

Bill No. CS for CS for SB 1566, 1st Eng.

Amendment No. \_\_\_\_

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senators Lee and Casas moved the following amendment to		
12	amendment (553475):		
13			
14	<b>Senate Amendment (with title amendment)</b>		
15	On page 168, between lines 26 and 27,		
16			
17	insert:		
18	Section 71. Subsections (3) and (4) of section 11.62,		
19	Florida Statutes, are amended to read:		
20	11.62 Legislative review of proposed regulation of		
21	unregulated functions.--		
22	(3) In determining whether to regulate a profession or		
23	occupation, the Legislature shall consider the following		
24	factors:		
25	(a) Whether the unregulated practice of the profession		
26	or occupation will substantially harm or endanger the public		
27	health, safety, or welfare, and whether the potential for harm		
28	is recognizable and not remote;		
29	(b) Whether the practice of the profession or		
30	occupation requires specialized skill or training, and whether		
31	that skill or training is readily measurable or quantifiable		

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1 so that examination or training requirements would reasonably  
2 assure initial and continuing professional or occupational  
3 ability;

4 (c) Whether the regulation will have an unreasonable  
5 effect on job creation or job retention in the state or will  
6 place unreasonable restrictions on the ability of individuals  
7 who seek to practice or who are practicing a given profession  
8 or occupation to find employment;

9 (d)(c) Whether the public is or can be effectively  
10 protected by other means; and

11 (e)(d) Whether the overall cost-effectiveness and  
12 economic impact of the proposed regulation, including the  
13 indirect costs to consumers, will be favorable.

14 (4) The proponents of legislation that provides for  
15 the regulation of a profession or occupation not already  
16 expressly subject to state regulation shall provide, upon  
17 request, the following information in writing to the state  
18 agency that is proposed to have jurisdiction over the  
19 regulation and to the legislative committees to which the  
20 legislation is referred:

21 (a) The number of individuals or businesses that would  
22 be subject to the regulation;

23 (b) The name of each association that represents  
24 members of the profession or occupation, together with a copy  
25 of its codes of ethics or conduct;

26 (c) Documentation of the nature and extent of the harm  
27 to the public caused by the unregulated practice of the  
28 profession or occupation, including a description of any  
29 complaints that have been lodged against persons who have  
30 practiced the profession or occupation in this state during  
31 the preceding 3 years;

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1 (d) A list of states that regulate the profession or  
2 occupation, and the dates of enactment of each law providing  
3 for such regulation and a copy of each law;

4 (e) A list and description of state and federal laws  
5 that have been enacted to protect the public with respect to  
6 the profession or occupation and a statement of the reasons  
7 why these laws have not proven adequate to protect the public;

8 (f) A description of the voluntary efforts made by  
9 members of the profession or occupation to protect the public  
10 and a statement of the reasons why these efforts are not  
11 adequate to protect the public;

12 (g) A copy of any federal legislation mandating  
13 regulation;

14 (h) An explanation of the reasons why other types of  
15 less restrictive regulation would not effectively protect the  
16 public;

17 (i) The cost, availability, and appropriateness of  
18 training and examination requirements;

19 (j)(i) The cost of regulation, including the indirect  
20 cost to consumers, and the method proposed to finance the  
21 regulation;

22 (k) The cost imposed on applicants or practitioners or  
23 on employers of applicants or practitioners as a result of the  
24 regulation;

25 (l)(j) The details of any previous efforts in this  
26 state to implement regulation of the profession or occupation;  
27 and

28 (m)(k) Any other information the agency or the  
29 committee considers relevant to the analysis of the proposed  
30 legislation.

31 Section 72. Subsection (4) of section 455.201, Florida

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1 Statutes, is amended to read:

2 455.201 Professions and occupations regulated by  
3 department; legislative intent; requirements.--

4 (4)(a) Neither the department nor any board may ~~No~~  
5 ~~board, nor the department, shall~~ create unreasonably  
6 restrictive and extraordinary standards that deter qualified  
7 persons from entering the various professions. Neither the  
8 department nor any board may ~~No board, nor the department,~~  
9 ~~shall~~ take any action that ~~which~~ tends to create or maintain  
10 an economic condition that unreasonably restricts competition,  
11 except as specifically provided by law.

