

By Senator Casas

39-1151-99

1                                   A bill to be entitled  
2           An act relating to the regulation of  
3           professions; amending s. 11.62, F.S.; revising  
4           considerations regarding decisions by the  
5           Legislature to regulate professions; amending  
6           s. 455.201, F.S.; prohibiting the adoption of  
7           any regulation that creates certain  
8           unreasonable effects on job creation or  
9           retention; creating s. 455.2123, F.S.;  
10          authorizing the use of distance learning for  
11          continuing education courses; creating s.  
12          455.2124, F.S.; authorizing the proration of  
13          continuing education requirements; amending s.  
14          455.213, F.S.; requiring fingerprint cards to  
15          accompany certain applications; amending s.  
16          455.225, F.S.; providing for the issuance of a  
17          notice of noncompliance to certain licensees  
18          who fail to comply with continuing education  
19          requirements; providing for the department to  
20          petition for a determination of probable cause;  
21          amending s. 455.517, F.S.; prohibiting the  
22          adoption of certain unreasonably restrictive  
23          standards or regulations; requiring legislative  
24          review of proposals to increase certain  
25          regulations of professions; providing an  
26          effective date.

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

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30           Section 1. Subsections (3) and (4) of section 11.62,  
31   Florida Statutes, are amended to read:

1           11.62 Legislative review of proposed regulation of  
2 unregulated functions.--

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

6           (a) Whether the unregulated practice of the profession  
7 or occupation will substantially harm or endanger the public  
8 health, safety, or welfare and whether the potential for harm  
9 is recognizable and not remote;

10           (b) Whether the practice of the profession or  
11 occupation requires specialized skill or training, and whether  
12 that skill or training is readily measurable or quantifiable  
13 so that examination or training requirements would reasonably  
14 assure initial and continuing professional or occupational  
15 ability;

16           (c) Whether the regulation will have an unreasonable  
17 effect on the job creation or job retention in the state or  
18 will place unreasonable restrictions on the ability of  
19 individuals who seek to practice or who are practicing a  
20 profession or occupation to find employment;

21           ~~(d)(c)~~ Whether the public is or can be effectively  
22 protected by other means; and

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

26           (4) The proponents of legislation that provides for  
27 the regulation of a profession or occupation not already  
28 expressly subject to state regulation shall provide, upon  
29 request, the following information in writing to the state  
30 agency that is proposed to have jurisdiction over the  
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1 regulation and to the legislative committees to which the  
2 legislation is referred:

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

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

8 (c) Documentation of the nature and extent of the harm  
9 to the public caused by the unregulated practice of the  
10 profession or occupation, including a description of any  
11 complaints that have been lodged against persons who have  
12 practiced the profession or occupation in this state during  
13 the preceding 3 years;

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

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

21 (f) A description of the voluntary efforts made by  
22 members of the profession or occupation to protect the public  
23 and a statement of the reasons why these efforts are not  
24 adequate to protect the public;

25 (g) A copy of any federal legislation mandating  
26 regulation;

27 (h) An explanation of the reasons why other types of  
28 less restrictive regulation would not effectively protect the  
29 public;

30 (i) The cost, availability, and appropriateness of  
31 training and examination requirements;

1           (j)(i) The cost of regulation, including the indirect  
2 cost to consumers, and the method proposed to finance the  
3 regulation;

4           (k) The cost imposed on applicants or practitioners or  
5 on employers of applicants or practitioners as a result of the  
6 regulation;

7           (l)(j) The details of any previous efforts in this  
8 state to implement regulation of the profession or occupation;  
9 and

10           (m)(k) Any other information the agency or the  
11 committee considers relevant to the analysis of the proposed  
12 legislation.

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

15           455.201 Professions and occupations regulated by  
16 department; legislative intent; requirements.--

17           (4)(a) Neither the department nor any No board may  
18 ~~nor the department, shall~~ create unreasonably restrictive and  
19 extraordinary standards that deter qualified persons from  
20 entering the various professions. Neither the department nor  
21 any No board may, nor the department, shall take any action  
22 that which tends to create or maintain an economic condition  
23 that unreasonably restricts competition, except as  
24 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 this state or that places unreasonable  
28 restrictions on the ability of individuals who seek to  
29 practice or who are practicing a given profession or  
30 occupation to find employment.

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

5           Section 3. Section 455.2123, Florida Statutes, is  
6 created to read:

7           455.2123 Continuing Education.--Boards, or the  
8 department when there is no board, may by rule provide that  
9 distance learning may be used to satisfy continuing education  
10 requirements.

