

By Senator Campbell

32-782C-04

1 A bill to be entitled
2 An act relating to complementary or alternative
3 health care services; creating s. 456.43, F.S.;
4 providing a short title; providing legislative
5 findings and intent; defining the term
6 "complementary or alternative health care
7 services"; clarifying that persons who are not
8 health care practitioners licensed by this
9 state may provide complementary or alternative
10 health care services under certain
11 circumstances; prohibiting certain acts;
12 requiring certain disclosures; providing civil
13 and criminal penalties; amending s. 456.065,
14 F.S.; providing that the disciplinary
15 provisions of the law prohibiting the
16 unlicensed practice of a health care profession
17 do not prohibit the provision of complementary
18 or alternative health care services as provided
19 under the act; providing an effective date.

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

23 Section 1. Section 456.43, Florida Statutes, is
24 created to read:

25 456.43 The practice of complementary or alternative
26 health care services.--

27 (1) SHORT TITLE.--This section may be cited as the
28 "Consumer Health Freedom Act."

29 (2) FINDINGS AND INTENT.--

30 (a) Based upon studies, research, and public policy
31 declarations by state governments, including a comprehensive

1 report by the National Institutes of Medicine, a study
2 published by the New England Journal of Medicine, laws enacted
3 by the states of California, Idaho, Minnesota, and Rhode
4 Island, and a Proclamation issued by the Governor of Florida,
5 it is widely recognized that millions of Americans and
6 hundreds of thousands of Floridians are presently receiving a
7 substantial amount of health care from providers of
8 complementary or alternative health care services. Those
9 studies show that complementary or alternative health care
10 services are used by individuals from a wide variety of age,
11 ethnic, socioeconomic, and other demographic categories.

12 (b) Notwithstanding the widespread use of
13 complementary or alternative health care services, the
14 Legislature finds that access to these services for residents
15 of the state has been hampered, and the free flow of
16 information about these services inhibited, by a failure of
17 the state to openly acknowledge the existence of health care
18 therapies and methods that are not suitable for regulation or
19 licensure under the police power of the state. As a result,
20 the providers of these services who are not licensed by the
21 state as health care practitioners, as defined in this
22 chapter, cannot openly offer their services with the comfort
23 and safety of knowing that they will not be exposed to fines,
24 penalties, or the restriction of their practices, based on
25 charges that they are in violation of state professional
26 practice acts governing licensed health care practitioners,
27 notwithstanding the delivery of health care services that have
28 not been shown to pose a recognizable and imminent risk of
29 significant and discernible harm to the public's health,
30 safety, or welfare.

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1 (c) The Legislature further finds that the state's
2 failure to acknowledge such unregulated health care services
3 impedes the beneficial delivery of health care information by
4 clients of complementary or alternative health care providers
5 to those clients' licensed health care providers, and between
6 licensed and unlicensed health care providers with respect to
7 their clients or patients.

8 (d) The Legislature acknowledges the public's desire
9 for broader access to complementary or alternative health care
10 therapies and finds that the health and welfare of this
11 state's residents can be enhanced by restating and clarifying
12 the state's long-standing public policy, enunciated in the
13 Sunrise Act, that a profession or occupation is not subject to
14 regulation under the police power of the state unless, and
15 then only to the extent that the profession or occupation has
16 been shown to pose a recognizable and imminent risk of
17 significant and discernible harm to the health, safety, or
18 welfare of the public.

19 (e) Based on these findings, and the further finding
20 that the unregulated practice of complementary or alternative
21 health care services is suitable and desirable for the
22 public's health and welfare, it is the intent of the
23 Legislature to allow, protect, and encourage public access to
24 and the performance and delivery of complementary or
25 alternative health care services in this state, subject only
26 to the limitations and restrictions provided in this act.

27 (3) DECLARATION OF PUBLIC POLICY.--The Legislature
28 recognizes and acknowledges that the health and welfare of
29 this state's residents has been and will continue to be
30 enhanced by the practice of complementary or alternative
31 health care therapies and methods in the state and that no

1 state licensure or regulation is appropriate or necessary for
2 the delivery of those services that are not shown to pose a
3 recognizable and imminent risk of significant and discernible
4 harm to the public's health, safety, or welfare.

