

By the Committee on Health Regulation and Representatives
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Alexander

1 A bill to be entitled
2 An act relating to health care practitioner
3 student loans and service scholarship
4 obligations; amending s. 456.074, F.S.;
5 providing for an emergency order suspending the
6 license of any health care practitioner who has
7 defaulted on a student loan issued or
8 guaranteed by the state or the Federal
9 Government; amending s. 456.072, F.S., and
10 reenacting subsection (2), relating to
11 disciplinary actions; clarifying the ground for
12 disciplinary action for failing to perform a
13 statutory or legal obligation to include
14 failing to repay a student loan issued or
15 guaranteed by the state or the Federal
16 Government in accordance with the terms of the
17 loan and for failing to comply with service
18 scholarship obligations; providing penalties;
19 directing the Department of Health to obtain
20 certain information from the United States
21 Department of Health and Human Services on a
22 monthly basis and to include certain
23 information in its annual report to the
24 Legislature; reenacting ss. 456.026 and
25 456.073, F.S., relating to the annual report
26 and disciplinary proceedings, respectively, to
27 conform; providing applicability; providing an
28 effective date.

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30 WHEREAS, the United States Department of Health and
31 Human Services reports that 9,454 health care practitioners in

1 the nation and 556 health care practitioners in Florida have
2 defaulted on educational loan or service scholarship
3 obligations, and

4 WHEREAS, the United States Department of Health and
5 Human Services reports that these defaulters are costing
6 taxpayers over \$694 million, of which \$45.6 million is
7 attributable to Florida health care practitioners, and

8 WHEREAS, needy communities lose the services of
9 essential clinicians when practitioners fail to meet their
10 service obligations, and

11 WHEREAS, because these defaulters have received the
12 substantial economic benefits of a health practitioner career
13 education at taxpayer expense, it is imperative that they be
14 required to honor their service obligations and repay their
15 student loans, and

16 WHEREAS, because health care practitioners are licensed
17 by the states and not the Federal Government, it is
18 anticipated that having state discipline of these defaulters
19 will motivate the defaulters to honor their commitments and
20 deter others from defaulting on their student loans and
21 service obligations, and

22 WHEREAS, taxpayers should not have to foot the bill for
23 individuals who have reneged on the repayment obligation of a
24 federal or state loan or scholarship which gave them access to
25 a career as a health care practitioner, and

26 WHEREAS, these defaulters have been or will be excluded
27 from participating in Medicare and Medicaid programs and,
28 therefore, are unable to practice in many of the neediest and
29 most underserved areas, and

30 WHEREAS, these defaulters would not be practicing as
31 health care practitioners had the programs not been available

1 to help finance their education; and, while it is not possible
2 to "repossess" the education these programs allowed them to
3 obtain, it is possible to "repossess" the results of that
4 education by suspending their ability to practice through
5 suspension of their licenses, and

6 WHEREAS, current Florida law provides recourse only for
7 certain state loans through s. 381.0302, Florida Statutes, and
8 does not address federal educational loan and service
9 scholarship defaulters, NOW, THEREFORE,

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

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13 Section 1. Subsection (4) is added to section 456.074,
14 Florida Statutes, to read:

15 456.074 Certain health care practitioners; immediate
16 suspension of license.--

17 (4) Upon receipt of information that a
18 Florida-licensed health care practitioner has defaulted on a
19 student loan issued or guaranteed by the state or the Federal
20 Government, the department shall notify the licensee by
21 certified mail that he or she shall be subject to immediate
22 suspension of license unless, within 45 days after the date of
23 mailing, the licensee provides proof that new payment terms
24 have been agreed upon by all parties to the loan. The
25 department shall issue an emergency order suspending the
26 license of any licensee who, after 45 days following the date
27 of mailing from the department, has failed to provide such
28 proof. Production of such proof shall not prohibit the
29 department from proceeding with disciplinary action against
30 the licensee pursuant to s. 456.073.

