

By Senator Forman

32-130B-99

1                                   A bill to be entitled  
2           An act relating to certified nursing  
3           assistants; creating part XV of chapter 468,  
4           F.S.; providing definitions; requiring that the  
5           Department of Health maintain a state registry  
6           of certified nursing assistants; authorizing  
7           the department to contract for examination  
8           services; providing requirements for obtaining  
9           certification as a certified nursing assistant;  
10          requiring that the department adopt rules  
11          governing initial certification; specifying  
12          grounds for which the department may deny,  
13          suspend, or revoke a person's certification;  
14          authorizing the department to exempt an  
15          applicant or certificateholder from  
16          disqualification of certification; providing  
17          requirements for records and meetings held for  
18          disciplinary actions; exempting an employer  
19          from liability for terminating a certified  
20          nursing assistant under certain circumstances;  
21          providing penalties; providing for background  
22          screening; providing rulemaking authority;  
23          requiring persons who employ certified nursing  
24          assistants to make certain reports to the  
25          Department of Health; requiring that the  
26          department update the certified nursing  
27          assistant registry; providing for future repeal  
28          of such provisions; amending s. 400.211, F.S.;  
29          deleting obsolete provisions with respect to  
30          the regulation of certified nursing assistants;  
31          authorizing additional positions for the

1 Department of Health; providing an effective  
2 date.

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

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6 Section 1. Part XV of chapter 468, Florida Statutes,  
7 consisting of sections 468.821, 468.822, 468.823, 468.824,  
8 468.825, 468.826, 468.827, and 468.828, Florida Statutes, is  
9 created to read:

10 468.821 Definitions.--As used in this part, the term:

11 (1) "Approved training program" means:

12 (a) A course of training conducted by a public sector  
13 or private sector educational center licensed by the  
14 Department of Education to implement the basic curriculum for  
15 nursing assistants which is approved by the Department of  
16 Education.

17 (b) A training program operated under s. 400.141.

18 (2) "Certified nursing assistant" means a person who  
19 meets the qualifications specified in this part and who is  
20 certified by the department as a certified nursing assistant.

21 (3) "Department" means the Department of Health.

22 (4) "Registry" means the listing of certified nursing  
23 assistants maintained by the department.

24 468.822 Duties and powers of the department.--The  
25 department shall maintain, or contract with or approve another  
26 entity to maintain, a state registry of certified nursing  
27 assistants. The registry must consist of the name of each  
28 certified nursing assistant in this state; other identifying  
29 information defined by department rule; certification status;  
30 the effective date of certification; other information  
31 required by state or federal law; information regarding any

1 crime or any abuse, neglect, or exploitation as provided under  
2 chapter 435; and any disciplinary action taken against the  
3 certified nursing assistant. The registry shall be accessible  
4 to the public, the certificateholder, employers, and other  
5 state agencies. The department shall adopt by rule testing  
6 procedures for use in certifying nursing assistants and shall  
7 adopt rules regulating the practice of certified nursing  
8 assistants to enforce this part. The department may contract  
9 with or approve another entity or organization to provide the  
10 examination services, including the development and  
11 administration of examinations. The provider shall pay all  
12 reasonable costs and expenses incurred by the department in  
13 evaluating the provider's application and performance during  
14 the delivery of services, including examination services and  
15 procedures for maintaining the certified nursing assistant  
16 registry.

17 468.823 Certified nursing assistants; certification  
18 requirement.--

19 (1) The department shall issue a certificate to  
20 practice as a certified nursing assistant to any person who  
21 demonstrates a minimum competency to read and write and meets  
22 one of the following requirements:

23 (a) Has successfully completed an approved training  
24 program and achieved a minimum score, established by rule of  
25 the department, on the nursing assistant competency  
26 examination, which consists of a written portion and  
27 skills-demonstration portion approved by the department and  
28 administered at a site and by personnel approved by the  
29 department.

30 (b) Has achieved a minimum score, established by rule  
31 of the department, on the nursing assistant competency

1 examination, which consists of a written portion and  
2 skills-demonstration portion, approved by the department and  
3 administered at a site and by personnel approved by the  
4 department and:

5 1. Has a high school diploma, or its equivalent; or

6 2. Is at least 18 years of age.

7 (c) Is currently certified in another state; is listed  
8 on that state's certified nursing assistant registry; has not  
9 been found to have committed abuse, neglect, or exploitation  
10 in that state; and has successfully completed a national  
11 nursing assistant evaluation in order to receive certification  
12 in that state.

13 (2) If an applicant fails to pass the nursing  
14 assistant competency examination in three attempts, the  
15 applicant is not eligible for reexamination unless the  
16 applicant completes an approved training program.

17 (3) An oral examination shall be administered as a  
18 substitute for the written portion of the examination upon  
19 request. The oral examination shall be administered at a site  
20 and by personnel approved by the department.

21 (4) The department shall adopt rules to provide for  
22 the initial certification of certified nursing assistants.

23 (5) A certified nursing assistant shall maintain a  
24 current address with the department in accordance with s.  
25 455.717.

