

Bill No. HB 4119, 1st Eng.

Amendment No.

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5	<hr/>		
6			
7			
8			
9			
10	<hr/>		
11	Senator Clary moved the following amendment:		
12			
13	Senate Amendment (with title amendment)		
14	Delete everything after the enacting clause		
15			
16	and insert:		
17	Section 1. Effective October 1, 1998, subsections (3)		
18	and (4) of section 11.62, Florida Statutes, are amended to		
19	read:		
20	11.62 Legislative review of proposed regulation of		
21	unregulated functions.--		
22	(3) In determining whether to regulate a profession or		
23	occupation, the Legislature shall consider the following		
24	factors:		
25	(a) Whether the unregulated practice of the profession		
26	or occupation will substantially harm or endanger the public		
27	health, safety, or welfare and whether the potential for harm		
28	is recognizable and not remote;		
29	(b) Whether the practice of the profession or		
30	occupation requires specialized skill or training, and whether		
31	that skill or training is readily measurable or quantifiable		

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 so that examination or training requirements would reasonably
 2 assure initial and continuing professional or occupational
 3 ability;

4 (c) Whether the regulation will have an unreasonable
 5 effect on the job creation or job retention in the state or
 6 will place unreasonable restrictions on the ability of
 7 individuals who seek to practice or who are practicing a given
 8 profession or occupation to find employment;

9 (d)(c) Whether the public is or can be effectively
 10 protected by other means; and

11 (e)(d) Whether the overall cost-effectiveness and
 12 economic impact of the proposed regulation, including the
 13 indirect costs to consumers, will be favorable.

14 (4) The proponents of legislation that provides for
 15 the regulation of a profession or occupation not already
 16 expressly subject to state regulation shall provide, upon
 17 request, the following information in writing to the state
 18 agency that is proposed to have jurisdiction over the
 19 regulation and to the legislative committees to which the
 20 legislation is referred:

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

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

26 (c) Documentation of the nature and extent of the harm
 27 to the public caused by the unregulated practice of the
 28 profession or occupation, including a description of any
 29 complaints that have been lodged against persons who have
 30 practiced the profession or occupation in this state during
 31 the preceding 3 years;

Bill No. HB 4119, 1st Eng.

Amendment No. ____

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

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

8 (f) A description of the voluntary efforts made by
9 members of the profession or occupation to protect the public
10 and a statement of the reasons why these efforts are not
11 adequate to protect the public;

12 (g) A copy of any federal legislation mandating
13 regulation;

14 (h) An explanation of the reasons why other types of
15 less restrictive regulation would not effectively protect the
16 public;

17 (i) The cost, availability, and appropriateness of
18 training and examination requirements;

19 ~~(j)(i)~~ The cost of regulation, including the indirect
20 cost to consumers, and the method proposed to finance the
21 regulation;

22 (k) The cost imposed on applicants or practitioners or
23 on employers of applicants or practitioners as a result of the
24 regulation;

25 ~~(l)(j)~~ The details of any previous efforts in this
26 state to implement regulation of the profession or occupation;
27 and

28 ~~(m)(k)~~ Any other information the agency or the
29 committee considers relevant to the analysis of the proposed
30 legislation.

31 Section 2. Effective October 1, 1998, subsection (4)

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 of section 455.201, Florida Statutes, is amended to read:

2 455.201 Professions and occupations regulated by
3 department; legislative intent; requirements.--

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

12 (b) Neither the department nor any board may create a
13 regulation that has an unreasonable effect on job creation or
14 job retention in the state or that places unreasonable
15 restrictions on the ability of individuals who seek to
16 practice or who are practicing a given profession or
17 occupation to find employment.

18 (c) The Legislature shall evaluate proposals to
19 increase regulation of professions or occupations that are
20 already regulated to determine their effect on job creation or
21 retention and job opportunities.

22 Section 3. Section 455.2035, Florida Statutes, is
23 created to read:

24 455.2035 Rulemaking authority.--The department may
25 adopt rules pursuant to ss. 120.54 and 120.536(1) to implement
26 the regulatory requirements of any profession within the
27 department's jurisdiction which does not have a statutorily
28 authorized governing board.

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

31 455.209 Accountability and liability of board

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 members.--

2 (2) Each board member and each former board member
3 serving on a probable cause panel shall be exempt from civil
4 liability for any act or omission when acting in the member's
5 official capacity, and the department, or the Department of
6 Legal Affairs shall defend any such member in any action
7 against any board or member of a board arising from any such
8 act or omission. In addition, the department or the Department
9 of Legal Affairs may defend the member's company or business
10 in any action against the company or business if the
11 department or the Department of Legal Affairs determines that
12 the actions from which the suit arises are actions taken by
13 the member in the member's official capacity and were not
14 beyond the member's statutory authority. In providing such
15 defense, the department, ~~the agency~~, or the Department of
16 Legal Affairs may employ or utilize the legal services of
17 outside counsel.

