

Bill No. CS for CS for SB 370

Amendment No.      Barcode 822716

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Wise moved the following **amendment to amendment**  
(104940):

**Senate Amendment (with title amendment)**

On page 97, between lines 23 and 24,

insert:

Section 80. Subsection (4) is added to section  
456.074, Florida Statutes, to read:

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

(4) Upon receipt of information that a  
Florida-licensed health care practitioner has defaulted on a  
student loan issued or guaranteed by the state or the Federal  
Government, the department shall notify the licensee by  
certified mail that he or she shall be subject to immediate  
suspension of license unless, within 45 days after the date of  
mailing, the licensee provides proof that new payment terms  
have been agreed upon by all parties to the loan. The  
department shall issue an emergency order suspending the  
license of any licensee who, after 45 days following the date

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1 of mailing from the department, has failed to provide such  
2 proof. Production of such proof shall not prohibit the  
3 department from proceeding with disciplinary action against  
4 the licensee pursuant to s. 456.073.

5 Section 81. Paragraph (k) of subsection (1) of section  
6 456.072, Florida Statutes, is amended, and subsection (2) of  
7 that section is reenacted, to read:

8 456.072 Grounds for discipline; penalties;  
9 enforcement.--

10 (1) The following acts shall constitute grounds for  
11 which the disciplinary actions specified in subsection (2) may  
12 be taken:

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

27 (2) When the board, or the department when there is no  
28 board, finds any person guilty of the grounds set forth in  
29 subsection (1) or of any grounds set forth in the applicable  
30 practice act, including conduct constituting a substantial  
31 violation of subsection (1) or a violation of the applicable

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1 practice act which occurred prior to obtaining a license, it  
2 may enter an order imposing one or more of the following  
3 penalties:

4 (a) Refusal to certify, or to certify with  
5 restrictions, an application for a license.

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

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

16 (d) Imposition of an administrative fine not to exceed  
17 \$10,000 for each count or separate offense. If the violation  
18 is for fraud or making a false or fraudulent representation,  
19 the board, or the department if there is no board, must impose  
20 a fine of \$10,000 per count or offense.

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

22 (f) Placement of the licensee on probation for a  
23 period of time and subject to such conditions as the board, or  
24 the department when there is no board, may specify. Those  
25 conditions may include, but are not limited to, requiring the  
26 licensee to undergo treatment, attend continuing education  
27 courses, submit to be reexamined, work under the supervision  
28 of another licensee, or satisfy any terms which are reasonably  
29 tailored to the violations found.

30 (g) Corrective action.

31 (h) Imposition of an administrative fine in accordance

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1 with s. 381.0261 for violations regarding patient rights.

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

4 (j) Requirement that the practitioner undergo remedial  
5 education.

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

15 Section 82. The Department of Health shall obtain from  
16 the United States Department of Health and Human Services  
17 information necessary to investigate and prosecute health care  
18 practitioners for failing to repay a student loan or comply  
19 with scholarship service obligations pursuant to s.  
20 456.072(1)(k), Florida Statutes. The department shall obtain  
21 from the United States Department of Health and Human Services  
22 a list of default health care practitioners each month, along  
23 with the information necessary to investigate a complaint in  
24 accordance with s. 456.073, Florida Statutes. The department  
25 may obtain evidence to support the investigation and  
26 prosecution from any financial institution or educational  
27 institution involved in providing the loan or education to the  
28 practitioner. The department shall report to the Legislature  
29 as part of the annual report required by s. 456.026, Florida  
30 Statutes, the number of practitioners in default, along with  
31 the results of the department's investigations and

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1 prosecutions, and the amount of fines collected from  
2 practitioners prosecuted for violating s. 456.072(1)(k),  
3 Florida Statutes.

4 Section 83. Section 456.073, Florida Statutes, is  
5 amended to read:

6 456.073 Disciplinary proceedings.--Disciplinary  
7 proceedings for each board shall be within the jurisdiction of  
8 the department.

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

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

25 (2) The department shall allocate sufficient and  
26 adequately trained staff to expeditiously and thoroughly  
27 determine legal sufficiency and investigate all legally  
28 sufficient complaints. For purposes of this section, it is the  
29 intent of the Legislature that the term "expeditiously" means  
30 that the department complete the report of its initial  
31 investigative findings and recommendations concerning the

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1 existence of probable cause within 6 months after its receipt  
2 of the complaint. The failure of the department, for  
3 disciplinary cases under its jurisdiction, to comply with the  
4 time limits of this section while investigating a complaint  
5 against a licensee constitutes harmless error in any  
6 subsequent disciplinary action unless a court finds that  
7 either the fairness of the proceeding or the correctness of  
8 the action may have been impaired by a material error in  
9 procedure or a failure to follow prescribed procedure. When  
10 its investigation is complete and legally sufficient, the  
11 department shall prepare and submit to the probable cause  
12 panel of the appropriate regulatory board the investigative  
13 report of the department. The report shall contain the  
14 investigative findings and the recommendations of the  
15 department concerning the existence of probable cause. The  
16 department shall not recommend a letter of guidance in lieu of  
17 finding probable cause if the subject has already been issued  
18 a letter of guidance for a related offense. At any time after  
19 legal sufficiency is found, the department may dismiss any  
20 case, or any part thereof, if the department determines that  
21 there is insufficient evidence to support the prosecution of  
22 allegations contained therein. The department shall provide a  
23 detailed report to the appropriate probable cause panel prior  
24 to dismissal of any case or part thereof, and to the subject  
25 of the complaint after dismissal of any case or part thereof,  
26 under this section. For cases dismissed prior to a finding of  
27 probable cause, such report is confidential and exempt from s.  
28 119.07(1). The probable cause panel shall have access, upon  
29 request, to the investigative files pertaining to a case prior  
30 to dismissal of such case. If the department dismisses a case,  
31 the probable cause panel may retain independent legal counsel,

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1 employ investigators, and continue the investigation and  
2 prosecution of the case as it deems necessary.

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

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

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

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

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

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1 recommended order pursuant to chapter 120. If any party raises  
2 an issue of disputed fact during an informal hearing, the  
3 hearing shall be terminated and a formal hearing pursuant to  
4 chapter 120 shall be held.

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

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

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

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

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

31 1. A written explanation of how an administrative

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1 complaint is resolved by the disciplinary process.

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

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

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

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

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

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

25 (12)(a) No person who reports in any capacity, whether  
26 or not required by law, information to the department with  
27 regard to the incompetence, impairment, or unprofessional  
28 conduct of any health care provider licensed under chapter  
29 458, chapter 459, chapter 460, chapter 461, chapter 462,  
30 chapter 463, chapter 464, chapter 465, or chapter 466 shall be  
31 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

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

3 Section 84. Sections 80-83 of this act shall apply to  
4 any loan or scholarship that is in default on or after the  
5 effective date of this act.

6  
7 (Redesignate subsequent sections.)

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9  
10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 On page 107, line 21, after the semicolon,

13  
14 insert:

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

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1           monthly basis and to include certain  
2           information in its annual report to the  
3           Legislature; amending s. 456.073, F.S.,  
4           relating to disciplinary proceedings, to  
5           conform; providing applicability;  
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