26 468.824 Denial, suspension, or revocation of  
27 certification; disciplinary actions.--

28 (1) The following acts constitute grounds for which  
29 the department may impose disciplinary sanctions as specified  
30 in subsection (2):

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1       (a) Obtaining or attempting to obtain an exemption, or  
2 possessing or attempting to possess a letter of exemption, by  
3 bribery, misrepresentation, deceit, or through an error of the  
4 department.

5       (b) Intentionally violating any provision of this  
6 chapter, chapter 455, or the rules adopted by the department.

7       (2) When the department finds any person guilty of any  
8 of the grounds set forth in subsection (1), it may enter an  
9 order imposing one or more of the following penalties:

10       (a) Denial, suspension, or revocation of  
11 certification.

12       (b) Imposition of an administrative fine not to exceed  
13 \$150 for each count or separate offense.

14       (c) Imposition of probation or restriction of  
15 certification, including conditions such as corrective actions  
16 as retraining or compliance with an approved treatment program  
17 for impaired practitioners.

18       (3) The department may, upon the request of a  
19 certificateholder, exempt the certificateholder from  
20 disqualification of certification or disqualification of  
21 employment in accordance with chapter 435 and issue a letter  
22 of exemption.

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24 After January 1, 2000, the department must notify an applicant  
25 seeking an exemption from disqualification from certification  
26 or employment of its decision to approve or deny the request  
27 within 30 days after the date the department receives all  
28 required documentation.

29       468.825 Availability of disciplinary records and  
30 proceedings.--Pursuant to s. 455.621, any complaint or record  
31 maintained by the Department of Health pursuant to the

1 discipline of a certified nursing assistant and any proceeding  
2 held by the department to discipline a certified nursing  
3 assistant shall remain open and available to the public.

4 468.826 Exemption from liability.--If an employer  
5 terminates or denies employment to a certified nursing  
6 assistant whose certification is inactive as shown on the  
7 certified nursing assistant registry or whose name appears on  
8 the central abuse registry and tracking system of the  
9 Department of Children and Family Services or on a criminal  
10 screening report of the Department of Law Enforcement, the  
11 employer is not civilly liable for such termination and a  
12 cause of action may not be brought against the employer for  
13 damages, regardless of whether the employee has filed for an  
14 exemption from the department under s. 468.824(1). There may  
15 not be any monetary liability on the part of, and a cause of  
16 action for damages may not arise against, any licensed  
17 facility, its governing board or members thereof, medical  
18 staff, disciplinary board, agents, investigators, witnesses,  
19 employees, or any other person for any action taken in good  
20 faith without intentional fraud in carrying out this section.

21 468.827 Penalties.--It is a misdemeanor of the first  
22 degree, punishable as provided under s. 775.082 or s. 775.083,  
23 for any person, knowingly or intentionally, to fail to  
24 disclose, by false statement, misrepresentation,  
25 impersonation, or other fraudulent means, in any application  
26 for voluntary or paid employment or licensure regulated under  
27 this part, a material fact used in making a determination as  
28 to such person's qualifications to be an employee or licensee.

29 468.828 Background screening information; rulemaking  
30 authority.--

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1           (1) The Agency for Health Care Administration shall  
2 allow the department to electronically access its background  
3 screening database and records and the Department of Children  
4 and Families shall allow the department to electronically  
5 access its central abuse registry and tracking system under  
6 chapter 415.

7           (2) An employer, or an agent thereof, may not use  
8 criminal records, juvenile records, or information obtained  
9 from the central abuse hotline under chapter 415 for any  
10 purpose other than determining if the person meets the  
11 requirements of this part. Such records and information  
12 obtained by the department shall remain confidential and  
13 exempt from s. 119.07(1).

14           (3) If the requirements of the Omnibus Budget  
15 Reconciliation Act of 1987, as amended, for the certification  
16 of nursing assistants are in conflict with this part, the  
17 federal requirements shall prevail for those facilities  
18 certified to provide care under Title XVIII (Medicare) or  
19 Title XIX (Medicaid) of the Social Security Act.

20           (4) The department shall adopt rules to administer  
21 this part.

22           Section 2. Certified nursing assistant registry.--

23           (1) By October 1, 1999, and by October 1 of every year  
24 thereafter, each employer of certified nursing assistants  
25 shall submit to the Department of Health a list of the names  
26 and social security numbers of each person employed by the  
27 employer as a certified nursing assistant in a nursing-related  
28 occupation for a minimum of 8 hours for monetary compensation  
29 during the preceding 24 months. Employers may submit such  
30 information electronically through the department's Internet  
31 site.

1           (2) The department shall update the certified nursing  
2 assistant registry upon receipt of the lists of certified  
3 nursing assistants, and shall complete the first of such  
4 updates by December 31, 1999.

