

By the Committee on Health, Aging and Long-Term Care; and
Senator Campbell

317-1885-00

1 A bill to be entitled
2 An act relating to the unlicensed practice of a
3 health care profession; amending s. 455.637,
4 F.S.; revising provisions relating to sanctions
5 against the unlicensed practice of a health
6 care profession; providing legislative intent;
7 revising and expanding provisions relating to
8 civil and administrative remedies; providing
9 criminal penalties; incorporating and modifying
10 the substance of current provisions that impose
11 a fee to combat unlicensed activity and provide
12 for disposition of the proceeds thereof;
13 providing applicability; repealing s. 455.641,
14 F.S., relating to unlicensed activity fees, to
15 conform; reenacting ss. 455.574(1)(d),
16 468.1295(1), 484.014(1), 484.056(1), F.S.,
17 relating to violation of security provisions
18 for examinations and violations involving
19 speech-language pathology, audiology,
20 opticianry, and the dispensing of hearing aids,
21 to incorporate the amendment to s. 455.637,
22 F.S., in references thereto; creating s.
23 455.665, F.S.; requiring a specified statement
24 in any advertisement by a health care
25 practitioner for a surgical procedure; amending
26 s. 921.0022, F.S.; modifying the criminal
27 offense severity ranking chart to include
28 offenses relating to unlicensed practice of a
29 health care profession; providing an effective
30 date.
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1 WHEREAS, the protection of Florida residents and
2 visitors from death or serious bodily injury that may be
3 caused by unlicensed health care practitioners is a state
4 priority, and

5 WHEREAS, the existing criminal prohibitions have not
6 been vigorously enforced in the past, and

7 WHEREAS, the existing penalties are not severe enough
8 to deter the unlicensed practice of the health care
9 professions, and

10 WHEREAS, persons convicted of practicing without a
11 license should be imprisoned so they cannot continue to hurt
12 Floridians, and

13 WHEREAS, persons convicted of practicing without a
14 license who are not citizens of this country should be
15 deported following incarceration to guarantee that they cannot
16 continue to endanger Floridians, NOW, THEREFORE,

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Section 455.637, Florida Statutes, is
21 amended to read:

22 455.637 Unlicensed practice of a health care
23 profession; ~~intent~~; cease and desist notice; ~~penalties~~ civil
24 ~~penalty~~; enforcement; citations; fees; allocation and
25 disposition of moneys collected.--

26 (1) It is the intent of the Legislature that vigorous
27 enforcement of licensure regulation for all health care
28 professions is a state priority in order to protect Florida
29 residents and visitors from the potentially serious and
30 dangerous consequences of receiving medical and health care
31 services from unlicensed persons whose professional education

1 and training and other relevant qualifications have not been
2 approved through the issuance of a license by the appropriate
3 regulatory board or the department when there is no board. The
4 unlicensed practice of a health care profession or the
5 performance or delivery of medical or health care services to
6 patients in this state without a valid, active license to
7 practice that profession is strictly prohibited.

8 (2) The penalties for unlicensed practice of a health
9 care profession shall include the following:

10 (a)~~(1)~~ When the department has probable cause to
11 believe that any person not licensed by the department, or the
12 appropriate regulatory board within the department, has
13 violated any provision of this part or any statute that
14 relates to the practice of a profession regulated by the
15 department, or any rule adopted pursuant thereto, the
16 department may issue and deliver to such person a notice to
17 cease and desist from such violation. In addition, the
18 department may issue and deliver a notice to cease and desist
19 to any person who aids and abets the unlicensed practice of a
20 profession by employing such unlicensed person. The issuance
21 of a notice to cease and desist shall not constitute agency
22 action for which a hearing under ss. 120.569 and 120.57 may be
23 sought. For the purpose of enforcing a cease and desist order,
24 the department may file a proceeding in the name of the state
25 seeking issuance of an injunction or a writ of mandamus
26 against any person who violates any provisions of such order.

27 (b) In addition to the foregoing remedies under
28 paragraph (a), the department may impose by citation an
29 administrative penalty not to exceed \$5,000 per incident
30 ~~pursuant to the provisions of chapter 120 or may issue a~~
31 ~~citation pursuant to the provisions of subsection (3). The~~

1 citation shall be issued to the subject and shall contain the
2 subject's name and any other information the department
3 determines to be necessary to identify the subject, a brief
4 factual statement, the sections of the law allegedly violated,
5 and the penalty imposed. If the subject does not dispute the
6 matter in the citation with the department within 30 days
7 after the citation is served, the citation shall become a
8 final order of the department. The department may adopt rules
9 to implement this section. The penalty shall be a fine of not
10 less than \$500 nor more than \$5,000 as established by rule of
11 the department. Each day that the unlicensed practice
12 continues after issuance of a notice to cease and desist
13 constitutes a separate violation. The department shall be
14 entitled to recover the costs of investigation and prosecution
15 in addition to the fine levied pursuant to the citation.
16 Service of a citation may be made by personal service or by
17 mail to the subject at the subject's last known address or
18 place of practice. If the department is required to seek
19 enforcement of the cease and desist or agency order ~~for a~~
20 penalty pursuant to s. 120.569, it shall be entitled to
21 collect its attorney's fees and costs, ~~together with any cost~~
22 of collection.

