four basic factors before determining that regulation is needed. Those factors are:

- 1) 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;

- 2) 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;
- 3) Whether the public is or can be effectively protected by other means; and
- 4) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

Subsequent to the 1994 Regular Session of the Florida Legislature, the Committee on Business and Professional Regulation received a request from several martial arts students to examine the question of whether regulation of martial arts instruction is needed. These students agreed to complete a Sunrise Questionnaire provided by the committee (Appendix A).

This questionnaire provides an information base and allows the proponents of regulation an opportunity to set forth a rationale for such regulation. Upon receipt of the completed questionnaire, committee staff engages in research to gather further information, and seeks to allow those who might oppose regulation an opportunity to provide information and argument in support of their position. Staff then examines whether the information gained and the arguments provided are sufficient to justify recommending regulation of martial arts instruction based on the above listed factors.



II. Executive Summary

Martial arts are practiced in dozens of styles, and in hundreds of variations among those "main" styles. Martial arts, as taught in the United States, primarily originates from three countries: Japan; Korea; and China. "Karate" (with its many variations) comes from Japan (although many assert that karate was brought to Japan from Okinawa). "Judo," "ju-jitsu," and "aikido" also originated from Japan. "Tae kwon do" and "hapkido" come from Korea. "Kung fu," in a myriad of styles such as "shoalin long fist," "wing chun," etc., come from China, as well as grappling or "joint locking" styles of martial arts such as "chin na."

All martial arts originally amounted to a "way of life," and included instruction and emphasis on such "moral" concerns as self-discipline, obedience, compassion, and the need not to fight at all, unless absolutely necessary. The majority of contemporary martial arts instruction retains these values, to a greater or lesser extent. However, some martial arts schools and instructors have essentially abandoned this moral instruction to focus on competitive values, or to focus solely on practical self defense concerns.

Staff estimates that there are approximately 600 martial arts schools throughout Florida, representing dozens of styles. There is no overall organization or authority for these disparate styles, although there is usually a particular certifying organization to which each school is a member.

Currently, in Florida there is no state, federal, or local regulation of the practice of martial arts instruction. Any complaints related to martial arts schools are handled by the Division of Consumer Services in the Department of Agriculture and Consumer Services. The division received 15 complaints relating to martial arts schools in the last three years. Most of these complaints related to contract disputes.

Florida does regulate several activities which have some similarity to martial arts or martial arts instruction (i.e., professional boxing [prizefights], including kickboxing). Florida also regulates health clubs/fitness centers and ballroom dance instruction. The health club and ballroom dance instruction regulation is almost entirely related to financial matters and contract provisions. As such, it is more in the nature of "consumer protection" regulation, rather than "professional" regulation.

The proposal offered by the proponents establishes a comprehensive system of regulation for both martial arts schools and instructors. The proposal relates to nine general areas:

- 1) Mandatory certification of instructors, with the certification authority remaining with the independent martial arts associations (which would be required to register with the state);

- 2) Mandatory background check for instructors;
- 3) Specific contract provision procedures for cancelling contracts and receiving reimbursement for instruction not received;
- 4) State mediation of student/instructor grievances if those grievances could not be resolved between the student and instructor;
- 5) Controls and restrictions on instructor-to-student discipline, particularly as relates to children;
- 6) Requirement that a certified instructor be present for all classes;
- 7) Tournament regulation;
- 8) Safety considerations during instruction; and
- 9) Disciplinary provisions.

The regulation proposed by the proponents is oriented toward licensing both schools and instructors, and toward involving itself in disputes between the student and instructor. Such regulation would require significant fees for the following reasons: inspectors would be needed to inspect the hundreds of schools; clerical personnel would be required to process and verify instructor applicants' claims of authenticity with regard to ranks and belt-issuing organizations; dozens of investigators and mediators would be needed to resolve disputes; and more investigators, as well as attorneys and administrative judges would be required to consider discipline in instances where mediation would not be effective.

On the other hand, regulation oriented solely to consumer protection to prevent consumers being held to long-term contracts for services they no longer want would involve only a registration fee for schools, and no licensure fee requirements for instructors. The registration fee could be set at a low amount, equal only to the cost of processing the registration.

After reviewing complaint data, and surveying some of the martial arts schools in Florida, this report concludes that the harm produced by the unregulated practice of martial arts is not discernible on a significant scale, and the sunrise criteria for recommending regulation is not met. Therefore, this report does not recommend professional regulation of martial arts instruction.

Additionally, even if some harm is judged to be present, it must be noted that the proponents' proposal would require "full" professional state regulation to an extent which no other state has established. More importantly, the regulation would require a huge and expensive regulatory infrastructure and bureaucracy. The fact that no

other state has established this sort of professional regulation is significant (though not necessarily determinative), and the cost and intrusiveness of full professional regulation in this area is a hugely important consideration.

The proponents' proposal would undoubtedly address what appears to be reasonable scenarios for possible harm. The question is, as expressed in section 11.62, Florida Statutes, whether the "potential for harm is recognizable and not remote."

The proponents' proposal would significantly enhance protection in a variety of ways. It is just that the sunrise criteria are not met and that the costs are huge and the intrusion is significant.

Regulation of contracts, with such regulation requiring schools to: (1) offer short term contracts as one of their options; and (2) allow students to break contracts for medical reasons or because they or the school have moved, would be beneficial and would provide some additional protection to consumers. Additionally, since it appears that most martial arts schools already offer short-term contracts, and allow students to break contracts for reasonable grounds, such regulation would not disrupt the conduct of these schools.

However, while this benefit is clear, there is not sufficient evidence to indicate that this problem is not currently being addressed by consumers simply being careful and "shopping around." Therefore, while the protection may be beneficial, the evidence does not indicate that such protection is needed or necessary.

Since there is insufficient evidence (only 15 complaints in three years) to suggest that a significant number of consumers are being harmed by being held to unreasonable contract payment conditions, it may be concluded that the great majority of consumers are exercising their available protections prior to signing the contract. Such protections include their ability to compare between various schools' contract options, and to read and understand the terms of the contracts they enter into.

A knowledgeable public, exercising reasonable, due caution in reading and considering the terms of the contract, is, by and large, protected by simply not entering into contracts whose duration is inappropriate for their level of commitment.

The report finds that the actual incidence of harm with regard to contract disputes does not appear to be significant and discernible. However, the report does find that the potential for consumer abuse is "recognizable and not remote."

Therefore, while this report does not recommend consumer protection regulation in the area of martial arts contracts at this time, nevertheless, should it be determined that the actual incidence of harm is greater than that discovered in the course of this review, contract regulation of martial arts instruction should be established.

That regulation should require schools to offer short term contracts to all beginning students, as an option. It should require schools to provide the student the ability to withdraw from class without further financial obligation for medical reasons or if the student or school should move away a specific minimum distance. It should require, similarly to the regulation of health clubs or dance studios, that any school which collects its contracts in a lump sum (rather than on a month-to-month basis) shall post a bond in an amount sufficient to reimburse those students, should the school cease to offer the services "as stated in the contract."



Bushido, the way of the samurai.

III. Government Regulation of Professions or Occupations: When Is It Needed?

A. Minimum Criteria for Proposing Regulation

The only legitimate justification for imposing regulation is to protect the public. A desire to produce heightened "professionalism," or an effort to assure a "higher quality of work" is not -- in the absence of showing a significant danger to the public by unregulated activity -- sufficient to justify regulation.

Nor is it sufficient in most cases to allude to "potential" dangers. It is reasonable to assume that any unregulated activity which is (allegedly) a danger to the public will have resulted in numerous and significant actual damages -- by virtue of its already having been practiced in its unregulated form for years. If groups promoting the proposed regulation are unable to demonstrate multiple instances of significant harm which has already occurred, the argument that government needs to impose regulation in order to prevent harm is substantially rebutted.

In addition, even if harm can be shown (and a problem is thereby concluded to exist), that alone is not enough to justify the regulation. It must also be shown that the proposed regulation will substantially remove the problem and prevent the harm. It is pointless to impose regulation as a response to a demonstrated problem unless it can be concluded that the regulation will have the effect of solving or significantly alleviating the problem.

Therefore, in order to even consider recommending regulation, two (2) essential elements must be established:

- (1) unregulated activity must be found to present a significant and clearly discernible danger to the public; and
- (2) the proposed regulation must be seen as likely to substantially remove the danger.

In other words, first a problem must be shown to exist, then it must be shown that the regulation will substantially correct the problem. If conclusive evidence for either of these propositions is lacking, the regulation should not be imposed.¹

B. Demand for Licensure

According to David Young,² there are two theories regarding the existence of licensing laws, their purpose, and who are the beneficiaries.

In the Public Interest theory of licensing, regulation is seen to be imposed for the benefit of the public. Presumably, such regulation is introduced due to public outcry or at the urging of consumers. This theory hypothesizes that by imposing regulation, a benevolent government purpose is at work, and that (according to Young): "regulators believe, rightly or wrongly, that efficiency or fairness -- or both -- will be enhanced."

Under this theory, the benefits of regulation center on the assertion that licensing provides the consumer information and protection not otherwise available. Licensure benefits consumers by providing assurance of minimum competency prior to the consumer selecting a practitioner, as well as providing an avenue (disciplinary hearings) to press grievances, should grievances develop.

¹ The New York State Bar Association, in its report: "New York State Regulatory Reform," indicates that even if the activity in question is an important one, regulation may not be needed. Their report states:

(The) rationale for licensing may be inapplicable where:

- 1) customers are sophisticated and knowledgeable;
- 2) the providers are selected through skilled intermediaries competent to make their own judgments, such as public or private agencies, boards or supervisors;
- 3) competence itself is elusive because the factors relevant to good performance are controversial, hard to define, and incapable of precise workable definition;
- 4) the number or sources of the service are so large that state efforts to assure quality will be likely to be nugatory -- for example where a multitude of publications, advertisements and personnel of every kind tell the public what is the best diet, how to lose weight, or how best to invest money;
- 5) where fraud or unethical behavior rather than incompetence is the key problem, and ordinary legal processes may be far more effective than licensing in curbing abuses and less likely to shield malefactors.

² Young, David, The Rule of Experts: Occupational Licensing in America, Cato Institute, 1987.

The second theory of the purpose and benefits of licensing, is the Capture³ theory of licensing. This theory suggests that professional groups ask for and use the government regulation for their own economic advantage. As Mr Young explains:

In effect, they capture the regulatory apparatus and use it to restrain competition and raise income.

