

By Representative Brown

1 A bill to be entitled
 2 An act relating to notices of noncompliance;
 3 amending s. 120.695, F.S.; providing that
 4 notices of noncompliance apply to violations of
 5 regulatory provisions of an agency found in
 6 rule or statute; eliminating obsolete
 7 provisions relating to review and designation
 8 of agency rules for notice issuance purposes;
 9 providing exemptions from applicability of the
 10 section; creating s. 120.696, F.S.; providing
 11 for classification of disciplinary actions as
 12 active or inactive; providing for the periodic
 13 clearing of minor violations from the
 14 disciplinary record; providing rulemaking
 15 authority; amending s. 455.225, F.S.; providing
 16 for classification of disciplinary actions by
 17 the Department of Business and Professional
 18 Regulation as active or inactive; providing for
 19 the periodic clearing of minor violations from
 20 the disciplinary record; providing rulemaking
 21 authority; providing an effective date.

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

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 25 Section 1. Section 120.695, Florida Statutes, is
 26 amended to read:

27 120.695 Notice of noncompliance.--

28 (1) It is the policy of the state that the purpose of
 29 regulation is to protect the public by attaining compliance
 30 with the policies established by the Legislature. Fines and
 31 other penalties may be provided in order to ensure ~~assure~~

1 compliance; however, the collection of fines and the
2 imposition of penalties are intended to be secondary to the
3 primary goal of attaining compliance with an agency's
4 regulatory provisions ~~rules~~. It is the intent of the
5 Legislature that an agency charged with enforcing regulatory
6 provisions ~~rules~~ shall issue a notice of noncompliance as its
7 first response to a minor violation of a regulatory provision
8 ~~rule~~ in any instance in which it is reasonable to assume that
9 the violator was unaware of the regulatory provision ~~rule~~ or
10 unclear as to how to comply with it.

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

25 ~~(b)~~ Each agency shall review all of its rules and
26 ~~designate those for which a violation would be a minor~~
27 ~~violation and for which a notice of noncompliance must be the~~
28 ~~first enforcement action taken against a person or business~~
29 ~~subject to regulation.~~A violation ~~of a rule~~ is a minor
30 violation if it does not result in economic or physical harm
31 to a person or adversely affect the public health, safety, or

1 welfare or create a significant threat of such harm. ~~if an~~
2 ~~agency under the direction of a cabinet officer mails to each~~
3 ~~licensee a notice of the designated rules at the time of~~
4 ~~licensure and at least annually thereafter, the provisions of~~
5 ~~paragraph (a) may be exercised at the discretion of the~~
6 ~~agency. Such notice shall include a subject-matter index of~~
7 ~~the rules and information on how the rules may be obtained.~~

8 ~~(c) The agency's review and designation must be~~
9 ~~completed by December 1, 1995; each agency under the direction~~
10 ~~of the Governor shall make a report to the Governor, and each~~
11 ~~agency under the joint direction of the Governor and Cabinet~~
12 ~~shall report to the Governor and Cabinet by January 1, 1996,~~
13 ~~on which of its rules have been designated as rules the~~
14 ~~violation of which would be a minor violation.~~

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

19 ~~(3)(e) This section does not apply to the Department~~
20 ~~of Revenue, criminal law, or the regulation of law enforcement~~
21 ~~personnel or teachers.~~

22 ~~(f) Designation pursuant to this section is not~~
23 ~~subject to challenge under this chapter.~~

24 Section 2. Section 120.696, Florida Statutes, is
25 created to read:

26 120.696 Classification of disciplinary actions.--

27 (1) The legislative intent of this subsection is to
28 clear minor violations from the disciplinary record of any
29 person or business after a set period of time. A person or
30 business may petition the appropriate agency to review a
31 disciplinary incident to determine whether the specific

1 violation meets the standard of a minor violation as set forth
2 in s. 120.695(2). If the circumstances of the violation meet
3 that standard, and 2 years have passed since the issuance of a
4 final order imposing discipline, the agency shall reclassify
5 that violation as inactive, so long as the person or business
6 has not been disciplined for a subsequent violation of the
7 same nature. Once the agency has reclassified the violation as
8 inactive, it shall no longer be considered as part of the
9 disciplinary record of that person or business, and the person
10 or business may lawfully deny or fail to acknowledge the
11 incident as a disciplinary action. The agency has authority to
12 adopt rules to implement this subsection.

13 (2) Each agency shall by January 1, 2000, establish a
14 schedule under which each disciplinary action taken against a
15 person or business shall remain active or become inactive. The
16 agency shall establish varying reclassification schedules for
17 each type of violation, according to the severity of the
18 violation. After the expiration of the set period of time, as
19 determined by agency rule, the agency shall reclassify the
20 violation as an inactive disciplinary action, provided the
21 person or business has not been disciplined for a subsequent
22 violation of the same nature. Once the agency has reclassified
23 such a violation as inactive, the person or business may
24 lawfully deny or fail to acknowledge the incident as a
25 disciplinary action. The agency has authority to adopt rules
26 to implement this subsection.

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

29 455.225 Disciplinary proceedings.--Disciplinary
30 proceedings for each board shall be within the jurisdiction of
31 the department.

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

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

19 (c) The legislative intent of this paragraph is to
20 clear minor violations from a licensee's disciplinary record
21 after a set period of time. A licensee may petition the
22 department to review a disciplinary incident to determine
23 whether the specific violation meets the standard of a minor
24 violation as set forth in paragraph (a). If the circumstances
25 of the violation meet that standard, and 2 years have passed
26 since the issuance of a final order imposing discipline, the
27 agency shall reclassify that violation as inactive, so long as
28 the licensee has not been disciplined for a subsequent
29 violation of the same nature. Once the department has
30 reclassified the violation as inactive, it shall no longer be
31 considered as part of the licensee's disciplinary record, and

1 the licensee may lawfully deny or fail to acknowledge the
2 incident as a disciplinary action. The department has
3 authority to adopt rules to implement this paragraph.

4 Section 4. This act shall take effect July 1, 1999.

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7 HOUSE SUMMARY

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9 Revises provisions of the Administrative Procedure Act
10 relating to notices of noncompliance. Provides that
11 notices of noncompliance apply to violations of
12 regulatory provisions of an agency found in rule or
13 statute. Eliminates obsolete provisions relating to
14 review of agency rules and designation of those for which
15 a notice of noncompliance would be the first enforcement
16 action. Exempts the Department of Revenue and criminal
17 law from applicability of such notice provisions.
18 Provides for classification of disciplinary actions as
19 active or inactive, and provides for the periodic
20 clearing of minor violations that have become inactive
21 from the disciplinary record. Applies such classification
22 provisions specifically to the disciplinary proceedings
23 of the Department of Business and Professional
24 Regulation.
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