

Bill No. CS for CS for SB 370

Amendment No.      Barcode 790132

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Saunders moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 12, lines 17-31, delete those lines

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16 and insert:

17 Section 13. Section 456.026, Florida Statutes, is  
18 amended to read:

19 456.026 Annual report concerning finances,  
20 administrative complaints, disciplinary actions, and  
21 recommendations.--The department is directed to prepare and  
22 submit a report to the President of the Senate and the Speaker  
23 of the House of Representatives by November 1 of each year. In  
24 addition to finances and any other information the Legislature  
25 may require, the report shall include statistics and relevant  
26 information, profession by profession, detailing:

27 (1) The revenues, expenditures, and cash balances for  
28 the prior year, and a review of the adequacy of existing fees.

29 (2) The number of complaints received and  
30 investigated.

31 (3) The number of findings of probable cause made.

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1 (4) The number of findings of no probable cause made.

2 (5) The number of administrative complaints filed.

3 (6) The disposition of all administrative complaints.

4 (7) A description of disciplinary actions taken.

5 (8) A description of any effort by the department to  
6 reduce or otherwise close any investigation or disciplinary  
7 proceeding not before the Division of Administrative Hearings  
8 under chapter 120 or otherwise not completed within 1 year  
9 after the initial filing of a complaint under this chapter.

10 (9) The status of the development and implementation  
11 of rules providing for disciplinary guidelines pursuant to s.  
12 456.079.

13 (10) Such recommendations for administrative and  
14 statutory changes necessary to facilitate efficient and  
15 cost-effective operation of the department and the various  
16 boards.

17 (11) The performance measures for all bureaus, units,  
18 boards, and contracted entities required by the department to  
19 reflect the expected quality and quantity of services, and a  
20 description of any effort to improve the performance of such  
21 services.

22 Section 14. Subsection (4) is added to section  
23 456.074, Florida Statutes, to read:

24 456.074 Certain health care practitioners; immediate  
25 suspension of license.--

26 (4) Upon receipt of information that a  
27 Florida-licensed health care practitioner has defaulted on a  
28 student loan issued or guaranteed by the state or the Federal  
29 Government, the department shall notify the licensee by  
30 certified mail that he or she shall be subject to immediate  
31 suspension of license unless, within 45 days after the date of



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1 board, finds any person guilty of the grounds set forth in  
2 subsection (1) or of any grounds set forth in the applicable  
3 practice act, including conduct constituting a substantial  
4 violation of subsection (1) or a violation of the applicable  
5 practice act which occurred prior to obtaining a license, it  
6 may enter an order imposing one or more of the following  
7 penalties:

8 (a) Refusal to certify, or to certify with  
9 restrictions, an application for a license.

10 (b) Suspension or permanent revocation of a license.

11 (c) Restriction of practice or license, including, but  
12 not limited to, restricting the licensee from practicing in  
13 certain settings, restricting the licensee to work only under  
14 designated conditions or in certain settings, restricting the  
15 licensee from performing or providing designated clinical and  
16 administrative services, restricting the licensee from  
17 practicing more than a designated number of hours, or any  
18 other restriction found to be necessary for the protection of  
19 the public health, safety, and welfare.

20 (d) Imposition of an administrative fine not to exceed  
21 \$10,000 for each count or separate offense. If the violation  
22 is for fraud or making a false or fraudulent representation,  
23 the board, or the department if there is no board, must impose  
24 a fine of \$10,000 per count or offense.

25 (e) Issuance of a reprimand or letter of concern.

26 (f) Placement of the licensee on probation for a  
27 period of time and subject to such conditions as the board, or  
28 the department when there is no board, may specify. Those  
29 conditions may include, but are not limited to, requiring the  
30 licensee to undergo treatment, attend continuing education  
31 courses, submit to be reexamined, work under the supervision

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1 of another licensee, or satisfy any terms which are reasonably  
2 tailored to the violations found.

3 (g) Corrective action.

4 (h) Imposition of an administrative fine in accordance  
5 with s. 381.0261 for violations regarding patient rights.

6 (i) Refund of fees billed and collected from the  
7 patient or a third party on behalf of the patient.

8 (j) Requirement that the practitioner undergo remedial  
9 education.

