

Bill No. HB 2125, 2nd Eng.

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Forman moved the following amendment:

Senate Amendment (with title amendment)

On page 68, between lines 27 and 28,

insert:

Section 57. Effective October 1, 1999, part XV of chapter 468, Florida Statutes, consisting of sections 468.821, 468.822, 468.823, 468.824, 468.825, 468.826, 468.827, and 468.828, Florida Statutes, is created to read:

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

(1) "Approved training program" means:

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

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

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

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

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

4 468.822 Duties and powers of the department.--The
5 department shall maintain, or contract with or approve another
6 entity to maintain, a state registry of certified nursing
7 assistants. The registry must consist of the name of each
8 certified nursing assistant in this state; other identifying
9 information defined by department rule; certification status;
10 the effective date of certification; other information
11 required by state or federal law; information regarding any
12 crime or any abuse, neglect, or exploitation as provided under
13 chapter 435; and any disciplinary action taken against the
14 certified nursing assistant. The registry shall be accessible
15 to the public, the certificateholder, employers, and other
16 state agencies. The department shall adopt by rule testing
17 procedures for use in certifying nursing assistants and shall
18 adopt rules regulating the practice of certified nursing
19 assistants to enforce this part. The department may contract
20 with or approve another entity or organization to provide the
21 examination services, including the development and
22 administration of examinations. The provider shall pay all
23 reasonable costs and expenses incurred by the department in
24 evaluating the provider's application and performance during
25 the delivery of services, including examination services and
26 procedures for maintaining the certified nursing assistant
27 registry.

28 468.823 Certified nursing assistants; certification
29 requirement.--

30 (1) The department shall issue a certificate to
31 practice as a certified nursing assistant to any person who

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1 demonstrates a minimum competency to read and write and meets
2 one of the following requirements:

3 (a) Has successfully completed an approved training
4 program and achieved a minimum score, established by rule of
5 the department, on the nursing assistant competency
6 examination, which consists of a written portion and
7 skills-demonstration portion approved by the department and
8 administered at a site and by personnel approved by the
9 department.

10 (b) Has achieved a minimum score, established by rule
11 of the department, on the nursing assistant competency
12 examination, which consists of a written portion and
13 skills-demonstration portion, approved by the department and
14 administered at a site and by personnel approved by the
15 department and:

- 16 1. Has a high school diploma, or its equivalent; or
17 2. Is at least 18 years of age.

18 (c) Is currently certified in another state; is listed
19 on that state's certified nursing assistant registry; has not
20 been found to have committed abuse, neglect, or exploitation
21 in that state; and has successfully completed a national
22 nursing assistant evaluation in order to receive certification
23 in that state.

24 (2) If an applicant fails to pass the nursing
25 assistant competency examination in three attempts, the
26 applicant is not eligible for reexamination unless the
27 applicant completes an approved training program.

28 (3) An oral examination shall be administered as a
29 substitute for the written portion of the examination upon
30 request. The oral examination shall be administered at a site
31 and by personnel approved by the department.

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

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

6 468.824 Denial, suspension, or revocation of
7 certification; disciplinary actions.--

8 (1) The following acts constitute grounds for which
9 the department may impose disciplinary sanctions as specified
10 in subsection (2):

11 (a) Obtaining or attempting to obtain an exemption, or
12 possessing or attempting to possess a letter of exemption, by
13 bribery, misrepresentation, deceit, or through an error of the
14 department.

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

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

20 (a) Denial, suspension, or revocation of
21 certification.

22 (b) Imposition of an administrative fine not to exceed
23 \$150 for each count or separate offense.

24 (c) Imposition of probation or restriction of
25 certification, including conditions such as corrective actions
26 as retraining or compliance with an approved treatment program
27 for impaired practitioners.

28 (3) The department may, upon the request of a
29 certificateholder, exempt the certificateholder from
30 disqualification of certification or disqualification of
31 employment in accordance with chapter 435 and issue a letter

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1 of exemption.

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3 After January 1, 2000, the department must notify an applicant
4 seeking an exemption from disqualification from certification
5 or employment of its decision to approve or deny the request
6 within 30 days after the date the department receives all
7 required documentation.

8 468.825 Availability of disciplinary records and
9 proceedings.--Pursuant to s. 455.621, any complaint or record
10 maintained by the Department of Health pursuant to the
11 discipline of a certified nursing assistant and any proceeding
12 held by the department to discipline a certified nursing
13 assistant shall remain open and available to the public.

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

31 468.827 Penalties.--It is a misdemeanor of the first

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1 degree, punishable as provided under s. 775.082 or s. 775.083,
2 for any person, knowingly or intentionally, to fail to
3 disclose, by false statement, misrepresentation,
4 impersonation, or other fraudulent means, in any application
5 for voluntary or paid employment or licensure regulated under
6 this part, a material fact used in making a determination as
7 to such person's qualifications to be an employee or licensee.

8 468.828 Background screening information; rulemaking
9 authority.--

10 (1) The Agency for Health Care Administration shall
11 allow the department to electronically access its background
12 screening database and records and the Department of Children
13 and Families shall allow the department to electronically
14 access its central abuse registry and tracking system under
15 chapter 415.