23 (c)(2) In addition to or in lieu of any other
24 administrative remedy ~~provided in subsection (1)~~, the
25 department may seek the imposition of a civil penalty through
26 the circuit court for any violation for which the department
27 may issue a notice to cease and desist ~~under subsection (1)~~.
28 The civil penalty shall be no less than \$500 and no more than
29 \$5,000 for each offense. The court may also award to the
30 prevailing party court costs and reasonable attorney fees and,
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1 in the event the department prevails, may also award
2 reasonable costs of investigation and prosecution.

3 (d) In addition to the administrative and civil
4 remedies under paragraphs (b) and (c) and in addition to the
5 criminal violations and penalties listed in the individual
6 health care practice acts:

7 1. It is a felony of the third degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084, to
9 practice, attempt to practice, or offer to practice a health
10 care profession without an active, valid Florida license to
11 practice that profession. Practicing without an active, valid
12 license also includes practicing on a suspended, revoked, or
13 void license but does not include practicing, attempting to
14 practice, or offering to practice with an inactive or
15 delinquent license for any period up to 12 months. Applying
16 for employment for a position that requires a license without
17 notifying the employer that the person does not currently
18 possess a valid, active license to practice that profession
19 shall be deemed to be an attempt or offer to practice that
20 health care profession without a license. Holding oneself out,
21 regardless of the means of communication, as able to practice
22 a health care profession or as able to provide services that
23 require a health care license shall be deemed to be an attempt
24 or offer to practice such profession without a license. The
25 minimum penalty for violating this subparagraph shall be a
26 fine of \$1,000 and a minimum mandatory period of incarceration
27 of 1 year.

28 2. It is a felony of the second degree, punishable as
29 provided in s. 775.082, s. 775.083, or s. 775.084, to practice
30 a health care profession without an active, valid Florida
31 license to practice that profession when such practice results

1 in serious bodily injury. For purposes of this section,
2 "serious bodily injury" means death; brain or spinal damage;
3 disfigurement; fracture or dislocation of bones or joints;
4 limitation of neurological, physical, or sensory function; or
5 any condition that required subsequent surgical repair. The
6 minimum penalty for violating this subparagraph shall be a
7 fine of \$1,000 and a minimum mandatory period of incarceration
8 of 1 year.

9 3. It is a misdemeanor of the first degree, punishable
10 as provided in s. 775.082 or s. 775.083, to practice, attempt
11 to practice, or offer to practice a health care profession
12 with an inactive or delinquent license for any period of time
13 up to 12 months. However, practicing, attempting to practice,
14 or offering to practice a health care profession when that
15 person's license has been inactive or delinquent for a period
16 of time of 12 months or more shall be a felony of the third
17 degree, punishable as provided in s. 775.082, s. 775.083, or
18 s. 775.084. The minimum penalty for violating this
19 subparagraph shall be a term of imprisonment of 30 days and a
20 fine of \$500.

21 (3) Because all enforcement costs should be covered by
22 professions regulated by the department, the department shall
23 impose, upon initial licensure and each licensure renewal, a
24 special fee of \$5 per licensee to fund efforts to combat
25 unlicensed activity. Such fee shall be in addition to all
26 other fees collected from each licensee. The board with
27 concurrence of the department, or the department when there is
28 no board, may earmark \$5 of the current licensure fee for this
29 purpose, if such board, or profession regulated by the
30 department, is not in a deficit and has a reasonable cash
31 balance. The department shall make direct charges to the

1 Medical Quality Assurance Trust Fund by profession. The
2 department shall seek board advice regarding enforcement
3 methods and strategies. The department shall directly credit
4 the Medical Quality Assurance Trust Fund, by profession, with
5 the revenues received from the department's efforts to enforce
6 licensure provisions. The department shall include all
7 financial and statistical data resulting from unlicensed
8 activity enforcement as a separate category in the quarterly
9 management report provided for in s. 455.587. For an
10 unlicensed activity account, a balance which remains at the
11 end of a renewal cycle may, with concurrence of the applicable
12 board and the department, be transferred to the operating fund
13 account of that profession. The department shall also use
14 these funds to inform and educate consumers generally on the
15 importance of using licensed health care practitioners.

16 ~~(3)(a) Notwithstanding the provisions of s. 455.621,~~
17 ~~the department shall adopt rules to permit the issuance of~~
18 ~~citations for unlicensed practice of a profession. The~~
19 ~~citation shall be issued to the subject and shall contain the~~
20 ~~subject's name and any other information the department~~
21 ~~determines to be necessary to identify the subject, a brief~~
22 ~~factual statement, the sections of the law allegedly violated,~~
23 ~~and the penalty imposed. The citation must clearly state that~~
24 ~~the subject may choose, in lieu of accepting the citation, to~~
25 ~~follow the procedure under s. 455.621. If the subject disputes~~
26 ~~the matter in the citation, the procedures set forth in s.~~
27 ~~455.621 must be followed. However, if the subject does not~~
28 ~~dispute the matter in the citation with the department within~~
29 ~~30 days after the citation is served, the citation shall~~
30 ~~become a final order of the department. The penalty shall be a~~

