

By Senator Clary

7-1105-98

1                                   A bill to be entitled  
2           An act relating to professional regulation;  
3           amending s. 11.62, F.S.; adding criteria for  
4           evaluating new regulation; amending s. 455.201,  
5           F.S.; requiring the Department of Business and  
6           Professional Regulation to consider the impact  
7           on jobs when considering new regulation;  
8           creating s. 455.2035, F.S.; providing the  
9           department rulemaking authority; amending ss.  
10          455.209, 455.213, 455.218, F.S.; conforming  
11          provisions to a previous administrative  
12          reorganization; amending s. 455.219, F.S.;  
13          providing inspection fee authority; creating s.  
14          455.2237, F.S.; providing authority to inspect  
15          and investigate records, offices, and job  
16          sites; amending s. 455.225, F.S.; revising  
17          probable-cause provisions; prescribing  
18          authority of the department or a board in cases  
19          of failure to comply with continuing-education  
20          requirements; conforming provisions to a  
21          previous administrative reorganization;  
22          amending s. 455.2285, F.S.; conforming  
23          provisions to a previous administrative  
24          reorganization; amending s. 455.517, F.S.;  
25          requiring the Department of Health to consider  
26          the impact on jobs when creating new  
27          regulation; providing effective dates.

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29   Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Effective October 1, 1998, subsections (3)  
2 and (4) of section 11.62, Florida Statutes, are amended to  
3 read:

4           11.62 Legislative review of proposed regulation of  
5 unregulated functions.--

6           (3) In determining whether to regulate a profession or  
7 occupation, the Legislature shall consider the following  
8 factors:

9           (a) Whether the unregulated practice of the profession  
10 or occupation will substantially harm or endanger the public  
11 health, safety, or welfare and whether the potential for harm  
12 is recognizable and not remote;

13           (b) Whether the practice of the profession or  
14 occupation requires specialized skill or training, and whether  
15 that skill or training is readily measurable or quantifiable  
16 so that examination or training requirements would reasonably  
17 assure initial and continuing professional or occupational  
18 ability;

19           (c) Whether the regulation will have an unreasonable  
20 effect on the job creation or job retention in the state or  
21 will place unreasonable restrictions on the ability of  
22 individuals who seek to practice or who are practicing a given  
23 profession or occupation to find employment;

24           ~~(d)(e)~~ Whether the public is or can be effectively  
25 protected by other means; and

26           ~~(e)(d)~~ Whether the overall cost-effectiveness and  
27 economic impact of the proposed regulation, including the  
28 indirect costs to consumers, will be favorable.

29           (4) The proponents of legislation that provides for  
30 the regulation of a profession or occupation not already  
31 expressly subject to state regulation shall provide, upon

1 request, the following information in writing to the state  
2 agency that is proposed to have jurisdiction over the  
3 regulation and to the legislative committees to which the  
4 legislation is referred:

5 (a) The number of individuals or businesses that would  
6 be subject to the regulation;

7 (b) The name of each association that represents  
8 members of the profession or occupation, together with a copy  
9 of its codes of ethics or conduct;

10 (c) Documentation of the nature and extent of the harm  
11 to the public caused by the unregulated practice of the  
12 profession or occupation, including a description of any  
13 complaints that have been lodged against persons who have  
14 practiced the profession or occupation in this state during  
15 the preceding 3 years;

16 (d) A list of states that regulate the profession or  
17 occupation, and the dates of enactment of each law providing  
18 for such regulation and a copy of each law;

19 (e) A list and description of state and federal laws  
20 that have been enacted to protect the public with respect to  
21 the profession or occupation and a statement of the reasons  
22 why these laws have not proven adequate to protect the public;

23 (f) A description of the voluntary efforts made by  
24 members of the profession or occupation to protect the public  
25 and a statement of the reasons why these efforts are not  
26 adequate to protect the public;

27 (g) A copy of any federal legislation mandating  
28 regulation;

29 (h) An explanation of the reasons why other types of  
30 less restrictive regulation would not effectively protect the  
31 public;

1           (i) The cost, availability, and appropriateness of  
2 training and examination requirements;

3           ~~(j)(i)~~ The cost of regulation, including the indirect  
4 cost to consumers, and the method proposed to finance the  
5 regulation;

6           (k) The cost imposed on applicants or practitioners or  
7 on employers of applicants or practitioners as a result of the  
8 regulation;

9           ~~(l)(j)~~ The details of any previous efforts in this  
10 state to implement regulation of the profession or occupation;  
11 and

12           ~~(m)(k)~~ Any other information the agency or the  
13 committee considers relevant to the analysis of the proposed  
14 legislation.