In this view, regulation's true purpose and effect is anti-competitive rather than benevolent. This theory contends that the primary purpose of licensure is to benefit the licensed professionals themselves. Naturally, under this theory, the professional groups do not admit (perhaps not even to themselves) their true purpose, and instead cloak it with pronouncements of their desire "to protect the public." Still, it is certainly possible that the professionals' efforts to establish licensure could actually evidence a genuine concern for the public -- and the fact that they would derive substantial benefits from reducing competition, and would receive more money for their services, is only a coincidence.

Additional argument in support of the "capture" theory is supplied by Walter Gellhorn in his article "The Abuse of Occupational Licensing."⁴ He points out that licensing has only infrequently been imposed upon an occupation against its wishes.⁵ According to Gellhorn:

In many more instances, licensing has been eagerly sought -- always on the purported ground that licensure protects the uninformed public against incompetence or dishonesty, but invariably with the consequence that members become protected against competition from newcomers.

Proponents of the "Capture" theory point out that licensing limits the number of people who may engage in the regulated activity.⁶ An economic principle generally known as the "Law of Supply and Demand" predicts that (other things being equal) any limitation imposed upon the supply of goods or services inevitably results in a higher cost for those goods or services. Therefore, regulation (to the extent it can be

³ This theory was first advanced by the economist George Stigler in his article "The Theory of Economic Regulation," Bell Journal of Economics and Management Science, Spring, 1971

⁴ The University of Chicago Law Review, 1976

⁵ He notes one example of the rare instance of unwelcome and unsolicited licensure imposition would be federal regulation of stockbrokers imposed in response to the financial scandals of 1929.

⁶ In "The Effectiveness of Licensing: History, Evidence, and Recommendations," Law and Human Behavior, Vol. 7, 1983, Daniel Hogan states: "While little research exists on this point, the influence of licensing seems obvious, especially since its explicit purpose is to limit supply to those deemed qualified to practice."

counted upon to restrict the number of practitioners)⁷ will consistently have the effect of raising (either immediately or eventually) the costs of the regulated goods or services.

Thomas Moore of the Carnegie Institute of Technology conducted a survey of regulated occupations and businesses which indicated:

[T]he least restrictive types of regulations were imposed for the public welfare while the most restrictive types appear to have been established to benefit practitioners of the regulated occupations and businesses.⁸

(emphasis added)

(In Moore's analysis, "least restrictive" refers to voluntary certification or registration without entry requirements, and "most restrictive" refers to mandatory licensing.)

Moore goes on to state that establishing restrictions of entry primarily:

benefits the practitioners who are in the industry at the time the restrictions are imposed. The more restrictive the regulations, the more practitioners will benefit.

Regarding the economic effects of licensure, he later adds:

The higher entry standards imposed by licensing laws reduce the supply of professional services, causing the market to clear at a higher price. In effect, then, the costs of the higher standards are distributed throughout the state in the form of higher prices. Affluent consumers who can afford these higher prices are better off, because the higher standards provide them with more confidence in the quality of the services they purchase. Poor consumers, however, do not benefit, because they cannot afford the higher prices. The poor are net losers, because the availability of low-cost service has been reduced.

(emphasis added)

⁷ According to Hogan ("The Effectiveness of Licensing: History, Evidence, and Recommendations," Law and Human Behavior, Vol. 7, 1983), the researchers Carrol and Gaston, in their report to the National Science Foundation titled: Occupational Licensing, studied eight professions and found that "restrictive licensing significantly lowered the number of people licensed..."

⁸ Moore, Thomas, "The Purpose of Licensing," Journal of Law and Economics, October 1961.

In his book, The Rise and Decline of Nations, Mancur Olson of the University of Maryland described how this self-protective process works. As described by James Fallows in More Like Us (1989), Olson's theory states:

Any society is more productive if every group in the society is exposed to competition -- but each group is better off if it's not. American quotas on imported sugar hurt America but help its sugar growers. Japanese laws forbidding chain stores hurt Japan but help its small shopkeepers.

Sometimes, Olson said, small groups can shield themselves from competition on their own, through private, informal, or even cultural means. According to Olson, (as described by Fallows):

Big steelmakers can tacitly agree to raise their prices all at the same time. The caste system in India is a form of private action against competition, since it excludes most people from certain jobs. Prejudice against minority groups has the same effect.

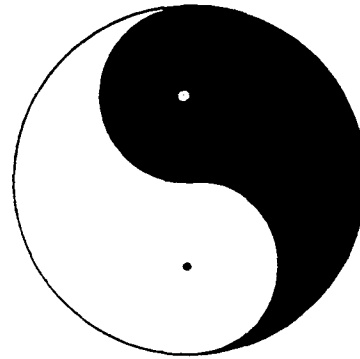
But, Olson said, these private steps are always more effective if they are backed up with government action (mandatory licensure).

It nevertheless remains that even if one accepts the "Capture" theory as being the dominant motive force, regulation may still serve a valid, justified, and even necessary purpose -- protecting the public. So, with certain professions, the government has determined that the genuine and demonstrated potential for harm in unregulated activity is so great, and the potential for alleviating the harm by instituting regulation so clear, that the costs of regulation should be borne.

Unfortunately, even in the instances where the proposal for regulation is thereby properly justified, some research indicates that the regulation -- once enacted -- cannot always be counted upon to actually deliver its anticipated benefit. Several studies indicate that even though licensure may raise the quality of services delivered by licensees, it may not actually raise the quality of services received by the public. According to Sidney L. Carroll and Robert J. Gaston⁹

⁹ "Occupational Licensing and the Quality of Service," Law and Human Behavior, Vol. 1, 1983.

The evidence available indicates that licensing tends to enhance the capabilities of the licensed professionals, resulting in better delivered quality.¹⁰ Often, however, this is not reflected in better quality received in the society as a whole. It is the lower middle income classes and poor... who tend to be shortchanged and offered low quality or no service at all.



¹⁰ A Federal Trade Commission study (Phelan, J.J., "Regulation of the Television Repair Industry in Louisiana and California: A Case Study," Staff Report to the FTC, 1974) disagrees even on the point that the more restrictive licensure scheme can be expected to produce more professional service. He examined the cost of TV repairs in 1) Louisiana, which licenses TV repairmen; 2) California, which merely registers TV repairmen; and 3) Washington, D.C., which has no regulations. The study found the incidence of fraud more frequent and prices 20 percent higher in Louisiana than in either of the other jurisdictions.

Because licensure tends to raise the costs of licensed goods or services,¹¹ as well as to reduce the number of practitioners available, it appears many consumers choose injurious self-treatment or go without help altogether.¹² Carroll and Gaston¹³ have found that states with strict laws regulating plumbers have more people doing their own plumbing (as measured by per-capita retail sales of plumbing supplies). Where entry requirements for real estate brokers are strict, they found that houses tended to stay on the market longer.

¹¹ Carrol and Gaston state: "To our knowledge, theory has not been disconfirmed by evidence, and licensing has been shown repeatedly to have an upward price effect" (emphasis added). Carrol and Gaston cite numerous studies in support of this:

Arnould, R.J. and Friedland, T.S. "The Effect of Fee Schedules on the Legal Services Industry," The Journal of Human Resources, 1977;

Blair, R.D. and Rubin, S. Regulating the Professions, 1980;

Begun, J.W. Professionalism and the Public Interest, 1981;

Shepard, Lawrence, "Licensing Restrictions and the Cost of Dental Care," Journal of Law and Economics, 1978;

Perloff, J.M. "The impact of Licensing Laws on Wage Changes in the Construction Industry," Journal of Law and Economics, 1980;

White, W.D. "The Impact of Occupational Licensure of Clinical Laboratory Personnel," Journal of Human Resources, 1978;

White, W.D. "Dynamic Elements of Regulation: The Case of Occupational Licensure," Research in Law and Economics;

Pashigan, B.P. "Occupational Licensing and the Interstate Mobility of Professionals," The Journal of Law and Economics, 1979;

¹² In "New York State Regulatory Reform," by the New York State Bar, the report states:

As a result of higher costs, those who cannot afford officially-approved services may do without any service at all, or have to resort to an unofficial underground network affording less protection than would have existed without the licensing laws. For example, if local religious or community organizations cannot afford to meet day-care requirements, children otherwise given good, but less than ideally required, care may get none at all, be left on the street or alone at home, or be left to the tender mercies of less honorable borderline operators.

¹³ Carroll, S.L. and Gaston, R.J. Occupational Licensing. (Final Report to the National Science Foundation, 1977.

Most incredibly, Carrol and Gaston discovered that accidental electrocutions are directly related to the restrictiveness of a state's licensing laws for electricians. In the seven most restrictive states, up to ten times more accidental electrocutions occurred.¹⁴

This perverse effect upon carefully calculated and well intended regulations may be ignored only at great peril by regulators considering adopting licensure requirements.

Finally, according to David Young, when considering a proposal to initiate regulation of a previously unregulated profession:

It is the policymaker's job to sift through arguments based on self-interest to discover the valid arguments affecting the interest of consumers.¹⁵

C. An Historical Perspective

In our current regulatory society, it appears that the idea that the individual knows what is best for himself has given way to the concept that it is society which can best judge. The belief that the consumer is not capable of evaluating the ability of a prospective professional employee, and then determining for himself the qualifications necessary for the job, is not new. However, a society so fully accepting this idea, and adopting it as government policy, is a relatively recent development.

In fact, the very idea of licensed occupations -- the practice of law, accounting, optometry, psychiatry -- is now accepted so unquestioningly that it is startling to realize how recent it is.¹⁶

According to James Fallows,¹⁷ practitioners of almost every occupation now thought of as a profession organized themselves around the time of the Civil War.

¹⁴ "How Licensing Hurts Consumers," Business Week, November 28, 1977, pg. 127-129.

¹⁵ Young, David, The Rule of Experts: Occupational Licensing in America, Cato Institute, 1987.

¹⁶ According to David Young, the early licensing movement met with considerable resistance. In the 1830's and 1840's, when the Jeffersonian/Jacksonian philosophy of laissez-faire was at its zenith, many consumers opposed state regulation. Also, according to David Hogan, the prevailing philosophy of the Jacksonian democracy emphasized minority groups, the underprivileged, the poor and the needy. It advocated a policy that allowed citizens maximum freedom of choice, and considered that a free and responsible society needed only the doctrine of "caveat emptor" (let the buyer beware) as public protection.

¹⁷ Fallows, James, More Like Us, 1989.

Dentists, in 1840, were the first. Medical doctors banded together soon after, in 1847.¹⁸ A generation later, dozens of other groups had become licensed professionals: architects, accountants, lawyers, chemical engineers, and many more.

