

Senate Bill SB _____

Florida Senate - 2011
By Senator _____

1 A bill to be entitled

2 An act relating to paralegals; creating part II of ch. 454, F.S., relating to the regulation of
3 paralegals; providing legislative intent; providing definitions; providing exceptions and
4 exemptions; providing educational requirements for qualification as a paralegal;
5 providing continuing education requirements; providing for a paralegal code of ethics
6 and professional responsibility; providing a grandfather provision; providing penalties;
7 establishing the Paralegal Licensing Board; providing for the board's powers, members,
8 terms, vacancies, fiscal accounting, and meetings; providing for severability; initial
9 funding; amending ss. [57.104](#) and [744.108](#), F.S. conforming cross-references; and
10 providing effective dates.

11

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

13

14 Section 1. Effective October 1, 2011, chapter 454, Florida Statutes, is designated part I
15 of that chapter, and part II, consisting of sections 454.37, 454.38, 454.39, 454.40,
16 454.41, 454.42, 454.43, 454.44, 454.45, 454.46, and 454.47, is created to read:

17

18 454.37 Part name. This part may be cited as the "Paralegal Profession Act."

19

20 454.38 Legislative intent. The purpose of this part is to:

21 (1) Protect the public from the unauthorized practice of law by any person who:

22 (a) Otherwise provides services outside the scope of existing laws and rules
23 of administrative agencies; or

24 (b) Holds themselves out as having advanced levels of legal education and
25 training sufficient to perform substantive legal work by using the title "paralegal," or
26 other similar title, as such title is defined in s. 454.39.

27 (2) Assist with the effective delivery of legal services.

28 (3) Maintain specific levels of ethics and competency.

29 (4) Ensure that every person who holds themselves out as a paralegal in this state
30 meets certain educational and paralegal experience requirements.

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1 454.39 Definitions.--As used in this part, the term:

2 (1) "Board" means the Paralegal Licensing Board created under s. 454.45.

3 (2) "Florida Licensed Paralegal" means:

4 (a) A person who is qualified under this part; who is employed or retained by
5 a licensed attorney, law office, governmental agency, or other entity; and who performs
6 substantive legal work for which a licensed attorney is responsible and which, absent
7 the paralegal, the licensed attorney would perform; or

8 (b) A person who is qualified under this part and is authorized by local, state,
9 or federal statute, rules of court, or administrative rules to perform substantive legal
10 work without the supervision of a licensed attorney.

11 (3) " Approved paralegal education program" means a program of study for
12 paralegals which is either approved by the American Bar Association (ABA), or in
13 substantial compliance with the ABA Guidelines for Paralegal Education Programs as
14 determined by the Board.

15 (4) "License" means: a document evidencing compliance with this Act.

16 (5) "Paralegal Examination" means: the licensing examination to be administered by
17 the Paralegal Licensing Board after expiration of grandfather provision.

18 (6) "Florida Registered Paralegal" or "FRP" means a person participating in The
19 Florida Bar's Florida Registered Paralegal program, implemented by Rule 20 of the
20 Rules Regulating The Florida Bar.

21 (7) "Act" means: the Paralegal Professional Act.

22 (8) "Attorney" means persons who are admitted by the Supreme Court of Florida to
23 the practice of law in this state who maintain their membership pursuant to the Rules
24 Regulating the Florida Bar.

25

26 454.40 Exceptions and exemptions.

27 (1) Exception.

28 (a) A disbarred attorney does not qualify under this part and may not use the
29 title "paralegal" or "Florida Licensed Paralegal."

30 (2) Exemptions.

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1 (a) A person may not hold themselves out as a paralegal in this state unless
2 that person is licensed under this part or has been determined to be exempt by the
3 Board.

4 (b) A person who is an active member of a branch of the United States
5 military and is classified as a "paralegal" is exempt from this part.

6 (c) An individual who is a civilian employee of a branch of the United States
7 military and is classified as a "paralegal" is exempt from this part during the term of such
8 employment in that capacity by a branch of the United States military.