15           Section 2. Effective October 1, 1998, subsection (4)  
16 of section 455.201, Florida Statutes, is amended to read:

17           455.201 Professions and occupations regulated by  
18 department; legislative intent; requirements.--

19           (4)(a) Neither ~~No board, nor~~ the department nor any  
20 board may, shall create unreasonably restrictive and  
21 extraordinary standards that deter qualified persons from  
22 entering the various professions. Neither ~~No board, nor~~ the  
23 department nor any board may, shall take any action that ~~which~~  
24 tends to create or maintain an economic condition that  
25 unreasonably restricts competition, except as specifically  
26 provided by law.

27           (b) Neither the department nor any board may create a  
28 regulation that has an unreasonable effect on job creation or  
29 job retention in the state or that places unreasonable  
30 restrictions on the ability of individuals who seek to  
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1 practice or who are practicing a given profession or  
2 occupation to find employment.

3 (c) The Legislature shall evaluate proposals to  
4 increase regulation of professions or occupations that are  
5 already regulated to determine their effect on job creation or  
6 retention and job opportunities.

7 Section 3. Section 455.2035, Florida Statutes, is  
8 created to read:

9 455.2035 Rulemaking authority.--The department may  
10 adopt rules pursuant to chapter 120 to implement the  
11 regulatory requirements of any profession within the  
12 department's jurisdiction which does not have a governing  
13 board.

14 Section 4. Subsection (2) of section 455.209, Florida  
15 Statutes, is amended to read:

16 455.209 Accountability and liability of board  
17 members.--

18 (2) Each board member and each former board member  
19 serving on a probable cause panel shall be exempt from civil  
20 liability for any act or omission when acting in the member's  
21 official capacity, and the department, or the Department of  
22 Legal Affairs shall defend any such member in any action  
23 against any board or member of a board arising from any such  
24 act or omission. In addition, the department or the Department  
25 of Legal Affairs may defend the member's company or business  
26 in any action against the company or business if the  
27 department or the Department of Legal Affairs determines that  
28 the actions from which the suit arises are actions taken by  
29 the member in the member's official capacity and were not  
30 beyond the member's statutory authority. In providing such  
31 defense, the department, ~~the agency,~~ or the Department of

1 Legal Affairs may employ or utilize the legal services of  
2 outside counsel.

3 Section 5. Subsection (1) of section 455.213, Florida  
4 Statutes, is amended to read:

5 455.213 General licensing provisions.--

6 (1) Any person desiring to be licensed shall apply to  
7 the department in writing. The application for licensure shall  
8 be made on a form prepared and furnished by the department and  
9 include the applicant's social security number. The  
10 application shall be supplemented as needed to reflect any  
11 material change in any circumstance or condition stated in the  
12 application which takes place between the initial filing of  
13 the application and the final grant or denial of the license  
14 and which might affect the decision of the department ~~agency~~.  
15 In order to further the economic development goals of the  
16 state, and notwithstanding any law to the contrary, the  
17 department may enter into an agreement with the county tax  
18 collector for the purpose of appointing the county tax  
19 collector as the department's agent to accept applications for  
20 licenses and applications for renewals of licenses. The  
21 agreement must specify the time within which the tax collector  
22 must forward any applications and accompanying application  
23 fees to the department. In cases where a person applies or  
24 schedules directly with a national examination organization or  
25 examination vendor to take an examination required for  
26 licensure, any organization- or vendor-related fees associated  
27 with the examination may be paid directly to the organization  
28 or vendor.

29 Section 6. Subsection (6) of section 455.218, Florida  
30 Statutes, is amended to read:

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1           455.218 Foreign-trained professionals; special  
2 examination and license provisions.--

3           (6) The department, for its boards, shall not issue an  
4 initial license to, or renew a license of, any applicant or  
5 licensee who is under investigation or prosecution in any  
6 jurisdiction for an action which would constitute a violation  
7 of this part or the professional practice acts administered by  
8 the department ~~or agency~~ and the boards until such time as the  
9 investigation or prosecution is complete, at which time the  
10 provisions of the professional practice acts shall apply.

11           Section 7. Subsection (8) is added to section 455.219,  
12 Florida Statutes, to read:

13           455.219 Fees; receipts; disposition; periodic  
14 management reports.--

15           (8) Unless otherwise provided by law, the board, or  
16 the department if there is no board, may charge an inspection  
17 fee for facility inspections required by law to be performed  
18 periodically, which fee shall be set to approximate the  
19 estimated average cost of an inspection, but shall not exceed  
20 \$50.