According to David Young,¹⁹ before World War I, not a single state required its lawyers to have attended (let alone have finished) law school; and the American Bar Association asked only that prospective lawyers have finished high school before they took the bar exam.

It is worth noting that the practice of law in England never went through this shift. According to Young:

There, law school is an alternative to college, not a course for college graduates only -- and in any event a degree is not strictly required for solicitors and barristers. It's hard to find evidence that the average standard of practice in America is higher than in England.

According to R.H. Shryock,²⁰ between 1911 and 1915 alone, 110 state or local statutes licensing 24 occupations were enacted. In medicine, licensing became mandatory in every state by 1900, and 22 states required both medical school diploma and successful passage of an exam.

Today, another surge of licensing laws has occurred. As of 1950, 73 occupations were licensed in one or more states, with 13 licensed in every state.²¹ The passage of legislation has been so rapid since 1950 that 20 years later the health field alone licensed 30 different occupations, with 12 regulated in all states. According to a Department of Labor study,²² almost 5000 different licenses, covering more than 500 different occupations, were available in one state or another by 1969. At that time, California and Illinois were the leading regulators, licensing more than 175 occupations each.

¹⁸ According to Daniel Hogan, in "The Effectiveness of Licensing: History, Evidence, and Recommendations," Law and Human Behavior, vol. 7, 1983, sporadic regulatory efforts in the field of medicine had been going on since 1639 (in Virginia), but by the mid-19th century: "the practice of medicine was open to virtually anyone who desired to hang out a shingle."

¹⁹ Young, David, The Rule of Experts: Occupational Licensing in America, Cato Institute, 1987.

²⁰ Shryock, R.H., Medical Licensing in America, 1650-1965, 1967

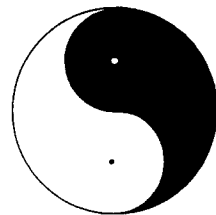
²¹ Council of State Governments, Occupational Licensing Legislation in the States: A Study of State Legislation Licensing the Practice of Professions and Other Occupations, 1952

²² U.S. Department of Labor, Occupational Licensing and the Supply of Nonprofessional Manpower, 1969

According to a 1990 study,²³ the number of different licensure categories has more than doubled, with over 1000 different occupations, trades, or professions being licensed.

Needless to say, the impact of licensing on the economy is substantial. As of 1976, licensing laws were estimated to affect directly a third to a fifth of the work force²⁴. According to the Department of Labor, 25% of the employed labor force in some states is composed of licensed practitioners²⁵, and as of 1969, roughly 10% of the national income of the United States originated in occupationally licensed labor markets.²⁶

An astonishingly wide variety of "professional" practice is licensed in one state or another. The following sampling from a Department of Labor study illustrates the unexpected range of professions: aerial horse hunters, athletic exhibition agents, alligator hunters, astrologers, bedding cleaners, ice cream buyers, cactus plant agents, rainmakers, and photographers.



²³ Occupational and Professional Regulation in the States: A Comprehensive Compilation, The National Clearinghouse on Licensure Enforcement, and Regulation (CLEAR), 1990

²⁴ "Pressure Builds to Improve Occupational Licensing by States," Behavior Today, August 23, 1976.

²⁵ "How Licensing Hurts Consumers," Business Week, November 28, 1977.

²⁶ Carroll, S.L. and Gaston, R.J., Occupational Licensing, (Final Report to the National Science Foundation, 1977

D. Mandatory Licensure, Registration, or Certification?

1. The Three Types of Regulation

If it is determined that regulation is necessary and justified, there is still the question of what sort of regulation should be imposed. Regulation can take any one of three forms:

- 1) Licensure (mandatory) -- This is a "practice act" form of regulation. Anyone wishing to practice the regulated activity must become licensed. Licensure also usually entails entrance requirements consisting of education, experience, or examination (or any combination thereof).
- 2) Registration (mandatory) -- This is also a "practice act" form of regulation, requiring anyone wishing to practice the regulated activity to become registered. It differs from (mandatory) licensure in that no (or only an absolute minimum of) entrance requirements are imposed, other than payment of a fee and provision of certain information. Sometimes a minimalist requirement such as provision of insurance or assurance of no criminal history is imposed, but education, experience, or examination requirements are generally not part of the regulatory scheme. If those sorts of entrance requirements are imposed, the regulation becomes, in effect, mandatory licensure.
- 3) Certification (voluntary) -- Certification is voluntary. That is, persons who are not certified may engage in the very same activity (practice) as someone who is certified -- however, they may not refer to themselves as certified (or refer to themselves by any other term which has been held as deceiving the public as to their qualifications or lack thereof). Certification usually imposes entrance requirements similar to licensure - education, experience, and testing. This is what has been termed a "title act." A title act is a form of regulation which only restricts the use of a title, rather than prohibiting the practice of an activity.

Mandatory licensure is the most restrictive of the three, because it provides significant entry requirements prior to licensure, and prohibits the practice of the activity except for those who obtain licensure. Registration is the next most restrictive because it prohibits the practice of the activity except for those who obtain registration, but does not impose significant entry requirements. Certification is the least restrictive because those who are not certified may still continue to practice the activity.

According to David Young, in 1989, 490 different occupations were licensed in one state or another, 643 different occupations were registered in one state or another, and 65 different occupations were certified in one state or another.

The "Sunrise Act" (section 11.62, Florida Statutes) provides guidance for determining which form of regulation to recommend or impose. The Sunrise Act requires that when regulation is imposed, it must be imposed at the lowest and least intrusive level which will serve the purpose.²⁷

It is therefore necessary to return to the question of what specific purpose regulation serves, in order to determine what is the lowest form of regulation which will serve that intended purpose.

2. Specific Purposes of Regulation

a. David Young's Analysis

According to David Young (and as previously discussed), under the "public interest" theory of regulation the purpose is either to: (1) provide information not otherwise available; or (2) provide consumer protection, i.e. complaint investigation and discipline; or both.

Wesley C. Mitchell, in The Backward Art of Spending Money, states that consumers do not have the knowledge necessary to make a "wise" decision when buying the complicated goods and service offered for sale today. This amounts to an argument that the purpose of regulation is to remedy a lack of information.

Licensing, argues Mitchell, increases information by establishing minimum standards for entrants. In effect, all practitioners must meet certain minimum qualifications, for no unlicensed practitioners are permitted. The consumer therefore knows that practitioners of the licensed occupation possess a given degree of competence.

²⁷ The Sunrise Act states:

It is the intent of the Legislature:

- (a) 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 that the police power of the state be exercised only to the extent necessary for that purpose; and
- (b) That no profession or occupation be 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 occupations services to the public.

However, this argument, particularly if used to support the choice of mandatory licensure, has at least two problems. The first problem is the assumption that this information is not otherwise available. It is, after all, not impossible for a consumer to gather the information necessary to protect himself. According to David Young, a consumer can acquire this information in several ways:

- 1) By frequently purchasing the goods or services;
- 2) By drawing on the experience of friends, relatives and neighbors;
- 3) By inferences drawn from the length of life of firms offering goods or services for sale;
- 4) From the sellers themselves, who have market incentives to provide consumers information on quality, often in the form of warranties.

However, it must be said that while these avenues for obtaining information exist, they have significant gaps and shortcomings. In a mobile society, citizens are often new to a community, and the first three avenues cited above for obtaining information would not be readily available. If information provision serves a critical need, regulation performs this service better than leaving people to their own devices.

Nevertheless, a second problem exists in attempting to establish the "lack of information" argument in support of mandatory licensure. A system of certification would furnish at least as much information as licensing. Under a certification arrangement, those practitioners who desire to be certified and who could meet certain standards (usually including the passing of an examination) would be given a certificate of approval. A system of regulation employing voluntary certification completely satisfies the purpose of information provision. However, it leaves it up to the consumer to choose whether he would prefer to employ an uncertified practitioner (perhaps at a lower cost) whom he personally believes to be competent despite his not having formally "proved" his competency to the state. As the economist Milton Friedman writes:²⁸

The usual arguments for licensure, and in particular the paternalistic arguments for licensure, are satisfied almost entirely by certification alone. If the argument is that we are too ignorant to judge good practitioners, all that is needed is to make the relevant information available. If, in full knowledge, we still want to go to someone who is uncertified, that is our business.

²⁸ Friedman, Milton, Capitalism and Freedom, 1962

So, even if lack of information were to be accepted as a sufficient and justifiable argument for regulation, certification would still be preferable to mandatory licensure because it would provide the same benefit at a lower and less intrusive level.

If the "lack of information" argument provides insufficient support for mandatory licensure, perhaps the argument could be advanced that the other part of Young's theory -- consumer protection (in the form of complaint processing and discipline provision) -- is the more important motive force which justifies regulation.²⁹

This "complaint/discipline provision" argument essentially maintains that where lack of competence or fraudulent activity would threaten the public, regulation serves to protect the public by assuring competency and preventing fraud.

The effectiveness of regulation in assuring competency is dependent upon the specific provisions which establish education, experience, or examination requirements (and the extent to which these specific requirements actually serve to assure competency). These provisions vary from practice act to practice act. One look at the many instances in which licensed individuals (who have, after all, complied with education, experience and testing requirements) have nevertheless performed substandard or incompetent work, and it is clear that such requirements do not assure protection. However, it can be argued that without these requirements, incompetent activity would be even greater.

The effectiveness of regulation in protecting against fraud has been called into question as recently as 1982, in New York. In 1982, the New York State Bar Association issued a report entitled "New York State Regulatory Reform." The report declared:

As an anti-fraud measure, licensing is frequently ineffective... If unscrupulous characters are prepared to risk criminal penalties, the additional sanctions for failure to obtain a license can hardly be a meaningful deterrent. Indeed, it is often even harder to prosecute a malefactor for fraud if the party is licensed, because of an assumption that the person is honest or else the license would have been revoked.

The presence of a license often gives the client a false sense of security where the State cannot insure that a licensed person or agency will act honestly -- merely that paper criteria are met.

Indeed, licensing often gives an imprimatur of competence to the licensee which encourages reliance by the public where this may be unjustified.

²⁹ This argument will hereafter be referred to as the "complaint/discipline provision" argument.

Still, while regulation may not prevent licensees from committing fraud or a criminal act, so long as disciplinary avenues are available and effectively prosecuted, regulation (in the form of license or registration revocation) should prevent the licensee from repeatedly victimizing the consumer.