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

19 Section 16. The Department of Health shall obtain from  
20 the United States Department of Health and Human Services  
21 information necessary to investigate and prosecute health care  
22 practitioners for failing to repay a student loan or comply  
23 with scholarship service obligations pursuant to s.  
24 456.072(1)(k), Florida Statutes. The department shall obtain  
25 from the United States Department of Health and Human Services  
26 a list of default health care practitioners each month, along  
27 with the information necessary to investigate a complaint in  
28 accordance with s. 456.073, Florida Statutes. The department  
29 may obtain evidence to support the investigation and  
30 prosecution from any financial institution or educational  
31 institution involved in providing the loan or education to the

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1 practitioner. The department shall report to the Legislature  
2 as part of the annual report required by s. 456.026, Florida  
3 Statutes, the number of practitioners in default, along with  
4 the results of the department's investigations and  
5 prosecutions, and the amount of fines collected from  
6 practitioners prosecuted for violating s. 456.072(1)(k),  
7 Florida Statutes.

8 Section 17. Section 456.073, Florida Statutes, is  
9 amended to read:

10 456.073 Disciplinary proceedings.--Disciplinary  
11 proceedings for each board shall be within the jurisdiction of  
12 the department.

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

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

29 (2) The department shall allocate sufficient and  
30 adequately trained staff to expeditiously and thoroughly  
31 determine legal sufficiency and investigate all legally

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1 sufficient complaints. For purposes of this section, it is the  
2 intent of the Legislature that the term "expeditiously" means  
3 that the department complete the report of its initial  
4 investigative findings and recommendations concerning the  
5 existence of probable cause within 6 months after its receipt  
6 of the complaint. The failure of the department, for  
7 disciplinary cases under its jurisdiction, to comply with the  
8 time limits of this section while investigating a complaint  
9 against a licensee constitutes harmless error in any  
10 subsequent disciplinary action unless a court finds that  
11 either the fairness of the proceeding or the correctness of  
12 the action may have been impaired by a material error in  
13 procedure or a failure to follow prescribed procedure. When  
14 its investigation is complete and legally sufficient, the  
15 department shall prepare and submit to the probable cause  
16 panel of the appropriate regulatory board the investigative  
17 report of the department. The report shall contain the  
18 investigative findings and the recommendations of the  
19 department concerning the existence of probable cause. The  
20 department shall not recommend a letter of guidance in lieu of  
21 finding probable cause if the subject has already been issued  
22 a letter of guidance for a related offense. At any time after  
23 legal sufficiency is found, the department may dismiss any  
24 case, or any part thereof, if the department determines that  
25 there is insufficient evidence to support the prosecution of  
26 allegations contained therein. The department shall provide a  
27 detailed report to the appropriate probable cause panel prior  
28 to dismissal of any case or part thereof, and to the subject  
29 of the complaint after dismissal of any case or part thereof,  
30 under this section. For cases dismissed prior to a finding of  
31 probable cause, such report is confidential and exempt from s.



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1 119.07(1). The probable cause panel shall have access, upon  
2 request, to the investigative files pertaining to a case prior  
3 to dismissal of such case. If the department dismisses a case,  
4 the probable cause panel may retain independent legal counsel,  
5 employ investigators, and continue the investigation and  
6 prosecution of the case as it deems necessary.

7 (3) As an alternative to the provisions of subsections  
8 (1) and (2), when a complaint is received, the department may  
9 provide a licensee with a notice of noncompliance for an  
10 initial offense of a minor violation. Each board, or the  
11 department if there is no board, shall establish by rule those  
12 minor violations under this provision which do not endanger  
13 the public health, safety, and welfare and which do not  
14 demonstrate a serious inability to practice the profession.  
15 Failure of a licensee to take action in correcting the  
16 violation within 15 days after notice may result in the  
17 institution of regular disciplinary proceedings.

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

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

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

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1           (5) A formal hearing before an administrative law  
2 judge from the Division of Administrative Hearings shall be  
3 held pursuant to chapter 120 if there are any disputed issues  
4 of material fact. The administrative law judge shall issue a  
5 recommended order pursuant to chapter 120. If any party raises  
6 an issue of disputed fact during an informal hearing, the  
7 hearing shall be terminated and a formal hearing pursuant to  
8 chapter 120 shall be held.

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

16           (7) The department shall have standing to seek  
17 judicial review of any final order of the board, pursuant to  
18 s. 120.68.

19           (8) Any proceeding for the purpose of summary  
20 suspension of a license, or for the restriction of the  
21 license, of a licensee pursuant to s. 120.60(6) shall be  
22 conducted by the secretary of the Department of Health or his  
23 or her designee, as appropriate, who shall issue the final  
24 summary order.

25           (9)(a) The department shall periodically notify the  
26 person who filed the complaint, as well as the patient or the  
27 patient's legal representative, of the status of the  
28 investigation, indicating whether probable cause has been  
29 found and the status of any civil action or administrative  
30 proceeding or appeal.

