

By the Committee on Health Care Licensing & Regulation and
Representative Fasano

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), and 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.
31

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. Applying for employment for a position that
14 requires a license without notifying the employer that the
15 person does not currently possess a valid, active license to
16 practice that profession shall be deemed to be an attempt or
17 offer to practice that health care profession without a
18 license. Holding oneself out, regardless of the means of
19 communication, as able to practice a health care profession or
20 as able to provide services that require a health care license
21 shall be deemed to be an attempt or offer to practice such
22 profession without a license. The minimum penalty for
23 violating this subparagraph shall be a fine of \$1,000 and a
24 minimum mandatory period of incarceration of 1 year.

25 2. It is a felony of the second degree, punishable as
26 provided in s. 775.082, s. 775.083, or s. 775.084, to practice
27 a health care profession without an active, valid Florida
28 license to practice that profession when such practice results
29 in serious bodily injury. For purposes of this section,
30 "serious bodily injury" means death; brain or spinal damage;
31 disfigurement; fracture or dislocation of bones or joints;

1 limitation of neurological, physical, or sensory function; or
2 any condition that required subsequent surgical repair. The
3 minimum penalty for violating this subparagraph shall be a
4 fine of \$1,000 and a minimum mandatory period of incarceration
5 of 1 year.

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

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

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

13 ~~(3)(a) Notwithstanding the provisions of s. 455.621,~~
14 ~~the department shall adopt rules to permit the issuance of~~
15 ~~citations for unlicensed practice of a profession. The~~
16 ~~citation shall be issued to the subject and shall contain the~~
17 ~~subject's name and any other information the department~~
18 ~~determines to be necessary to identify the subject, a brief~~
19 ~~factual statement, the sections of the law allegedly violated,~~
20 ~~and the penalty imposed. The citation must clearly state that~~
21 ~~the subject may choose, in lieu of accepting the citation, to~~
22 ~~follow the procedure under s. 455.621. If the subject disputes~~
23 ~~the matter in the citation, the procedures set forth in s.~~
24 ~~455.621 must be followed. However, if the subject does not~~
25 ~~dispute the matter in the citation with the department within~~
26 ~~30 days after the citation is served, the citation shall~~
27 ~~become a final order of the department. The penalty shall be a~~
28 ~~fine of not less than \$500 or more than \$5,000 or other~~
29 ~~conditions as established by rule.~~

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

1 ~~(c) The department shall be entitled to recover the~~
2 ~~costs of investigation, in addition to any penalty provided~~
3 ~~according to department rule as part of the penalty levied~~
4 ~~pursuant to the citation.~~

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

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

13 ~~(4)(5)~~ The provisions of this section apply only to
14 health care ~~the~~ professional practice acts administered by the
15 department.

16 Section 2. The amendment of s. 455.637, Florida
17 Statutes, by this act applies to offenses committed on or
18 after the effective date of such section.

19 Section 3. Section 455.641, Florida Statutes, is
20 repealed.

21 Section 4. For the purpose of incorporating the
22 amendment to section 455.637, Florida Statutes, in references
23 thereto, the sections or subdivisions of Florida Statutes set
24 forth below are reenacted to read:

25 455.574 Department of Health; examinations.--

26 (1)

27 (d) Each board, or the department when there is no
28 board, shall adopt rules regarding the security and monitoring
29 of examinations. The department shall implement those rules
30 adopted by the respective boards. In order to maintain the
31 security of examinations, the department may employ the

1 procedures set forth in s. 455.637 to seek fines and
2 injunctive relief against an examinee who violates the
3 provisions of s. 455.577 or the rules adopted pursuant to this
4 paragraph. The department, or any agent thereof, may, for the
5 purposes of investigation, confiscate any written,
6 photographic, or recording material or device in the
7 possession of the examinee at the examination site which the
8 department deems necessary to enforce such provisions or
9 rules.

10 468.1295 Disciplinary proceedings.--

11 (1) The following acts constitute grounds for both
12 disciplinary actions as set forth in subsection (2) and cease
13 and desist or other related actions by the department as set
14 forth in s. 455.637:

15 (a) Procuring or attempting to procure a license by
16 bribery, by fraudulent misrepresentation, or through an error
17 of the department or the board.