Nevertheless, it appears that whatever its merits in justifying some form of regulation,³⁰ the "complaint/discipline provision" argument cannot be established as support for mandatory licensure. For, just as certification satisfies the "lack of information" argument, but at a lower and less intrusive level, registration satisfies the "complaint/discipline provision" argument, but at a lower and less intrusive level. Registration does not preclude a full complaint-processing, discipline-providing support system. Registration serves to allow anyone who wishes to practice, but will still "weed out" those who are found to be incompetent or unscrupulous.

If the "lack of information" argument cannot justify mandatory licensure (because certification is preferable), and the "complaint/discipline provision" argument cannot justify mandatory licensure (because registration is preferable), what can justify mandatory licensure?

b. Thomas Moore's Analysis

It may be necessary to consider another analyst's theory of regulatory justification. According to the economist, Thomas G. Moore, three rationales based on public interest arguments may be advanced as to why certain occupations should be licensed:

- 1) Lack of information or misinformation,
- 2) Social costs of lack of regulation being higher than private costs, and
- 3) Society's knowing better than the individual what is best for the individual.

We have already considered the merits of "lack of information" as regarding its ability to serve as support for mandatory licensure. "Lack of information" does not, by itself, support mandatory licensure.

³⁰ It should be emphasized that the natural operation of the marketplace serves to eliminate incompetent or unscrupulous practitioners through the information dissemination avenues discussed above, avenues which are available to consumers in the absence of regulation. To the extent that the marketplace functions adequately in this area, complaint processing and discipline may be seen as relatively superfluous.

Moore's second rationale holds that licensing may sometimes be necessary when social costs are greater than private costs. Social costs comprise all the costs or risks which arise from a transaction. Private costs are those costs which are borne only by the parties to the transaction. According to Moore:

The medical profession is often cited as a case where social costs are greater than private costs. It is usually said that "incompetent" physicians may diagnose a disease incorrectly and thus start an epidemic. Only in the case of a few occupations, such as physicians, veterinarians, and pharmacists, is it possible to argue that social costs are greater than private costs. For a great many of the occupations that are licensed, it is unlikely that social costs are larger than private costs.

It may be that Moore should add some other professions to his list. In the construction field, for example, the potential sometimes exists for great public harm (e.g. collapse of a public building) resulting from incompetent work.³¹ It may be legitimate in the construction field to view social costs (and concerns) as eclipsing private costs in some instances.

Finally, Moore considers the argument that society is a better judge than the individual concerning what is good for him. Moore states that this "is the only argument that is both logically consistent and statistically significant." In other words, while this argument may not often be overtly advanced as justification for licensure, it is the only explanation which logically explains the widespread public reliance upon, and legislative enactment of, licensing laws. However, Moore goes on to state:

This approach raises great philosophical problems. If the individual is not the best judge of what is best for him, then what is best and who is to decide? According to this approach, all activity can and should be regulated by the body that does know what is best for the individual.

So, with Moore's analysis, once we determine that regulation is necessary, and seek justification of mandatory licensure, we are left with:

- 1) A discredited argument ("lack of information"),
- 2) An argument of only narrow and rare application (public harm as a compelling expectation), and

³¹ It should be noted that the same does not hold true for fraud. The damages or costs for fraud are basically limited to the parties to the transaction, and no case appears to be available alleging "public harm" as a result of fraud.

- 3) An argument which has great philosophical problems in a society which is not comfortable with government telling individuals what is best for them.

c. What Justifies Mandatory Licensure?

While it is clear (both from this analysis and from the plain language of the Sunrise Act) that certification and registration are to be preferred over mandatory licensure, there may still be times when mandatory licensure is justified. Under Moore's analysis, mandatory licensure is justified:

- 1) If it is determined that significant public harm can be expected to occur if the privately-arranged unregulated practice were to continue, mandatory licensure can be justified (Moore's rationale #2); or
- 2) If it is determined that we -- as a society -- cannot trust the members of our society to make decisions regarding what is best for them, mandatory licensure can be justified (Moore's rationale #3).

A third situation, not examined or discussed by Moore, but implicit in Young's analysis, can also support mandatory licensure. If both of the elements of Young's argument in support of "public interest" licensing were established, that is, if there was a compelling need for information (which certification by itself could provide), and a compelling need for complaint processing and discipline (which registration by itself could provide) -- then mandatory licensure could be recommended.

It is important to understand that both elements must be established in order to recommend mandatory licensure. The need for provision of information (on competency) must be compelling and the need for the government (as opposed to the marketplace) stepping in and eliminating below-standard practitioners must be equally compelling. This scenario serves to justify mandatory licensure because in such an instance, neither certification nor registration singly provide the benefits or fulfill the needs. Their benefits must be combined to achieve the purpose. And, when the attributes of certification and registration are combined, you have: mandatory licensure.

IV. Findings

A. Martial Arts Instruction in Florida

Martial arts are practiced in dozens of styles, and in hundreds of variations among those "main" styles. Martial arts, as taught in the United States, primarily originates from three countries: Japan; Korea; and China. "Karate" (with its many variations) comes from Japan (although many assert that karate was brought to Japan from Okinawa). "Judo," "ju-jitsu," and "aikido" also originated from Japan. "Tae kwon do" and "hapkido" come from Korea. "Kung fu," in a myriad of styles such as "shoalin long fist," "wing chun," etc., come from China, as well as grappling styles of martial arts such as "chin na."

Martial arts styles also originated in Viet Nam, Thailand, the Phillipines, India, Brazil, and many other countries. In addition, several styles of "American" karate, such as Ed Parker's "American Kenpo," have been developed in this country over the last 20 years. Also, some styles have been developed in this country, yet would probably not be termed "American" styles, such as Bruce Lee's Jeet Kune Do. Finally, there are schools and classes which are "eclectic" or "generic" and which teach practical self-defense techniques unrelated to any particular martial art.

All martial arts originally amounted to a "way of life," and included instruction and emphasis on such "moral" concerns as self-discipline, obedience, compassion, and the need not to fight at all, unless absolutely necessary. The majority of contemporary martial arts instruction retains these values, to a greater or lesser extent. However, some martial arts schools and instructors have essentially abandoned this moral instruction to focus on competitive values, or to focus solely on practical self defense concerns.

With most martial arts, a "belt" designates the level of advancement of a student. Belts come in a variety of colors (white, yellow, purple, green, brown, black, etc.) and degrees (first degree up to as high as ninth degree). These colors indicate the level of advancement, with "black" being the highest level. Once a black belt has been achieved, further advancement is indicated by attaching a "degree" designation to the belt, with first degree being the lowest, and ninth degree usually being the highest.

Each school, and its "parent" organization, where it exists, determines what belts it will issue, and under what conditions. Some schools are very informal and issue a minimum of belts, or no belts at all. Some schools are highly organized, engage in regular competitive tournaments, and emphasize the awarding of belts.

Several martial artists have gone so far as to suggest that martial arts may be divided into two broad schools of thought: those who practice it as a sport; and those who practice it as "budo" (literally: martial art). According to this thinking, those

martial artists who participate in competitions and emphasize belt-awarding "practice martial arts as a sport." While those who do not engage in competitions or award trophies and who de-emphasize the awarding of belts are practicing their martial art as "budo." "Aikido," in particular (this is the martial art which the current motion picture celebrity Steven Seagal practices), appears to exist entirely as "budo," since there are no aikido tournaments, and many practitioners de-emphasize the awarding of belts.

It may be, however, that those who practice martial arts seriously, yet who engage in competitive tournaments, may assert that they, too, practice martial arts as "budo," and have merely "overlaid" their practice of budo with an additional aspect of competition. Nevertheless, the distinction is probably valid, so long as the designation of some martial arts being "for the purpose of sport" is not seen as pejorative.

There is no overall organization or authority for these disparate styles, although there is often a particular certifying organization to which each school is a member. Staff has been assured by several sources that the difference of opinion among these various types of martial arts as to what is "correct" -- or even preferred -- is overwhelming and adamant. Disagreement exists to such a degree that it rises to the level of disdain in many cases. Cooperation and interaction between the styles essentially does not exist, with the exception of some "open" tournament competitions.

B. Proponents' Regulatory Proposal

During the interim following the 1994 Regular Session of the Florida Legislature, the Business and Professional Regulation Committee received a request from several martial arts students asking the Legislature to study the issue of regulation of martial arts instruction. These students (hereafter known as "the proponents") were sent and completed the Sunrise questionnaire provided by this committee. The Sunrise Questionnaire is designed to provide staff a basic information base, and also to afford the proponents an opportunity to provide the rationale for their proposal.

The initial input from the proponents centered on their general dissatisfaction with a specific instructor's attitude in dealing with his students and his decisions in recommending certain students for eligibility for promotion to a higher belt ranking. The proponents indicated they had sought mediation in this dispute from the association to which their school belonged. According to the association, their officials talked with the instructor as well as the students, and in the end, basically agreed with the instructor.

As explained to committee staff, the association officials felt that the issue was essentially a personality conflict. They pointed out that martial arts instruction is by nature and tradition rather autocratic. That is, they indicated that obedience and

relatively uncritical acceptance of the teaching and dictates of the instructor is -- and always has been -- integral to the very nature of martial arts instruction. They stated that any student who questions their instructor's decision or instruction is often seen as questioning their authority, and will inevitably risk friction with, or even alienation from, that instructor. They contended that the situation is similar to what one would expect if a football, baseball, or basketball player were to question his coach's instructions or decisions. They basically suggested that if the student is dissatisfied with the attitude, behavior, or competence of the school's instructor, the simple solution is to seek instruction elsewhere.

The proponents' reply indicated that they accepted the autocratic nature of martial arts instruction, but that they nevertheless felt that the unregulated practice of the instruction lent itself to a great potential for abuse and arbitrary action on the part of the instructor. The proponents further contended that in the event of a personality conflict, the student was at a distinct disadvantage. Under normal circumstances, any student who might be asked to leave or who might wish to leave would incur significant financial loss in doing so.

This financial loss would come about because, according to the proponents, the student is generally obligated -- by contract -- to pay for the remaining instruction even if the student ceases attending class. These contracts are usually for one year, and are sometimes for two or three years. Abrogating a contract can cost the student \$1,500 to \$3,000. Some schools even take payment for the entire multi-year payment in a lump sum before any instruction is provided.

Despite the rather narrow focus of the initial complaint, the proposal offered by the proponents recommended a comprehensive system of regulation for martial arts schools and instructors. Additionally, in phone conversations with staff, the proponents indicated that their primary motivation in recommending regulation does not relate to their personal complaints, or to money or contract problems or considerations. The proponents maintain that their actual concern derives from their view that persons who instruct children need to be held accountable, and that safety considerations should be of paramount importance.