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1 ~~fine of not less than \$500 or more than \$5,000 or other~~
2 ~~conditions as established by rule.~~

3 ~~(b) Each day that the unlicensed practice continues~~
4 ~~after issuance of a citation constitutes a separate violation.~~

5 ~~(c) The department shall be entitled to recover the~~
6 ~~costs of investigation, in addition to any penalty provided~~
7 ~~according to department rule as part of the penalty levied~~
8 ~~pursuant to the citation.~~

9 ~~(d) Service of a citation may be made by personal~~
10 ~~service or certified mail, restricted delivery, to the subject~~
11 ~~at the subject's last known address.~~

12 ~~(4) All fines, fees, and costs collected through the~~
13 ~~procedures set forth in this section shall be allocated to the~~
14 ~~professions in the manner provided for in s. 455.641 for the~~
15 ~~allocation of the fees assessed and collected to combat~~
16 ~~unlicensed practice of a profession.~~

17 ~~(4)(5)~~ The provisions of this section apply only to
18 health care the professional practice acts administered by the
19 department.

20 Section 2. The amendment of section 455.637, Florida
21 Statutes, by this act applies to offenses committed on or
22 after the effective date of such section.

23 Section 3. Section 455.641, Florida Statutes, is
24 repealed.

25 Section 4. For the purpose of incorporating the
26 amendment to section 455.637, Florida Statutes, in references
27 thereto, paragraph (d) of subsection (1) of section 455.574,
28 Florida Statutes, is reenacted to read:

29 455.574 Department of Health; examinations.--

30 (1)

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1 (d) Each board, or the department when there is no
2 board, shall adopt rules regarding the security and monitoring
3 of examinations. The department shall implement those rules
4 adopted by the respective boards. In order to maintain the
5 security of examinations, the department may employ the
6 procedures set forth in s. 455.637 to seek fines and
7 injunctive relief against an examinee who violates the
8 provisions of s. 455.577 or the rules adopted pursuant to this
9 paragraph. The department, or any agent thereof, may, for the
10 purposes of investigation, confiscate any written,
11 photographic, or recording material or device in the
12 possession of the examinee at the examination site which the
13 department deems necessary to enforce such provisions or
14 rules.

15 Section 5. For the purpose of incorporating the
16 amendment to section 455.637, Florida Statutes, in references
17 thereto, subsection (1) of section 468.1295, Florida Statutes,
18 is reenacted to read:

19 468.1295 Disciplinary proceedings.--

20 (1) The following acts constitute grounds for both
21 disciplinary actions as set forth in subsection (2) and cease
22 and desist or other related actions by the department as set
23 forth in s. 455.637:

24 (a) Procuring or attempting to procure a license by
25 bribery, by fraudulent misrepresentation, or through an error
26 of the department or the board.

27 (b) Having a license revoked, suspended, or otherwise
28 acted against, including denial of licensure, by the licensing
29 authority of another state, territory, or country.

30 (c) Being convicted or found guilty of, or entering a
31 plea of nolo contendere to, regardless of adjudication, a

1 crime in any jurisdiction which directly relates to the
2 practice of speech-language pathology or audiology.

3 (d) Making or filing a report or record which the
4 licensee knows to be false, intentionally or negligently
5 failing to file a report or records required by state or
6 federal law, willfully impeding or obstructing such filing, or
7 inducing another person to impede or obstruct such filing.
8 Such report or record shall include only those reports or
9 records which are signed in one's capacity as a licensed
10 speech-language pathologist or audiologist.

11 (e) Advertising goods or services in a manner which is
12 fraudulent, false, deceptive, or misleading in form or
13 content.

14 (f) Being proven guilty of fraud or deceit or of
15 negligence, incompetency, or misconduct in the practice of
16 speech-language pathology or audiology.

17 (g) Violating a lawful order of the board or
18 department previously entered in a disciplinary hearing, or
19 failing to comply with a lawfully issued subpoena of the board
20 or department.

21 (h) Practicing with a revoked, suspended, inactive, or
22 delinquent license.

23 (i) Using, or causing or promoting the use of, any
24 advertising matter, promotional literature, testimonial,
25 guarantee, warranty, label, brand, insignia, or other
26 representation, however disseminated or published, which is
27 misleading, deceiving, or untruthful.

28 (j) Showing or demonstrating or, in the event of sale,
29 delivery of a product unusable or impractical for the purpose
30 represented or implied by such action.

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1 (k) Failing to submit to the board on an annual basis,
2 or such other basis as may be provided by rule, certification
3 of testing and calibration of such equipment as designated by
4 the board and on the form approved by the board.

5 (l) Aiding, assisting, procuring, employing, or
6 advising any licensee or business entity to practice
7 speech-language pathology or audiology contrary to this part,
8 part II of chapter 455, or any rule adopted pursuant thereto.

9 (m) Violating any provision of this part or part II of
10 chapter 455 or any rule adopted pursuant thereto.

11 (n) Misrepresenting the professional services
12 available in the fitting, sale, adjustment, service, or repair
13 of a hearing aid, or using any other term or title which might
14 connote the availability of professional services when such
15 use is not accurate.