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

20 455.213 General licensing provisions.--

21 (1) Any person desiring to be licensed shall apply to
22 the department in writing. The application for licensure shall
23 be made on a form prepared and furnished by the department and
24 include the applicant's social security number. The
25 application shall be supplemented as needed to reflect any
26 material change in any circumstance or condition stated in the
27 application which takes place between the initial filing of
28 the application and the final grant or denial of the license
29 and which might affect the decision of the department ~~agency~~.
30 In order to further the economic development goals of the
31 state, and notwithstanding any law to the contrary, the

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 department may enter into an agreement with the county tax
2 collector for the purpose of appointing the county tax
3 collector as the department's agent to accept applications for
4 licenses and applications for renewals of licenses. The
5 agreement must specify the time within which the tax collector
6 must forward any applications and accompanying application
7 fees to the department. In cases where a person applies or
8 schedules directly with a national examination organization or
9 examination vendor to take an examination required for
10 licensure, any organization- or vendor-related fees associated
11 with the examination may be paid directly to the organization
12 or vendor.

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

15 455.218 Foreign-trained professionals; special
16 examination and license provisions.--

17 (6) The department, for its boards, shall not issue an
18 initial license to, or renew a license of, any applicant or
19 licensee who is under investigation or prosecution in any
20 jurisdiction for an action which would constitute a violation
21 of this part or the professional practice acts administered by
22 the department ~~or agency~~ and the boards until such time as the
23 investigation or prosecution is complete, at which time the
24 provisions of the professional practice acts shall apply.

25 Section 7.

26 Section 8. Subsections (2), (3), (4), and (9) of
27 section 455.225, Florida Statutes, are amended to read:

28 455.225 Disciplinary proceedings.--Disciplinary
29 proceedings for each board shall be within the jurisdiction of
30 the department.

31 (2) The department shall allocate sufficient and

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 adequately trained staff to expeditiously and thoroughly
2 determine legal sufficiency and investigate all legally
3 sufficient complaints. ~~For purposes of this section, it is the~~
4 ~~intent of the Legislature that the term "expeditiously" means~~
5 ~~that the agency, for disciplinary cases under its~~
6 ~~jurisdiction, shall complete the report of its initial~~
7 ~~investigative findings and recommendations concerning the~~
8 ~~existence of probable cause within 6 months after its receipt~~
9 ~~of the complaint. The failure of the agency, for disciplinary~~
10 ~~cases under its jurisdiction, to comply with the time limits~~
11 ~~of this section while investigating a complaint against a~~
12 ~~licensee constitutes harmless error in any subsequent~~
13 ~~disciplinary action unless a court finds that either the~~
14 ~~fairness of the proceeding or the correctness of the action~~
15 ~~may have been impaired by a material error in procedure or a~~
16 ~~failure to follow prescribed procedure.~~When its investigation
17 is complete and legally sufficient, the department shall
18 prepare and submit to the probable cause panel of the
19 appropriate regulatory board the investigative report of the
20 department. The report shall contain the investigative
21 findings and the recommendations of the department concerning
22 the existence of probable cause. At any time after legal
23 sufficiency is found, the department may dismiss any case, or
24 any part thereof, if the department determines that there is
25 insufficient evidence to support the prosecution of
26 allegations contained therein. The department shall provide a
27 detailed report to the appropriate probable cause panel prior
28 to dismissal of any case or part thereof, and to the subject
29 of the complaint after dismissal of any case or part thereof,
30 under this section. For cases dismissed prior to a finding of
31 probable cause, such report is confidential and exempt from s.

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 119.07(1). The probable cause panel shall have access, upon
2 request, to the investigative files pertaining to a case prior
3 to dismissal of such case. If the department dismisses a case,
4 the probable cause panel may retain independent legal counsel,
5 employ investigators, and continue the investigation and
6 prosecution of the case as it deems necessary.

7 (3)(a) As an alternative to the provisions of
8 subsections (1) and (2), when a complaint is received, the
9 department may provide a licensee with a notice of
10 noncompliance for an initial offense of a minor violation. A
11 violation is a minor violation if it does not demonstrate a
12 serious inability to practice the profession, result in
13 economic or physical harm to a person, or adversely affect the
14 public health, safety, or welfare or create a significant
15 threat of such harm. Each board, or the department if there is
16 no board, shall establish by rule those violations which are
17 minor violations under this provision. Failure of a licensee
18 to take action in correcting the violation within 15 days
19 after notice may result in the institution of regular
20 disciplinary proceedings.