The proposal relates to nine general areas:

- 1) Mandatory certification of instructors, with the certification authority remaining with the independent martial arts associations (which would be required to register with the state);
- 2) Mandatory background check for instructors;
- 3) Specific contract provision procedures for cancelling contracts and receiving reimbursement for instruction not received;

- 4) State mediation of student/instructor grievances if those grievances could not be resolved between the student and instructor;
- 5) Controls and restrictions on instructor-to-student discipline, particularly as relates to children;
- 6) Requirement that a certified instructor be present for all classes;
- 7) Tournament regulation;
- 8) Safety considerations during instruction; and
- 9) Disciplinary provisions.

The regulation proposed by the proponents is oriented toward licensing both schools and instructors, and additionally toward involving itself in disputes between the student and instructor. Such regulation would require significant fees for the following reasons: inspectors would be needed to inspect the hundreds of schools; clerical personnel would be required to process and verify instructor applicants' claims of authenticity with regard to ranks and belt-issuing organizations; dozens of investigators and mediators would be needed to resolve disputes; and more investigators, as well as attorneys and administrative judges would be required to consider discipline in instances where mediation would not be effective.

On the other hand, regulation oriented solely to consumer protection to prevent consumers being held to long-term contracts for services they no longer want would involve only a registration fee for schools, and no licensure fee requirements for instructors. The registration fee could be set at a low amount, equal only to the cost of processing the registration.

C. Research Methodology

In order to obtain an estimate of the number of schools in Florida, staff asked each of Florida's 67 counties to provide the number of martial arts schools holding an occupational license in that county. Twenty-seven counties, containing 65% of Florida's population, responded. These counties reported a total of 382 schools. If it is assumed that the availability of schools is generally distributed on a consistent basis related to population, this extrapolates to an estimate of approximately 600 martial arts schools throughout Florida.

In order to survey martial arts schools and students in Florida, staff obtained the names, addresses, and telephone numbers of 100 martial arts schools from the yellow page phone directories of the cities of Miami, Tampa, Jacksonville, Pensacola, and Lakeland, and the counties of Orange and Seminole. It was discovered that twenty-five of the schools selected had their business phone number disconnected

and are presumed to have closed. The committee sent questionnaires to the remaining 75 schools (Appendix B). Twelve of these were returned with no forwarding address, and are presumed to have closed. Of the remaining 63 schools, 24 responded (see table on following page).

The questionnaire asked the schools to provide basic information on student population relating to the number, gender, and age of students, a description of contract options, and the owner or manager's opinion on the proposal to regulate martial arts instruction. The questionnaire also inquired as to whether the school would be willing to provide a list of their students so that the students could be surveyed directly as to their views. Only one school was willing to provide a list of students for survey purposes. It is understood that any school has legitimate concerns about supplying a client list, even to the Legislature. Therefore, it was not possible for staff to survey martial arts students.

Thirty-three percent (33%) of the respondents (8 out of 24) support some form of regulation. However, most of those who support regulation only support a limited form, while the 66% of those who oppose regulation oppose it completely and adamantly.

Fifty percent (50%) of the respondents (12 out of 24) do not offer contracts, or, if they do offer contracts, stipulate that "anyone can get out of their contract at any time for any reason, and not owe any additional money for the remainder of the contract." Several of those who do not offer contracts to their students are sharply critical of those schools who insist on collecting monthly payments from students who no longer wish to continue instruction.

The average number of students for the 21 schools who provided membership information is 208. However, two respondents have 1,000 students each (one with 4 locations, the other with 7 locations), and this may have skewed the average. Nine schools have less than 100 students, and 16 out of 21 schools have less students than the mean average of 208.

Seventeen schools responded to the question of how many students tended to withdraw within the first year of instruction. Fifty percent (50%) of the schools (9 out of 17) report that between 20% and 25% of their students withdraw in the first year. Twenty-nine percent (29%) of the schools (5 out of 17) report that less than 20% of their students tend to withdraw in the first year. Eighteen percent (18%) of the schools (3 out of 17) report that more than 25% of their students tended to withdraw in the first year.

It should be noted that the 24 responses to the questionnaire are not sufficient to establish any confidence level for the percentages noted above. Therefore, this report does not constitute a valid statistical survey and does not assert that the percentages described above are representative of the entire martial arts instruction

industry, across Florida. It is speculated that the low response rate may be due to the refusal on the part of the martial arts association against whom the proponents of regulation sought relief, to participate in the survey or cooperate in providing requested information.

However, despite the low response rate, this report does assert that the survey establishes two points:

- 1) Some martial arts schools support at least limited regulation of martial arts; and
- 2) Some martial arts schools do not believe that yearly contracts are necessary, do not offer them, and criticize those who do.

The following table represents the responses of the 24 schools which responded.

Table: Martial Art Schools' Survey Results

| | Time in Operation | Require & Enforce Contracts? | Number of Students | % of Men | % of Children | % Withdraw in First Year | Support Regulation? |
|------------|-------------------|------------------------------|--------------------|----------|---------------|--------------------------|---------------------|
| A. Kenpo | 5 yrs | yes | 477 | 85% | 85% | 3% | no |
| B. TKD | 4 yrs | yes | 280 | 75% | 70% | 20% | no |
| C. Kenpo | 14 yrs | yes | 50 | 90% | 80% | 25% | no |
| D. SD | 3 yrs | no | 42 | 75% | 33% | | no |
| E. Karate | 20 yrs | yes | 150 | 73% | 90% | 20% | yes |
| F. MA | 3 yrs | no | 27 | 89% | 13% | 25% | yes |
| G. Kung Fu | 15 yrs | yes | 150 | 83% | 45% | 25% | no |
| H. SRK | 8 yrs | no | 60 | 92% | 41% | | no |
| I. TKD | 8 yrs | no | 80 | 15% | 58% | 5% | no |
| J. Tai Chi | 9 yrs | no | 120 | | | | no |
| K. TKD | 13 yrs | no | | | | | yes |
| L. TKD | 15 yrs | yes | 235 | | 53% | 2% | yes |
| M. Aikido | 8 yrs | no | 47 | 94% | 0% | 60% | yes |
| N. TKD | 11 yrs | yes | 100 | 65% | 70% | 50% | no |
| O. TKD | 25 yrs | yes | 1000 | 76% | 60% | 25% | no |
| P. TKD | 12 yrs | no | | | | | no |
| Q. Karate | 2 yrs | no | 45 | 84% | 20% | | yes |
| R. Judo | 9 yrs | no | 30 | 93% | 12% | | no |
| S. Karate | 7 yrs | yes | 120 | 96% | 90% | 22% | yes |
| T. Karate | 7 yrs | yes | 85 | 82% | 12% | 1% | no |
| U. Kenpo | 21 yrs | yes | 1000 | 90% | | 30% | yes |
| V. Karate | 10 yrs | yes | 130 | 88% | 60% | 10% | no |
| W. TKD | 5 yrs | no | 150 | 67% | 50% | 25% | |
| X. Karate | 20 yrs | no | | | | 20% | no |

TKD = Tae Kwon Do
SD = Self Defense
MA = Martial Arts
SRK = Shorin Ryu Karate

D. Regulation in Florida

Currently, there is no state, federal, or local regulation of the practice of martial arts instruction. An occupational license is required from local government to operate a school, but an occupational license is more properly a "tax", and does not constitute a "professional" license. Any complaints related to martial arts schools are handled by the Division of Consumer Services in the Department of Agriculture and Consumer Services. While martial arts instruction is not regulated in Florida, somewhat similar endeavors are regulated.

1. Boxing Matches

Professional boxing contests (including kickboxing) are regulated by the State Athletic Commission under the Department of Business and Professional Regulation (BPR), pursuant to chapter 548, Florida Statutes. As provided in section 548.006, Florida Statutes:

The commission has exclusive jurisdiction over every match held within the state which involves a professional.

The commission licenses and regulates timekeepers, trainers, managers, promoters, matchmakers, and judges associated with professional contests or exhibitions. In addition, the commission exercises regulatory control over the age of boxers and the weight classifications in which they compete. The commission requires a physician at each match, requires insurance coverage of each participant, and regulates the disbursement of the purses. The commission requires permits for matches and exhibitions and requires that the admissions not exceed seating capacity. It is important to note that boxing instruction or training is not regulated.

2. Health Clubs

Sections 501.012, through 501.019, Florida Statutes, regulate health clubs. This regulation is almost entirely related to contract regulation, and to ensuring that a health club has sufficient financial security arrangements that the consumer is protected should the health club go out of business. No instruction within the health club is regulated in any way, and martial arts facilities are specifically exempted under section 501.013(4), Florida Statutes.

The health studio regulation includes provisions which:

- a) Require health studios to register (registration fee: \$300 per year) with the Department of Agriculture and Consumer Services (DACS);

- b) Require health studios which offer contracts of more than one month, and which collect on those contracts in advance (rather than through month-to-month payments) to post a bond of at least \$50,000, unless the club can show that the club's current outstanding contracts amount to less than \$5,000, in which case the required bond would be \$10,000; and
- c) Require certain provisions regarding contracts:
 - 1) The contract may be cancelled for any reason within three (3) working days;
 - 2) The contract may be cancelled by the buyer if the health club location goes out of business or moves more than five (5) driving miles from the previous location;
 - 3) The contract may be cancelled if the buyer becomes physically unable (as established by a certificate of disability by a licensed physician) to avail himself of the services; or
 - 4) The initial contract may not be for longer than three (3) years, and thereafter shall only be renewed annually.

3. Ballroom Dance Studios

Section 501.143, Florida Statutes, establishes regulation of ballroom dance studios. It is important to note that there is no regulation of any other type of dance instruction such as ballet, tap, modern dance, or "popular dance" styles such as country line dancing or disco dancing. Legislative staff involved in the development of this regulation (the law was enacted in 1992) indicates that there was a particular problem of financial abuse of the elderly and middle age population in this particular form of instruction, and asserted that the enactment of this regulation was by no means an effort to establish a general regulation of dance instruction or schools.

The ballroom dance studio regulation includes provisions which:

- a) Requires the owner of a ballroom dance studio to register (registration fee: \$300 per year) with the Department of Agriculture and Consumer Services (DACS);
- b) Requires certain provisions regarding contracts:
 - 1) The contract may be cancelled for any reason within three (3) working days;

- 2) The contract may be cancelled by the buyer if the dance studio ceases to offer the services "as stated in the contract";
- 3) The contract may be cancelled if the buyer becomes physically or mentally unable to avail himself of the services; or
- 4) Declares as "void and unenforceable" any provisions of the contract which purport to waive, limit, restrict, or avoid any of the prescriptions of the dance studio as provided under the act; and

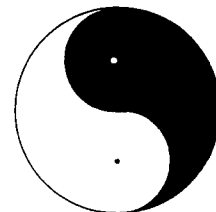
c) Requires certain monetary security (bond).