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

21 (c) Being convicted or found guilty of, or entering a
22 plea of nolo contendere to, regardless of adjudication, a
23 crime in any jurisdiction which directly relates to the
24 practice of speech-language pathology or audiology.

25 (d) Making or filing a report or record which the
26 licensee knows to be false, intentionally or negligently
27 failing to file a report or records required by state or
28 federal law, willfully impeding or obstructing such filing, or
29 inducing another person to impede or obstruct such filing.
30 Such report or record shall include only those reports or
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1 records which are signed in one's capacity as a licensed
2 speech-language pathologist or audiologist.

3 (e) Advertising goods or services in a manner which is
4 fraudulent, false, deceptive, or misleading in form or
5 content.

6 (f) Being proven guilty of fraud or deceit or of
7 negligence, incompetency, or misconduct in the practice of
8 speech-language pathology or audiology.

9 (g) Violating a lawful order of the board or
10 department previously entered in a disciplinary hearing, or
11 failing to comply with a lawfully issued subpoena of the board
12 or department.

13 (h) Practicing with a revoked, suspended, inactive, or
14 delinquent license.

15 (i) Using, or causing or promoting the use of, any
16 advertising matter, promotional literature, testimonial,
17 guarantee, warranty, label, brand, insignia, or other
18 representation, however disseminated or published, which is
19 misleading, deceiving, or untruthful.

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

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

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

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

3 (n) Misrepresenting the professional services
4 available in the fitting, sale, adjustment, service, or repair
5 of a hearing aid, or using any other term or title which might
6 connote the availability of professional services when such
7 use is not accurate.

8 (o) Representing, advertising, or implying that a
9 hearing aid or its repair is guaranteed without providing full
10 disclosure of the identity of the guarantor; the nature,
11 extent, and duration of the guarantee; and the existence of
12 conditions or limitations imposed upon the guarantee.

13 (p) Representing, directly or by implication, that a
14 hearing aid utilizing bone conduction has certain specified
15 features, such as the absence of anything in the ear or
16 leading to the ear, or the like, without disclosing clearly
17 and conspicuously that the instrument operates on the bone
18 conduction principle and that in many cases of hearing loss
19 this type of instrument may not be suitable.

20 (q) Stating or implying that the use of any hearing
21 aid will improve or preserve hearing or prevent or retard the
22 progression of a hearing impairment or that it will have any
23 similar or opposite effect.

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

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

30 (t) Canvassing from house to house or by telephone,
31 either in person or by an agent, for the purpose of selling a

1 hearing aid, except that contacting persons who have evidenced
2 an interest in hearing aids, or have been referred as in need
3 of hearing aids, shall not be considered canvassing.

4 (u) Failing to notify the department in writing of a
5 change in current mailing and place-of-practice address within
6 30 days after such change.

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

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

12 (x) Practicing or offering to practice beyond the
13 scope permitted by law or accepting and performing
14 professional responsibilities the licensee or
15 certificateholder knows, or has reason to know, the licensee
16 or certificateholder is not competent to perform.

17 (y) Aiding, assisting, procuring, or employing any
18 unlicensed person to practice speech-language pathology or
19 audiology.

20 (z) Delegating or contracting for the performance of
21 professional responsibilities by a person when the licensee
22 delegating or contracting for performance of such
23 responsibilities knows, or has reason to know, such person is
24 not qualified by training, experience, and authorization to
25 perform them.

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

29 (bb) Being unable to practice the profession for which
30 he or she is licensed or certified under this chapter with
31 reasonable skill or competence as a result of any mental or

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

23 484.014 Disciplinary actions.--

24 (1) The following acts relating to the practice of
25 opticianry shall be grounds for both disciplinary action
26 against an optician as set forth in this section and cease and
27 desist or other related action by the department as set forth
28 in s. 455.637 against any person operating an optical
29 establishment who engages in, aids, or abets any such
30 violation:
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1 (a) Procuring or attempting to procure a license by
2 misrepresentation, bribery, or fraud or through an error of
3 the department or the board.

