

Bill No. CS for SB 2220

Amendment No. ____

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Forman moved the following amendment to amendment (333964):

Senate Amendment (with title amendment)

On page 276, between lines 26 and 27,

insert:

Section 201. 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

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1 certified by the department as a certified nursing assistant.

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

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

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

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

31 (1) The department shall issue a certificate to

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1 practice as a certified nursing assistant to any person who
2 demonstrates a minimum competency to read and write and meets
3 one of the following requirements:

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

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

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

18 2. Is at least 18 years of age.

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

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

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

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1 and by personnel approved by the department.

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

4 (5) A certified nursing assistant shall maintain a
5 current address with the department in accordance with s.
6 455.717.

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

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

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

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

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

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

23 (b) Imposition of an administrative fine not to exceed
24 \$150 for each count or separate offense.

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

29 (3) The department may, upon the request of a
30 certificateholder, exempt the certificateholder from
31 disqualification of certification or disqualification of

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1 employment in accordance with chapter 435 and issue a letter
2 of exemption.

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

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

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

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1 468.827 Penalties.--It is a misdemeanor of the first
2 degree, punishable as provided under s. 775.082 or s. 775.083,
3 for any person, knowingly or intentionally, to fail to
4 disclose, by false statement, misrepresentation,
5 impersonation, or other fraudulent means, in any application
6 for voluntary or paid employment or licensure regulated under
7 this part, a material fact used in making a determination as
8 to such person's qualifications to be an employee or licensee.

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

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

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

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

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

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1 Section 202. Certified nursing assistant registry.--
2 (1) By October 1, 1999, and by October 1 of every year
3 thereafter, each employer of certified nursing assistants
4 shall submit to the Department of Health a list of the names
5 and social security numbers of each person employed by the
6 employer as a certified nursing assistant in a nursing-related
7 occupation for a minimum of 8 hours for monetary compensation
8 during the preceding 24 months. Employers may submit such
9 information electronically through the department's Internet
10 site.

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

15 (3) Each certified nursing assistant whose name is not
16 reported to the department under subsection (1) on October 1,
17 1999, shall be assigned an inactive certification on January
18 1, 2000. A certified nursing assistant may remove such an
19 inactive certification by submitting documentation to the
20 department that he or she was employed for a minimum of 8
21 hours for monetary compensation as a certified nursing
22 assistant in a nursing-related occupation during the preceding
23 24 months.

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

25 Section 203. Effective October 1, 1999, section
26 400.211, Florida Statutes, 1998 Supplement, is amended to
27 read:

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

30 (1) A person must be certified under part XV of
31 chapter 468 pursuant to this section, except a registered

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

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

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

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

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

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

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1 ~~plea of nolo contendere or guilty to, any offense set forth in~~
2 ~~the level 1 screening standards of chapter 435 or any~~
3 ~~confirmed report of abuse of a vulnerable adult.~~

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

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

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

13

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

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

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

31 ~~(6) If the requirements pursuant to the Omnibus Budget~~

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1 ~~Reconciliation Act of 1987, as amended, for the certification~~
2 ~~of nursing assistants are in conflict with this section, the~~
3 ~~federal requirements shall prevail for those facilities~~
4 ~~certified to provide care under Title XVIII (Medicare) or~~
5 ~~Title XIX (Medicaid) of the Social Security Act.~~

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

8
9 (Redesignate subsequent sections.)

10

11

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

13 And the title is amended as follows:

14 On page 296, line 29, after the semicolon,

15

16 insert:

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

18 providing definitions; requiring that the

19 Department of Health maintain a state registry

20 of certified nursing assistants; authorizing

21 the department to contract for examination

22 services; providing requirements for obtaining

23 certification as a certified nursing assistant;

24 requiring that the department adopt rules

25 governing initial certification; specifying

26 grounds for which the department may deny,

27 suspend, or revoke a person's certification;

28 authorizing the department to exempt an

29 applicant or certificateholder from

30 disqualification of certification; providing

31 requirements for records and meetings held for

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

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