16 (2) An employer, or an agent thereof, may not use
17 criminal records, juvenile records, or information obtained
18 from the central abuse hotline under chapter 415 for any
19 purpose other than determining if the person meets the
20 requirements of this part. Such records and information
21 obtained by the department shall remain confidential and
22 exempt from s. 119.07(1).

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

29 (4) The department shall adopt rules to administer
30 this part.

31 Section 58. Certified nursing assistant registry.--

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

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

14 (3) Each certified nursing assistant whose name is not
15 reported to the department under subsection (1) on October 1,
16 1999, shall be assigned an inactive certification on January
17 1, 2000. A certified nursing assistant may remove such an
18 inactive certification by submitting documentation to the
19 department that he or she was employed for a minimum of 8
20 hours for monetary compensation as a certified nursing
21 assistant in a nursing-related occupation during the preceding
22 24 months.

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

24 Section 59. Effective October 1, 1999, section
25 400.211, Florida Statutes, 1998 Supplement, is amended to
26 read:

27 400.211 Persons employed as nursing assistants;
28 certification requirement.--

29 (1) A person must be certified under part XV of
30 chapter 468 ~~pursuant to this section~~, except a registered
31 nurse or practical nurse licensed in accordance with ~~the~~

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1 ~~provisions of chapter 464 or an applicant for such licensure~~
2 ~~who is permitted to practice nursing in accordance with rules~~
3 ~~adopted promulgated by the Board of Nursing pursuant to~~
4 ~~chapter 464, to serve as a nursing assistant in any nursing~~
5 ~~home. The Department of Health shall issue a certificate to~~
6 ~~any person who:~~

7 ~~(a) Has successfully completed a nursing assistant~~
8 ~~program in a state-approved school and has achieved a minimum~~
9 ~~score of 75 percent on the written portion of the Florida~~
10 ~~Nursing Assistant Certification Test approved by the~~
11 ~~Department of Health and administered by state-approved test~~
12 ~~site personnel;~~

13 ~~(b) Has achieved a minimum score of 75 percent on the~~
14 ~~written and performance portions of the Florida Nursing~~
15 ~~Assistant Certification Test approved by the Department of~~
16 ~~Health and administered by state-approved test site personnel;~~
17 ~~or~~

18 ~~(c) Is currently certified in another state, is on~~
19 ~~that state's registry, has no findings of abuse, and has~~
20 ~~achieved a minimum score of 75 percent on the written portion~~
21 ~~of the Florida Nursing Assistant Certification Test approved~~
22 ~~by the Department of Health and administered by state-approved~~
23 ~~test site personnel.~~

24
25 ~~An oral examination shall be administered upon request.~~

26 ~~(2) The agency may deny, suspend, or revoke the~~
27 ~~certification of any person to serve as a nursing assistant,~~
28 ~~based upon written notification from a court of competent~~
29 ~~jurisdiction, law enforcement agency, or administrative agency~~
30 ~~of any finding of guilt of, regardless of adjudication, or a~~
31 ~~plea of nolo contendere or guilty to, any offense set forth in~~

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1 ~~the level 1 screening standards of chapter 435 or any~~
2 ~~confirmed report of abuse of a vulnerable adult.~~

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

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

8 (b) Persons who have been positively verified by a
9 state-approved test site as certified and on the registry in
10 another state with no findings of abuse, but who have not
11 completed the written examination required under this section.

12

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

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

21 ~~(3)~~⁽⁵⁾ Nursing homes shall require persons seeking
22 employment as a certified nursing assistant to submit an
23 employment history to the facility. The facility shall verify
24 the employment history unless, through diligent efforts, such
25 verification is not possible. There shall be no monetary
26 liability on the part of, and no cause of action for damages
27 shall arise against, a former employer who reasonably and in
28 good faith communicates his or her honest opinion about a
29 former employee's job performance.

30 ~~(6) If the requirements pursuant to the Omnibus Budget~~
31 ~~Reconciliation Act of 1987, as amended, for the certification~~

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1 ~~of nursing assistants are in conflict with this section, the~~
2 ~~federal requirements shall prevail for those facilities~~
3 ~~certified to provide care under Title XVIII (Medicare) or~~
4 ~~Title XIX (Medicaid) of the Social Security Act.~~

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

7

8 (Redesignate subsequent sections.)

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

12 And the title is amended as follows:

13 On page 5, line 10, after the semicolon

14

15 insert:

16 creating part XV of chapter 468, F.S.;

17 providing definitions; requiring that the

18 Department of Health maintain a state registry

19 of certified nursing assistants; authorizing

20 the department to contract for examination

21 services; providing requirements for obtaining

22 certification as a certified nursing assistant;

23 requiring that the department adopt rules

24 governing initial certification; specifying

25 grounds for which the department may deny,

26 suspend, or revoke a person's certification;

27 authorizing the department to exempt an

28 applicant or certificateholder from

29 disqualification of certification; providing

30 requirements for records and meetings held for

31 disciplinary actions; exempting an employer

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1 from liability for terminating a certified
2 nursing assistant under certain circumstances;
3 providing penalties; providing for background
4 screening; providing rulemaking authority;
5 requiring persons who employ certified nursing
6 assistants to make certain reports to the
7 Department of Health; requiring that the
8 department update the certified nursing
9 assistant registry; providing for future repeal
10 of such provisions; amending s. 400.211, F.S.;
11 deleting obsolete provisions with respect to
12 the regulation of certified nursing assistants;

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