12 (b) Neither the department nor any board may create a  
13 regulation that has an unreasonable effect on job creation or  
14 job retention in the state or that places unreasonable  
15 restrictions on the ability of individuals who seek to  
16 practice or who are practicing a given profession or  
17 occupation to find employment.

18 (c) The Legislature shall evaluate proposals to  
19 increase regulation of already regulated professions or  
20 occupations to determine their effect on job creation or  
21 retention and employment opportunities.

22 Section 73. Subsection (4) of section 455.517, Florida  
23 Statutes, is amended to read:

24 455.517 Professions and occupations regulated by  
25 department; legislative intent; requirements.--

26 (4)(a) Neither the department nor any board may ~~No~~  
27 ~~board, nor the department, shall~~ create unreasonably  
28 restrictive and extraordinary standards that deter qualified  
29 persons from entering the various professions. Neither the  
30 department nor any board may ~~No board, nor the department,~~  
31 ~~shall~~ take any action that ~~which~~ tends to create or maintain

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1 an economic condition that unreasonably restricts competition,  
2 except as specifically provided by law.

3 (b) Neither the department nor any board may create a  
4 regulation that has an unreasonable effect on job creation or  
5 job retention in the state or that places unreasonable  
6 restrictions on the ability of individuals who seek to  
7 practice or who are practicing a profession or occupation to  
8 find employment.

9 (c) The Legislature shall evaluate proposals to  
10 increase the regulation of regulated professions or  
11 occupations to determine the effect of increased regulation on  
12 job creation or retention and employment opportunities.

13 Section 74. Section 455.2035, Florida Statutes, is  
14 created to read:

15 455.2035 Rulemaking authority for professions not  
16 under a board.--The department may adopt rules pursuant to ss.  
17 120.54 and 120.536(1) to implement the regulatory requirements  
18 of any profession within the department's jurisdiction which  
19 does not have a statutorily authorized regulatory board.

20 Section 75. Section 455.2123, Florida Statutes, is  
21 created to read:

22 455.2123 Continuing education.--A board, or the  
23 department when there is no board, may provide by rule that  
24 distance learning may be used to satisfy continuing education  
25 requirements.

26 Section 76. Section 455.2124, Florida Statutes, is  
27 created to read:

28 455.2124 Proration of continuing education.--A board,  
29 or the department when there is no board, may:

30 (1) Prorate continuing education for new licensees by  
31 requiring half of the required continuing education for any

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1 applicant who becomes licensed with more than half the renewal  
2 period remaining and no continuing education for any applicant  
3 who becomes licensed with half or less than half of the  
4 renewal period remaining; or

5 (2) Require no continuing education until the first  
6 full renewal cycle of the licensee.

7  
8 These options shall also apply when continuing education is  
9 first required or the number of hours required is increased by  
10 law or the board, or the department when there is no board.

11 Section 77. Subsection (10) is added to section  
12 455.213, Florida Statutes, 1998 Supplement, to read:

13 455.213 General licensing provisions.--

14 (10) For any profession requiring fingerprints as part  
15 of the registration, certification, or licensure process or  
16 for any profession requiring a criminal history record check  
17 to determine good moral character, a fingerprint card  
18 containing the fingerprints of the applicant must accompany  
19 all applications for registration, certification, or  
20 licensure. The fingerprint card shall be forwarded to the  
21 Division of Criminal Justice Information Systems within the  
22 Department of Law Enforcement for purposes of processing the  
23 fingerprint card to determine if the applicant has a criminal  
24 history record. The fingerprint card shall also be forwarded  
25 to the Federal Bureau of Investigation for purposes of  
26 processing the fingerprint card to determine if the applicant  
27 has a criminal history record. The information obtained by the  
28 processing of the fingerprint card by the Florida Department  
29 of Law Enforcement and the Federal Bureau of Investigation  
30 shall be sent to the department for the purpose of determining  
31 if the applicant is statutorily qualified for registration,

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1 certification, or licensure.