4. Other Similar Activities Which are Unregulated

Managers of martial arts schools who oppose regulation assert that such regulation would be akin to establishing licensure of coaches and instruction in little league baseball and boys and girls softball leagues, and of teachers performing dance instruction, or gymnastics instruction. They point out that none of these activities require state licensure, and assert that to require such licensure would be a disaster and would amount to grossly unwarranted state intervention in privately-arranged affairs.

E. Regulation in Other States

No other state regulates martial arts instruction. Several states regulate prizefight and kickboxing competition similarly to the existing regulation in Florida under chapter 548, F.S., and the State Athletic Commission.



V. Is Regulation Needed?

A. Does the Unregulated Practice of this Occupation Harm the Public?

The Division of Consumer Services (DCS) of the Department of Agriculture and Consumer Services (DACS) is the state agency which receives and compiles general consumer complaints related to business endeavors which are not otherwise regulated. Martial arts instruction falls within that category.

The DCS has received 15 complaints in the last three years relating to martial arts schools. In 1992, 1993, and the first half of 1994, the DCS received five (5) complaints in each year. Four (4) of the complaints filed in 1993-94 related to the same business establishment.

In almost every instance, the complaint related to a payment dispute. Specifically, complaints related to:

1. Not being allowed to withdraw with no further payment obligation because student had "lost interest;"
2. Not having a medical condition honored as a reason for being allowed to withdraw with no further payment obligation;
3. Misunderstanding the terms (length of contract) of the contract signed;
4. Alleged verbal misrepresentation regarding the contract;
5. Improperly billing for classes already paid for;
6. No refund given when school went out of business;
7. Being forced to attend instruction classes with children because no all-adult classes were available;
8. Having the school relocated; and
9. Dissatisfaction with the age or qualifications of instructor.

Upon receiving complaints, the DCS procedure is to contact the business or person complained against and attempt to mediate the dispute. It is not clear from the files how many of the 15 complaints were successfully mediated.

B. Is there Insufficient Protection Without Regulation?

The low number of complaints may indicate that problems are being solved between the complainant and the instructor/school, and that there is sufficient protection without regulation. It is also possible that there is a significant number of problems in which the consumer is dissatisfied, yet is unaware that there is any recourse or state agency to whom he may complain.

One protective factor that does appear to be in operation, at least with regard to the question of contracts, is the ability of the prospective student, in most cases, to do "comparison shopping." It appears that the majority of schools either have no contract requirements, or offer short term contracts as an alternative to their one, two, or three year contracts. Therefore, any prospective student who does not wish to make a long-term commitment initially may choose the school or plan offering the short-term commitment.

C. Will Regulation Accomplish Protection?

Whether regulation would address the problem depends on what is identified as the problem, and what regulation is established to address the problem. Regulation could be "full" regulation, or it could be limited in its scope.

Regulation could address only the contract issues, such as a student wishing to stop receiving instruction but finding he or she is bound to a contract for payment for a year or several years. Similar regulation, restricting certain contract provisions, is common in Florida law, but is generally considered "consumer protection regulation," rather than "professional regulation."

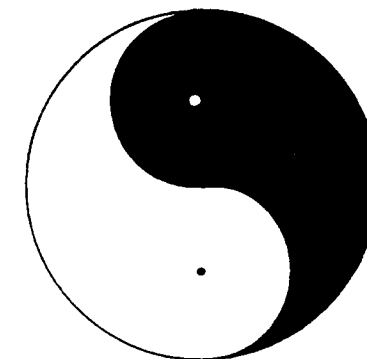
On the other hand, "full" regulation, addressing not only safety concerns but also disputes or disagreements between student and instructor would require a significant inspection, investigatory, disciplinary, and mediation-oriented department personnel infrastructure. This infrastructure would then interact with the public, the students, the schools and the instructors. However, such regulation would be both expensive and intrusive. Regulation of that sort would "accomplish the protection," but should only be initiated if justified on the basis of acute need due to a finding of significant and discernible harm to the public.

D. What will be the Economic Impact of Regulation?

The direct economic impact of professional regulation would be that schools and instructors would be required to pay licensure fees. The amount of these fees would vary according to the extent of the regulation. It can also be assumed that fees set high enough to produce a significant impact on the business would be passed along to students in the form of greater cost for instruction.

Regulation oriented solely to consumer protection to prevent consumers being held to long-term contracts for services they no longer want would involve only a registration fee for schools, and no licensure fee requirements for instructors. The registration fee could be set at a low amount, equal only to the cost of processing the registration.

Regulation, as proposed by the proponents (oriented toward licensing both schools and instructors, and involving itself in disputes between the student and instructor), would require significant fees. Inspectors would be needed to inspect all of the hundreds of schools. Clerical personnel would be required to process and verify instructor applicants' claims of authenticity with regard to ranks and issuing organizations. Dozens of investigators and mediators would be needed to resolve disputes. More investigators, as well as attorneys and administrative judges would be required to consider discipline in instances where mediation would not be effective.



Martial Arts Instructors (Current Population: 800 applicants)
Fiscal Input Data provided by the Department of Business and Professional Regulation.

SALARIES AND BENEFITS:

| | FTE | RATE | | |
|---|--------------|--------------|--------------|--|
| CLASS TITLE | | | | |
| Professional Regulation Spec. I | 1.00 | \$17,373 | | |
| Investigation Spec. II | 12.00 | \$279,622 | | |
| | 95-96 | 96-97 | 97-98 | |
| <u>Subtotal Salaries</u> (12 investigators/mediators) | \$325,878 | \$447,539 | \$460,965 | |

OTHER PERSONAL SERVICES:

| | | | | |
|--|----------------|----------------|----------------|--|
| Board Member Composition 10 members, 3 1 day meetings | <u>\$1,500</u> | <u>\$1,500</u> | <u>\$1,500</u> | |
|--|----------------|----------------|----------------|--|

EXPENSES:

| | | | | |
|--|-----------------|-----------------|-----------------|--|
| Expense Standard: | | | | |
| Professional @ \$9241 | \$9,241 | \$9,703 | \$10,188 | |
| Clerical @ \$7493 | \$89,916 | \$94,412 | \$99,132 | |
| Printing, distribution, and legal notices for rules | \$2,550 | \$0 | \$0 | |
| Board travel 10 members/2 staff + 350 air each - 3 meetings | \$14,400 | \$14,400 | \$14,400 | |
| Site rental three sites @ \$1,250 each | \$3,750 | \$3,750 | \$3,750 | |
| Supplies/printing/postage/data processing | \$6,257 | \$6,257 | \$6,257 | |
| Overhead costs @ 10% (all categories) | <u>\$53,592</u> | <u>\$57,756</u> | <u>\$59,619</u> | |
| <u>Subtotal expenses</u> | \$179,706 | \$186,278 | \$193,347 | |

OPERATING CAPITAL OUTLAY:

| | | | | |
|------------------------------|------------------|------------------|------------------|--|
| OCO standard: | | | | |
| STD per FTE \$8243 | <u>\$82,430</u> | <u>\$0</u> | <u>\$0</u> | |
| Subtotal OCO | \$82,430 | \$0 | \$0 | |
| TOTAL PROJECTED COSTS | \$589,514 | \$635,317 | \$655,812 | |

Staff attempted to survey 100 schools listed in selected yellow pages. Thirty-five of the schools selected had their phones disconnected or had their mail returned with no forwarding address. It may be reasonable to assume from this that at least 35% of existing schools close every 1 to 2 years (the period of time from the listing in the yellow pages till the time staff attempted to contact them). It may be that full professional regulation, with its high licensure costs would produce an even higher failure rate. It is also possible that regulation preventing consumers being charged for services they choose not to continue would adversely impact some martial arts businesses' cash flow, and would contribute toward an even higher failure rate.

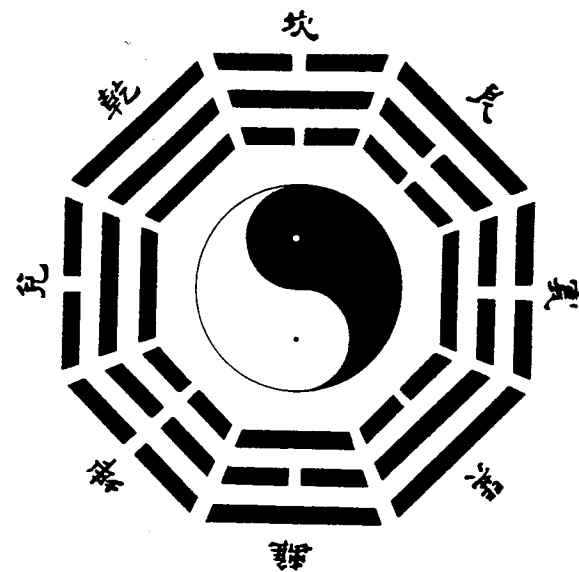
VI. The Regulatory Alternatives

Several regulatory alternatives exist. On one end of the continuum is the continued absence of regulation. On the other end of the continuum is the proponents' proposal for essentially "full" regulation.

The proponents' proposal would include the following points:

- Licensure would be required of instructors and schools, and registration would be required of the certifying organization to which each school belongs.
- Instructors would have a criminal history background check.
- Instructors who teach martial arts to children outside of an established educational system would be trained in the handling and teaching of children.
- Instructors who teach martial arts would be required to be trained in first aid and CPR by a state recognized and accredited institution.
- The ability of the school to collect for the full contract period of instruction would be constrained if the student chooses to withdraw from instruction.
- The state would attempt to mediate disputes.
- The state would impose safety standards on the physical layout of the place of instruction.
- Disciplinary procedures for children would be limited.
- Tournament competition would be regulated.

Between these extremes lie several other regulatory alternatives. These alternatives basically consist of selecting any one, or any several, of the elements listed above.



The Chinese Yin-Yang symbol surrounded by eight trigrams which figuratively express nature and its changes. The Yin-Yang symbol, also called the "Double Fish" diagram, represents two opposites residing together. In the heart of Yin will always be found a small part of Yang, and vice versa. Within strength is found weakness; within hardness, softness; inactivity, activity. Inside the sleeping newborn babe there rests a strongly beating heart.