21           Section 8. Section 455.2237, Florida Statutes, is  
22 created to read:

23           455.2237 Authority to inspect.--Any board, or the  
24 department when there is no board, may by rule authorize  
25 inspections and investigations of records, offices, or job  
26 sites at times when a licensee or the employee or agent of the  
27 licensee, or any person suspected of unlicensed activity, is  
28 performing an activity regulated by this chapter or the  
29 applicable practice act. Such rule may establish more  
30 definitively the times and conditions of inspections and  
31 investigations and may authorize such inspections and

1 investigations only to the extent necessary to determine  
2 whether a person is in compliance with the provisions of this  
3 chapter or of the regulated practice acts or any rule  
4 promulgated thereunder, to aid in the enforcement of the  
5 provisions of this chapter or of the regulated practice acts  
6 or any rule adopted thereunder, or to determine if any of the  
7 provisions of this chapter or of the regulated practice acts,  
8 or any rule adopted thereunder, is being or has been violated.

9 Section 9. Subsections (2), (3), (4), and (9) of  
10 section 455.225, Florida Statutes, are amended to read:

11 455.225 Disciplinary proceedings.--Disciplinary  
12 proceedings for each board shall be within the jurisdiction of  
13 the department.

14 (2) The department shall allocate sufficient and  
15 adequately trained staff to expeditiously and thoroughly  
16 determine legal sufficiency and investigate all legally  
17 sufficient complaints. ~~For purposes of this section, it is the~~  
18 ~~intent of the Legislature that the term "expeditiously" means~~  
19 ~~that the agency, for disciplinary cases under its~~  
20 ~~jurisdiction, shall complete the report of its initial~~  
21 ~~investigative findings and recommendations concerning the~~  
22 ~~existence of probable cause within 6 months after its receipt~~  
23 ~~of the complaint. The failure of the agency, for disciplinary~~  
24 ~~cases under its jurisdiction, to comply with the time limits~~  
25 ~~of this section while investigating a complaint against a~~  
26 ~~licensee constitutes harmless error in any subsequent~~  
27 ~~disciplinary action unless a court finds that either the~~  
28 ~~fairness of the proceeding or the correctness of the action~~  
29 ~~may have been impaired by a material error in procedure or a~~  
30 ~~failure to follow prescribed procedure.~~When its investigation  
31 is complete and legally sufficient, the department shall



1 prepare and submit to the probable cause panel of the  
2 appropriate regulatory board the investigative report of the  
3 department. The report shall contain the investigative  
4 findings and the recommendations of the department concerning  
5 the existence of probable cause. At any time after legal  
6 sufficiency is found, the department may dismiss any case, or  
7 any part thereof, if the department determines that there is  
8 insufficient evidence to support the prosecution of  
9 allegations contained therein. The department shall provide a  
10 detailed report to the appropriate probable cause panel prior  
11 to dismissal of any case or part thereof, and to the subject  
12 of the complaint after dismissal of any case or part thereof,  
13 under this section. For cases dismissed prior to a finding of  
14 probable cause, such report is confidential and exempt from s.  
15 119.07(1). The probable cause panel shall have access, upon  
16 request, to the investigative files pertaining to a case prior  
17 to dismissal of such case. If the department dismisses a case,  
18 the probable cause panel may retain independent legal counsel,  
19 employ investigators, and continue the investigation and  
20 prosecution of the case as it deems necessary.

21 (3)(a) As an alternative to the provisions of  
22 subsections (1) and (2), when a complaint is received, the  
23 department may provide a licensee with a notice of  
24 noncompliance for an initial offense of a minor violation. A  
25 violation is a minor violation if it does not demonstrate a  
26 serious inability to practice the profession, result in  
27 economic or physical harm to a person, or adversely affect the  
28 public health, safety, or welfare or create a significant  
29 threat of such harm. Each board, or the department if there is  
30 no board, shall establish by rule those violations which are  
31 minor violations under this provision. Failure of a licensee

1 to take action in correcting the violation within 15 days  
2 after notice may result in the institution of regular  
3 disciplinary proceedings.

4 (b) The department may issue a notice of noncompliance  
5 for an initial offense of a minor violation, notwithstanding a  
6 board's failure to designate a particular minor violation by  
7 rule as provided in paragraph (a).

8 (c) In any instance in which a licensee is charged  
9 with failure to comply with continuing-education requirements,  
10 the department's or board's, as appropriate, initial response  
11 may only be to issue a notice of noncompliance, including  
12 granting the licensee a reasonable time to comply. However,  
13 if the department finds that the licensee's failure to comply  
14 was done knowingly, the department or board, as appropriate,  
15 may levy any other penalty otherwise available to it under the  
16 circumstances. This paragraph does not apply to any licensee  
17 for which failure to comply with continuing-education  
18 requirements is not grounds for discipline but is instead only  
19 a prerequisite for renewal.

