

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Kyle offered the following:

**Amendment to Amendment (541895) (with title amendment)**

On page 3, between lines 23 & 24, of the amendment

insert:

Section 2. Section 455.5641, Florida Statutes, is created to read:

455.5641 Telehealth; findings and intent; licensure.--

(1) The Legislature finds that there is a great and recognizable potential for harm if persons without the appropriate level of education, training, experience, supervision, and competence are allowed to provide health care services to the people of this state. The potential for harm could arise through substandard care or fraud, or both. The Legislature further finds that there is a compelling state interest in protecting the health, safety, and welfare of the public from incompetent, impaired, or unscrupulous practitioners and that no less restrictive means are available to effectively protect the public than through licensure in this state. Therefore, it is the intent of the Legislature

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1 that the use of untested, ineffective, and potentially harmful  
2 health care services be prohibited and that the delivery of  
3 all health care services to the people of this state be  
4 regulated through the licensure of health care practitioners.

5 (2) The Legislature finds that the methods for  
6 delivering health care services to the people of this state  
7 are rapidly changing due to advances in technology and  
8 telecommunications. However, the Legislature finds that the  
9 compelling state interest in protecting the public health,  
10 safety, and welfare exists regardless of the method of  
11 communication or the method of delivery of services.

12 Therefore, it is the intent of the Legislature that all health  
13 care practitioners providing health care services to the  
14 people of this state should be regulated in a similar manner  
15 regardless of the method of communication or the method of  
16 delivery of services.

17 (3) For purposes of this section, "health care  
18 services" means providing, attempting to provide, or offering  
19 to provide a diagnosis, treatment plan, prescription,  
20 examination, or any other activity limited to persons licensed  
21 or otherwise legally authorized to practice medicine as  
22 defined in s. 458.305(3), practice osteopathic medicine as  
23 defined in s. 459.003(3), practice chiropractic medicine as  
24 defined in s. 460.403(9), practice podiatric medicine as  
25 defined in s. 461.003(5), practice natureopathy or naturopathy  
26 as defined in s. 462.01(1), practice optometry as defined in  
27 s. 463.002(5), practice professional nursing as defined in s.  
28 464.003(3)(a), practice practical nursing as defined in s.  
29 464.003(3)(b), practice advanced or specialized nursing  
30 practice as defined in s. 464.003(3)(c), practice pharmacy as  
31 defined in s. 465.003(13), practice dentistry as defined in s.

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1 466.003(3), practice dental hygiene as defined in s.  
2 466.003(4), practice midwifery as defined in s. 467.003(8),  
3 practice audiology as defined in s. 468.1125(6)(a), practice  
4 speech-language pathology as defined in s. 468.1125(7)(a),  
5 practice nursing home administration as defined in s.  
6 468.1655(4), practice occupational therapy as defined in s.  
7 468.203(4), practice respiratory care as defined in s.  
8 468.352(5), practice dietetics and nutrition as defined in s.  
9 468.503(4), practice athletic training as defined in s.  
10 468.701(5), practice orthotics as defined in s. 468.80(7),  
11 practice pedorthics as defined in s. 468.80(10), practice  
12 prosthetics as defined in s. 468.80(13), practice electrolysis  
13 or electrology as defined in s. 478.42(5), practice massage as  
14 defined in s. 480.033(3), practice clinical laboratory  
15 personnel as provided in s. 483.803, practice medical physics  
16 as defined in s. 483.901(3)(j), practice opticianry as defined  
17 s. 484.002(3), dispense hearing aids as defined in s.  
18 484.041(3), practice physical therapy as defined in s.  
19 486.021(11), practice psychology as defined in s. 490.003(4),  
20 practice school psychology as defined in s. 490.003(5),  
21 practice clinical social work as defined in s. 491.003(7),  
22 practice marriage and family therapy as defined in s.  
23 491.003(8), and practice mental health counseling as defined  
24 in s. 490.003(9).

25 (4) A person who is not licensed in this state as a  
26 health care practitioner who wishes to provide health care  
27 services, as defined herein, to patients located in this state  
28 by means of telecommunication only, must apply to the  
29 appropriate regulatory board, or the department when there is  
30 no board, for a Florida telehealth license and subsequently  
31 for renewal of such license. The requirements for an initial

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1 telehealth license and subsequent renewal of such license  
2 shall be identical to the requirements for full licensure as  
3 set forth in the appropriate practice act in this state for  
4 the applicable profession, including requirements such as  
5 profiling, credentialing, informed consent, and financial  
6 responsibility and malpractice insurance. Telehealth licensees  
7 must comply with all Florida laws and rules regulating the  
8 practice of that profession.