4 (b) Procuring or attempting to procure a license for
5 any other person by making or causing to be made any false
6 representation.

7 (c) Making or filing a report or record which the
8 licensee knows to be false, intentionally or negligently
9 failing to file a report or record required by federal or
10 state law, willfully impeding or obstructing such filing, or
11 inducing another person to do so. Such reports or records
12 shall include only those which the person is required to make
13 or file as an optician.

14 (d) Failing to make fee or price information readily
15 available by providing such information upon request or upon
16 the presentation of a prescription.

17 (e) Advertising goods or services in a manner which is
18 fraudulent, false, deceptive, or misleading in form or
19 content.

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

22 (g) Violation or repeated violation of this part or of
23 part II of chapter 455 or any rules promulgated pursuant
24 thereto.

25 (h) Practicing with a revoked, suspended, inactive, or
26 delinquent license.

27 (i) Violation of a lawful order of the board or
28 department previously entered in a disciplinary hearing or
29 failing to comply with a lawfully issued subpoena of the
30 department.

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

1 (k) Conspiring with another licensee or with any
2 person to commit an act, or committing an act, which would
3 coerce, intimidate, or preclude another licensee from lawfully
4 advertising her or his services.

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

7 (m) Failing to keep written prescription files.

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

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

14 (p) Gross or repeated malpractice.

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

19 (r) Being convicted or found guilty of, or entering a
20 plea of nolo contendere to, regardless of adjudication, in a
21 court of this state or other jurisdiction, a crime which
22 relates to the ability to practice opticianry or to the
23 practice of opticianry.

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

27 (t) Being unable to practice opticianry with
28 reasonable skill and safety by reason of illness or use of
29 drugs, narcotics, chemicals, or any other type of material or
30 as a result of any mental or physical condition. An optician
31 affected under this paragraph shall at reasonable intervals be

1 afforded an opportunity to demonstrate that she or he can
2 resume the competent practice of opticianry with reasonable
3 skill and safety to her or his customers.

4 484.056 Disciplinary proceedings.--

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

12 (a) Violation of any provision of s. 455.624(1), s.
13 484.0512, or s. 484.053.

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

17 (c) Having a license to dispense hearing aids revoked,
18 suspended, or otherwise acted against, including the denial of
19 licensure, by the licensing authority of another state,
20 territory, or country.

21 (d) Being convicted or found guilty of, or entering a
22 plea of nolo contendere to, regardless of adjudication, a
23 crime in any jurisdiction which directly relates to the
24 practice of dispensing hearing aids or the ability to practice
25 dispensing hearing aids, including violations of any federal
26 laws or regulations regarding hearing aids.

27 (e) Making or filing a report or record which the
28 licensee knows to be false, intentionally or negligently
29 failing to file a report or record required by state or
30 federal law, willfully impeding or obstructing such filing, or
31 inducing another person to impede or obstruct such filing.

1 Such reports or records shall include only those reports or
2 records which are signed in one's capacity as a licensed
3 hearing aid specialist.

4 (f) Advertising goods or services in a manner which is
5 fraudulent, false, deceptive, or misleading in form or
6 content.

7 (g) Proof that the licensee is guilty of fraud or
8 deceit or of negligence, incompetency, or misconduct in the
9 practice of dispensing hearing aids.

10 (h) Violation or repeated violation of this part or of
11 part II of chapter 455, or any rules promulgated pursuant
12 thereto.

13 (i) Violation of a lawful order of the board or
14 department previously entered in a disciplinary hearing or
15 failure to comply with a lawfully issued subpoena of the board
16 or department.

17 (j) Practicing with a revoked, suspended, inactive, or
18 delinquent license.

19 (k) Using, or causing or promoting the use of, any
20 advertising matter, promotional literature, testimonial,
21 guarantee, warranty, label, brand, insignia, or other
22 representation, however disseminated or published, which is
23 misleading, deceiving, or untruthful.

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

27 (m) Misrepresentation of professional services
28 available in the fitting, sale, adjustment, service, or repair
29 of a hearing aid, or use of the terms "doctor," "clinic,"
30 "clinical," "medical audiologist," "clinical audiologist,"
31 "research audiologist," or "audiologic" or any other term or

1 title which might connote the availability of professional
2 services when such use is not accurate.