11           Section 4. Section 455.2124, Florida Statutes, is  
12 created to read:

13           455.2124 Proration of Education.--A board, or the  
14 department when there is no board, may:

15           (1) Prorate continuing education for new licensees by  
16 requiring half of the required continuing education for any  
17 applicant who becomes licensed with more than half of the  
18 renewal period remaining and no continuing education for any  
19 applicant who becomes licensed with half or less than half of  
20 the renewal period remaining; or

21           (2) Require no continuing education until the first  
22 full renewal cycle of the licensee.

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24 These options shall also apply when continuing education is  
25 first required or when the number of hours is increased.

26           Section 5. Subsection (10) is added to section  
27 455.213, Florida Statutes, 1998 Supplement, to read:

28           455.213 General licensing provisions.--

29           (10) For any profession requiring fingerprints as part  
30 of the registration, certification, or licensing process or  
31 for any profession requiring proof of good moral character, a

1 fingerprint card containing the fingerprints of the applicant  
2 must accompany all applications for registration, licensure,  
3 and certification. The fingerprint card shall be forwarded to  
4 the Division of Criminal Justice Information Systems within  
5 the Department of Law Enforcement and to the Federal Bureau of  
6 Investigation in order to determine whether the applicant has  
7 a criminal history record. The information obtained shall be  
8 used to determine whether the applicant is statutorily  
9 qualified for registration, licensure, or certification.

10 Section 6. Subsections (3) and (4) of section 455.225,  
11 Florida Statutes, 1998 Supplement, are amended to read:

12 455.225 Disciplinary proceedings.--Disciplinary  
13 proceedings for each board shall be within the jurisdiction of  
14 the department.

15 (3)(a) As an alternative to the provisions of  
16 subsections (1) and (2), when a complaint is received, the  
17 department may provide a licensee with a notice of  
18 noncompliance for an initial offense of a minor violation. A  
19 violation is a minor violation if it does not demonstrate a  
20 serious inability to practice the profession, result in  
21 economic or physical harm to a person, or adversely affect the  
22 public health, safety, or welfare or create a significant  
23 threat of such harm. Each board, or the department if there is  
24 no board, shall establish by rule those violations which are  
25 minor violations under this provision. Failure of a licensee  
26 to take action in correcting the violation within 15 days  
27 after notice may result in the institution of regular  
28 disciplinary proceedings.

29 (b) The department may issue a notice of noncompliance  
30 for an initial offense of a minor violation, notwithstanding a  
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1 board's failure to designate a particular minor violation by  
2 rule as provided in paragraph (a).

3 (c) When a licensee is charged with failure to comply  
4 with continuing-education requirements, the department's or  
5 board's, as appropriate, initial response may only be to issue  
6 a notice of noncompliance, including granting the licensee a  
7 reasonable time to comply. However, if the department finds  
8 that the licensee's failure to comply was done knowingly, the  
9 department or board, as appropriate, may levy any other  
10 penalty otherwise available to it under the circumstances.  
11 This paragraph does not apply to any licensee whose failure to  
12 comply with continuing-education requirements is not grounds  
13 for discipline but whose compliance is only a prerequisite for  
14 renewal.

15 (4) The determination as to whether probable cause  
16 exists shall be made by majority vote of a probable cause  
17 panel of the board, or by the department, as appropriate. Each  
18 regulatory board shall provide by rule that the determination  
19 of probable cause shall be made by a panel of its members or  
20 by the department. Each board may provide by rule for multiple  
21 probable cause panels composed of at least two members. Each  
22 board may provide by rule that one or more members of the  
23 panel or panels may be a former board member. The length of  
24 term or repetition of service of any such former board member  
25 on a probable cause panel may vary according to the direction  
26 of the board when authorized by board rule. Any probable cause  
27 panel must include one of the board's former or present  
28 consumer members, if one is available, willing to serve, and  
29 is authorized to do so by the board chair. Any probable cause  
30 panel must include a present board member. Any probable cause  
31 panel must include a former or present professional board