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1 Section 2. Paragraph (k) of subsection (1) of section
2 456.072, Florida Statutes, is amended, and subsection (2) of
3 said section is reenacted, to read:

4 456.072 Grounds for discipline; penalties;
5 enforcement.--

6 (1) The following acts shall constitute grounds for
7 which the disciplinary actions specified in subsection (2) may
8 be taken:

9 (k) Failing to perform any statutory or legal
10 obligation placed upon a licensee. For purposes of this
11 section, failing to repay a student loan issued or guaranteed
12 by the state or the Federal Government in accordance with the
13 terms of the loan or failing to comply with service
14 scholarship obligations shall be considered a failure to
15 perform a statutory or legal obligation, and the minimum
16 disciplinary action imposed shall be a suspension of the
17 license until new payment terms are agreed upon or the
18 scholarship obligation is resumed, followed by probation for
19 the duration of the student loan or remaining scholarship
20 obligation period, and a fine equal to 10 percent of the
21 defaulted loan amount. Fines collected shall be deposited
22 into the Medical Quality Assurance Trust Fund.

23 (2) When the board, or the department when there is no
24 board, finds any person guilty of the grounds set forth in
25 subsection (1) or of any grounds set forth in the applicable
26 practice act, including conduct constituting a substantial
27 violation of subsection (1) or a violation of the applicable
28 practice act which occurred prior to obtaining a license, it
29 may enter an order imposing one or more of the following
30 penalties:
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- 1 (a) Refusal to certify, or to certify with
2 restrictions, an application for a license.
- 3 (b) Suspension or permanent revocation of a license.
- 4 (c) Restriction of practice or license, including, but
5 not limited to, restricting the licensee from practicing in
6 certain settings, restricting the licensee to work only under
7 designated conditions or in certain settings, restricting the
8 licensee from performing or providing designated clinical and
9 administrative services, restricting the licensee from
10 practicing more than a designated number of hours, or any
11 other restriction found to be necessary for the protection of
12 the public health, safety, and welfare.
- 13 (d) Imposition of an administrative fine not to exceed
14 \$10,000 for each count or separate offense. If the violation
15 is for fraud or making a false or fraudulent representation,
16 the board, or the department if there is no board, must impose
17 a fine of \$10,000 per count or offense.
- 18 (e) Issuance of a reprimand or letter of concern.
- 19 (f) Placement of the licensee on probation for a
20 period of time and subject to such conditions as the board, or
21 the department when there is no board, may specify. Those
22 conditions may include, but are not limited to, requiring the
23 licensee to undergo treatment, attend continuing education
24 courses, submit to be reexamined, work under the supervision
25 of another licensee, or satisfy any terms which are reasonably
26 tailored to the violations found.
- 27 (g) Corrective action.
- 28 (h) Imposition of an administrative fine in accordance
29 with s. 381.0261 for violations regarding patient rights.
- 30 (i) Refund of fees billed and collected from the
31 patient or a third party on behalf of the patient.

1 (j) Requirement that the practitioner undergo remedial
2 education.

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4 In determining what action is appropriate, the board, or
5 department when there is no board, must first consider what
6 sanctions are necessary to protect the public or to compensate
7 the patient. Only after those sanctions have been imposed may
8 the disciplining authority consider and include in the order
9 requirements designed to rehabilitate the practitioner. All
10 costs associated with compliance with orders issued under this
11 subsection are the obligation of the practitioner.

12 Section 3. The Department of Health shall obtain from
13 the United States Department of Health and Human Services
14 information necessary to investigate and prosecute health care
15 practitioners for failing to repay a student loan or comply
16 with scholarship service obligations pursuant to s.
17 456.072(1)(k), Florida Statutes. The department shall obtain
18 from the United States Department of Health and Human Services
19 a list of default health care practitioners each month, along
20 with the information necessary to investigate a complaint in
21 accordance with s. 456.073, Florida Statutes. The department
22 may obtain evidence to support the investigation and
23 prosecution from any financial institution or educational
24 institution involved in providing the loan or education to the
25 practitioner. The department shall report to the Legislature
26 as part of the annual report required by s. 456.026, Florida
27 Statutes, the number of practitioners in default, along with
28 the results of the department's investigations and
29 prosecutions, and the amount of fines collected from
30 practitioners prosecuted for violating s. 456.072(1)(k),
31 Florida Statutes.