3 (n) Representation, advertisement, or implication that
4 a hearing aid or its repair is guaranteed without providing
5 full disclosure of the identity of the guarantor; the nature,
6 extent, and duration of the guarantee; and the existence of
7 conditions or limitations imposed upon the guarantee.

8 (o) Representing, directly or by implication, that a
9 hearing aid utilizing bone conduction has certain specified
10 features, such as the absence of anything in the ear or
11 leading to the ear, or the like, without disclosing clearly
12 and conspicuously that the instrument operates on the bone
13 conduction principle and that in many cases of hearing loss
14 this type of instrument may not be suitable.

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

18 (q) Stating or implying that the use of any hearing
19 aid will improve or preserve hearing or prevent or retard the
20 progression of a hearing impairment or that it will have any
21 similar or opposite effect.

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

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

28 (t) Canvassing from house to house or by telephone
29 either in person or by an agent for the purpose of selling a
30 hearing aid, except that contacting persons who have evidenced
31

1 an interest in hearing aids, or have been referred as in need
2 of hearing aids, shall not be considered canvassing.

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

7 (v) Failing to provide all information as described in
8 s. 484.051(1).

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

12 Section 5. Section 455.665, Florida Statutes, is
13 created to read:

14 455.665 Advertisement by a health care practitioner
15 for a surgical procedure; required statement.--

16 (1) In the text of any written advertisement for a
17 surgical procedure, the following statement must appear in
18 capital letters clearly distinguishable from the rest of the
19 text: "MANY SURGICAL PROCEDURES CARRY RISKS OF UNINTENDED
20 SERIOUS BODILY INJURY OR DEATH. CONSULT A LICENSED PHYSICIAN
21 CONCERNING THESE RISKS BEFORE SUBMITTING TO ANY SURGERY."

22 (2) Any advertisement that has an audible component
23 must orally contain the statement required in subsection (1)
24 verbatim.

25 Section 6. Paragraphs (a) and (g) of subsection (3) of
26 section 921.0022, Florida Statutes, are amended to read:

27 921.0022 Criminal Punishment Code; offense severity
28 ranking chart.--

29 (3) OFFENSE SEVERITY RANKING CHART
30
31

1	Florida	Felony	
2	Statute	Degree	Description
3			
4			(a) LEVEL 1
5	24.118(3)(a)	3rd	Counterfeit or altered state
6			lottery ticket.
7	212.054(2)(b)	3rd	Discretionary sales surtax;
8			limitations, administration, and
9			collection.
10	212.15(2)(b)	3rd	Failure to remit sales taxes,
11			amount greater than \$300 but less
12			than \$20,000.
13	319.30(5)	3rd	Sell, exchange, give away
14			certificate of title or
15			identification number plate.
16	319.35(1)(a)	3rd	Tamper, adjust, change, etc., an
17			odometer.
18	320.26(1)(a)	3rd	Counterfeit, manufacture, or sell
19			registration license plates or
20			validation stickers.
21	322.212(1)	3rd	Possession of forged, stolen,
22			counterfeit, or unlawfully issued
23			driver's license; possession of
24			simulated identification.
25	322.212(4)	3rd	Supply or aid in supplying
26			unauthorized driver's license or
27			identification card.
28	322.212(5)(a)	3rd	False application for driver's
29			license or identification card.
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1	370.13(3)(a)	3rd	Molest any stone crab trap, line,
2			or buoy which is property of
3			licenseholder.
4	370.135(1)	3rd	Molest any blue crab trap, line,
5			or buoy which is property of
6			licenseholder.
7	372.663(1)	3rd	Poach any alligator or
8			crocodilia.
9	414.39(2)	3rd	Unauthorized use, possession,
10			forgery, or alteration of food
11			stamps, Medicaid ID, value
12			greater than \$200.
13	414.39(3)(a)	3rd	Fraudulent misappropriation of
14			public assistance funds by
15			employee/official, value more
16			than \$200.
17	443.071(1)	3rd	False statement or representation
18			to obtain or increase
19			unemployment compensation
20			benefits.
21	458.327(1)(a)	3rd	Unlicensed practice of medicine.
22	466.026(1)(a)	3rd	Unlicensed practice of dentistry
23			or dental hygiene.
24	509.151(1)	3rd	Defraud an innkeeper, food or
25			lodging value greater than \$300.
26	517.302(1)	3rd	Violation of the Florida
27			Securities and Investor
28			Protection Act.
29	562.27(1)	3rd	Possess still or still apparatus.
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1	713.69	3rd	Tenant removes property upon
2			which lien has accrued, value
3			more than \$50.
4	812.014(3)(c)	3rd	Petit theft (3rd conviction);
5			theft of any property not
6			specified in subsection (2).
7	812.081(2)	3rd	Unlawfully makes or causes to be
8			made a reproduction of a trade
9			secret.
10	815.04(4)(a)	3rd	Offense against intellectual
11			property (i.e., computer
12			programs, data).
13	817.52(2)	3rd	Hiring with intent to defraud,
14			motor vehicle services.
15	826.01	3rd	Bigamy.
16	828.122(3)	3rd	Fighting or baiting animals.
17	831.04(1)	3rd	Any erasure, alteration, etc., of
18			any replacement deed, map, plat,
19			or other document listed in s.
20			92.28.
21	831.31(1)(a)	3rd	Sell, deliver, or possess
22			counterfeit controlled
23			substances, all but s. 893.03(5)
24			drugs.
25	832.041(1)	3rd	Stopping payment with intent to
26			defraud \$150 or more.
27	832.05		
28	(2)(b)&(4)(c)	3rd	Knowing, making, issuing
29			worthless checks \$150 or more or
30			obtaining property in return for
31			worthless check \$150 or more.