31           (b) In any disciplinary case for which probable cause

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1 has been found, the department shall provide to the person who  
2 filed the complaint a copy of the administrative complaint  
3 and:

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

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

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

11 (c) In any disciplinary case for which probable cause  
12 is not found, the department shall so inform the person who  
13 filed the complaint and notify that person that he or she may,  
14 within 60 days, provide any additional information to the  
15 department which may be relevant to the decision. To  
16 facilitate the provision of additional information, the person  
17 who filed the complaint may receive, upon request, a copy of  
18 the department's expert report that supported the  
19 recommendation for closure, if such a report was relied upon  
20 by the department. In no way does this require the department  
21 to procure an expert opinion or report if none was used.  
22 Additionally, the identity of the expert shall remain  
23 confidential. In any administrative proceeding under s.  
24 120.57, the person who filed the disciplinary complaint shall  
25 have the right to present oral or written communication  
26 relating to the alleged disciplinary violations or to the  
27 appropriate penalty.

28 (10) The complaint and all information obtained  
29 pursuant to the investigation by the department are  
30 confidential and exempt from s. 119.07(1) until 10 days after  
31 probable cause has been found to exist by the probable cause

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

23 (11) A privilege against civil liability is hereby  
24 granted to any complainant or any witness with regard to  
25 information furnished with respect to any investigation or  
26 proceeding pursuant to this section, unless the complainant or  
27 witness acted in bad faith or with malice in providing such  
28 information.

29 (12)(a) No person who reports in any capacity, whether  
30 or not required by law, information to the department with  
31 regard to the incompetence, impairment, or unprofessional

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1 conduct of any health care provider licensed under chapter  
2 458, chapter 459, chapter 460, chapter 461, chapter 462,  
3 chapter 463, chapter 464, chapter 465, or chapter 466 shall be  
4 held liable in any civil action for reporting against such  
5 health care provider if such person acts without intentional  
6 fraud or malice.

7 (b) No facility licensed under chapter 395, health  
8 maintenance organization certificated under part I of chapter  
9 641, physician licensed under chapter 458, or osteopathic  
10 physician licensed under chapter 459 shall discharge, threaten  
11 to discharge, intimidate, or coerce any employee or staff  
12 member by reason of such employee's or staff member's report  
13 to the department about a physician licensed under chapter  
14 458, chapter 459, chapter 460, chapter 461, or chapter 466 who  
15 may be guilty of incompetence, impairment, or unprofessional  
16 conduct so long as such report is given without intentional  
17 fraud or malice.

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

24 (13) Notwithstanding any provision of law to the  
25 contrary, an administrative complaint against a licensee shall  
26 be filed within 6 years after the time of the incident or  
27 occurrence giving rise to the complaint against the licensee.  
28 If such incident or occurrence involved criminal actions,  
29 diversion of controlled substances, sexual misconduct, or  
30 impairment by the licensee, this subsection does not apply to  
31 bar initiation of an investigation or filing of an

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1 administrative complaint beyond the 6-year timeframe. In those  
2 cases covered by this subsection in which it can be shown that  
3 fraud, concealment, or intentional misrepresentation of fact  
4 prevented the discovery of the violation of law, the period of  
5 limitations is extended forward, but in no event to exceed 12  
6 years after the time of the incident or occurrence.

7 Section 18. Sections 13-17 of this act shall apply to  
8 any loan or scholarship that is in default on or after the  
9 effective date of this act.

10

11 (Redesignate subsequent sections.)

12

13

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

15 And the title is amended as follows:

16 On page 2, line 1, following the first semicolon

17

18 insert:

19 amending s. 456.074, F.S.; providing for an  
20 emergency order suspending the license of any  
21 health care practitioner who has defaulted on a  
22 student loan issued or guaranteed by the state  
23 or the Federal Government; amending s. 456.072,  
24 F.S., and reenacting subsection (2), relating  
25 to disciplinary actions; clarifying the ground  
26 for disciplinary action for failing to perform  
27 a statutory or legal obligation to include  
28 failing to repay a student loan issued or  
29 guaranteed by the state or the Federal  
30 Government in accordance with the terms of the  
31 loan and for failing to comply with service



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1 scholarship obligations; providing penalties;  
2 directing the Department of Health to obtain  
3 certain information from the United States  
4 Department of Health and Human Services on a  
5 monthly basis and to include certain  
6 information in its annual report to the  
7 Legislature; amending s. 456.073, F.S.,  
8 relating to disciplinary proceedings, to  
9 conform; providing applicability;  
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