1 Section 4. Section 456.026, Florida Statutes, is
2 reenacted to read:
3 456.026 Annual report concerning finances,
4 administrative complaints, disciplinary actions, and
5 recommendations.--The department is directed to prepare and
6 submit a report to the President of the Senate and the Speaker
7 of the House of Representatives by November 1 of each year. In
8 addition to finances and any other information the Legislature
9 may require, the report shall include statistics and relevant
10 information, profession by profession, detailing:
11 (1) The revenues, expenditures, and cash balances for
12 the prior year, and a review of the adequacy of existing fees.
13 (2) The number of complaints received and
14 investigated.
15 (3) The number of findings of probable cause made.
16 (4) The number of findings of no probable cause made.
17 (5) The number of administrative complaints filed.
18 (6) The disposition of all administrative complaints.
19 (7) A description of disciplinary actions taken.
20 (8) A description of any effort by the department to
21 reduce or otherwise close any investigation or disciplinary
22 proceeding not before the Division of Administrative Hearings
23 under chapter 120 or otherwise not completed within 1 year
24 after the initial filing of a complaint under this chapter.
25 (9) The status of the development and implementation
26 of rules providing for disciplinary guidelines pursuant to s.
27 456.079.
28 (10) Such recommendations for administrative and
29 statutory changes necessary to facilitate efficient and
30 cost-effective operation of the department and the various
31 boards.

1 Section 5. Section 456.073, Florida Statutes, is
2 reenacted to read:

3 456.073 Disciplinary proceedings.--Disciplinary
4 proceedings for each board shall be within the jurisdiction of
5 the department.

6 (1) The department, for the boards under its
7 jurisdiction, shall cause to be investigated any complaint
8 that is filed before it if the complaint is in writing, signed
9 by the complainant, and legally sufficient. A complaint is
10 legally sufficient if it contains ultimate facts that show
11 that a violation of this chapter, of any of the practice acts
12 relating to the professions regulated by the department, or of
13 any rule adopted by the department or a regulatory board in
14 the department has occurred. In order to determine legal
15 sufficiency, the department may require supporting information
16 or documentation. The department may investigate, and the
17 department or the appropriate board may take appropriate final
18 action on, a complaint even though the original complainant
19 withdraws it or otherwise indicates a desire not to cause the
20 complaint to be investigated or prosecuted to completion. The
21 department may investigate an anonymous complaint if the
22 complaint is in writing and is legally sufficient, if the
23 alleged violation of law or rules is substantial, and if the
24 department has reason to believe, after preliminary inquiry,
25 that the violations alleged in the complaint are true. The
26 department may investigate a complaint made by a confidential
27 informant if the complaint is legally sufficient, if the
28 alleged violation of law or rule is substantial, and if the
29 department has reason to believe, after preliminary inquiry,
30 that the allegations of the complainant are true. The
31 department may initiate an investigation if it has reasonable

1 cause to believe that a licensee or a group of licensees has
2 violated a Florida statute, a rule of the department, or a
3 rule of a board. Except as provided in ss. 458.331(9),
4 459.015(9), 460.413(5), and 461.013(6), when an investigation
5 of any subject is undertaken, the department shall promptly
6 furnish to the subject or the subject's attorney a copy of the
7 complaint or document that resulted in the initiation of the
8 investigation. The subject may submit a written response to
9 the information contained in such complaint or document within
10 20 days after service to the subject of the complaint or
11 document. The subject's written response shall be considered
12 by the probable cause panel. The right to respond does not
13 prohibit the issuance of a summary emergency order if
14 necessary to protect the public. However, if the secretary, or
15 the secretary's designee, and the chair of the respective
16 board or the chair of its probable cause panel agree in
17 writing that such notification would be detrimental to the
18 investigation, the department may withhold notification. The
19 department may conduct an investigation without notification
20 to any subject if the act under investigation is a criminal
21 offense.