VII. Conclusions and Recommendations

The Sunrise Act requires that the Legislature consider the following factors before determining whether regulation is needed:

- 1) **Will the unregulated practice of the profession or occupation substantially harm or endanger the public health, safety, or welfare and is the potential for harm recognizable and not remote?**

This report concludes that the unregulated practice of martial arts instruction does not, and will not, substantially harm or endanger the public health, safety, or welfare.

Only 15 complaints related to martial arts instruction have been filed in the last three years. That is not a significant amount of complaints for an activity involving over 600 schools and 30,000 to 60,000 students. The potential for harm is real and recognizable but the number of complaints indicate that the potential for harm actually occurring in significant numbers is remote.

- 2) **Does the practice of the profession or occupation require specialized skill or training, and is that skill or training readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability?**

The practice of the profession requires specialized skill and training, but that skill is not readily measurable or quantifiable, and the judgment of any one person having achieved that level of skill is highly subjective.

However, the elements of the practice that the proponents proposed to regulate (CPR training, assurance of certification by an independent certifying body, absence of hazardous conditions in the workout area, etc.) are readily "quantifiable," and could be regulated.

- 3) **Can the public be effectively protected by other means?**

Yes. Martial arts instruction is undertaken by contract with the instructing entity. A knowledgeable public, exercising reasonable due caution in reading and considering the terms of the contract, appears to be, for the most part, protected by simply not entering into contracts whose duration is inappropriate for their level of commitment.

However, regulation of contracts in a fashion similar to the regulation established for health clubs and dance studios, which would protect consumers from "fly by night" operations or operations which require large initial payments rather than month-to-month payments, would provide additional consumer protection.

4) Will the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, be favorable.

Regulation as proposed by the proponents would not be cost-effective. Mediation of disputes between thousands of students and hundreds of instructors would be a massive and expensive undertaking, not justified by the apparent low level of problems currently existing.

Additional Conclusions:

CONCLUSION #1

The proponents' proposal would undoubtedly address what appears to be reasonable scenarios for possible harm. The question is, as expressed in section 11.62, Florida Statutes, whether the "potential for harm is recognizable and not remote." The proponents' proposal would significantly enhance protection in a variety of ways. It is just that the sunrise criteria are not met and that the costs are huge and the intrusion is significant.

CONCLUSION #2

A significant proportion of successful schools do not require contracts. Therefore, yearly or multi-year contracts, in which consumers are initially required to pay the entire amount, or who are forced to continue to pay for instruction even when they are no longer seeking or receiving instruction, are not an essential element of the instructional practice of martial arts. Clearly, many schools do not use contracts, and some are sharply critical of the financial emphasis inherent in the philosophy of those schools that do.

CONCLUSION #3

If contracts are not essential to the business, then, such strictly enforced long-term contracts must be justified on the grounds of reasonableness and fair treatment. The question is whether such contracts should be controlled, as they are with health clubs and ballroom dance instruction.

Several of the martial arts schools which supplied input sharply criticized any school which would force students to continue to pay once that student has decided that martial arts is not for them. In a business that knows 25% to 50% of its initial students will decide, once they begin the instruction, that they have no wish to continue, is it reasonable or fair for that business to insist on holding those students to the full-term of the contract they were sold?

One reason why it might be reasonable or fair to insist on strict contract enforcement is because the business has incurred significant debts, or made significant purchases, in order to offer the service. Then, in order to pay for this large capital investment, the business must be able to rely on a stable and assured source of revenue from their established clientele.

In the area of a regulated activity such as health clubs, this argument is particularly convincing. Health club operation necessitates a huge outlay of funds to purchase hundreds of thousands of dollars of exercise equipment. However, this is not the case with martial arts instruction. Martial arts instruction involves a relatively insignificant purchase of capital equipment.

One additional reason provided in support of contract requirements is that some martial arts instructors/entrepreneurs insist that not allowing students to exit contracts is a "moral" lesson which attempts to make the point that once an endeavor is begun and committed to, it should be seen to its conclusion. In other words, it attempts to teach a person not to be a "quitter."

CONCLUSION #4

Conclusion #2 establishes that contracts are not essential or necessary in operating all martial arts schools. Conclusion #3 indicates that the persuasive reasons supporting the need for strict contract enforcement which are present with regard to operation of health clubs (i.e., large capital investment) do not appear to be present with regard to martial arts schools. Therefore, this report concludes that regulation of contracts, requiring schools to offer short-term contracts as one of their options, and allowing students to break contracts for medical reasons or because they or the school have moved, would be beneficial and would provide some additional protection to consumers. Additionally, since it appears that most martial arts schools already offer short-term contracts, and allow students to break contracts for reasonable grounds, such regulation would not disrupt the conduct of most schools.

CONCLUSION #5

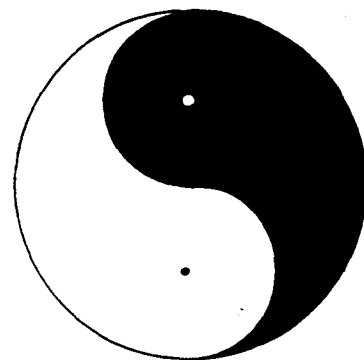
However, while this benefit is clear, there is not sufficient evidence to indicate that this problem is not currently being addressed by consumers simply being careful and

"shopping around." Therefore, while the protection may be beneficial, the evidence does not indicate that such protection is needed or necessary.

Since there is insufficient evidence (15 complaints in three years) to suggest that a significant number of consumers are being harmed by being held to unreasonable contract payment conditions, it may be concluded that the great majority of consumers are exercising their available protections prior to signing the contract. Such protections include their ability to: (1) compare between various schools' contract options; and (2) read and understand the terms of the contracts they enter into.

FINAL CONCLUSION:

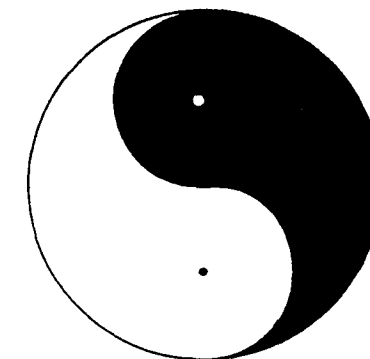
This report concludes that there is not sufficient evidence to establish that the unregulated practice of this activity will result in significant and discernible harm. Therefore, the criteria for recommending licensure according to section 11.62, Florida Statutes, is not met and this report does not recommend professional regulation in the area of martial arts instruction.



RECOMMENDATIONS

- o Pursuant to 11.62, Florida Statutes, known as the Sunrise Act, this report finds that harm to the public due to the unregulated practice of martial arts instruction is not significant and discernible, and therefore, does not recommend professional regulation.
- o This report finds that the potential for consumer abuse through imposing unreasonable contract provisions is recognizable and not remote, but that the incidence of harm does not appear to be significant and discernible. Therefore, this report does not recommend consumer protection regulation in the area of martial arts contracts at this time. However, should it be determined that the actual incidence of harm is greater than that discovered in the course of this review, contract regulation of martial arts instruction should be established.

Such regulation would require schools to offer short-term contracts to all beginning students, as an option. It should require schools to provide the student the ability to withdraw from class without further financial obligation for medical reasons, or to abrogate the contract should the student, or the school, move away a specific minimum distance. It should require, similarly to the regulation of health clubs, that any school which collects its contracts in a lump sum (rather than on a month-to-month basis) shall post a bond in an amount sufficient to reimburse those students, should the school go out of business or fundamentally change the nature of the instruction it offers.



IX. Appendixes



**FLORIDA HOUSE OF REPRESENTATIVES
COMMITTEE ON BUSINESS AND PROFESSIONAL REGULATION**

SUNRISE QUESTIONNAIRE

INSTRUCTIONS FOR COMPLETING THIS QUESTIONNAIRE:

Regulation of professions is mandated by the Legislature only for the preservation of the health, safety, and welfare of the public. The criteria for regulating a profession is set forth in various sections of chapter 455, Florida Statutes. Chapter 455 governs all professions regulated by the Department of Business & Professional Regulation. If the Legislature authorizes regulation of your profession, you will be subject to the provisions contained in this chapter, as well as your individual practice act. Nothing in your practice act should conflict with chapter 455, Florida Statutes. Please familiarize yourself with this chapter prior to submitting proposed Sunrise legislation.

This questionnaire is designed to obtain information which will aid the Legislature in determining the need for regulation of your profession and in analyzing proposed legislation seeking to establish the regulation of your profession under the Department of Business & Professional Regulation. Your cooperation in completing it will be greatly appreciated.

Each part of every question must be addressed. If there is no information available to answer the question, please state this as your response and describe what you did to attempt to find information that would answer the question. If you think the question is not applicable, please state this and explain your response.

When supporting information is appropriate, it should be included as an appendix and labeled accordingly. References within the main document to information contained in the appendices should be properly labeled.

Please read the entire questionnaire before answering any questions so that you will understand what information is being requested and how questions relate to each other.

QUESTIONNAIRE

Section A. - Legislative History

1. What is the history of regulation or attempts at regulation of this group? For example, has this profession ever been regulated and subsequently deregulated? Has legislation requiring regulation been filed in the past? Has legislation requiring regulation passed and been vetoed? Please explain why the regulation was sunset, why bills did not pass or why legislation was vetoed.

Section B. - Applicant Group Identification

This section of the questionnaire is designed to help identify the group seeking regulation and to determine if the applicant group adequately represents the occupation.

2. What occupational group is seeking regulation? Identify by name, address, phone number, and associational affiliation the individuals who should be contacted when communicating with this group regarding this questionnaire.
3. List all titles currently used by Florida practitioners of this occupation. Estimate the total number of practitioners now in Florida and the number using each title. Document.
4. Identify each occupational association or similar organization representing current practitioners in Florida and estimate its membership. Please provide membership lists to document the numbers of people in these associations. List the names of any associated national group.
5. Estimate the percentage of practitioners who support this request for regulation. Document the source of this estimate.
6. Name the group or individual representing the practitioners in this effort to seek regulation. How was this group or individual selected?
7. Are all practitioner groups listed in response to questions represented in the organization or by the individual seeking regulation? If not, why not?

Section C. - Consumer Group Identification

This section is designed to identify consumers who typically seek practitioner services and to identify groups, outside of those seeking regulation, with an interest in the proposed regulation.

8. Do practitioners typically deal with a specific consumer population? Are clients generally individuals or organizations? Document.
9. Identify any advocacy groups representing Florida consumers of this service, e.g., AARP. List also the name of any applicable national advocacy groups.
10. Identify the consumer populations not now using practitioner services who will be likely to do so, if regulation is approved.
11. Name any groups who will oppose this proposed regulation or others with an interest in this proposed regulation. If there are none, indicate efforts made to identify them.