2 Section 78. Paragraph (e) of subsection (2) of section  
3 468.453, Florida Statutes, 1998 Supplement, is amended to  
4 read:

5 468.453 Licensure required; qualifications;  
6 examination; bond.--

7 (2) A person shall be licensed as an athlete agent if  
8 the applicant:

9 (e) ~~Has provided sufficient information which must be~~  
10 ~~submitted to by the department a fingerprint card for a~~  
11 ~~criminal history records check through the Federal Bureau of~~  
12 ~~Investigation. The fingerprint card shall be forwarded to the~~  
13 ~~Division of Criminal Justice Information Systems within the~~  
14 ~~Department of Law Enforcement for purposes of processing the~~  
15 ~~fingerprint card to determine if the applicant has a criminal~~  
16 ~~history record. The fingerprint card shall also be forwarded~~  
17 ~~to the Federal Bureau of Investigation for purposes of~~  
18 ~~processing the fingerprint card to determine if the applicant~~  
19 ~~has a criminal history record. The information obtained by the~~  
20 ~~processing of the fingerprint card by the Florida Department~~  
21 ~~of Law Enforcement and the Federal Bureau of Investigation~~  
22 ~~shall be sent to the department for the purpose of determining~~  
23 ~~if the applicant is statutorily qualified for licensure.~~

24 Section 79. Paragraph (a) of subsection (1) of section  
25 475.175, Florida Statutes, is amended to read:

26 475.175 Examinations.--

27 (1) A person shall be entitled to take the license  
28 examination to practice in this state if the person:

29 (a) Submits to the department the appropriate  
30 notarized application and fee, two photographs of herself or  
31 himself taken within the preceding year, and a fingerprint

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1 card. The fingerprint card shall be forwarded to the Division  
2 of Criminal Justice Information Systems within the Department  
3 of Law Enforcement for purposes of processing the fingerprint  
4 card to determine if the applicant has a criminal history  
5 record. The fingerprint card shall also be forwarded to the  
6 Federal Bureau of Investigation for purposes of processing the  
7 fingerprint card to determine if the applicant has a criminal  
8 history record. The information obtained by the processing of  
9 the fingerprint card by the Florida Department of Law  
10 Enforcement and the Federal Bureau of Investigation shall be  
11 sent to the department for the purpose of determining if the  
12 applicant is statutorily qualified for examination.

13 ~~fingerprints for processing through appropriate law~~  
14 ~~enforcement agencies; and~~

15 Section 80. Subsection (3) of section 475.615, Florida  
16 Statutes, 1998 Supplement, is amended to read:

17 475.615 Qualifications for registration, licensure, or  
18 certification.--

19 (3) Appropriate fees, as set forth in the rules of the  
20 board pursuant to s. 475.6147, and a fingerprint card  
21 ~~fingerprints for processing through appropriate law~~  
22 ~~enforcement agencies~~ must accompany all applications for  
23 registration, ~~licensure,~~ and certification, or licensure. The  
24 fingerprint card shall be forwarded to the Division of  
25 Criminal Justice Information Systems within the Department of  
26 Law Enforcement for purposes of processing the fingerprint  
27 card to determine if the applicant has a criminal history  
28 record. The fingerprint card shall also be forwarded to the  
29 Federal Bureau of Investigation for purposes of processing the  
30 fingerprint card to determine if the applicant has a criminal  
31 history record. The information obtained by the processing of



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1 the fingerprint card by the Florida Department of Law  
2 Enforcement and the Federal Bureau of Investigation shall be  
3 sent to the department for the purpose of determining if the  
4 applicant is statutorily qualified for registration,  
5 certification, or licensure.

6 Section 81. Section 455.2255, Florida Statutes, is  
7 created to read:

8 455.2255 Classification of disciplinary actions.--

9 (1) A licensee may petition the department to review a  
10 disciplinary incident to determine whether the specific  
11 violation meets the standard of a minor violation as set forth  
12 in s. 455.225(3). If the circumstances of the violation meet  
13 that standard and 2 years have passed since the issuance of a  
14 final order imposing discipline, the department shall  
15 reclassify that violation as inactive if the licensee has not  
16 been disciplined for any subsequent minor violation of the  
17 same nature. After the department has reclassified the  
18 violation as inactive, it is no longer considered to be part  
19 of the licensee's disciplinary record, and the licensee may  
20 lawfully deny or fail to acknowledge the incident as a  
21 disciplinary action.