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

25 (c) In any instance in which a licensee is charged
26 with failure to comply with continuing-education requirements,
27 the department's or board's, as appropriate, initial response
28 may only be to issue a notice of noncompliance, including
29 granting the licensee a reasonable time to comply. However,
30 if the department finds that the licensee's failure to comply
31 was done knowingly, the department or board, as appropriate,

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 may levy any other penalty otherwise available to it under the
2 circumstances. This paragraph does not apply to any licensee
3 for which failure to comply with continuing-education
4 requirements is not grounds for discipline but is instead only
5 a prerequisite for renewal.

6 (4) The determination as to whether probable cause
7 exists shall be made by majority vote of a probable cause
8 panel of the board, or the department, as appropriate. Each
9 regulatory board shall provide by rule that the determination
10 of probable cause shall be made by a panel of its members or
11 by the department. Each board may provide by rule for multiple
12 probable cause panels composed of at least two members. Each
13 board may provide by rule that one or more members of the
14 panel or panels may be a former board member. The length of
15 term or repetition of service of any such former board member
16 on a probable cause panel may vary according to the direction
17 of the board when authorized by board rule. Any probable cause
18 panel must include one of the board's former or present
19 consumer members, if one is available, willing to serve, and
20 is authorized to do so by the board chair. Any probable cause
21 panel must include a present board member. Any probable cause
22 panel must include a former or present professional board
23 member. However, any former professional board member serving
24 on the probable cause panel must hold an active valid license
25 for that profession. All proceedings of the panel are exempt
26 from s. 286.011 until 10 days after probable cause has been
27 found to exist by the panel or until the subject of the
28 investigation waives his or her privilege of confidentiality.
29 The probable cause panel may make a reasonable request, and
30 upon such request the department shall provide such additional
31 investigative information as is necessary to the determination

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 of probable cause. A request for additional investigative
2 information shall be made within 15 days from the date of
3 receipt by the probable cause panel of the investigative
4 report of the department. The probable cause panel or the
5 department, as may be appropriate, shall make its
6 determination of probable cause within 30 days after receipt
7 by it of the final investigative report of the department. The
8 secretary may grant extensions of the 15-day and the 30-day
9 time limits. In lieu of a finding of probable cause, the
10 probable cause panel, or the department when there is no
11 board, may issue a letter of guidance to the subject. If,
12 within the 30-day time limit, as may be extended, the probable
13 cause panel does not make a determination regarding the
14 existence of probable cause or does not issue a letter of
15 guidance in lieu of a finding of probable cause, the
16 department agency, for disciplinary cases under its
17 jurisdiction, must make a determination regarding the
18 existence of probable cause within 10 days after the
19 expiration of the time limit. If the probable cause panel
20 finds no probable cause, the department may petition within 10
21 days for a determination of the existence of probable cause
22 pursuant to s. 120.574. Such actions shall be held
23 confidential as provided in s. 455.255(10). The administrative
24 law judge's order shall constitute final action with respect
25 to the existence of probable cause. If the probable cause
26 panel finds that probable cause exists, it shall direct the
27 department to file a formal complaint against the licensee.
28 The department shall follow the directions of the probable
29 cause panel regarding the filing of a formal complaint. If
30 directed to do so, the department shall file a formal
31 complaint against the subject of the investigation and

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 prosecute that complaint pursuant to chapter 120. However, the
2 department may decide not to prosecute the complaint if it
3 finds that probable cause had been improvidently found by the
4 panel. In such cases, the department shall refer the matter to
5 the board. The board may then file a formal complaint and
6 prosecute the complaint pursuant to chapter 120. The
7 department shall also refer to the board any investigation or
8 disciplinary proceeding not before the Division of
9 Administrative Hearings pursuant to chapter 120 or otherwise
10 completed by the department within 1 year after the filing of
11 a complaint. The department ~~agency~~, for disciplinary cases
12 under its jurisdiction, must establish a uniform reporting
13 system to quarterly refer to each board the status of any
14 investigation or disciplinary proceeding that is not before
15 the Division of Administrative Hearings or otherwise completed
16 by the department ~~or agency~~ within 1 year after the filing of
17 the complaint. ~~Annually, the agency, for disciplinary cases~~
18 ~~under its jurisdiction if there is no board, or each board~~
19 ~~must establish a plan to reduce or otherwise close any~~
20 ~~investigation or disciplinary proceeding that is not before~~
21 ~~the Division of Administrative Hearings or otherwise completed~~
22 ~~by the agency within 1 year after the filing of the complaint.~~
23 A probable cause panel or a board may retain independent legal
24 counsel, employ investigators, and continue the investigation
25 as it deems necessary; all costs thereof shall be paid from
26 the Professional Regulation Trust Fund. All proceedings of the
27 probable cause panel are exempt from s. 120.525.