16 (o) Representing, advertising, or implying that a
17 hearing aid or its repair is guaranteed without providing full
18 disclosure of the identity of the guarantor; the nature,
19 extent, and duration of the guarantee; and the existence of
20 conditions or limitations imposed upon the guarantee.

21 (p) Representing, directly or by implication, that a
22 hearing aid utilizing bone conduction has certain specified
23 features, such as the absence of anything in the ear or
24 leading to the ear, or the like, without disclosing clearly
25 and conspicuously that the instrument operates on the bone
26 conduction principle and that in many cases of hearing loss
27 this type of instrument may not be suitable.

28 (q) Stating or implying that the use of any hearing
29 aid will improve or preserve hearing or prevent or retard the
30 progression of a hearing impairment or that it will have any
31 similar or opposite effect.

1 (r) Making any statement regarding the cure of the
2 cause of a hearing impairment by the use of a hearing aid.

3 (s) Representing or implying that a hearing aid is or
4 will be "custom-made," "made to order," or
5 "prescription-made," or in any other sense specially
6 fabricated for an individual, when such is not the case.

7 (t) Canvassing from house to house or by telephone,
8 either in person or by an agent, for the purpose of selling a
9 hearing aid, except that contacting persons who have evidenced
10 an interest in hearing aids, or have been referred as in need
11 of hearing aids, shall not be considered canvassing.

12 (u) Failing to notify the department in writing of a
13 change in current mailing and place-of-practice address within
14 30 days after such change.

15 (v) Failing to provide all information as described in
16 ss. 468.1225(5)(b), 468.1245(1), and 468.1246.

17 (w) Exercising influence on a client in such a manner
18 as to exploit the client for financial gain of the licensee or
19 of a third party.

20 (x) Practicing or offering to practice beyond the
21 scope permitted by law or accepting and performing
22 professional responsibilities the licensee or
23 certificateholder knows, or has reason to know, the licensee
24 or certificateholder is not competent to perform.

25 (y) Aiding, assisting, procuring, or employing any
26 unlicensed person to practice speech-language pathology or
27 audiology.

28 (z) Delegating or contracting for the performance of
29 professional responsibilities by a person when the licensee
30 delegating or contracting for performance of such
31 responsibilities knows, or has reason to know, such person is

1 not qualified by training, experience, and authorization to
2 perform them.

3 (aa) Committing any act upon a patient or client which
4 would constitute sexual battery or which would constitute
5 sexual misconduct as defined pursuant to s. 468.1296.

6 (bb) Being unable to practice the profession for which
7 he or she is licensed or certified under this chapter with
8 reasonable skill or competence as a result of any mental or
9 physical condition or by reason of illness, drunkenness, or
10 use of drugs, narcotics, chemicals, or any other substance. In
11 enforcing this paragraph, upon a finding by the secretary, his
12 or her designee, or the board that probable cause exists to
13 believe that the licensee or certificateholder is unable to
14 practice the profession because of the reasons stated in this
15 paragraph, the department shall have the authority to compel a
16 licensee or certificateholder to submit to a mental or
17 physical examination by a physician, psychologist, clinical
18 social worker, marriage and family therapist, or mental health
19 counselor designated by the department or board. If the
20 licensee or certificateholder refuses to comply with the
21 department's order directing the examination, such order may
22 be enforced by filing a petition for enforcement in the
23 circuit court in the circuit in which the licensee or
24 certificateholder resides or does business. The department
25 shall be entitled to the summary procedure provided in s.
26 51.011. A licensee or certificateholder affected under this
27 paragraph shall at reasonable intervals be afforded an
28 opportunity to demonstrate that he or she can resume the
29 competent practice for which he or she is licensed or
30 certified with reasonable skill and safety to patients.

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1 Section 6. For the purpose of incorporating the
2 amendment to section 455.637, Florida Statutes, in references
3 thereto, subsection (1) of section 484.014, Florida Statutes,
4 is reenacted to read:

5 484.014 Disciplinary actions.--

6 (1) The following acts relating to the practice of
7 opticianry shall be grounds for both disciplinary action
8 against an optician as set forth in this section and cease and
9 desist or other related action by the department as set forth
10 in s. 455.637 against any person operating an optical
11 establishment who engages in, aids, or abets any such
12 violation:

13 (a) Procuring or attempting to procure a license by
14 misrepresentation, bribery, or fraud or through an error of
15 the department or the board.

16 (b) Procuring or attempting to procure a license for
17 any other person by making or causing to be made any false
18 representation.

19 (c) Making or filing a report or record which the
20 licensee knows to be false, intentionally or negligently
21 failing to file a report or record required by federal or
22 state law, willfully impeding or obstructing such filing, or
23 inducing another person to do so. Such reports or records
24 shall include only those which the person is required to make
25 or file as an optician.

26 (d) Failing to make fee or price information readily
27 available by providing such information upon request or upon
28 the presentation of a prescription.

29 (e) Advertising goods or services in a manner which is
30 fraudulent, false, deceptive, or misleading in form or
31 content.

1 (f) Fraud or deceit, or negligence, incompetency, or
2 misconduct, in the authorized practice of opticianry.

3 (g) Violation or repeated violation of this part or of
4 part II of chapter 455 or any rules promulgated pursuant
5 thereto.