22 (2) The department may establish a schedule  
23 classifying violations according to the severity of the  
24 violation. After the expiration of set periods of time, the  
25 department may provide for such disciplinary records to become  
26 inactive, according to their classification. After the  
27 disciplinary record has become inactive, the department may  
28 clear the violation from the disciplinary record and the  
29 subject person or business may lawfully deny or fail to  
30 acknowledge such disciplinary actions. The department may  
31 adopt rules to implement this subsection.

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1           (3) Notwithstanding s. 455.017, this section applies  
2 to the disciplinary records of all persons or businesses  
3 licensed by the department.

4           Section 82. Subsection (3) of section 455.227, Florida  
5 Statutes, is amended to read:

6           455.227 Grounds for discipline; penalties;  
7 enforcement.--

8           (3)(a) In addition to any other discipline imposed  
9 pursuant to this section or discipline imposed for a violation  
10 of any practice act, the board, or the department when there  
11 is no board, may assess costs related to the investigation and  
12 prosecution of the case excluding costs associated with an  
13 attorney's time.

14           (b) In any case where the board or the department  
15 imposes a fine or assessment and the fine or assessment is not  
16 paid within a reasonable time, such reasonable time to be  
17 prescribed in the rules of the board, or the department when  
18 there is no board, or in the order assessing such fines or  
19 costs, the department or the Department of Legal Affairs may  
20 contract for the collection of, or bring a civil action to  
21 recover, the fine or assessment.

22           (c) The department shall not issue or renew a license  
23 to any person against whom or business against which the board  
24 has assessed a fine, interest, or costs associated with  
25 investigation and prosecution until the person or business has  
26 paid in full such fine, interest, or costs associated with  
27 investigation and prosecution or until the person or business  
28 complies with or satisfies all terms and conditions of the  
29 final order.

30           Section 83. Subsection (6) of section 455.564, Florida  
31 Statutes, 1998 Supplement, is amended to read:

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1           455.564 Department; general licensing provisions.--  
2           (6) As a condition of renewal of a license, the Board  
3 of Medicine, the Board of Osteopathic Medicine, the Board of  
4 Chiropractic Medicine, and the Board of Podiatric Medicine  
5 shall each require licensees which they respectively regulate  
6 to periodically demonstrate their professional competency by  
7 completing at least 40 hours of continuing education every 2  
8 years, ~~which may include up to 1 hour of risk management or~~  
9 ~~cost containment and up to 2 hours of other topics related to~~  
10 ~~the applicable medical specialty, if required by board rule.~~  
11 The boards may require by rule that up to 1 hour of the  
12 required 40 or more hours be in the area of risk management or  
13 cost containment. This provision shall not be construed to  
14 limit the number of hours that a licensee may obtain in risk  
15 management or cost containment to be credited toward  
16 satisfying the 40 or more required hours. This provision shall  
17 not be construed to require the boards to impose any  
18 requirement on licensees except for the completion of at least  
19 40 hours of continuing education every 2 years.Each of such  
20 boards shall determine whether any specific continuing  
21 education ~~course~~ requirements not otherwise mandated by law  
22 shall be mandated and shall approve criteria for, and the  
23 content of, any continuing education ~~course~~ mandated by such  
24 board. Notwithstanding any other provision of law, the board,  
25 or the department when there is no board, may approve by rule  
26 alternative methods of obtaining continuing education credits  
27 in risk management. The alternative methods may include  
28 attending a board meeting at which another ~~a~~ licensee is  
29 disciplined, serving as a volunteer expert witness for the  
30 department in a disciplinary case, or serving as a member of a  
31 probable cause panel following the expiration of a board

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1 member's term. Other boards within the Division of Medical  
2 Quality Assurance, or the department if there is no board, may  
3 adopt rules granting continuing education hours in risk  
4 management for attending a board meeting at which another  
5 licensee is disciplined, for serving as a volunteer expert  
6 witness for the department in a disciplinary case, or for  
7 serving as a member of a probable cause panel following the  
8 expiration of a board member's term.

