

By the Committee on Regulated Industries

315-454-99

1 A bill to be entitled
2 An act relating to the regulation of
3 professions and occupations; amending s. 11.62,
4 F.S.; providing criteria for evaluating
5 proposals for new regulations based on the
6 effect of such regulations on job creation or
7 retention; amending ss. 455.201 and 455.517,
8 F.S.; providing criteria for evaluating
9 proposals to increase the regulation of
10 currently regulated professions based on the
11 effect of such regulations on job creation or
12 retention; amending s. 455.204, F.S.; requiring
13 the Department of Business and Professional
14 Regulation to evaluate costs of activities;
15 amending s. 455.2226, F.S.; requiring funeral
16 directors and embalmers to provide proof of
17 completion of continuing education
18 requirements; amending s. 455.2228, F.S.;
19 requiring barbers and cosmetologists to provide
20 proof of completion of continuing education
21 requirements; amending s. 455.273, F.S.;
22 revising provisions related to the submission
23 and processing of proof of completing of
24 continuing education requirements for licensees
25 regulated by the department; providing for the
26 department to contract for this service;
27 deleting requirements that licensees sign such
28 proof; amending s. 474.211, F.S.; deleting an
29 affidavit requirement for veterinarians;
30 amending s. 489.115, F.S.; deleting a signature
31 requirement for contractors; requiring the

1 Department of Business and Professional
2 Regulation to make a report; providing
3 effective dates.
4

5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Subsections (3) and (4) of section 11.62,
8 Florida Statutes, are amended to read:

9 11.62 Legislative review of proposed regulation of
10 unregulated functions.--

11 (3) In determining whether to regulate a profession or
12 occupation, the Legislature shall consider the following
13 factors:

14 (a) Whether the unregulated practice of the profession
15 or occupation will substantially harm or endanger the public
16 health, safety, or welfare, and whether the potential for harm
17 is recognizable and not remote;

18 (b) Whether the practice of the profession or
19 occupation requires specialized skill or training, and whether
20 that skill or training is readily measurable or quantifiable
21 so that examination or training requirements would reasonably
22 assure initial and continuing professional or occupational
23 ability;

24 (c) Whether the regulation will have an unreasonable
25 effect on job creation or job retention in the state or will
26 place unreasonable restrictions on the ability of individuals
27 who seek to practice or who are practicing a given profession
28 or occupation to find employment;

29 (d)~~(c)~~ Whether the public is or can be effectively
30 protected by other means; and
31

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

4 (4) The proponents of legislation that provides for
5 the regulation of a profession or occupation not already
6 expressly subject to state regulation shall provide, upon
7 request, the following information in writing to the state
8 agency that is proposed to have jurisdiction over the
9 regulation and to the legislative committees to which the
10 legislation is referred:

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

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

16 (c) Documentation of the nature and extent of the harm
17 to the public caused by the unregulated practice of the
18 profession or occupation, including a description of any
19 complaints that have been lodged against persons who have
20 practiced the profession or occupation in this state during
21 the preceding 3 years;

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

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

29 (f) A description of the voluntary efforts made by
30 members of the profession or occupation to protect the public
31

1 and a statement of the reasons why these efforts are not
2 adequate to protect the public;

3 (g) A copy of any federal legislation mandating
4 regulation;

5 (h) An explanation of the reasons why other types of
6 less restrictive regulation would not effectively protect the
7 public;

8 (i) The cost, availability, and appropriateness of
9 training and examination requirements;

10 (j)~~(i)~~ The cost of regulation, including the indirect
11 cost to consumers, and the method proposed to finance the
12 regulation;

13 (k) The cost imposed on applicants or practitioners or
14 on employers of applicants or practitioners as a result of the
15 regulation;

16 (l)~~(j)~~ The details of any previous efforts in this
17 state to implement regulation of the profession or occupation;
18 and

19 (m)~~(k)~~ Any other information the agency or the
20 committee considers relevant to the analysis of the proposed
21 legislation.

22 Section 2. Subsection (4) of section 455.201, Florida
23 Statutes, is amended to read:

24 455.201 Professions and occupations regulated by
25 department; legislative intent; requirements.--

26 (4)(a) Neither the department nor any board may ~~No~~
27 ~~board, nor the department, shall~~ create unreasonably
28 restrictive and extraordinary standards that deter qualified
29 persons from entering the various professions. Neither the
30 department nor any board may ~~No board, nor the department,~~
31 ~~shall~~ take any action that ~~which~~ tends to create or maintain

1 an economic condition that unreasonably restricts competition,
2 except as specifically provided by law.