6 (h) Practicing with a revoked, suspended, inactive, or
7 delinquent license.

8 (i) Violation of a lawful order of the board or
9 department previously entered in a disciplinary hearing or
10 failing to comply with a lawfully issued subpoena of the
11 department.

12 (j) Violation of any provision of s. 484.012.

13 (k) Conspiring with another licensee or with any
14 person to commit an act, or committing an act, which would
15 coerce, intimidate, or preclude another licensee from lawfully
16 advertising her or his services.

17 (l) Willfully submitting to any third-party payor a
18 claim for services which were not provided to a patient.

19 (m) Failing to keep written prescription files.

20 (n) Willfully failing to report any person who the
21 licensee knows is in violation of this part or of rules of the
22 department or the board.

23 (o) Exercising influence on a client in such a manner
24 as to exploit the client for financial gain of the licensee or
25 of a third party.

26 (p) Gross or repeated malpractice.

27 (q) Permitting any person not licensed as an optician
28 in this state to fit or dispense any lenses, spectacles,
29 eyeglasses, or other optical devices which are part of the
30 practice of opticianry.

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1 (r) Being convicted or found guilty of, or entering a
2 plea of nolo contendere to, regardless of adjudication, in a
3 court of this state or other jurisdiction, a crime which
4 relates to the ability to practice opticianry or to the
5 practice of opticianry.

6 (s) Having been disciplined by a regulatory agency in
7 another state for any offense that would constitute a
8 violation of Florida law or rules regulating opticianry.

9 (t) Being unable to practice opticianry with
10 reasonable skill and safety by reason of illness or use of
11 drugs, narcotics, chemicals, or any other type of material or
12 as a result of any mental or physical condition. An optician
13 affected under this paragraph shall at reasonable intervals be
14 afforded an opportunity to demonstrate that she or he can
15 resume the competent practice of opticianry with reasonable
16 skill and safety to her or his customers.

17 Section 7. For the purpose of incorporating the
18 amendment to section 455.637, Florida Statutes, in references
19 thereto, subsection (1) of section 484.056, Florida Statutes,
20 is reenacted to read:

21 484.056 Disciplinary proceedings.--

22 (1) The following acts relating to the practice of
23 dispensing hearing aids shall be grounds for both disciplinary
24 action against a hearing aid specialist as set forth in this
25 section and cease and desist or other related action by the
26 department as set forth in s. 455.637 against any person
27 owning or operating a hearing aid establishment who engages
28 in, aids, or abets any such violation:

29 (a) Violation of any provision of s. 455.624(1), s.
30 484.0512, or s. 484.053.

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1 (b) Attempting to procure a license to dispense
2 hearing aids by bribery, by fraudulent misrepresentations, or
3 through an error of the department or the board.

4 (c) Having a license to dispense hearing aids revoked,
5 suspended, or otherwise acted against, including the denial of
6 licensure, by the licensing authority of another state,
7 territory, or country.

8 (d) Being convicted or found guilty of, or entering a
9 plea of nolo contendere to, regardless of adjudication, a
10 crime in any jurisdiction which directly relates to the
11 practice of dispensing hearing aids or the ability to practice
12 dispensing hearing aids, including violations of any federal
13 laws or regulations regarding hearing aids.

14 (e) Making or filing a report or record which the
15 licensee knows to be false, intentionally or negligently
16 failing to file a report or record required by state or
17 federal law, willfully impeding or obstructing such filing, or
18 inducing another person to impede or obstruct such filing.
19 Such reports or records shall include only those reports or
20 records which are signed in one's capacity as a licensed
21 hearing aid specialist.

22 (f) Advertising goods or services in a manner which is
23 fraudulent, false, deceptive, or misleading in form or
24 content.

25 (g) Proof that the licensee is guilty of fraud or
26 deceit or of negligence, incompetency, or misconduct in the
27 practice of dispensing hearing aids.

28 (h) Violation or repeated violation of this part or of
29 part II of chapter 455, or any rules promulgated pursuant
30 thereto.

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1 (i) Violation of a lawful order of the board or
2 department previously entered in a disciplinary hearing or
3 failure to comply with a lawfully issued subpoena of the board
4 or department.

5 (j) Practicing with a revoked, suspended, inactive, or
6 delinquent license.

7 (k) Using, or causing or promoting the use of, any
8 advertising matter, promotional literature, testimonial,
9 guarantee, warranty, label, brand, insignia, or other
10 representation, however disseminated or published, which is
11 misleading, deceiving, or untruthful.

12 (l) Showing or demonstrating, or, in the event of
13 sale, delivery of, a product unusable or impractical for the
14 purpose represented or implied by such action.

15 (m) Misrepresentation of professional services
16 available in the fitting, sale, adjustment, service, or repair
17 of a hearing aid, or use of the terms "doctor," "clinic,"
18 "clinical," "medical audiologist," "clinical audiologist,"
19 "research audiologist," or "audiologic" or any other term or
20 title which might connote the availability of professional
21 services when such use is not accurate.

22 (n) Representation, advertisement, or implication that
23 a hearing aid or its repair is guaranteed without providing
24 full disclosure of the identity of the guarantor; the nature,
25 extent, and duration of the guarantee; and the existence of
26 conditions or limitations imposed upon the guarantee.

