

Amendment No. 01 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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5			ORIGINAL STAMP BELOW
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11 The Committee on Governmental Operations offered the  
12 following:

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

15 Remove from the bill: Everything after the enacting clause  
16  
17 and insert in lieu thereof:

18 Section 1. Section 120.695, Florida Statutes, is  
19 amended to read:

20 120.695 Notice of noncompliance.--

21 (1) It is the policy of the state that the purpose of  
22 regulation is to protect the public by attaining compliance  
23 with the policies established by the Legislature. Fines and  
24 other penalties may be provided in order to ensure ~~assure~~  
25 compliance; however, the collection of fines and the  
26 imposition of penalties are intended to be secondary to the  
27 primary goal of attaining compliance with the rules or  
28 statutes ~~an agency's rules~~. It is the intent of the  
29 Legislature that an agency charged with enforcing the rules or  
30 statutes ~~rules~~ shall issue a notice of noncompliance as its  
31 first response to a minor violation of ~~a rule~~ in any instance

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1 in which it is reasonable to assume that the violator was  
2 unaware of the rule or statute, or was unclear as to how to  
3 comply with it.

4           (2)~~(a)~~ Each agency shall issue a notice of  
5 noncompliance as a first response to a minor violation. A  
6 "notice of noncompliance" is a notification by the agency  
7 ~~charged with enforcing the rule~~ issued to the person or  
8 business subject to the rule or statute in question. A notice  
9 of noncompliance may not be accompanied with a fine or other  
10 disciplinary penalty. It must identify the specific provision  
11 found in rule or statute ~~rule~~ that is being violated, provide  
12 information on how to comply with it ~~the rule~~, and specify a  
13 reasonable time for the violator to comply with ~~the rule~~. ~~A~~  
14 ~~rule is agency action that regulates a business, occupation,~~  
15 ~~or profession, or regulates a person operating a business,~~  
16 ~~occupation, or profession, and that, if not complied with, may~~  
17 ~~result in a disciplinary penalty.~~

18           ~~(b) Each agency shall review all of its rules and~~  
19 ~~designate those for which a violation would be a minor~~  
20 ~~violation and for which a notice of noncompliance must be the~~  
21 ~~first enforcement action taken against a person or business~~  
22 ~~subject to regulation. A violation of a rule is a minor~~  
23 ~~violation if it does not result in economic or physical harm~~  
24 ~~to a person or adversely affect the public health, safety, or~~  
25 ~~welfare, or create a significant threat of such harm. If an~~  
26 ~~agency under the direction of a cabinet officer mails to each~~  
27 ~~licensee a notice of the designated rules at the time of~~  
28 ~~licensure and at least annually thereafter, the provisions of~~  
29 ~~paragraph (a) may be exercised at the discretion of the~~  
30 ~~agency. Such notice shall include a subject-matter index of~~  
31 ~~the rules and information on how the rules may be obtained.~~

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1           ~~(c) The agency's review and designation must be~~  
2 ~~completed by December 1, 1995; each agency under the direction~~  
3 ~~of the Governor shall make a report to the Governor, and each~~  
4 ~~agency under the joint direction of the Governor and Cabinet~~  
5 ~~shall report to the Governor and Cabinet by January 1, 1996,~~  
6 ~~on which of its rules have been designated as rules the~~  
7 ~~violation of which would be a minor violation.~~

8           ~~(d) The Governor or the Governor and Cabinet, as~~  
9 ~~appropriate pursuant to paragraph (c), may evaluate the review~~  
10 ~~and designation effects of each agency and may apply a~~  
11 ~~different designation than that applied by the agency.~~

12           (3)(e) This section does not apply to the Department  
13 of Revenue, criminal law, statutes relating to taxes or fees,  
14 or the regulation of law enforcement personnel or teachers.

15           (f) Designation pursuant to this section is not  
16 subject to challenge under this chapter.

17           Section 2. Section 120.696, Florida Statutes, is  
18 created to read:

19           120.696 Classification of disciplinary actions.--

20           (1) The legislative intent of this subsection is to  
21 clear minor violations from the disciplinary record of certain  
22 persons or businesses after a set period of time. A person or  
23 business may petition the appropriate agency to review a  
24 disciplinary incident to determine whether the specific  
25 violation meets the standard of a minor violation as set forth  
26 in s. 120.695(2). If the circumstances of the violation meet  
27 that standard, and 2 years have passed since the issuance of a  
28 final order imposing discipline, the agency shall reclassify  
29 that violation as inactive, so long as the person or business  
30 has not been disciplined for a subsequent violation of the  
31 same nature. Once the agency has reclassified the violation as

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1 inactive, it shall no longer be considered as part of the  
2 disciplinary record of that person or business, and the person  
3 or business may lawfully deny or fail to acknowledge the  
4 incident as a disciplinary action. The agency has authority to  
5 adopt rules to implement this subsection.