9 Section 84. Subsections (4) and (6) of section  
10 477.013, Florida Statutes, 1998 Supplement, are amended, and  
11 subsections (12) and (13) are added to that section, to read:

12 477.013 Definitions.--As used in this chapter:

13 (4) "Cosmetology" means the mechanical or chemical  
14 treatment of the head, face, and scalp for aesthetic rather  
15 than medical purposes, including, but not limited to, hair  
16 shampooing, hair cutting, hair arranging, hair coloring,  
17 permanent waving, and hair relaxing, ~~hair removing pedicuring,~~  
18 ~~and manicuring,~~ for compensation. This term also includes  
19 performing hair removal, including wax treatments, manicures,  
20 pedicures, and skin-care services.

21 (6) "Specialty" means the practice of one or more of  
22 the following:

23 (a) Manicuring, or the cutting, polishing, tinting,  
24 coloring, cleansing, adding, or extending of the nails, and  
25 massaging of the hands. This term includes any procedure or  
26 process for the affixing of artificial nails, except those  
27 nails which may be applied solely by use of a simple adhesive.

28 (b) Pedicuring, or the shaping, polishing, tinting, or  
29 cleansing of the nails of the feet, and massaging or  
30 beautifying of the feet.

31 (c) Facials, or the massaging or treating of the face

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1 or scalp with oils, creams, lotions, or other preparations,  
2 and skin care services.

3 (12) "Body wrapping" means a treatment program that  
4 uses herbal wraps for the purposes of weight loss and of  
5 cleansing and beautifying the skin of the body, but does not  
6 include:

7 (a) The application of oils, lotions, or other fluids  
8 to the body, except fluids contained in presoaked materials  
9 used in the wraps; or

10 (b) Manipulation of the body's superficial tissue,  
11 other than that arising from compression emanating from the  
12 wrap materials.

13 (13) "Skin care services" means the treatment of the  
14 skin of the body, other than the head, face, and scalp, by the  
15 use of a sponge, brush, cloth, or similar device to apply or  
16 remove a chemical preparation or other substance, except that  
17 chemical peels may be removed by peeling an applied  
18 preparation from the skin by hand. Skin care services must be  
19 performed by a licensed cosmetologist or facial specialist  
20 within a licensed cosmetology or specialty salon, and such  
21 services may not involve massage, as defined in s. 480.033(3),  
22 through manipulation of the superficial tissue.

23 Section 85. Section 477.0132, Florida Statutes, 1998  
24 Supplement, is amended to read:

25 477.0132 Hair braiding, ~~and~~ hair wrapping, and body  
26 wrapping registration.--

27 (1)(a) Persons whose occupation or practice is  
28 confined solely to hair braiding must register with the  
29 department, pay the applicable registration fee, and take a  
30 two-day 16-hour course. The course shall be board approved and  
31 consist of 5 hours of HIV/AIDS and other communicable

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1 diseases, 5 hours of sanitation and sterilization, 4 hours of  
2 disorders and diseases of the scalp, and 2 hours of studies  
3 regarding laws affecting hair braiding.

4 (b) Persons whose occupation or practice is confined  
5 solely to hair wrapping must register with the department, pay  
6 the applicable registration fee, and take a one-day 6-hour  
7 course. The course shall be board approved and consist of  
8 education in HIV/AIDS and other communicable diseases,  
9 sanitation and sterilization, disorders and diseases of the  
10 scalp, and studies regarding laws affecting hair wrapping.

11 (c) Unless otherwise licensed or exempted from  
12 licensure under this chapter, any person whose occupation or  
13 practice is body wrapping must register with the department,  
14 pay the applicable registration fee, and take a two-day  
15 12-hour course. The course shall be board approved and consist  
16 of education in HIV/AIDS and other communicable diseases,  
17 sanitation and sterilization, disorders and diseases of the  
18 skin, and studies regarding laws affecting body wrapping.