20 (4) The determination as to whether probable cause  
21 exists shall be made by majority vote of a probable cause  
22 panel of the board, or the department, as appropriate. Each  
23 regulatory board shall provide by rule that the determination  
24 of probable cause shall be made by a panel of its members or  
25 by the department. Each board may provide by rule for multiple  
26 probable cause panels composed of at least two members. Each  
27 board may provide by rule that one or more members of the  
28 panel or panels may be a former board member. The length of  
29 term or repetition of service of any such former board member  
30 on a probable cause panel may vary according to the direction  
31 of the board when authorized by board rule. Any probable cause

1 panel must include one of the board's former or present  
2 consumer members, if one is available, willing to serve, and  
3 is authorized to do so by the board chair. Any probable cause  
4 panel must include a present board member. Any probable cause  
5 panel must include a former or present professional board  
6 member. However, any former professional board member serving  
7 on the probable cause panel must hold an active valid license  
8 for that profession. All proceedings of the panel are exempt  
9 from s. 286.011 until 10 days after probable cause has been  
10 found to exist by the panel or until the subject of the  
11 investigation waives his or her privilege of confidentiality.  
12 The probable cause panel may make a reasonable request, and  
13 upon such request the department shall provide such additional  
14 investigative information as is necessary to the determination  
15 of probable cause. A request for additional investigative  
16 information shall be made within 15 days from the date of  
17 receipt by the probable cause panel of the investigative  
18 report of the department. The probable cause panel or the  
19 department, as may be appropriate, shall make its  
20 determination of probable cause within 30 days after receipt  
21 by it of the final investigative report of the department. The  
22 secretary may grant extensions of the 15-day and the 30-day  
23 time limits. In lieu of a finding of probable cause, the  
24 probable cause panel, or the department when there is no  
25 board, may issue a letter of guidance to the subject. If,  
26 within the 30-day time limit, as may be extended, the probable  
27 cause panel does not make a determination regarding the  
28 existence of probable cause or does not issue a letter of  
29 guidance in lieu of a finding of probable cause, the  
30 department ~~agency~~, for disciplinary cases under its  
31 jurisdiction, must make a determination regarding the

1 existence of probable cause within 10 days after the  
2 expiration of the time limit. In addition, if the probable  
3 cause panel finds no probable cause, the department may  
4 determine within 10 days thereafter that probable cause  
5 exists. If the probable cause panel finds that probable cause  
6 exists, it shall direct the department to file a formal  
7 complaint against the licensee. The department shall follow  
8 the directions of the probable cause panel regarding the  
9 filing of a formal complaint. If directed to do so, the  
10 department shall file a formal complaint against the subject  
11 of the investigation and prosecute that complaint pursuant to  
12 chapter 120. However, the department may decide not to  
13 prosecute the complaint if it finds that probable cause had  
14 been improvidently found by the panel. In such cases, the  
15 department shall refer the matter to the board. The board may  
16 then file a formal complaint and prosecute the complaint  
17 pursuant to chapter 120. The department shall also refer to  
18 the board any investigation or disciplinary proceeding not  
19 before the Division of Administrative Hearings pursuant to  
20 chapter 120 or otherwise completed by the department within 1  
21 year after the filing of a complaint. The department ~~agency~~,  
22 for disciplinary cases under its jurisdiction, must establish  
23 a uniform reporting system to quarterly refer to each board  
24 the status of any investigation or disciplinary proceeding  
25 that is not before the Division of Administrative Hearings or  
26 otherwise completed by the department ~~or agency~~ within 1 year  
27 after the filing of the complaint. ~~Annually, the agency, for~~  
28 ~~disciplinary cases under its jurisdiction if there is no~~  
29 ~~board, or each board must establish a plan to reduce or~~  
30 ~~otherwise close any investigation or disciplinary proceeding~~  
31 ~~that is not before the Division of Administrative Hearings or~~

1 ~~otherwise completed by the agency within 1 year after the~~  
2 ~~filing of the complaint.~~ A probable cause panel or a board  
3 may retain independent legal counsel, employ investigators,  
4 and continue the investigation as it deems necessary; all  
5 costs thereof shall be paid from the Professional Regulation  
6 Trust Fund. All proceedings of the probable cause panel are  
7 exempt from s. 120.525.