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

9 (c) The Legislature shall evaluate proposals to
10 increase regulation of already regulated professions or
11 occupations to determine their effect on job creation or
12 retention and employment opportunities.

13 Section 3. Subsection (4) of section 455.517, Florida
14 Statutes, is amended to read:

15 455.517 Professions and occupations regulated by
16 department; legislative intent; requirements.--

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

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

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1 (c) The Legislature shall evaluate proposals to
2 increase the regulation of regulated professions or
3 occupations to determine the effect of increased regulation on
4 job creation or retention and employment opportunities.

5 Section 4. Section 455.204, Florida Statutes, is
6 amended to read:

7 455.204 Long-range policy planning; plans, reports,
8 and recommendations.--To facilitate efficient and
9 cost-effective regulation, the department and the board, where
10 appropriate, shall develop and implement a long-range policy
11 planning and monitoring process to include recommendations
12 specific to each profession. Such process shall include
13 estimates of revenues, expenditures, cash balances, and
14 performance statistics for each profession. The period
15 covered shall not be less than 5 years. The department, with
16 input from the boards, shall develop the long-range plan and
17 must obtain the approval of the secretary. The department
18 shall monitor compliance with the approved long-range plan
19 and, with input from the boards, shall annually update the
20 plans for approval by the secretary. The department shall
21 provide concise management reports to the boards quarterly.

22 As part of the review process, the department shall evaluate:

23 (1) Whether the department, including the boards and
24 the various functions performed by the department, is
25 operating efficiently and effectively and if there is a need
26 for a board or council to assist in cost-effective regulation.

27 (2) How and why the various professions are regulated.

28 (3) Whether there is a need to continue regulation,
29 and to what degree.

30 (4) Whether or not consumer protection is adequate,
31 and how it can be improved.

1 (5) Whether there is consistency between the various
2 practice acts.

3 (6) Whether unlicensed activity is adequately
4 enforced.

5 (7) The number of licensees, the number of
6 departmental employees, and the cost of all regulatory
7 activities, including overhead and indirect costs, specifying
8 the function for which they are performed.

9
10 Such plans should include conclusions and recommendations on
11 these and other issues as appropriate. Such plans shall be
12 provided to the Governor and the Legislature by November 1 of
13 each year.

14 Section 5. Subsection (2) of section 455.2226, Florida
15 Statutes, is amended to read:

16 455.2226 Funeral directors and embalmers; instruction
17 on human immunodeficiency virus and acquired immune deficiency
18 syndrome.--

19 (2) Each such licensee or certificateholder shall
20 provide proof of completion of continuing education
21 requirements, pursuant to departmental rule, in the same
22 manner as any other continuing education requirement for
23 license renewal ~~submit confirmation of having completed said~~
24 ~~course, on a form as provided by the board, when submitting~~
25 ~~fees for each biennial renewal.~~

26 Section 6. Subsection (2) of section 455.2228, Florida
27 Statutes, is amended to read:

28 455.2228 Barbers and cosmetologists; instruction on
29 human immunodeficiency virus and acquired immune deficiency
30 syndrome.--

31

1 (2) Each licensee shall provide proof of completion of
2 continuing education requirements, pursuant to departmental
3 rule, in the same manner as any other continuing education
4 requirements for license renewal.~~When filing fees for each~~
5 ~~biennial renewal, each licensee shall submit confirmation of~~
6 ~~having completed said course, on a form provided by the board~~
7 ~~or by the department if there is no board. At the time of the~~
8 ~~subsequent biennial renewal when coursework is to be~~
9 ~~completed, if the licensee has not submitted confirmation~~
10 ~~which has been received and recorded by the board, or~~
11 ~~department if there is no board, the department shall not~~
12 ~~renew the license.~~

13 Section 7. Subsection 455.273, Florida Statutes, is
14 amended to read:

15 455.273 Renewal and cancellation notices.--

16 (1) At least 90 days before the end of a licensure
17 cycle, the Department of Business and Professional Regulation
18 shall:

19 (a) Forward a licensure renewal notification to an
20 active or inactive licensee at the licensee's last known
21 address of record with the department.

22 (b) Forward a notice of pending cancellation of
23 licensure to a delinquent status licensee at the licensee's
24 last known address of record with the department.