27 (o) Representing, directly or by implication, that a
28 hearing aid utilizing bone conduction has certain specified
29 features, such as the absence of anything in the ear or
30 leading to the ear, or the like, without disclosing clearly
31 and conspicuously that the instrument operates on the bone

1 conduction principle and that in many cases of hearing loss
2 this type of instrument may not be suitable.

3 (p) Making any predictions or prognostications as to
4 the future course of a hearing impairment, either in general
5 terms or with reference to an individual person.

6 (q) Stating or implying that the use of any hearing
7 aid will improve or preserve hearing or prevent or retard the
8 progression of a hearing impairment or that it will have any
9 similar or opposite effect.

10 (r) Making any statement regarding the cure of the
11 cause of a hearing impairment by the use of a hearing aid.

12 (s) Representing or implying that a hearing aid is or
13 will be "custom-made," "made to order," or "prescription-made"
14 or in any other sense specially fabricated for an individual
15 person when such is not the case.

16 (t) Canvassing from house to house or by telephone
17 either in person or by an agent for the purpose of selling a
18 hearing aid, except that contacting persons who have evidenced
19 an interest in hearing aids, or have been referred as in need
20 of hearing aids, shall not be considered canvassing.

21 (u) Failure to submit to the board on an annual basis,
22 or such other basis as may be provided by rule, certification
23 of testing and calibration of audiometric testing equipment on
24 the form approved by the board.

25 (v) Failing to provide all information as described in
26 s. 484.051(1).

27 (w) Exercising influence on a client in such a manner
28 as to exploit the client for financial gain of the licensee or
29 of a third party.

30 Section 8. Section 455.665, Florida Statutes, is
31 created to read:

1 455.665 Advertisement by a health care practitioner
2 for a surgical procedure; required statement.--

3 (1) In the text of any written advertisement for a
4 surgical procedure, the following statement must appear in
5 capital letters clearly distinguishable from the rest of the
6 text: "MANY SURGICAL PROCEDURES CARRY RISKS OF UNINTENDED
7 SERIOUS BODILY INJURY OR DEATH. CONSULT A LICENSED
8 PRACTITIONER CONCERNING THESE RISKS BEFORE SUBMITTING TO ANY
9 SURGERY."

10 (2) Any advertisement that has an audible component
11 must orally contain the statement required in subsection (1)
12 verbatim.

13 Section 9. Paragraphs (a) and (g) of subsection (3) of
14 section 921.0022, Florida Statutes, are amended to read:

15 921.0022 Criminal Punishment Code; offense severity
16 ranking chart.--

17 (3) OFFENSE SEVERITY RANKING CHART

19 Florida	Felony	
20 Statute	Degree	Description
		22 (a) LEVEL 1
23 24.118(3)(a)	3rd	24 Counterfeit or altered state lottery ticket.
25 212.054(2)(b)	3rd	26 Discretionary sales surtax; 27 limitations, administration, and collection.
28 212.15(2)(b)	3rd	29 Failure to remit sales taxes, 30 amount greater than \$300 but less than \$20,000.

1	319.30(5)	3rd	Sell, exchange, give away
2			certificate of title or
3			identification number plate.
4	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
5			odometer.
6	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
7			registration license plates or
8			validation stickers.
9	322.212(1)	3rd	Possession of forged, stolen,
10			counterfeit, or unlawfully issued
11			driver's license; possession of
12			simulated identification.
13	322.212(4)	3rd	Supply or aid in supplying
14			unauthorized driver's license or
15			identification card.
16	322.212(5)(a)	3rd	False application for driver's
17			license or identification card.
18	370.13(3)(a)	3rd	Molest any stone crab trap, line,
19			or buoy which is property of
20			licenseholder.
21	370.135(1)	3rd	Molest any blue crab trap, line,
22			or buoy which is property of
23			licenseholder.
24	372.663(1)	3rd	Poach any alligator or
25			crocodilia.
26	414.39(2)	3rd	Unauthorized use, possession,
27			forgery, or alteration of food
28			stamps, Medicaid ID, value
29			greater than \$200.
30			
31			

1	414.39(3)(a)	3rd	Fraudulent misappropriation of
2			public assistance funds by
3			employee/official, value more
4			than \$200.
5	443.071(1)	3rd	False statement or representation
6			to obtain or increase
7			unemployment compensation
8			benefits.
9	458.327(1)(a)	3rd	Unlicensed practice of medicine.
10	466.026(1)(a)	3rd	Unlicensed practice of dentistry
11			or dental hygiene.
12	509.151(1)	3rd	Defraud an innkeeper, food or
13			lodging value greater than \$300.
14	517.302(1)	3rd	Violation of the Florida
15			Securities and Investor
16			Protection Act.
17	562.27(1)	3rd	Possess still or still apparatus.
18	713.69	3rd	Tenant removes property upon
19			which lien has accrued, value
20			more than \$50.
21	812.014(3)(c)	3rd	Petit theft (3rd conviction);
22			theft of any property not
23			specified in subsection (2).
24	812.081(2)	3rd	Unlawfully makes or causes to be
25			made a reproduction of a trade
26			secret.
27	815.04(4)(a)	3rd	Offense against intellectual
28			property (i.e., computer
29			programs, data).
30	817.52(2)	3rd	Hiring with intent to defraud,
31			motor vehicle services.