9
10 454.41 Educational requirements. A paralegal licensed under this part must meet one
11 of the following educational requirements:

12 (1) Educational Requirements. A person may become a Florida Licensed Paralegal
13 from effective date of this Act and the end of the grandfather provision by meeting one
14 (1) of the following education requirements from an approved paralegal education
15 program, or a program of study which is from an institution accredited by a nationally
16 recognized accrediting agency approved by the United States Department of Education
17 or the Florida Department of Education:

18 (a) a bachelor's degree in paralegal studies;

19 (b) a bachelor's degree in any field, plus a certificate from an approved
20 paralegal studies program;

21 (c) an associate's degree in paralegal studies;

22 (d) an associate's degree in any field, plus a certificate from an approved
23 paralegal studies program; or

24 (e) a juris doctorate degree from a law school approved by the American Bar
25 Association, plus successful completion of an approved paralegal certification
26 referenced in s. 454.41(2).

27 (2) Certification. A person may become a Florida Licensed Paralegal by obtaining
28 one (1) of the professional certification designations for paralegals administered by the

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1 National Federation of Paralegal Associations "NFPA") or the National Association of
2 Legal Assistants "NALA") and said certification is in good standing.

3 (3) Grandfathering. A person who does not meet the requirements of paragraphs 1
4 or 2 of this section may become a Florida Licensed Paralegal by providing the following:

5 (a) an attestation from an employing or supervising attorney(s) that the
6 person has paralegal work experience for five (5) of the eight (8) years immediately
7 preceding the date of such attestation; and

8 (b) has completed at least two (2) hours of continuing education courses
9 approved pursuant to s. 454.42 in the area of legal ethics and professional responsibility
10 during the twelve (12) months immediately preceding the time of application.

11 (c) The Grandfathering provision of this section will expire one year from the
12 effective date of this Act.

13 (4) In order to qualify as paralegal work or paralegal work experience for purposes of
14 meeting the eligibility requirements set forth herein, the paralegal must primarily perform
15 paralegal work and the work must be continuous and recent. Recent paralegal work for
16 the purposes of meeting the eligibility requirements set forth herein means work
17 performed during three (3) of the previous five (5) years in connection with an initial
18 application, and during the preceding year in the case of renewal. Time spent
19 performing clerical work is specifically excluded. An applicant shall provide
20 documentation of the work experience required in paragraphs (1) and (3) of F.S. 454.41
21 by an affidavit under oath of an attorney under whose supervision the work was
22 performed in a law office, a governmental agency, or other entity. The form and content
23 of the affidavit shall be prescribed by the Board.

24 (5) Any person who qualifies under the provisions of this Act three years after the
25 effective date of this Act must also take a proficiency-based examination promulgated
26 by the Board that shall consist of ethics and general legal knowledge.

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1 454.42 Continuing education. A paralegal licensed under this part shall complete
2 continuing legal education. The Board shall establish the required number of hours and
3 approved course content, which may not be less than thirty (30) hours every three (3)
4 years, five (5) hours of which must be in the area of ethics. Courses approved for credit
5 by the Board, The Florida Bar, the National Association of Legal Assistants, or the
6 National Federation of Paralegal Associations shall be deemed acceptable for purposes
7 of this section.

8
9 454.43 Ethics. A paralegal licensed under this part shall comply with the Florida
10 Paralegal Code of Ethics and Professional Responsibility as adopted by the Board.

11
12 454.44 Penalties. Any individual who holds themselves out as a paralegal in violation
13 of this Act violates s. 454.38 and commits a felony of the third degree, punishable as
14 provided in s. 775.082 or s. 775.083.

15
16 454.45 Paralegal Licensing Board. This Act hereby creates an independent board to
17 promulgate and administer the administrative regulations necessary to effectuate the
18 provisions of this Act and shall have complete supervision over the administration of the
19 provisions of this act.

- 20 (1) Board Members:
- 21 (a) All members of the Board shall be residents of Florida.
 - 22 (b) Ten (10) members shall be Florida Licensed Paralegals as defined by this
23 Act,
 - 24 (c) Two (2) members shall be Attorneys and licensed to practice in this state;
 - 25 (d) Two (2) members of the Board shall be paralegal educators from an
26 institution that is either ABA-approved or in substantial compliance with the ABA
27 Guidelines for Paralegal Programs as determined by the Board; and
 - 28 (e) One (1) member shall be a citizen at large who is neither associated with
29 nor financially interested in paralegal or legal practice.
- 30 (2) Term.

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1 (a) The Board members shall be initially appointed by the Chief Justice of the
2 Florida Supreme Court with initial appointments for all members including the citizen at
3 large, for a term of two (2) years. Thereafter the Board members shall be elected by
4 paralegals regulated under this Act by rules promulgated by the Board for staggered
5 terms of three (3) years.