8 (9)(a) The department shall periodically notify the  
9 person who filed the complaint of the status of the  
10 investigation, whether probable cause has been found, and the  
11 status of any civil action or administrative proceeding or  
12 appeal.

13 ~~(b) In any disciplinary case under the jurisdiction of~~  
14 ~~the Agency for Health Care Administration for which probable~~  
15 ~~cause has been found, the Agency for Health Care~~  
16 ~~Administration shall provide to the person who filed the~~  
17 ~~complaint a copy of the administrative complaint, including:~~

18 1. ~~A written explanation of how an administrative~~  
19 ~~complaint is resolved by the disciplinary process.~~

20 2. ~~A written explanation of how and when the person~~  
21 ~~may participate in the disciplinary process.~~

22 3. ~~A written notice of any hearing before the Division~~  
23 ~~of Administrative Hearings or the regulatory board at which~~  
24 ~~final agency action is taken.~~

25 (c) ~~In any disciplinary case for which probable cause~~  
26 ~~is not found, the Agency for Health Care Administration shall~~  
27 ~~so inform the person who filed the complaint and notify that~~  
28 ~~person that he or she may, within 60 days, provide any~~  
29 ~~additional information to the probable cause panel which may~~  
30 ~~be relevant to the decision. In any administrative proceeding~~  
31 ~~under s. 120.57, the person who filed the disciplinary~~

1 ~~complaint shall have the right to present oral or written~~  
2 ~~communication relating to the alleged disciplinary violations~~  
3 ~~or to the appropriate penalty.~~

4 Section 10. Section 455.2285, Florida Statutes, is  
5 amended to read:

6 455.2285 Annual report concerning finances,  
7 administrative complaints, disciplinary actions, and  
8 recommendations.--The department is directed to prepare and  
9 submit a report to the President of the Senate and Speaker of  
10 the House of Representatives by November 1 of each year. In  
11 addition to finances and any other information the Legislature  
12 may require, the report shall include statistics and relevant  
13 information, profession by profession, detailing:

14 (1) The revenues, expenditures, and cash balances for  
15 the prior year, and a review of the adequacy of existing fees.

16 (2) The number of complaints received and  
17 investigated.

18 (3) The number of findings of probable cause made.

19 (4) The number of findings of no probable cause made.

20 (5) The number of administrative complaints filed.

21 (6) The disposition of all administrative complaints.

22 (7) A description of disciplinary actions taken.

23 (8) A description of any effort by the department  
24 ~~agency~~, for any disciplinary cases under its jurisdiction, to  
25 reduce or otherwise close any investigation or disciplinary  
26 proceeding not before the Division of Administrative Hearings  
27 under chapter 120 or otherwise not completed within 1 year  
28 after the initial filing of a complaint under this chapter.

29 (9) The status of the development and implementation  
30 of rules providing for disciplinary guidelines pursuant to s.  
31 455.2273.

1           (10) Such recommendations for administrative and  
2 statutory changes necessary to facilitate efficient and  
3 cost-effective operation of the department and the various  
4 boards.

5           Section 11. Effective October 1, 1998, subsection (4)  
6 of section 455.517, Florida Statutes, is amended to read:

7           455.517 Professions and occupations regulated by  
8 department; legislative intent; requirements.--

9           (4)(a) Neither ~~No board, nor~~ the department nor any  
10 board may, shall create unreasonably restrictive and  
11 extraordinary standards that deter qualified persons from  
12 entering the various professions. Neither ~~No board, nor~~ the  
13 department nor any board may, shall take any action that ~~which~~  
14 tends to create or maintain an economic condition that  
15 unreasonably restricts competition, except as specifically  
16 provided by law.

17           (b) Neither the department nor any board may create a  
18 regulation that has an unreasonable effect on job creation or  
19 job retention in the state or that places unreasonable  
20 restrictions on the ability of individuals who seek to  
21 practice or who are practicing a profession or occupation to  
22 find employment.

23           (c) The Legislature shall evaluate proposals to  
24 increase regulation of professions or occupations to determine  
25 their effect on job creation or retention and employment  
26 opportunities.

27           Section 12. Except as otherwise provided in this act,  
28 this act shall take effect upon becoming a law.

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SENATE SUMMARY

Requires the Department of Business and Professional Regulation and the Department of Health to consider the effect on jobs in the state in determining whether to regulate a profession or occupation. Provides additional criteria, including the effect on job creation and job retention, training and examination requirements, and costs resulting from the regulation. Authorizes the Department of Business and Professional Regulation to adopt rules to implement regulatory requirements. Authorizes the department to charge an inspection fee. Authorizes inspections and investigations of records, offices, and job sites. Revises procedures for conducting disciplinary proceedings.