1	826.01	3rd	Bigamy.
2	828.122(3)	3rd	Fighting or baiting animals.
3	831.04(1)	3rd	Any erasure, alteration, etc., of
4			any replacement deed, map, plat,
5			or other document listed in s.
6			92.28.
7	831.31(1)(a)	3rd	Sell, deliver, or possess
8			counterfeit controlled
9			substances, all but s. 893.03(5)
10			drugs.
11	832.041(1)	3rd	Stopping payment with intent to
12			defraud \$150 or more.
13	832.05		
14	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
15			worthless checks \$150 or more or
16			obtaining property in return for
17			worthless check \$150 or more.
18	838.015(3)	3rd	Bribery.
19	838.016(1)	3rd	Public servant receiving unlawful
20			compensation.
21	838.15(2)	3rd	Commercial bribe receiving.
22	838.16	3rd	Commercial bribery.
23	843.18	3rd	Fleeing by boat to elude a law
24			enforcement officer.
25	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
26			lewd, etc., material (2nd
27			conviction).
28	849.01	3rd	Keeping gambling house.
29			
30			
31			

1	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
2			or assist therein, conduct or
3			advertise drawing for prizes, or
4			dispose of property or money by
5			means of lottery.
6	849.23	3rd	Gambling-related machines;
7			"common offender" as to property
8			rights.
9	849.25(2)	3rd	Engaging in bookmaking.
10	860.08	3rd	Interfere with a railroad signal.
11	860.13(1)(a)	3rd	Operate aircraft while under the
12			influence.
13	893.13(2)(a)2.	3rd	Purchase of cannabis.
14	893.13(6)(a)	3rd	Possession of cannabis (more than
15			20 grams).
16	893.13(7)(a)10.	3rd	Affix false or forged label to
17			package of controlled substance.
18	934.03(1)(a)	3rd	Intercepts, or procures any other
19			person to intercept, any wire or
20			oral communication.
21			(g) LEVEL 7
22	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
23			injury.
24	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
25			bodily injury.
26	402.319(2)	2nd	Misrepresentation and negligence
27			or intentional act resulting in
28			great bodily harm, permanent
29			disfiguration, permanent
30			disability, or death.
31	409.920(2)	3rd	Medicaid provider fraud.

1	<u>455.637(2)</u>	<u>3rd</u>	<u>Practicing a health care</u>
2			<u>profession without a license.</u>
3	<u>455.637(2)</u>	<u>2nd</u>	<u>Practicing a health care</u>
4			<u>profession without a license</u>
5			<u>which results in serious bodily</u>
6			<u>injury.</u>
7	<u>458.327(1)</u>	<u>3rd</u>	<u>Practicing medicine without a</u>
8			<u>license.</u>
9	<u>459.013(1)</u>	<u>3rd</u>	<u>Practicing osteopathic medicine</u>
10			<u>without a license.</u>
11	<u>460.411(1)</u>	<u>3rd</u>	<u>Practicing chiropractic medicine</u>
12			<u>without a license.</u>
13	<u>461.012(1)</u>	<u>3rd</u>	<u>Practicing podiatric medicine</u>
14			<u>without a license.</u>
15	<u>462.17</u>	<u>3rd</u>	<u>Practicing naturopathy without a</u>
16			<u>license.</u>
17	<u>463.015(1)</u>	<u>3rd</u>	<u>Practicing optometry without a</u>
18			<u>license.</u>
19	<u>464.016(1)</u>	<u>3rd</u>	<u>Practicing nursing without a</u>
20			<u>license.</u>
21	<u>465.015(2)</u>	<u>3rd</u>	<u>Practicing pharmacy without a</u>
22			<u>license.</u>
23	<u>466.026(1)</u>	<u>3rd</u>	<u>Practicing dentistry or dental</u>
24			<u>hygiene without a license.</u>
25	<u>467.201</u>	<u>3rd</u>	<u>Practicing midwifery without a</u>
26			<u>license.</u>
27	<u>468.366</u>	<u>3rd</u>	<u>Delivering respiratory care</u>
28			<u>services without a license.</u>
29	<u>483.828(1)</u>	<u>3rd</u>	<u>Practicing as clinical laboratory</u>
30			<u>personnel without a license.</u>
31			

1	<u>483.901(9)</u>	<u>3rd</u>	<u>Practicing medical physics</u>
2			<u>without a license.</u>
3	<u>484.053</u>	<u>3rd</u>	<u>Dispensing hearing aids without a</u>
4			<u>license.</u>
5	494.0018(2)	1st	Conviction of any violation of
6			ss. 494.001-494.0077 in which the
7			total money and property
8			unlawfully obtained exceeded
9			\$50,000 and there were five or
10			more victims.
11	782.051(3)	2nd	Attempted felony murder of a
12			person by a person other than the
13			perpetrator or the perpetrator of
14			an attempted felony.
15	782.07(1)	2nd	Killing of a human being by the
16			act, procurement, or culpable
17			negligence of another
18			(manslaughter).
19	782.071	2nd	Killing of human being or viable
20			fetus by the operation of a motor
21			vehicle in a reckless manner
22			(vehicular homicide).
23	782.072	2nd	Killing of a human being by the
24			operation of a vessel in a
25			reckless manner (vessel
26			homicide).
27	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
28			causing great bodily harm or
29			disfigurement.
30	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
31			weapon.