9 (5) All telehealth communications, including, but not  
10 limited to, Internet web sites, advertisements, e-mail, and  
11 other offers to provide health care services to the people of  
12 this state, must clearly identify the practitioner's Florida  
13 license number and must include a disclaimer which clearly  
14 states that only Florida-licensed health care practitioners  
15 may provide health care services directly to persons located  
16 in this state. The disclaimer must also include the  
17 department's mailing and Internet addresses. It is the  
18 responsibility of the health care practitioner to ensure the  
19 confidentiality of electronic medical records as required by  
20 the laws of this state.

21 (6) The provision of telehealth services to patients  
22 in this state without holding an active Florida license to  
23 practice that profession may be prosecuted as unlicensed  
24 activity in accordance with this chapter. In addition, any act  
25 performed through telehealth communication that would  
26 constitute a criminal violation if performed physically in  
27 this state may be prosecuted under Florida law as if the crime  
28 were physically carried out in this state.

29 (7) Notwithstanding any other provision of law to the  
30 contrary, persons holding a valid, active license to practice  
31 in another jurisdiction may provide episodic consultative

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1 services to a Florida licensee without being licensed in this  
2 state so long as the out-of-state practitioner does not  
3 exercise primary authority for the care or diagnosis of the  
4 Florida patient.

5 (8) Only practitioners licensed in this state or  
6 otherwise authorized to practice in this state may order, from  
7 a person located outside this state, electronic communications  
8 diagnostic-imaging or treatment services for a person located  
9 in this state.

10 (9) Nothing in this section shall be construed to  
11 prohibit or restrict a health care practitioner who is not  
12 licensed in Florida from providing health care services  
13 through telecommunications to a patient temporarily visiting  
14 Florida with whom the health care practitioner has an  
15 established practitioner-patient relationship so long as the  
16 treatment provided is for a non-acute chronic or recurrent  
17 illness previously diagnosed and treated by that practitioner  
18 and so long as the practitioner holds an active unrestricted  
19 license to practice in another state or in another recognized  
20 jurisdiction.

21 (10) The provisions of subsection (3) do not apply to  
22 nonresident pharmacies registered pursuant to s. 465.0156 or  
23 the employees thereof.

24 (11) Nothing in this section shall be construed to  
25 prohibit or limit the board, or the department when there is  
26 no board, from regulating Florida licensees regardless of the  
27 location of the patient.

28 (12) The board, or the department when there is no  
29 board, may adopt rules pursuant to ss. 120.536(1) and 120.54  
30 necessary to administer this section.

31 Section 3. Subsection (7) is added to section 766.102,

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1 Florida Statutes, to read:

2 766.102 Medical negligence; standards of recovery.--

3 (7) If the injury or death is alleged to have resulted  
4 from health care provided to a patient located in this state  
5 through means of telecommunications, the action for recovery  
6 of damages may be brought in this state regardless of the  
7 location of the provider alleged to have caused the injury.

8  
9 (Renumber subsequent sections)

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

13 And the title is amended as follows:

14 On page 69, line 28, after the semicolon, of the  
15 amendment

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17 insert:

18 creating s. 455.5641, F.S.; providing  
19 legislative findings and intent; providing a  
20 definition; requiring separate licensure to  
21 provide telehealth services to patients in this  
22 state; providing that telehealth licensure  
23 requirements and responsibilities shall be  
24 identical to those provided for full licensure  
25 in the applicable profession; requiring certain  
26 information to be provided in all telehealth  
27 communications; providing responsibility for  
28 confidentiality of medical records; providing  
29 for prosecution of unlicensed and other  
30 criminal activity; authorizing certain  
31 consultative services without a license;

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1           requiring licensure to order out-of-state  
2           electronic communications diagnostic-imaging or  
3           treatment services for persons in this state;  
4           providing exemption from telehealth licensure  
5           for health care practitioners treating visitors  
6           to this state under certain conditions;  
7           providing exemption from telehealth licensure  
8           for registered nonresident pharmacies and their  
9           employees; providing applicability to  
10          regulation of Florida licensees; providing  
11          rulemaking authority; amending s. 766.102,  
12          F.S.; authorizing the bringing of telehealth  
13          malpractice actions in this state regardless of  
14          provider location;

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