22 (2) The department shall allocate sufficient and
23 adequately trained staff to expeditiously and thoroughly
24 determine legal sufficiency and investigate all legally
25 sufficient complaints. For purposes of this section, it is the
26 intent of the Legislature that the term "expeditiously" means
27 that the department complete the report of its initial
28 investigative findings and recommendations concerning the
29 existence of probable cause within 6 months after its receipt
30 of the complaint. The failure of the department, for
31 disciplinary cases under its jurisdiction, to comply with the

1 time limits of this section while investigating a complaint
2 against a licensee constitutes harmless error in any
3 subsequent disciplinary action unless a court finds that
4 either the fairness of the proceeding or the correctness of
5 the action may have been impaired by a material error in
6 procedure or a failure to follow prescribed procedure. When
7 its investigation is complete and legally sufficient, the
8 department shall prepare and submit to the probable cause
9 panel of the appropriate regulatory board the investigative
10 report of the department. The report shall contain the
11 investigative findings and the recommendations of the
12 department concerning the existence of probable cause. The
13 department shall not recommend a letter of guidance in lieu of
14 finding probable cause if the subject has already been issued
15 a letter of guidance for a related offense. At any time after
16 legal sufficiency is found, the department may dismiss any
17 case, or any part thereof, if the department determines that
18 there is insufficient evidence to support the prosecution of
19 allegations contained therein. The department shall provide a
20 detailed report to the appropriate probable cause panel prior
21 to dismissal of any case or part thereof, and to the subject
22 of the complaint after dismissal of any case or part thereof,
23 under this section. For cases dismissed prior to a finding of
24 probable cause, such report is confidential and exempt from s.
25 119.07(1). The probable cause panel shall have access, upon
26 request, to the investigative files pertaining to a case prior
27 to dismissal of such case. If the department dismisses a case,
28 the probable cause panel may retain independent legal counsel,
29 employ investigators, and continue the investigation and
30 prosecution of the case as it deems necessary.
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1 (3) As an alternative to the provisions of subsections
2 (1) and (2), when a complaint is received, the department may
3 provide a licensee with a notice of noncompliance for an
4 initial offense of a minor violation. Each board, or the
5 department if there is no board, shall establish by rule those
6 minor violations under this provision which do not endanger
7 the public health, safety, and welfare and which do not
8 demonstrate a serious inability to practice the profession.
9 Failure of a licensee to take action in correcting the
10 violation within 15 days after notice may result in the
11 institution of regular disciplinary proceedings.

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

1 exempt from s. 286.011 until 10 days after probable cause has
2 been found to exist by the panel or until the subject of the
3 investigation waives his or her privilege of confidentiality.
4 The probable cause panel may make a reasonable request, and
5 upon such request the department shall provide such additional
6 investigative information as is necessary to the determination
7 of probable cause. A request for additional investigative
8 information shall be made within 15 days from the date of
9 receipt by the probable cause panel of the investigative
10 report of the department or the agency. The probable cause
11 panel or the department, as may be appropriate, shall make its
12 determination of probable cause within 30 days after receipt
13 by it of the final investigative report of the department. The
14 secretary may grant extensions of the 15-day and the 30-day
15 time limits. In lieu of a finding of probable cause, the
16 probable cause panel, or the department if there is no board,
17 may issue a letter of guidance to the subject. If, within the
18 30-day time limit, as may be extended, the probable cause
19 panel does not make a determination regarding the existence of
20 probable cause or does not issue a letter of guidance in lieu
21 of a finding of probable cause, the department must make a
22 determination regarding the existence of probable cause within
23 10 days after the expiration of the time limit. If the
24 probable cause panel finds that probable cause exists, it
25 shall direct the department to file a formal complaint against
26 the licensee. The department shall follow the directions of
27 the probable cause panel regarding the filing of a formal
28 complaint. If directed to do so, the department shall file a
29 formal complaint against the subject of the investigation and
30 prosecute that complaint pursuant to chapter 120. However, the
31 department may decide not to prosecute the complaint if it