1 member. However, any former professional board member serving  
2 on the probable cause panel must hold an active valid license  
3 for that profession. All proceedings of the panel are exempt  
4 from s. 286.011 until 10 days after probable cause has been  
5 found to exist by the panel or until the subject of the  
6 investigation waives his or her privilege of confidentiality.  
7 The probable cause panel may make a reasonable request, and  
8 upon such request the department shall provide such additional  
9 investigative information as is necessary to the determination  
10 of probable cause. A request for additional investigative  
11 information shall be made within 15 days from the date of  
12 receipt by the probable cause panel of the investigative  
13 report of the department. The probable cause panel or the  
14 department, as may be appropriate, shall make its  
15 determination of probable cause within 30 days after receipt  
16 by it of the final investigative report of the department. The  
17 secretary may grant extensions of the 15-day and the 30-day  
18 time limits. In lieu of a finding of probable cause, the  
19 probable cause panel, or the department when there is no  
20 board, may issue a letter of guidance to the subject. If,  
21 within the 30-day time limit, as may be extended, the probable  
22 cause panel does not make a determination regarding the  
23 existence of probable cause or does not issue a letter of  
24 guidance in lieu of a finding of probable cause, the  
25 department, for disciplinary cases under its jurisdiction,  
26 must make a determination regarding the existence of probable  
27 cause within 10 days after the expiration of the time limit.  
28 If the probable cause panel finds no probable cause, the  
29 department may petition within 10 days for a determination of  
30 the existence of probable cause, pursuant to s. 120.574. Such  
31 proceedings must be held confidential, as provided in s.



1 455.225(10). The administrative law judge's order shall  
2 constitute final action regarding the existence of probable  
3 cause.If the probable cause panel finds that probable cause  
4 exists, it shall direct the department to file a formal  
5 complaint against the licensee. The department shall follow  
6 the directions of the probable cause panel regarding the  
7 filing of a formal complaint. If directed to do so, the  
8 department shall file a formal complaint against the subject  
9 of the investigation and prosecute that complaint pursuant to  
10 chapter 120. However, the department may decide not to  
11 prosecute the complaint if it finds that probable cause had  
12 been improvidently found by the panel. In such cases, the  
13 department shall refer the matter to the board. The board may  
14 then file a formal complaint and prosecute the complaint  
15 pursuant to chapter 120. The department shall also refer to  
16 the board any investigation or disciplinary proceeding not  
17 before the Division of Administrative Hearings pursuant to  
18 chapter 120 or otherwise completed by the department within 1  
19 year after the filing of a complaint. The department, for  
20 disciplinary cases under its jurisdiction, must establish a  
21 uniform reporting system to quarterly refer to each board the  
22 status of any investigation or disciplinary proceeding that is  
23 not before the Division of Administrative Hearings or  
24 otherwise completed by the department within 1 year after the  
25 filing of the complaint. A probable cause panel or a board  
26 may retain independent legal counsel, employ investigators,  
27 and continue the investigation as it deems necessary; all  
28 costs thereof shall be paid from the Professional Regulation  
29 Trust Fund. All proceedings of the probable cause panel are  
30 exempt from s. 120.525.  
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1           Section 7. Subsection (4) of section 455.517, Florida  
2 Statutes, is amended to read:

3           455.517 Professions and occupations regulated by  
4 department; legislative intent; requirements.--

5           (4)(a) Neither ~~No board, nor~~ the department nor any  
6 board may, shall create unreasonably restrictive and  
7 extraordinary standards that deter qualified persons from  
8 entering the various professions. Neither ~~No board, nor~~ the  
9 department nor any board may, shall take any action that which  
10 tends to create or maintain an economic condition that  
11 unreasonably restricts competition, except as specifically  
12 provided by law.

13           (b) Neither the department nor any board may create a  
14 regulation that has an unreasonable effect on job creation or  
15 job retention in this state or that places unreasonable  
16 restrictions on the ability of individuals who seek to  
17 practice or who are practicing a profession or occupation to  
18 find employment.

19           (c) The Legislature shall evaluate proposals to  
20 increase regulation of professions or occupations to determine  
21 their effect on job creation or retention and employment  
22 opportunities.

23           Section 8. This act shall take effect upon becoming a  
24 law.

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SENATE SUMMARY

Revises numerous provisions related to the Department of Business and Professional Regulation. Revises considerations regarding legislative decisions to regulate professions. Prohibits the adoption of regulations that create certain unreasonable effects on job creation or retention. Authorizes the use of distance learning for continuing education courses; authorizes the prorotation of such course requirements. Requires fingerprint cards to accompany certain applications. Authorizes the issuance of a notice of noncompliance for certain continuing education requirement violations. Provides for the department to petition for a determination of probable cause. Requires legislative review of proposals to increase certain regulation of professions. (See bill for details.)