25 (2) Each licensure renewal notification and each
26 notice of pending cancellation of licensure must state
27 conspicuously that a licensee who remains on inactive status
28 for more than two consecutive biennial licensure cycles and
29 who wishes to reactivate the license may be required to
30 demonstrate the competency to resume active practice by
31 sitting for a special purpose examination or by completing

1 other reactivation requirements, as defined by rule of the
2 board or the department when there is no board.

3 (3) Notwithstanding any provision of law to the
4 contrary, completion of continuing education requirements is a
5 mandatory prerequisite for license renewal, but the failure to
6 complete and report continuing education requirements is not
7 grounds for discipline. The license of a licensee who does not
8 complete required continuing education shall revert to a
9 delinquent status.

10 (4) Any continuing education required for license
11 renewal must be completed 6 months before the end of a renewal
12 period. One year before the end of the renewal period, the
13 department shall notify the licensee of all approved
14 continuing education reported by the licensee as having been
15 completed.

16 (5)(a) The department shall monitor completion of
17 continuing education requirements for licensees or may
18 contract for the monitoring of such requirements. The
19 department or its contractor may:

20 1. Collect from continuing education providers or
21 licensees who complete self-directed studies or any other
22 approved continuing education, sufficient information, as
23 determined by board rule, or by department rule where there is
24 no board, to determine whether the requirements for continuing
25 education have been met.

26 2. When the monitoring of continuing education is
27 performed by contract, provide in the contract that the audit
28 fee is to be paid directly to the contractor and not to the
29 department.

30 (b) A board, or the department where there is no
31 board, may require licensees who take continuing education

1 from national providers or from providers who offer continuing
2 education on a limited basis, or in other situations where it
3 would be more practicable, to report directly to the monitor.

4 (6) Subsections (3)-(5) do not apply to licensees
5 during the renewal cycle in effect on the effective date of
6 this act if less than 12 months remain in the renewal cycle.
7 For such licensees, pre-existing law related to renewals and
8 continuing education applies until the next renewal cycle,
9 except that monitoring will be performed by random
10 post-renewal audits.

11 (7) Affidavits, reports, or other signed documents for
12 proof of continuing education are not required, and submission
13 of the renewal notice and payment of the renewal fee by the
14 licensee constitutes the licensee's affirmation of compliance
15 with all statutory and rule requirements associated with
16 license renewal.

17 Section 8. Subsection (1) of section 474.211, Florida
18 Statutes, is amended to read:

19 474.211 Renewal of license.--

20 (1) The department shall renew a license upon receipt
21 of the renewal application and fee ~~and an affidavit of~~
22 ~~compliance with continuing education requirements set by rule~~
23 ~~of the board.~~

24 Section 9. Paragraph (c) of subsection (4) of section
25 489.115, Florida Statutes, 1998 Supplement, is amended to
26 read:

27 489.115 Certification and registration; endorsement;
28 reciprocity; renewals; continuing education.--

29 (4)

30 (c) The certificateholder or registrant shall
31 complete, ~~sign,~~ and forward the renewal application to the

1 department, together with the appropriate fee. Upon receipt of
2 the application and fee, the department shall renew the
3 certificate or registration.

4 Section 10. The Department of Business and
5 Professional Regulation shall make a report on or before
6 November 1, 1999, to the State Council on Competitive
7 Government, created pursuant to section 14.203, Florida
8 Statutes, the President of the Senate, and the Speaker of the
9 House of Representatives identifying commercial activities
10 currently performed by the department which may be better
11 provided by requiring competition with private sources or
12 other state agency service providers.

13 Section 11. This act shall take effect upon becoming a
14 law, except that section 7 shall take effect on the date the
15 Department of Business and Professional Regulation executes a
16 contract to monitor continuing education, on the date the
17 department announces its decision to conduct such monitoring
18 in-house, or on October 1, 2000, whichever occurs first.

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21 SENATE SUMMARY

22 Provides criteria to evaluate proposals for the
23 regulation of professions or occupations based on the
24 effect of such regulations on job creation or retention.
25 Requires the Department of Business and Professional
26 Regulation to evaluate the cost of certain activities.
27 Revises provisions related to the submission and
28 processing of proof of compliance with continuing
29 education requirements by the Department of Business and
30 Professional Regulation. Provides for funeral directors
31 and embalmers, barbers, and cosmetologists to comply in
the same manner as other licensees. Provides authority
for the department to contract with outside vendors for
such services. Deletes a requirement that veterinarians
provide affidavits and that contractors sign submissions
regarding continuing education requirements. Requires a
report. (See bill for details.)