5 (4) DEFINITION.--As used in this act, the term
6 "complementary or alternative health care services" means the
7 broad domain of complementary or alternative health care
8 treatment, as defined in s. 456.41, provided by persons who
9 are not licensed as health care practitioners as defined in
10 this chapter and to the extent the services are not prohibited
11 by subsection (5), or as otherwise excepted by law from state
12 regulation.

13 (5) PROHIBITED ACTS.--

14 (a) Notwithstanding any other provision of law, a
15 person who provides complementary or alternative health care
16 services does not violate s. 456.065 or any other health care
17 professional practice act, unless the person:

18 1. Performs surgery or any other procedure that
19 punctures the skin, or a chiropractic adjustment of the
20 articulations of joints or the spine of any person;

21 2. Prescribes or administers X-ray radiation to any
22 person;

23 3. Prescribes or administers a legend drug, a legend
24 medical device, or controlled substance to any person or
25 recommends the discontinuance of a legend drug, a legend
26 medical device, or controlled substance;

27 4. Engages in a practice that has as its primary
28 purpose the deep manipulation of the muscle of the human body
29 with the hand, foot, arm, or elbow or represents that the
30 practice is massage therapy;

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1 5. Willfully provides an allopathic biomedical disease
2 diagnosis;

3 6. Willfully provides a diagnosis or treatment of a
4 physical or mental health condition of any person which
5 directly poses to that person a recognizable and imminent risk
6 of significant and discernible physical or mental harm; or

7 7. Holds out, states, indicates, advertises, or
8 implies to any person that he or she is a health care
9 practitioner licensed by this state.

10 (6) DISCLOSURE.--

11 (a) Any person providing complementary or alternative
12 health care services shall, prior to providing the services,
13 disclose to the client in a plainly worded written statement:

14 1. The nature of the services to be provided and the
15 theory upon which the services are based; and

16 2. The degrees, training, experience, credentials, or
17 other qualifications of the person regarding the services
18 being provided, followed by a statement in at least 11-point
19 font size:

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21 "I AM NOT LICENSED BY THE STATE OF FLORIDA AS A
22 HEALTH CARE PRACTITIONER. THE STATE HAS NOT
23 ADOPTED ANY EDUCATIONAL AND TRAINING STANDARDS
24 FOR UNLICENSED COMPLEMENTARY OR ALTERNATIVE
25 HEALTH CARE PRACTITIONERS."

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27 (b) Any person providing complementary or alternative
28 health care services shall:

29 1. Obtain a written acknowledgement from the client
30 stating that he or she has been provided with the information
31 described in this subsection and provide a copy of this

1 written acknowledgment to the client. The written
2 acknowledgment must be maintained for 2 years by the person
3 providing the service.

4 2. State in any advertisement for complementary or
5 alternative health care services that he or she is not
6 licensed by this state as a health care practitioner.

7 (7) PENALTIES FOR VIOLATIONS.--

8 (a) A person who violates any provision of subsection
9 (5) is subject to the administrative, civil, and criminal
10 penalties specified in s. 456.065(2), including, but not
11 limited to, court costs, reasonable attorney's fees and the
12 reasonable costs of investigation and prosecution.

13 (b) A person who violates any provision of subsection
14 (6) is subject to the administrative and civil penalties
15 specified in s. 456.065(2)(a-c), including, but not limited
16 to, court costs, reasonable attorney's fees, and the
17 reasonable costs of investigation and prosecution.

18 Section 2. Subsection (4) of section 456.065, Florida
19 Statutes, is amended to read:

20 456.065 Unlicensed practice of a health care
21 profession; intent; cease and desist notice; penalties;
22 enforcement; citations; fees; allocation and disposition of
23 moneys collected.--

24 (4) The provisions of this section apply only to
25 health care professional practice acts administered by the
26 department and do not prohibit the provision of complementary
27 or alternative health care services under s. 456.43 by a
28 person who is not licensed in this state as a health care
29 practitioner.

30 Section 3. This act shall take effect July 1, 2004.
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SENATE SUMMARY

Creates the Consumer Health Freedom Act. Provides legislative findings and intent. Clarifies the right of persons who are not health care practitioners licensed in this state to provide complementary or alternative health care services under certain circumstances. Prohibits certain acts. Requires providers of complementary or alternative health care services to make certain disclosures prior to providing service. Provides civil and criminal penalties. Provides that the disciplinary provisions applicable to the unlicensed practice of a health care profession do not prohibit a person from providing complementary or alternative health care services under the act. (See bill for details.)