6 (d) Each agency may establish a schedule classifying  
7 violations according to the severity of the violation. After  
8 the expiration of set periods of time, the agency may provide  
9 for such disciplinary records to become inactive, according to  
10 their classification. Once the disciplinary record has become  
11 inactive, the agency may clear the violation from the  
12 disciplinary record and the subject person or business may  
13 lawfully deny or fail to acknowledge such disciplinary  
14 actions. Each agency has authority to adopt rules to  
15 implement this subsection.

16 Section 3. Subsection (3) of section 455.225, Florida  
17 Statutes, 1998 Supplement, is amended to read:

18 455.225 Disciplinary proceedings.--Disciplinary  
19 proceedings for each board shall be within the jurisdiction of  
20 the department.

21 (3)(a) As an alternative to the provisions of  
22 subsections (1) and (2), when a complaint is received, the  
23 department may provide a licensee with a notice of  
24 noncompliance for an initial offense of a minor violation. A  
25 violation is a minor violation if it does not demonstrate a  
26 serious inability to practice the profession, result in  
27 economic or physical harm ~~to a person~~, or adversely affect the  
28 public health, safety, or welfare or create a significant  
29 threat of such harm. ~~Each board, or the department if there is~~  
30 ~~no board, shall establish by rule those violations which are~~  
31 ~~minor violations under this provision.~~ Failure of a licensee

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1 to take action in correcting the violation within 15 days  
2 after notice may result in the institution of regular  
3 disciplinary proceedings.

4 (b) The department may issue a notice of noncompliance  
5 for an initial offense of a minor violation, notwithstanding a  
6 board's failure to designate a particular minor violation by  
7 rule as provided in paragraph (a).

8 (c) The legislative intent of this paragraph is to  
9 clear minor violations from a licensee's disciplinary record  
10 after a set period of time. A licensee may petition the  
11 department to review a disciplinary incident to determine  
12 whether the specific violation meets the standard of a minor  
13 violation as set forth in paragraph (a). If the circumstances  
14 of the violation meet that standard, and 2 years have passed  
15 since the issuance of a final order imposing discipline, the  
16 agency shall reclassify that violation as inactive, so long as  
17 the licensee has not been disciplined for a subsequent  
18 violation of the same nature. Once the department has  
19 reclassified the violation as inactive, it shall no longer be  
20 considered as part of the licensee's disciplinary record, and  
21 the licensee may lawfully deny or fail to acknowledge the  
22 incident as a disciplinary action. The department has  
23 authority to adopt rules to implement this paragraph.

24 (d) Each agency may establish a schedule classifying  
25 violations according to the severity of the violation. After  
26 the expiration of set periods of time, the agency may provide  
27 for such disciplinary records to become inactive, according to  
28 their classification. Once the disciplinary record has become  
29 inactive, the agency may clear the violation from the  
30 disciplinary record and the subject person or business may  
31 lawfully deny or fail to acknowledge such disciplinary

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1 actions. Each agency has authority to adopt rules to  
2 implement this subsection.

3 Section 4. This act shall take effect July 1, 1999.  
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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 1, line 1  
9

10 insert in lieu thereof:

11 An act relating to notices of noncompliance;  
12 amending s. 120.695, F.S.; providing that  
13 notices of noncompliance apply to violations of  
14 regulatory provisions of an agency found in  
15 rule or statute; eliminating obsolete  
16 provisions relating to review and designation  
17 of agency rules for notice issuance purposes;  
18 providing exemptions from applicability of the  
19 section; creating s. 120.696, F.S.; providing  
20 for classification of disciplinary actions as  
21 active or inactive; providing for the periodic  
22 clearing of minor violations from the  
23 disciplinary record; providing rulemaking  
24 authority; amending s. 455.225, F.S.; providing  
25 for classification of disciplinary actions by  
26 the Department of Business and Professional  
27 Regulation as active or inactive; providing for  
28 the periodic clearing of minor violations from  
29 the disciplinary record; providing rulemaking  
30 authority; providing an effective date.  
31