5           (3) Each certified nursing assistant whose name is not  
6 reported to the department under subsection (1) on October 1,  
7 1999, shall be assigned an inactive certification on January  
8 1, 2000. A certified nursing assistant may remove such an  
9 inactive certification by submitting documentation to the  
10 department that he or she was employed for a minimum of 8  
11 hours for monetary compensation as a certified nursing  
12 assistant in a nursing-related occupation during the preceding  
13 24 months.

14           (4) This section is repealed October 2, 2001.

15           Section 3. Section 400.211, Florida Statutes, 1998  
16 Supplement, is amended to read:

17           400.211 Persons employed as nursing assistants;  
18 certification requirement.--

19           (1) A person must be certified under part XV of  
20 chapter 468 pursuant to this section, except a registered  
21 nurse or practical nurse licensed in accordance with ~~the~~  
22 ~~provisions of~~ chapter 464 or an applicant for such licensure  
23 who is permitted to practice nursing in accordance with rules  
24 adopted promulgated by the Board of Nursing pursuant to  
25 chapter 464, to serve as a nursing assistant in any nursing  
26 home. ~~The Department of Health shall issue a certificate to~~  
27 ~~any person who:~~

28           ~~(a) Has successfully completed a nursing assistant~~  
29 ~~program in a state-approved school and has achieved a minimum~~  
30 ~~score of 75 percent on the written portion of the Florida~~  
31 ~~Nursing Assistant Certification Test approved by the~~



1 ~~Department of Health and administered by state-approved test~~  
2 ~~site personnel;~~

3 ~~(b) Has achieved a minimum score of 75 percent on the~~  
4 ~~written and performance portions of the Florida Nursing~~  
5 ~~Assistant Certification Test approved by the Department of~~  
6 ~~Health and administered by state-approved test site personnel;~~  
7 ~~or~~

8 ~~(c) Is currently certified in another state, is on~~  
9 ~~that state's registry, has no findings of abuse, and has~~  
10 ~~achieved a minimum score of 75 percent on the written portion~~  
11 ~~of the Florida Nursing Assistant Certification Test approved~~  
12 ~~by the Department of Health and administered by state-approved~~  
13 ~~test site personnel.~~

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15 ~~An oral examination shall be administered upon request.~~

16 ~~(2) The agency may deny, suspend, or revoke the~~  
17 ~~certification of any person to serve as a nursing assistant,~~  
18 ~~based upon written notification from a court of competent~~  
19 ~~jurisdiction, law enforcement agency, or administrative agency~~  
20 ~~of any finding of guilt of, regardless of adjudication, or a~~  
21 ~~plea of nolo contendere or guilty to, any offense set forth in~~  
22 ~~the level 1 screening standards of chapter 435 or any~~  
23 ~~confirmed report of abuse of a vulnerable adult.~~

24 ~~(2)(3)~~ (2) The following categories of persons who are not  
25 certified as nursing assistants under this part may be  
26 employed by a nursing facility for a period of 4 months:

27 (a) Persons who are enrolled in a state-approved  
28 nursing assistant program; or

29 (b) Persons who have been positively verified by a  
30 state-approved test site as certified and on the registry in  
31

1 another state with no findings of abuse, but who have not  
2 completed the written examination required under this section.

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4 The certification requirement must be met within 4 months of  
5 initial employment as a nursing assistant in a licensed  
6 nursing facility.

7 ~~(4) A person certified under this section on or after~~  
8 ~~September 30, 1990, who has not worked for pay as a nursing~~  
9 ~~assistant in a nursing-related occupation for a period of time~~  
10 ~~during a consecutive 24-month period must be recertified under~~  
11 ~~this section to be eligible to work in a nursing facility.~~

12 (3)(5) Nursing homes shall require persons seeking  
13 employment as a certified nursing assistant to submit an  
14 employment history to the facility. The facility shall verify  
15 the employment history unless, through diligent efforts, such  
16 verification is not possible. There shall be no monetary  
17 liability on the part of, and no cause of action for damages  
18 shall arise against, a former employer who reasonably and in  
19 good faith communicates his or her honest opinion about a  
20 former employee's job performance.

21 ~~(6) If the requirements pursuant to the Omnibus Budget~~  
22 ~~Reconciliation Act of 1987, as amended, for the certification~~  
23 ~~of nursing assistants are in conflict with this section, the~~  
24 ~~federal requirements shall prevail for those facilities~~  
25 ~~certified to provide care under Title XVIII (Medicare) or~~  
26 ~~Title XIX (Medicaid) of the Social Security Act.~~

27 ~~(7) The Department of Health may adopt such rules as~~  
28 ~~are necessary to carry out this section.~~

29 Section 4. The Department of Health is authorized six  
30 additional positions for the purposes of implementing this  
31 act.

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Section 5. This act shall take effect October 1, 1999.

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SENATE SUMMARY

Provides for the Department of Health to regulate the practice of certified nursing assistants in this state. Requires that the department maintain a registry of certified nursing assistants. Provides requirements for certification. Specifies grounds for disciplinary action by the department and provides penalties. Authorizes the department to issue a letter of exemption from disqualification of certification. Authorizes the Department of Health to adopt rules. (See bill for details.)