6 (b) No Board member shall serve more than two (2) full consecutive three (3)
7 year terms.

8 (c) Initial terms shall begin on the effective date of this Act.

9 (d) Every unexpired term of an interim vacancy shall be filled only for the
10 remainder of that term and the person appointed to fill such vacancy shall be eligible for
11 election for one subsequent three (3) year term only.

12 (3) Initial Term Appointments, and Interim Vacancies.

13 (a) The Florida Alliance of Paralegal Associations, Inc. shall provide the Chief
14 Justice of the Florida Supreme Court with a suggested list of qualified paralegals,
15 attorneys, paralegal educators and public members-at-large for the initial appointees to
16 the Board.

17 (b) Initial paralegal appointees shall not be required to be Florida Licensed
18 Paralegals, but rather shall, by their sworn statement in writing, signed, and verified,
19 have been voluntarily registered with The Florida Bar as a Florida Registered Paralegal
20 ("FRP"). All subsequent paralegal members shall be Florida Licensed Paralegals as
21 defined under this Act.

22 (c) Whenever a subsequent appointment of a Florida Licensed Paralegal,
23 attorney, paralegal educator, or public member-at-large is to be made to the Board
24 following a resignation or termination during an elected term, a public notice soliciting
25 nominations for qualified persons for each vacancy shall be published in a general
26 circulation news publication at least thirty (30) days prior to the date of such
27 appointment is to be made by the Board. The Board shall review all nominations, and
28 vote on an appropriate interim replacement.

29 (4) Removal.

30 (a) The Board may suspend or remove any member of the Board for
31 misfeasance, malfeasance, gross inefficiency or misconduct, or upon any of the

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1 constitutional grounds upon which officers may be suspended by the Board pursuant to
2 the administrative rules promulgated by the Board.

3 (b) In the event a Board member is removed, the removal shall be effective
4 immediately and a vacancy shall be deemed to exist as of the date of the Board's
5 finding. Any Board member so removed shall be entitled to appeal the removal in a
6 court of competent jurisdiction.

7 (c) Any vacancy which occurs on the Board for any reason shall be filled for
8 the unexpired term according to section 3(c) of this statute.

9 (5) Board headquarters, meetings and quorum:

10 (a) The Board shall maintain its official headquarters in Tallahassee, Florida.

11 (b) The Board shall meet annually for the purpose of electing from its
12 members a President, a Vice President, and a Secretary/Treasurer.

13 (c) The Board shall hold at least two (2) regular meetings each year.

14 (d) Additional meetings may be held upon call of an officer of the Board or at
15 the written request of any two (2) members of the Board.

16 (e) All meetings of the Board shall be open to the public in accordance with
17 Florida's Government in the Sunshine laws except that the Board may hold executive
18 sessions related to administrative duties related to applications, personnel issues or
19 other reasons for privacy as allowed by law.

20 (f) All meeting notices and agendas shall be published by public notice at
21 least five (5) days prior to the date of the meeting unless otherwise provided by law.

22 (g) A majority of the Board shall constitute a quorum. The concurring vote of a
23 majority of the Board shall be considered as the action of the Board, except in matters
24 involving suspension, revocation or reinstatement of a License, in which case, an
25 affirmative vote of at least two-thirds (2/3) of the Board shall be required. Once a
26 quorum has been established all votes of the Board shall be deemed valid.

27 (6) Board powers and duties.

28 (a) The Board shall administer, coordinate, and enforce the provisions of this
29 Act; evaluate the qualifications of applicants; supervise the administration of the
30 examination of applicants, including setting, assessing and collecting reasonable fees
31 for examination, licensing and renewals, penalties and other monies; supervise the

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1 creation and maintenance of a log or database of persons who are issued a License
2 which is electronically accessible by the public; and may issue subpoenas, examine
3 witnesses, and administer oaths, and shall conduct confidential investigations of
4 persons engaging in practices which may violate the provisions of this Act.

5 (b) The Board shall prescribe the time, place, method, manner, scope and
6 subjects of the Paralegal Examination; provided, however, at least two (2) examination
7 sessions shall be held each calendar year.

8 (c) The Board shall conduct such hearings and keep such records and
9 minutes as shall be necessary to affect an orderly dispatch of business.

10 (d) The Board shall promulgate, adopt and interpret rules and regulations,
11 which include but are not limited to, qualifications for a license, renewal of a license,
12 discipline and enforcement proceedings, establishment of ethical standards of practice,
13 and may amend or repeal the same.