1 finds that probable cause has been improvidently found by the
2 panel. In such cases, the department shall refer the matter to
3 the board. The board may then file a formal complaint and
4 prosecute the complaint pursuant to chapter 120. The
5 department shall also refer to the board any investigation or
6 disciplinary proceeding not before the Division of
7 Administrative Hearings pursuant to chapter 120 or otherwise
8 completed by the department within 1 year after the filing of
9 a complaint. The department, for disciplinary cases under its
10 jurisdiction, must establish a uniform reporting system to
11 quarterly refer to each board the status of any investigation
12 or disciplinary proceeding that is not before the Division of
13 Administrative Hearings or otherwise completed by the
14 department within 1 year after the filing of the complaint.
15 Annually, the department, in consultation with the applicable
16 probable cause panel, must establish a plan to expedite or
17 otherwise close any investigation or disciplinary proceeding
18 that is not before the Division of Administrative Hearings or
19 otherwise completed by the department within 1 year after the
20 filing of the complaint. A probable cause panel or a board
21 may retain independent legal counsel, employ investigators,
22 and continue the investigation as it deems necessary; all
23 costs thereof shall be paid from a trust fund used by the
24 department to implement this chapter. All proceedings of the
25 probable cause panel are exempt from s. 120.525.

26 (5) A formal hearing before an administrative law
27 judge from the Division of Administrative Hearings shall be
28 held pursuant to chapter 120 if there are any disputed issues
29 of material fact. The administrative law judge shall issue a
30 recommended order pursuant to chapter 120. If any party raises
31 an issue of disputed fact during an informal hearing, the

1 hearing shall be terminated and a formal hearing pursuant to
2 chapter 120 shall be held.

3 (6) The appropriate board, with those members of the
4 panel, if any, who reviewed the investigation pursuant to
5 subsection (4) being excused, or the department when there is
6 no board, shall determine and issue the final order in each
7 disciplinary case. Such order shall constitute final agency
8 action. Any consent order or agreed-upon settlement shall be
9 subject to the approval of the department.

10 (7) The department shall have standing to seek
11 judicial review of any final order of the board, pursuant to
12 s. 120.68.

13 (8) Any proceeding for the purpose of summary
14 suspension of a license, or for the restriction of the
15 license, of a licensee pursuant to s. 120.60(6) shall be
16 conducted by the secretary of the Department of Health or his
17 or her designee, as appropriate, who shall issue the final
18 summary order.

19 (9)(a) The department shall periodically notify the
20 person who filed the complaint, as well as the patient or the
21 patient's legal representative, of the status of the
22 investigation, indicating whether probable cause has been
23 found and the status of any civil action or administrative
24 proceeding or appeal.

25 (b) In any disciplinary case for which probable cause
26 has been found, the department shall provide to the person who
27 filed the complaint a copy of the administrative complaint
28 and:

29 1. A written explanation of how an administrative
30 complaint is resolved by the disciplinary process.

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1 2. A written explanation of how and when the person
2 may participate in the disciplinary process.

3 3. A written notice of any hearing before the Division
4 of Administrative Hearings or the regulatory board at which
5 final agency action may be taken.

6 (c) In any disciplinary case for which probable cause
7 is not found, the department shall so inform the person who
8 filed the complaint and notify that person that he or she may,
9 within 60 days, provide any additional information to the
10 department which may be relevant to the decision. To
11 facilitate the provision of additional information, the person
12 who filed the complaint may receive, upon request, a copy of
13 the department's expert report that supported the
14 recommendation for closure, if such a report was relied upon
15 by the department. In no way does this require the department
16 to procure an expert opinion or report if none was used.
17 Additionally, the identity of the expert shall remain
18 confidential. In any administrative proceeding under s.
19 120.57, the person who filed the disciplinary complaint shall
20 have the right to present oral or written communication
21 relating to the alleged disciplinary violations or to the
22 appropriate penalty.

