

By Senator Harris

24-692-98

See HB

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A bill to be entitled
An act relating to minority business enterprises; amending s. 287.0943, F.S.; providing a presumption for certain certification purposes; providing an exclusion; amending s. 288.703, F.S.; revising definitions; specifying application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (1) of section 287.0943, Florida Statutes, is amended to read:

287.0943 Certification of minority business enterprises.--

(1)

(e) In assessing the status of ownership and control, certification criteria shall, at a minimum:

1. Link ownership by a minority person, as defined in s. 288.703(3), or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to licensure of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified; however, the minority licenseholder need not be the controlling owner of the enterprise, but must hold an ownership interest. Minority business enterprises presently certified by the state will not be subject to the licensure requirement until 5 years after the effective date of this act.

1 2. If present ownership was obtained by transfer,
2 require the minority person on whom eligibility is based to
3 have owned at least 51 percent of the applicant firm for a
4 minimum of 2 years, when any previous majority ownership
5 interest in the firm was by a nonminority who is or was a
6 relative, former employer, or current employer of the minority
7 person on whom eligibility is based. This requirement shall
8 not apply to minority persons who are otherwise eligible who
9 take a 51-percent-or-greater interest in a firm that requires
10 professional licensure to operate and who will be the
11 qualifying licenseholder for the firm when certified. A
12 transfer made within a related immediate family group from a
13 nonminority person to a minority person in order to establish
14 ownership by a minority person shall be deemed to have been
15 made solely for purposes of satisfying certification criteria
16 and shall render such ownership invalid for purposes of
17 qualifying for such certification if the combined total net
18 asset value of all members of such family group exceeds \$1
19 million. For purposes of this subparagraph, the term "related
20 immediate family group" means one or more children under 16
21 years of age and a parent of such children or the spouse of
22 such parent residing in the same house or living unit.

23 3. Require that prospective certified minority
24 business enterprises be currently performing a useful business
25 function. A "useful business function" is defined as a
26 business function which results in the provision of materials,
27 supplies, equipment, or services to customers other than state
28 or local government. Acting as a conduit to transfer funds to
29 a nonminority business does not constitute a useful business
30 function unless it is done so in a normal industry practice.
31 As used in this section, the term "acting as a conduit" means,

1 in part, not acting as a regular dealer by making sales of
2 material, goods, or supplies from items bought, kept in stock,
3 and regularly sold to the public in the usual course of
4 business. Brokers, manufacturer's representatives, sales
5 representatives, and nonstocking distributors are considered
6 as conduits that do not perform a useful business function,
7 unless normal industry practice dictates.

8 Section 2. Subsections (1) and (2) of section 288.703,
9 Florida Statutes, are amended to read:

10 288.703 Definitions.--As used in this act, the
11 following words and terms shall have the following meanings
12 unless the content shall indicate another meaning or intent:

13 (1) "Small business" means an independently owned and
14 operated business concern that employs 100 or fewer permanent
15 full-time employees and that, together with its affiliates,
16 has a net worth of not more than ~~\$1~~\$3 million and an average
17 net income after federal income taxes, excluding any carryover
18 losses, for the preceding 2 years of not more than \$2 million.
19 As applicable to sole proprietorships, the ~~\$1~~\$3 million net
20 worth requirement shall include both personal and business
21 investments.

22 (2) "Minority business enterprise" means any small
23 business concern as defined in subsection (1) which is
24 organized to engage in commercial transactions, which is
25 domiciled in Florida, and which is at least 51-percent-owned
26 by minority persons who are members of an insular group that
27 is of a particular racial, ethnic, or gender makeup or
28 national origin, which has been subjected historically to
29 disparate treatment due to identification in and with that
30 group resulting in an underrepresentation of commercial
31 enterprises under the group's control, and whose management

1 and daily operations are controlled by such persons. A
2 minority business enterprise may primarily involve the
3 practice of a profession. Ownership by a minority person does
4 not include ownership that is the result of a transfer from a
5 nonminority person to a minority person within a related
6 immediate family group if the combined total net asset value
7 of all members of such family group exceeds \$1 million. For
8 purposes of this subsection, the term "related immediate
9 family group" means one or more children under 16 years of age
10 and a parent of such children or the spouse of such parent
11 residing in the same house or living unit.

12 Section 3. The definitions of small business, minority
13 business enterprise, and certified minority business
14 enterprise provided in section 288.703, Florida Statutes,
15 apply to the state and all political subdivisions of the
16 state.

17 Section 4. This act shall take effect October 1, 1998.

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LEGISLATIVE SUMMARY

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Revises the definition of minority business enterprise to exclude intrafamily transfers made solely to achieve ownership by a minority person. Excludes from provisions relating to certification of minority business enterprises intrafamily transfers from a nonminority person to a minority person for purposes of eligibility for certification. Limits small businesses to those with net worths of \$1 million or less. (See bill for details.)