14 (e) The Board shall create and adopt a Code of Ethics that shall govern and
15 control every person who is designated a Florida Licensed Paralegal.

16 (f) The Board shall have the power to issue a License to all applicants who
17 meet the requirements set forth in this Act. Any person who qualifies to be a Florida
18 Licensed Paralegal under this Act shall pay to the Board a reasonable fee as
19 determined by the Board. The License shall be renewed annually by the Board. Any
20 renewal of the License as provided for in this Act shall be subject to payment of a
21 reasonable renewal fee as determined by the Board.

22 (g) Members of the Board, its agents, and employees shall be indemnified
23 from suit in any action civil or criminal, which is based upon any official act or acts
24 performed by them in good faith.

25 (h) The conferral or enumeration of specific powers elsewhere in this Plan
26 shall not be construed as a limitation of the general powers conferred by this Plan.

27 (7) All initial members of the Paralegal Licensing Board created under s. 454.45,
28 Florida Statutes, shall be appointed at least 60 days before the effective date of this
29 part. This section shall take effect upon this Act becoming law.
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1 454.46 Paralegal Licensing Examination. The paralegal licensing exam, as
2 promulgated by the Board that shall consist of ethics and general legal knowledge. The
3 initial exam shall be developed and implemented by the Paralegal Licensing Board no
4 later than three years following the effective date of this Act. Once the paralegal
5 licensing has been implemented, all applicants will be required to successfully pass this
6 exam as well as comply with the educational requirements.

7

8 454.47 Severability. If any provision of part II of chapter 454, Florida Statutes, or
9 the application thereof to any individual or circumstance is for any reason held invalid,
10 such invalidity does not affect other provisions or applications of the part which can be
11 given effect without the invalid provision or application, and to this end the provisions of
12 part II of chapter 454, Florida Statutes, are severable.

13 Funding. It is the intent of this Act that the Board be independent and self sustaining. In
14 that respect, the initial appropriation for the Board's start up costs will be funded by The
15 Florida Bar from any and all dues collected from Florida Registered Paralegals for the
16 fiscal years 2010 and 2011, less administrative overhead costs. All monies received by
17 the Board under this Act shall be paid to the Secretary/Treasurer of the Board and shall
18 be deposited into a separate fund for the exclusive use the activities under the Act. No
19 part of this fund shall revert to the general funds of this State or organizing body. After
20 the initial funding, the Board shall be financed solely and individually from income
21 accruing to it from fees, licenses, and other charges collected by the Board and all such
22 monies are hereby appropriated to the Act. All salaries and expenses as approved by
23 the Board shall be paid from the monies deposited in this fund, the amounts of which
24 shall be set by the Board.

25

26 Effective October 1, 2011 section 57.104, Florida Statutes, is amended to read:

27 **57.104** Computation of attorneys' fees.--In any action in which attorneys' fees are to be
28 determined or awarded by the court, the court shall consider, among other things, time
29 and labor of any licensed paralegals, as defined by s. 454.39(2), ~~legal assistants who~~
30 contributed nonclerical, meaningful legal support to the matter involved and who are
31 working under the supervision of an licensed attorney. ~~For purposes of this section~~

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1 ~~"legal assistant" means a person, who under the supervision and direction of a licensed~~
2 ~~attorney engages in legal research, and case development or planning in relation to~~
3 ~~modifications or initial proceedings, services, processes, or applications; or who~~
4 ~~prepares or interprets legal documents or selects, compiles, and uses technical~~
5 ~~information from references such as digests, encyclopedias, or practice manuals and~~
6 ~~analyzes and follows procedural problems that involve independent decisions.~~

7
8 Effective October 1, 2011, subsection (4) of section 744.108, Florida Statutes, is
9 amended to read:

10 744.108 Guardian's and attorney's fees and expenses.--

11 (4) Fees for legal services may include customary and reasonable
12 charges for work performed by licensed paralegals, as defined by s. 454.39(2), legal
13 ~~assistants~~ employed by and working under the direction of the attorney.

14
15 Except as otherwise expressly provided in this Act, this Act shall take effect upon
16 becoming a law.

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18 SENATE SUMMARY

19
20 Provides for the regulation and licensing of paralegals. Provides educational
21 requirements for qualification as a paralegal. Requires continuing education. Provides a
22 code of ethics. Provides penalties. Establishes the Paralegal Licensing Board. (See bill
23 for details.)