23 (10) The complaint and all information obtained
24 pursuant to the investigation by the department are
25 confidential and exempt from s. 119.07(1) until 10 days after
26 probable cause has been found to exist by the probable cause
27 panel or by the department, or until the regulated
28 professional or subject of the investigation waives his or her
29 privilege of confidentiality, whichever occurs first. Upon
30 completion of the investigation and a recommendation by the
31 department to find probable cause, and pursuant to a written

1 request by the subject or the subject's attorney, the
2 department shall provide the subject an opportunity to inspect
3 the investigative file or, at the subject's expense, forward
4 to the subject a copy of the investigative file.
5 Notwithstanding s. 456.057, the subject may inspect or receive
6 a copy of any expert witness report or patient record
7 connected with the investigation if the subject agrees in
8 writing to maintain the confidentiality of any information
9 received under this subsection until 10 days after probable
10 cause is found and to maintain the confidentiality of patient
11 records pursuant to s. 456.057. The subject may file a written
12 response to the information contained in the investigative
13 file. Such response must be filed within 20 days of mailing by
14 the department, unless an extension of time has been granted
15 by the department. This subsection does not prohibit the
16 department from providing such information to any law
17 enforcement agency or to any other regulatory agency.

18 (11) A privilege against civil liability is hereby
19 granted to any complainant or any witness with regard to
20 information furnished with respect to any investigation or
21 proceeding pursuant to this section, unless the complainant or
22 witness acted in bad faith or with malice in providing such
23 information.

24 (12)(a) No person who reports in any capacity, whether
25 or not required by law, information to the department with
26 regard to the incompetence, impairment, or unprofessional
27 conduct of any health care provider licensed under chapter
28 458, chapter 459, chapter 460, chapter 461, chapter 462,
29 chapter 463, chapter 464, chapter 465, or chapter 466 shall be
30 held liable in any civil action for reporting against such
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1 health care provider if such person acts without intentional
2 fraud or malice.

3 (b) No facility licensed under chapter 395, health
4 maintenance organization certificated under part I of chapter
5 641, physician licensed under chapter 458, or osteopathic
6 physician licensed under chapter 459 shall discharge, threaten
7 to discharge, intimidate, or coerce any employee or staff
8 member by reason of such employee's or staff member's report
9 to the department about a physician licensed under chapter
10 458, chapter 459, chapter 460, chapter 461, or chapter 466 who
11 may be guilty of incompetence, impairment, or unprofessional
12 conduct so long as such report is given without intentional
13 fraud or malice.

14 (c) In any civil suit brought outside the protections
15 of paragraphs (a) and (b) in which intentional fraud or malice
16 is alleged, the person alleging intentional fraud or malice
17 shall be liable for all court costs and for the other party's
18 reasonable attorney's fees if intentional fraud or malice is
19 not proved.

20 (13) Notwithstanding any provision of law to the
21 contrary, an administrative complaint against a licensee shall
22 be filed within 6 years after the time of the incident or
23 occurrence giving rise to the complaint against the licensee.
24 If such incident or occurrence involved criminal actions,
25 diversion of controlled substances, sexual misconduct, or
26 impairment by the licensee, this subsection does not apply to
27 bar initiation of an investigation or filing of an
28 administrative complaint beyond the 6-year timeframe. In those
29 cases covered by this subsection in which it can be shown that
30 fraud, concealment, or intentional misrepresentation of fact
31 prevented the discovery of the violation of law, the period of

1 limitations is extended forward, but in no event to exceed 12
2 years after the time of the incident or occurrence.

3 Section 6. This act shall take effect upon becoming a
4 law and shall apply to any loan or scholarship that is in
5 default on or after the effective date.

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8 HOUSE SUMMARY

9
10 Provides for an emergency order suspending the license of
11 any health care practitioner who has defaulted on a
12 student loan issued or guaranteed by the state or the
13 Federal Government. Clarifies the ground for
14 disciplinary action for failing to perform a statutory or
15 legal obligation to include failing to repay a student
16 loan issued or guaranteed by the state or the Federal
17 Government in accordance with the terms of the loan and
18 for failing to comply with service scholarship
19 obligations. Directs the Department of Health to obtain
20 from the United States Department of Health and Human
21 Services and financial and educational institutions
22 information necessary to investigate and prosecute health
23 care practitioners who fail to repay student loans or
24 comply with scholarship service obligations. Directs the
25 department to include related information in its annual
26 report to the Legislature. See bill for details.
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