1	838.015(3)	3rd	Bribery.
2	838.016(1)	3rd	Public servant receiving unlawful
3			compensation.
4	838.15(2)	3rd	Commercial bribe receiving.
5	838.16	3rd	Commercial bribery.
6	843.18	3rd	Fleeing by boat to elude a law
7			enforcement officer.
8	847.011(1)(a)	3rd	Sell, distribute, etc., obscene,
9			lewd, etc., material (2nd
10			conviction).
11	849.01	3rd	Keeping gambling house.
12	849.09(1)(a)-(d)	3rd	Lottery; set up, promote, etc.,
13			or assist therein, conduct or
14			advertise drawing for prizes, or
15			dispose of property or money by
16			means of lottery.
17	849.23	3rd	Gambling-related machines;
18			"common offender" as to property
19			rights.
20	849.25(2)	3rd	Engaging in bookmaking.
21	860.08	3rd	Interfere with a railroad signal.
22	860.13(1)(a)	3rd	Operate aircraft while under the
23			influence.
24	893.13(2)(a)2.	3rd	Purchase of cannabis.
25	893.13(6)(a)	3rd	Possession of cannabis (more than
26			20 grams).
27	893.13(7)(a)10.	3rd	Affix false or forged label to
28			package of controlled substance.
29	934.03(1)(a)	3rd	Intercepts, or procures any other
30			person to intercept, any wire or
31			oral communication.

1			(g) LEVEL 7
2	316.193(3)(c)2.	3rd	DUI resulting in serious bodily
3			injury.
4	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious
5			bodily injury.
6	402.319(2)	2nd	Misrepresentation and negligence
7			or intentional act resulting in
8			great bodily harm, permanent
9			disfiguration, permanent
10			disability, or death.
11	409.920(2)	3rd	Medicaid provider fraud.
12	<u>455.637(2)</u>	<u>3rd</u>	<u>Practicing a health care</u>
13			<u>profession without a license.</u>
14	<u>455.637(2)</u>	<u>2nd</u>	<u>Practicing a health care</u>
15			<u>profession without a license</u>
16			<u>which results in serious bodily</u>
17			<u>injury.</u>
18	<u>458.327(1)</u>	<u>3rd</u>	<u>Practicing medicine without a</u>
19			<u>license.</u>
20	<u>459.013(1)</u>	<u>3rd</u>	<u>Practicing osteopathic medicine</u>
21			<u>without a license.</u>
22	<u>460.411(1)</u>	<u>3rd</u>	<u>Practicing chiropractic medicine</u>
23			<u>without a license.</u>
24	<u>461.012(1)</u>	<u>3rd</u>	<u>Practicing podiatric medicine</u>
25			<u>without a license.</u>
26	<u>462.17</u>	<u>3rd</u>	<u>Practicing naturopathy without a</u>
27			<u>license.</u>
28	<u>463.015(1)</u>	<u>3rd</u>	<u>Practicing optometry without a</u>
29			<u>license.</u>
30	<u>464.016(1)</u>	<u>3rd</u>	<u>Practicing nursing without a</u>
31			<u>license.</u>