Section D.

I. The unregulated practice of this occupation will harm or endanger the public health, safety, and welfare.

12. Is there or has there been significant public need and demand for a regulatory standard? Document. If not, what is the basis for seeking regulation?
13. What harm to the public has occurred as a result of the un-regulated practice of this profession? What is the nature and severity of the harm? Document the physical, social, intellectual, financial, health, safety, and welfare threat to the consumer if this practice goes unregulated.
14. How likely is it that harm will occur? Cite cases or instances of consumer injury and the estimated number of these injuries. If there are none, how is harm currently avoided?
15. What are the estimated numbers of complaints against professionals practicing this profession? (Some information can be obtained from the Department of Agriculture, Division of Consumer Services or the State Attorney's Office.)
16. What provisions of the proposed regulation would protect the consumer from injury?

II. Existing protection available to the consumer is insufficient.

17. To what extent do consumers currently control their exposure to risk? How do clients locate and select practitioners?
18. Are clients frequently referred to practitioners for services? Give examples of referral patterns.
19. Are clients frequently referred elsewhere by practitioners? Give examples of referral patterns.
20. What sources exist to inform consumers of the risk inherent in incompetent practice and of what practitioner behaviors constitute competent performance?
21. What administrative or legal remedies are currently available to redress consumer injury and abuse in this field?
22. Are the currently available remedies insufficient or ineffective? If so, please explain.

III. No alternatives to regulation will adequately protect the public.

23. Explain why marketplace factors will not be as effective as governmental regulation in ensuring public welfare. Document specific instances in which market controls have broken down or proven ineffective in assuring consumer protection.
24. Are there other states in which this occupation is regulated? If so, identify the states and indicate the manner in which consumer protection is ensured in those states. Provide as an appendix copies of the regulatory provisions from these states.
25. What means other than governmental regulation have been employed in Florida to ensure consumer health, safety, and welfare? Show why the following would be inadequate:
 - (a) code of ethics
 - (b) codes of practice enforced by professional associations
 - (c) dispute-resolution mechanisms such as mediation or arbitration
 - (d) recourse to current applicable law
 - (e) regulation of those who employ or supervise practitioners
 - (f) caveat emptor, i.e., "let the buyer beware"
 - (g) other measures attempted

26. If a "grandfather" clause (in which current practitioners are exempted from compliance with proposed entry standards) will be allowed, how is that clause justified? What safeguards will be provided to consumers regarding this group?

IV. Regulation will mitigate existing problems.

27. What specific benefits will the public realize if this occupation is regulated? Indicate clearly how the proposed regulation will correct or preclude consumer injury. Do these benefits go beyond freedom from harm? If so, how?
28. Which consumers of practitioner services are most in need of protection? Which require least protection? Which consumers will benefit most and least from regulation?
29. Provide evidence of "net" benefit when the following possible effects of regulation are considered:
 - (a) restriction of opportunity to practice
 - (b) restricted supply of practitioners
 - (c) increased cost of services to consumers
 - (d) increased governmental intervention in the marketplace

V. Practitioners operate independently, making decisions of consequences.

30. To what degree do individual practitioners make professional judgements of consequence? What are these judgements? How frequently do they occur? What are the consequences? Document.
31. To what extent do practitioners work independently, as opposed to working under the auspices of an organization, an employer, or a supervisor?
32. To what extent do decisions made by the practitioner require a high degree of skill or knowledge to avoid harm?

VI. Functions and tasks of the occupation are clearly defined.

33. Does the proposed regulatory scheme define a scope of activity which requires licensure, or merely prevent the use of a designated job title or occupational description without a license? Explain.

34. Describe the important functions, tasks, and duties performed by practitioners. Identify the services and/or products provided.
35. Is there a consensus on what activities constitute competent practice of the occupation? If so, state and document. If not, what is the basis for assessing competence?
36. Is such competent practice measurable by objective standards such as peer review? Give examples.
37. Specify activities or practices that would suggest that a practitioner is incompetent. To what extent is public harm caused by personal factors such as dishonesty? Document.

VII. The occupation is clearly distinguishable from other occupations that are already regulated.

38. What similar occupations have been regulated in Florida? Is it the business practice that needs to be regulated or the individual providing the service? Explain and give examples.
39. Describe functions performed by practitioners that differ from those performed by occupations listed in the above question.
40. What is the relationship among those groups listed in response to question 38 and practitioners? Can practitioners be considered a branch of a currently regulated occupation?
41. What impact will the requested regulation have upon the authority and scope of practice of currently regulated groups?
42. Are there unregulated occupations performing services similar to those of the group to be regulated? If so, estimate those numbers of unregulated practitioners.
43. Describe the similarities and differences between practitioners and the groups identified in the above question.
44. Will this legislation create confusion in the marketplace regarding who is licensed and who is not?
45. Will this generate scope of practice or unlicensed activity complaints?

VIII. The occupation requires possession of knowledge, skills, and abilities that are both teachable and testable.

46. Is there a generally accepted core set of knowledge, skills, and abilities without which a practitioner may cause public harm? Describe and document.
47. What methods are currently used to define the requisite knowledge, skills, and abilities? Who is responsible for defining them?
48. Are those skills, abilities, and knowledge testable? Is the work of the group sufficiently defined that competence could be evaluated by some standard (i.e.: ratings of education, experience, or exam performance)? Is there a National Exam given to test this skill, ability, and knowledge level? What is the name of the test and the name and address of the testing service who has developed and offers this exam?
49. List institutions and program titles offering accredited and non-accredited preparatory programs in Florida. Estimate the annual number of graduates from each. If there are no such programs in Florida, list programs found elsewhere. Will out-of-state programs be recognized? How?
50. Apart from the above listed programs, indicate various methods of acquiring the required knowledge, skills, and ability such as apprenticeships, internships, on the job training, etc.
51. Estimate the percentage of current practitioners trained by each of the routes described in questions 49 and 50.
52. Does any examination or other measure currently exist to test for functional competence in this profession? If so, indicate how and by whom each was constructed and by whom it is currently administered. Include the name, address, and phone number. If not, indicate search efforts to locate such method.
53. Describe the format and content of each examination listed in question 52. Describe the sections of each examination. What competencies is each designed to measure? How do these relate to the knowledge, skills, and abilities listed in question 44?
54. If more than one examination is listed above, which do you intend to support, if any? Why? If none of the above, why not and what do you propose as an alternate?

Economic Impact

55. How many people are exposed annually to this occupation? Will regulation of the occupation affect this figure? If so, in what way?
56. What is the current cost of the service provided? Estimate the amount of money spent annually in Florida for the services of this group. How will regulation affect these costs? Provide documentation for your answers.
57. Outline major governmental activities you believe will be necessary to appropriately regulate practitioners.

Some examples:

- (a) regulation by a newly created board, regulation by an existing board, or regulation by the department. (If an existing board is applicable, please identify that board);
 - (b) credentials and licensure requirements review;
 - (c) examination development and administration;
 - (d) licensure renewal;
 - (e) enforcement of the law: complaints, investigations, prosecution, inspections, etc.;
 - (f) continuing education, approval and school accreditation, etc.
58. How many practitioners are likely to be certified if regulation is approved? Document.
59. How many practitioners are expected to apply each year if regulation is adopted? Document.
60. If small numbers will apply in answers to 54 and 55, how are costs justified?
61. Does adoption of the requested regulation represent the most cost-effective form of regulation? Indicate alternatives considered and costs associated with each.

Section E. - Proposed Legislation

62. Attach a draft of the legislation proposing new regulation. Please include:
- (a) whether or not a board will be established;
 - (b) what background, education, and experience will be required;

- (c) if an examination must be successfully completed;
- (d) if a grandfather clause will be implemented and what the deadline date will be;
- (e) what actions will be prohibited and what disciplinary measures will be allowed.

You are welcome to review any statute regulating a profession under DPR in order to draft legislation consistent with existing statutes. A list of professions and their corresponding statute number is enclosed (Attachment 1).

We will assist you in developing the fee schedule for your legislative draft once this questionnaire is completed and a fiscal impact analysis can be done based on the information provided in this questionnaire.

If you have any questions or need assistance, please contact the Business & Professional Regulation Committee at (904) 488-0996 or SC 278-0996.

d:\data\wp\sunrise.qst\sunrise.1
June 13, 1994

Name of School:

Address:

Name and Rank of Head Instructor:

Number and Ranks of other Instructors:

- 1) How many years has your school been in operation?

- 2) What certifying organization are you a member of?

- 3) How many students do you currently have? Please divide into:
 - a) Total number of students _____
 - b) Overall number of men _____
 - c) Overall number of women _____

 - d) Number of students between 5 and 10 yrs old _____
 - e) Number of students between 11 and 18 yrs old _____
 - f) Number of students 19 yrs and older _____

- 4) Please briefly describe the contract options available to prospective students. Please include a sample copy of your contract.

5) As a matter of your school's policy, what is the basis for which a student may withdraw from your school and be reimbursed for the contract time period he will not be receiving instruction?

6) Please estimate the number or percentage of students who contract for instruction each year, but withdraw from class within the first year.

7) What percentage of those who withdraw receive any reimbursement?

8) If a student decides to withdraw from instruction, but has a contract obligation to continue paying, may he "assign" this instruction which he is obligated to pay for to another person (perhaps on the basis that both the original student and the new student "jointly" retain a responsibility to make payment)? In other words, may he "sell" the remainder of his contract to another person if he wishes to withdraw?

9) Do you see any need for any sort of regulation of martial arts schools?

If yes, please indicate the areas which should have some regulation:

a) Requiring licensure of:

1. Schools only _____
2. Instructors only _____
3. Schools and instructors _____

b) Contracts provisions _____

c) Oversight relating to awarding of various belt rankings _____

d) Mediation or arbitration of disputes between student and school _____

e) Safety or medical emergency training (e.g. CPR training) _____

f) Requirements related to the facility (e.g. mirrors well secured to the wall, padded areas, safety concerns for sparring areas, etc.) _____

g) Other areas of regulation (please briefly describe). _____

- 10) Will you provide a list of your members so that we can distribute a survey to them in order to learn their views on this issue? If yes, please include their names and addressees.

If you provide a list of students pursuant to question #10, we will not use the list for any purpose other than to conduct a survey. We will then destroy the list. Additionally, we will conduct the survey in such a fashion that the responses will not be linked to an individual respondent, thereby guaranteeing confidentiality.