

CHAPTER 98-295

Committee Substitute for House Bill No. 319

An act relating to minority business enterprises; amending s. 287.0943, F.S.; providing a presumption for certain certification purposes; providing an exclusion; amending s. 288.703, F.S.; revising definitions; specifying application; providing an effective date.

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

Section 1. Paragraph (e) of subsection (1) of section 287.0943, Florida Statutes, is amended to read:

287.0943 Certification of minority business enterprises.—

(1)

(e) In assessing the status of ownership and control, certification criteria shall, at a minimum:

1. Link ownership by a minority person, as defined in s. 288.703(3), or as dictated by the legal obligations of a certifying organization, to day-to-day control and financial risk by the qualifying minority owner, and to licensure of a minority owner in any trade or profession that the minority business enterprise will offer to the state when certified; however, the minority licenseeholder need not be the controlling owner of the enterprise, but must hold an ownership interest. Minority business enterprises presently certified by the state will not be subject to the licensure requirement until 5 years after the effective date of this act.

2. If present ownership was obtained by transfer, require the minority person on whom eligibility is based to have owned at least 51 percent of the applicant firm for a minimum of 2 years, when any previous majority ownership interest in the firm was by a nonminority who is or was a relative, former employer, or current employer of the minority person on whom eligibility is based. This requirement shall not apply to minority persons who are otherwise eligible who take a 51-percent-or-greater interest in a firm that requires professional licensure to operate and who will be the qualifying licenseeholder for the firm when certified. A transfer made within a related immediate family group from a nonminority person to a minority person in order to establish ownership by a minority person shall be deemed to have been made solely for purposes of satisfying certification criteria and shall render such ownership invalid for purposes of qualifying for such certification if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subparagraph, the term "related immediate family group" means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

3. Require that prospective certified minority business enterprises be currently performing a useful business function. A "useful business func-

tion” is defined as a business function which results in the provision of materials, supplies, equipment, or services to customers other than state or local government. Acting as a conduit to transfer funds to a nonminority business does not constitute a useful business function unless it is done so in a normal industry practice. As used in this section, the term “acting as a conduit” means, in part, not acting as a regular dealer by making sales of material, goods, or supplies from items bought, kept in stock, and regularly sold to the public in the usual course of business. Brokers, manufacturer’s representatives, sales representatives, and nonstocking distributors are considered as conduits that do not perform a useful business function, unless normal industry practice dictates.

Section 2. Subsections (1) and (2) of section 288.703, Florida Statutes, are amended to read:

288.703 Definitions.—As used in this act, the following words and terms shall have the following meanings unless the content shall indicate another meaning or intent:

(1) “Small business” means an independently owned and operated business concern that employs 100 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$3 million and an average net income after federal income taxes, excluding any carryover losses, for the preceding 2 years of not more than \$2 million. As applicable to sole proprietorships, the \$3 million net worth requirement shall include both personal and business investments.

(2) “Minority business enterprise” means any small business concern as defined in subsection (1) which is organized to engage in commercial transactions, which is domiciled in Florida, and which is at least 51-percent-owned by minority persons who are members of an insular group that is of a particular racial, ethnic, or gender makeup or national origin, which has been subjected historically to disparate treatment due to identification in and with that group resulting in an underrepresentation of commercial enterprises under the group’s control, and whose management and daily operations are controlled by such persons. A minority business enterprise may primarily involve the practice of a profession. Ownership by a minority person does not include ownership which is the result of a transfer from a nonminority person to a minority person within a related immediate family group if the combined total net asset value of all members of such family group exceeds \$1 million. For purposes of this subsection, the term “related immediate family group” means one or more children under 16 years of age and a parent of such children or the spouse of such parent residing in the same house or living unit.

Section 3. The definitions of small business, minority business enterprise, and certified minority business enterprise provided in s. 288.703, Florida Statutes, apply to the state and all political subdivisions of the state.

Section 4. This act shall take effect October 1 of the year in which enacted.

Became a law without the Governor's approval May 29, 1998.

Filed in Office Secretary of State May 28, 1998.