1	<u>465.015(2)</u>	<u>3rd</u>	<u>Practicing pharmacy without a</u>
2			<u>license.</u>
3	<u>466.026(1)</u>	<u>3rd</u>	<u>Practicing dentistry or dental</u>
4			<u>hygiene without a license.</u>
5	<u>467.201</u>	<u>3rd</u>	<u>Practicing midwifery without a</u>
6			<u>license.</u>
7	<u>468.366</u>	<u>3rd</u>	<u>Delivering respiratory care</u>
8			<u>services without a license.</u>
9	<u>483.828(1)</u>	<u>3rd</u>	<u>Practicing as clinical laboratory</u>
10			<u>personnel without a license.</u>
11	<u>483.901(9)</u>	<u>3rd</u>	<u>Practicing medical physics</u>
12			<u>without a license.</u>
13	<u>484.053</u>	<u>3rd</u>	<u>Dispensing hearing aids without a</u>
14			<u>license.</u>
15	494.0018(2)	1st	Conviction of any violation of
16			ss. 494.001-494.0077 in which the
17			total money and property
18			unlawfully obtained exceeded
19			\$50,000 and there were five or
20			more victims.
21	782.051(3)	2nd	Attempted felony murder of a
22			person by a person other than the
23			perpetrator or the perpetrator of
24			an attempted felony.
25	782.07(1)	2nd	Killing of a human being by the
26			act, procurement, or culpable
27			negligence of another
28			(manslaughter).
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1	782.071	2nd	Killing of human being or viable
2			fetus by the operation of a motor
3			vehicle in a reckless manner
4			(vehicular homicide).
5	782.072	2nd	Killing of a human being by the
6			operation of a vessel in a
7			reckless manner (vessel
8			homicide).
9	784.045(1)(a)1.	2nd	Aggravated battery; intentionally
10			causing great bodily harm or
11			disfigurement.
12	784.045(1)(a)2.	2nd	Aggravated battery; using deadly
13			weapon.
14	784.045(1)(b)	2nd	Aggravated battery; perpetrator
15			aware victim pregnant.
16	784.048(4)	3rd	Aggravated stalking; violation of
17			injunction or court order.
18	784.07(2)(d)	1st	Aggravated battery on law
19			enforcement officer.
20	784.08(2)(a)	1st	Aggravated battery on a person 65
21			years of age or older.
22	784.081(1)	1st	Aggravated battery on specified
23			official or employee.
24	784.082(1)	1st	Aggravated battery by detained
25			person on visitor or other
26			detainee.
27	784.083(1)	1st	Aggravated battery on code
28			inspector.
29	790.07(4)	1st	Specified weapons violation
30			subsequent to previous conviction
31			of s. 790.07(1) or (2).