19 (2) Hair braiding,~~and~~ hair wrapping, and body  
20 wrapping are not required to be practiced in a cosmetology  
21 salon or specialty salon. When hair braiding,~~or~~ hair  
22 wrapping, or body wrapping is practiced outside a cosmetology  
23 salon or specialty salon, disposable implements must be used  
24 or all implements must be sanitized in a disinfectant approved  
25 for hospital use or approved by the federal Environmental  
26 Protection Agency.

27 (3) Pending issuance of registration, a person is  
28 eligible to practice hair braiding,~~or~~ hair wrapping, or body  
29 wrapping upon submission of a registration application that  
30 includes proof of successful completion of the education  
31 requirements and payment of the applicable fees required by

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1 this chapter.

2 Section 86. Paragraph (f) of subsection (1) of section  
3 477.026, Florida Statutes, 1998 Supplement, is amended to  
4 read:

5 477.026 Fees; disposition.--

6 (1) The board shall set fees according to the  
7 following schedule:

8 (f) For hair braiders, ~~and~~ hair wrappers, and body  
9 wrappers, fees for registration shall not exceed \$25.

10 Section 87. Paragraph (g) is added to subsection (1)  
11 of section 477.0265, Florida Statutes, to read:

12 477.0265 Prohibited acts.--

13 (1) It is unlawful for any person to:

14 (g) Advertise or imply that skin care services or body  
15 wrapping, as performed under this chapter, have any  
16 relationship to the practice of massage therapy as defined in  
17 s. 480.033(3), except those practices or activities defined in  
18 s. 477.013.

19 Section 88. Paragraph (a) of subsection (1) of section  
20 477.029, Florida Statutes, 1998 Supplement, is amended to  
21 read:

22 477.029 Penalty.--

23 (1) It is unlawful for any person to:

24 (a) Hold himself or herself out as a cosmetologist,  
25 specialist, hair wrapper, ~~or~~ hair braider, or body wrapper  
26 unless duly licensed or registered, or otherwise authorized,  
27 as provided in this chapter.

28 Section 89. Subsection (2) of section 455.209, Florida  
29 Statutes, 1998 Supplement, is amended to read:

30 455.209 Accountability and liability of board  
31 members.--

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1           (2) Each board member and each former board member  
2 serving on a probable cause panel shall be exempt from civil  
3 liability for any act or omission when acting in the member's  
4 official capacity, and the department, ~~or the Department of~~  
5 ~~Legal Affairs~~ shall defend any such member in any action  
6 against any board or member of a board arising from any such  
7 act or omission. In addition, the department ~~or the Department~~  
8 ~~of Legal Affairs~~ may defend the member's company or business  
9 in any action against the company or business if the  
10 department ~~or the Department of Legal Affairs~~ determines that  
11 the actions from which the suit arises are actions taken by  
12 the member in the member's official capacity and were not  
13 beyond the member's statutory authority. In providing such  
14 defense, the department ~~or the Department of Legal Affairs~~ may  
15 employ or utilize the legal services of the Department of  
16 Legal Affairs or outside counsel retained pursuant to s.  
17 287.059. Fees and costs of providing legal services provided  
18 under this subsection shall be paid from the Professional  
19 Regulation Trust Fund, subject to the provisions of ss.  
20 455.219 and 215.37.

21           Section 90. Subsection (1) of section 455.221, Florida  
22 Statutes, is amended to read:

23           455.221 Legal and investigative services.--

24           (1) The department shall provide board counsel for  
25 boards within the department by contracting with the  
26 Department of Legal Affairs, by retaining private counsel  
27 pursuant to s. 287.059, or by providing department staff  
28 counsel ~~A board shall retain, through the department's~~  
29 ~~contract procedures, board counsel from the Department of~~  
30 ~~Legal Affairs. The Department of Legal Affairs shall provide~~  
31 ~~legal services to each board within the Department of Business~~