1	784.045(1)(b)	2nd	Aggravated battery; perpetrator
2			aware victim pregnant.
3	784.048(4)	3rd	Aggravated stalking; violation of
4			injunction or court order.
5	784.07(2)(d)	1st	Aggravated battery on law
6			enforcement officer.
7	784.08(2)(a)	1st	Aggravated battery on a person 65
8			years of age or older.
9	784.081(1)	1st	Aggravated battery on specified
10			official or employee.
11	784.082(1)	1st	Aggravated battery by detained
12			person on visitor or other
13			detainee.
14	784.083(1)	1st	Aggravated battery on code
15			inspector.
16	790.07(4)	1st	Specified weapons violation
17			subsequent to previous conviction
18			of s. 790.07(1) or (2).
19	790.16(1)	1st	Discharge of a machine gun under
20			specified circumstances.
21	796.03	2nd	Procuring any person under 16
22			years for prostitution.
23	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
24			victim less than 12 years of age;
25			offender less than 18 years.
26	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
27			victim 12 years of age or older
28			but less than 16 years; offender
29			18 years or older.
30	806.01(2)	2nd	Maliciously damage structure by
31			fire or explosive.

1	810.02(3)(a)	2nd	Burglary of occupied dwelling;
2			unarmed; no assault or battery.
3	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
4			unarmed; no assault or battery.
5	810.02(3)(d)	2nd	Burglary of occupied conveyance;
6			unarmed; no assault or battery.
7	812.014(2)(a)	1st	Property stolen, valued at
8			\$100,000 or more; property stolen
9			while causing other property
10			damage; 1st degree grand theft.
11	812.019(2)	1st	Stolen property; initiates,
12			organizes, plans, etc., the theft
13			of property and traffics in
14			stolen property.
15	812.131(2)(a)	2nd	Robbery by sudden snatching.
16	812.133(2)(b)	1st	Carjacking; no firearm, deadly
17			weapon, or other weapon.
18	825.102(3)(b)	2nd	Neglecting an elderly person or
19			disabled adult causing great
20			bodily harm, disability, or
21			disfigurement.
22	825.1025(2)	2nd	Lewd or lascivious battery upon
23			an elderly person or disabled
24			adult.
25	825.103(2)(b)	2nd	Exploiting an elderly person or
26			disabled adult and property is
27			valued at \$20,000 or more, but
28			less than \$100,000.
29	827.03(3)(b)	2nd	Neglect of a child causing great
30			bodily harm, disability, or
31			disfigurement.

1	827.04(3)	3rd	Impregnation of a child under 16
2			years of age by person 21 years
3			of age or older.
4	837.05(2)	3rd	Giving false information about
5			alleged capital felony to a law
6			enforcement officer.
7	872.06	2nd	Abuse of a dead human body.
8	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
9			cocaine (or other drug prohibited
10			under s. 893.03(1)(a), (1)(b),
11			(1)(d), (2)(a), or (2)(b)) within
12			1,000 feet of a child care
13			facility or school.
14	893.13(1)(e)	1st	Sell, manufacture, or deliver
15			cocaine or other drug prohibited
16			under s. 893.03(1)(a), (1)(b),
17			(1)(d), (2)(a), or (2)(b), within
18			1,000 feet of property used for
19			religious services or a specified
20			business site.
21	893.13(4)(a)	1st	Deliver to minor cocaine (or
22			other s. 893.03(1)(a), (1)(b),
23			(1)(d), (2)(a), or (2)(b) drugs).
24	893.135(1)(a)1.	1st	Trafficking in cannabis, more
25			than 50 lbs., less than 2,000
26			lbs.
27	893.135		
28	(1)(b)1.a.	1st	Trafficking in cocaine, more than
29			28 grams, less than 200 grams.
30			
31			

1 893.135
2 (1)(c)1.a. 1st Trafficking in illegal drugs,
3 more than 4 grams, less than 14
4 grams.
5 893.135
6 (1)(d)1. 1st Trafficking in phencyclidine,
7 more than 28 grams, less than 200
8 grams.
9 893.135(1)(e)1. 1st Trafficking in methaqualone, more
10 than 200 grams, less than 5
11 kilograms.
12 893.135(1)(f)1. 1st Trafficking in amphetamine, more
13 than 14 grams, less than 28
14 grams.
15 893.135
16 (1)(g)1.a. 1st Trafficking in flunitrazepam, 4
17 grams or more, less than 14
18 grams.

19 Section 10. This act shall take effect July 1, 2000.

20
21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 Senate Bill 1028

24 The bill revises funding and enforcement by the Department of
25 Health of prohibitions against the unlicensed practice of
26 health care professions, creates criminal offenses for the
27 unlicensed practice of a health care profession, and requires
28 a minimum mandatory sentence of imprisonment and a monetary
29 fine. The bill revises information to be provided in an
30 advertisement for surgical procedures.
31