1	790.16(1)	1st	Discharge of a machine gun under
2			specified circumstances.
3	796.03	2nd	Procuring any person under 16
4			years for prostitution.
5	800.04(5)(c)1.	2nd	Lewd or lascivious molestation;
6			victim less than 12 years of age;
7			offender less than 18 years.
8	800.04(5)(c)2.	2nd	Lewd or lascivious molestation;
9			victim 12 years of age or older
10			but less than 16 years; offender
11			18 years or older.
12	806.01(2)	2nd	Maliciously damage structure by
13			fire or explosive.
14	810.02(3)(a)	2nd	Burglary of occupied dwelling;
15			unarmed; no assault or battery.
16	810.02(3)(b)	2nd	Burglary of unoccupied dwelling;
17			unarmed; no assault or battery.
18	810.02(3)(d)	2nd	Burglary of occupied conveyance;
19			unarmed; no assault or battery.
20	812.014(2)(a)	1st	Property stolen, valued at
21			\$100,000 or more; property stolen
22			while causing other property
23			damage; 1st degree grand theft.
24	812.019(2)	1st	Stolen property; initiates,
25			organizes, plans, etc., the theft
26			of property and traffics in
27			stolen property.
28	812.131(2)(a)	2nd	Robbery by sudden snatching.
29	812.133(2)(b)	1st	Carjacking; no firearm, deadly
30			weapon, or other weapon.
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1	825.102(3)(b)	2nd	Neglecting an elderly person or
2			disabled adult causing great
3			bodily harm, disability, or
4			disfigurement.
5	825.1025(2)	2nd	Lewd or lascivious battery upon
6			an elderly person or disabled
7			adult.
8	825.103(2)(b)	2nd	Exploiting an elderly person or
9			disabled adult and property is
10			valued at \$20,000 or more, but
11			less than \$100,000.
12	827.03(3)(b)	2nd	Neglect of a child causing great
13			bodily harm, disability, or
14			disfigurement.
15	827.04(3)	3rd	Impregnation of a child under 16
16			years of age by person 21 years
17			of age or older.
18	837.05(2)	3rd	Giving false information about
19			alleged capital felony to a law
20			enforcement officer.
21	872.06	2nd	Abuse of a dead human body.
22	893.13(1)(c)1.	1st	Sell, manufacture, or deliver
23			cocaine (or other drug prohibited
24			under s. 893.03(1)(a), (1)(b),
25			(1)(d), (2)(a), or (2)(b)) within
26			1,000 feet of a child care
27			facility or school.
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1	893.13(1)(e)	1st	Sell, manufacture, or deliver
2			cocaine or other drug prohibited
3			under s. 893.03(1)(a), (1)(b),
4			(1)(d), (2)(a), or (2)(b), within
5			1,000 feet of property used for
6			religious services or a specified
7			business site.
8	893.13(4)(a)	1st	Deliver to minor cocaine (or
9			other s. 893.03(1)(a), (1)(b),
10			(1)(d), (2)(a), or (2)(b) drugs).
11	893.135(1)(a)1.	1st	Trafficking in cannabis, more
12			than 50 lbs., less than 2,000
13			lbs.
14	893.135		
15	(1)(b)1.a.	1st	Trafficking in cocaine, more than
16			28 grams, less than 200 grams.
17	893.135		
18	(1)(c)1.a.	1st	Trafficking in illegal drugs,
19			more than 4 grams, less than 14
20			grams.
21	893.135		
22	(1)(d)1.	1st	Trafficking in phencyclidine,
23			more than 28 grams, less than 200
24			grams.
25	893.135(1)(e)1.	1st	Trafficking in methaqualone, more
26			than 200 grams, less than 5
27			kilograms.
28	893.135(1)(f)1.	1st	Trafficking in amphetamine, more
29			than 14 grams, less than 28
30			grams.
31			

1 893.135

2 (1)(g)1.a. 1st Trafficking in flunitrazepam, 4
3 grams or more, less than 14
4 grams.

5 Section 7. This act shall take effect July 1, 2000.

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8 HOUSE SUMMARY

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10 Revises provisions relating to sanctions against the
11 unlicensed practice of a health care profession, to
12 provide legislative intent and criminal penalties, to
13 revise and expand provisions relating to civil and
14 administrative remedies, and to incorporate and modify
15 the substance of current provisions that impose a fee to
16 combat unlicensed activity and provide for disposition of
17 the proceeds thereof. Reenacts provisions relating to
18 violation of security provisions for examinations and
19 violations involving speech-language pathology,
20 audiology, opticianry, and the dispensing of hearing
21 aids, to incorporate such changes. Requires a specific
22 statement of risk in any advertisement by a health care
23 practitioner for a surgical procedure. Modifies the
24 criminal offense severity ranking chart to include
25 offenses relating to unlicensed practice of a health care
26 profession. See bill for details.

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