28 (9)(a) The department shall periodically notify the
29 person who filed the complaint of the status of the
30 investigation, whether probable cause has been found, and the
31 status of any civil action or administrative proceeding or

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 appeal.

2 ~~(b) In any disciplinary case under the jurisdiction of~~
3 ~~the Agency for Health Care Administration for which probable~~
4 ~~cause has been found, the Agency for Health Care~~
5 ~~Administration shall provide to the person who filed the~~
6 ~~complaint a copy of the administrative complaint, including:~~

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

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

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

14 ~~(c) In any disciplinary case for which probable cause~~
15 ~~is not found, the Agency for Health Care Administration shall~~
16 ~~so inform the person who filed the complaint and notify that~~
17 ~~person that he or she may, within 60 days, provide any~~
18 ~~additional information to the probable cause panel which may~~
19 ~~be relevant to the decision. In any administrative proceeding~~
20 ~~under s. 120.57, the person who filed the disciplinary~~
21 ~~complaint shall have the right to present oral or written~~
22 ~~communication relating to the alleged disciplinary violations~~
23 ~~or to the appropriate penalty.~~

24 Section 9. Section 455.2285, Florida Statutes, is
25 amended to read:

26 455.2285 Annual report concerning finances,
27 administrative complaints, disciplinary actions, and
28 recommendations.--The department is directed to prepare and
29 submit a report to the President of the Senate and Speaker of
30 the House of Representatives by November 1 of each year. In
31 addition to finances and any other information the Legislature

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 may require, the report shall include statistics and relevant
 2 information, profession by profession, detailing:

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

5 (2) The number of complaints received and
 6 investigated.

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

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

9 (5) The number of administrative complaints filed.

10 (6) The disposition of all administrative complaints.

11 (7) A description of disciplinary actions taken.

12 (8) A description of any effort by the department
 13 ~~agency~~, for any disciplinary cases under its jurisdiction, to
 14 reduce or otherwise close any investigation or disciplinary
 15 proceeding not before the Division of Administrative Hearings
 16 under chapter 120 or otherwise not completed within 1 year
 17 after the initial filing of a complaint under this chapter.

18 (9) The status of the development and implementation
 19 of rules providing for disciplinary guidelines pursuant to s.
 20 455.2273.

21 (10) Such recommendations for administrative and
 22 statutory changes necessary to facilitate efficient and
 23 cost-effective operation of the department and the various
 24 boards.

25 Section 10. Effective October 1, 1998, subsection (4)
 26 of section 455.517, Florida Statutes, is amended to read:

27 455.517 Professions and occupations regulated by
 28 department; legislative intent; requirements.--

29 (4)(a) Neither ~~No board, nor~~ the department nor any
 30 board may, shall create unreasonably restrictive and
 31 extraordinary standards that deter qualified persons from

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 entering the various professions. Neither ~~No board, nor~~ the
2 department nor any board may, ~~shall~~ take any action that ~~which~~
3 tends to create or maintain an economic condition that
4 unreasonably restricts competition, except as specifically
5 provided by law.

6 (b) Neither the department nor any board may create a
7 regulation that has an unreasonable effect on job creation or
8 job retention in the state or that places unreasonable
9 restrictions on the ability of individuals who seek to
10 practice or who are practicing a profession or occupation to
11 find employment.

12 (c) The Legislature shall evaluate proposals to
13 increase regulation of professions or occupations to determine
14 their effect on job creation or retention and employment
15 opportunities.

16 Section 11. Except as otherwise provided in this act,
17 this act shall take effect upon becoming a law.

18
19

20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 Delete everything before the enacting clause

23
24

and insert:

25 A bill to be entitled
26 An act relating to professional regulation;
27 amending s. 11.62, F.S.; adding criteria for
28 evaluating new regulation; amending s. 455.201,
29 F.S.; requiring the Department of Business and
30 Professional Regulation to consider the impact
31 on jobs when considering new regulation;

Bill No. HB 4119, 1st Eng.

Amendment No. ____

1 creating s. 455.2035, F.S.; providing the
2 department rulemaking authority; amending ss.
3 455.209, 455.213, 455.218, F.S.; conforming
4 provisions to a previous administrative
5 reorganization; amending s. 455.225, F.S.;
6 revising probable-cause provisions; prescribing
7 authority of the department or a board in cases
8 of failure to comply with continuing-education
9 requirements; conforming provisions to a
10 previous administrative reorganization;
11 amending s. 455.2285, F.S.; conforming
12 provisions to a previous administrative
13 reorganization; amending s. 455.517, F.S.;
14 requiring the Department of Health to consider
15 the impact on jobs when creating new
16 regulation; providing effective dates.

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31