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1 ~~and Professional Regulation, but the primary responsibility of~~  
2 ~~board counsel the Department of Legal Affairs shall be to~~  
3 ~~represent the interests of the citizens of the state by~~  
4 ~~vigorously counseling the boards with respect to their~~  
5 ~~obligations under the laws of the state. A board shall provide~~  
6 ~~for the periodic review and evaluation of the services~~  
7 ~~provided by its board counsel. Subject to the prior approval~~  
8 ~~of the Attorney General, any board may retain, through the~~  
9 ~~department's contract procedures, independent legal counsel to~~  
10 ~~provide legal advice to the board on a specific matter. Fees~~  
11 ~~and costs of such counsel by the Department of Legal Affairs~~  
12 ~~or independent legal counsel approved by the Attorney General~~  
13 ~~shall be paid from the Professional Regulation Trust Fund,~~  
14 ~~subject to the provisions of ss. 455.219 and 215.37. All~~  
15 ~~contracts for independent counsel shall provide for periodic~~  
16 ~~review and evaluation by the board and the department of~~  
17 ~~services provided.~~

18 Section 91. Subsection (2) of section 455.541, Florida  
19 Statutes, is amended to read:

20 455.541 Accountability and liability of board  
21 members.--

22 (2) Each board member and each former board member  
23 serving on a probable cause panel shall be exempt from civil  
24 liability for any act or omission when acting in the member's  
25 official capacity, and the department ~~or the Department of~~  
26 ~~Legal Affairs~~ shall defend any such member in any action  
27 against any board or member of a board arising from any such  
28 act or omission. In addition, the department ~~or the Department~~  
29 ~~of Legal Affairs~~ may defend the member's company or business  
30 in any action against the company or business if the  
31 department ~~or the Department of Legal Affairs~~ determines that

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1 the actions from which the suit arises are actions taken by  
2 the member in the member's official capacity and were not  
3 beyond the member's statutory authority. In providing such  
4 defense, the department ~~or the Department of Legal Affairs~~ may  
5 employ or utilize the legal services of the Department of  
6 Legal Affairs or outside counsel retained pursuant to s.  
7 287.059. Fees and costs of providing legal services provided  
8 under this subsection shall be paid from a trust fund used by  
9 the department to implement this part, subject to the  
10 provisions of s. 455.587.

11 Section 92. Subsection (1) of section 455.594, Florida  
12 Statutes, is amended to read:

13 455.594 Legal and investigative services.--

14 (1) The department shall provide board counsel for  
15 boards within the department by contracting with the  
16 Department of Legal Affairs, by retaining private counsel  
17 pursuant to s. 287.059, or by providing department staff  
18 counsel ~~A board shall retain, through the department's~~  
19 ~~contract procedures, board counsel from the Department of~~  
20 ~~Legal Affairs. The Department of Legal Affairs shall provide~~  
21 ~~legal services to each board within the Department of Health,~~  
22 ~~but the primary responsibility of board counsel the Department~~  
23 ~~of Legal Affairs shall be to represent the interests of the~~  
24 ~~citizens of the state by vigorously counseling the boards with~~  
25 ~~respect to their obligations under the laws of the state. A~~  
26 ~~board shall provide for the periodic review and evaluation of~~  
27 ~~the services provided by its board counsel. Subject to the~~  
28 ~~prior approval of the Attorney General, any board may retain,~~  
29 ~~through the department's contract procedures, independent~~  
30 ~~legal counsel to provide legal advice to the board on a~~  
31 ~~specific matter.~~ Fees and costs of such counsel by the

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1 ~~Department of Legal Affairs or independent legal counsel~~  
2 ~~approved by the Attorney General~~ shall be paid from a trust  
3 fund used by the department to implement this part, subject to  
4 the provisions of s. 455.587. All contracts for independent  
5 counsel shall provide for periodic review and evaluation by  
6 the board and the department of services provided.

7 Section 93. Subsection (16) of section 458.347,  
8 Florida Statutes, 1998 Supplement, is amended to read:

9 458.347 Physician assistants.--

10 (16) LEGAL SERVICES.--~~The Department of Legal Affairs~~  
11 ~~shall provide~~ Legal services shall be provided to the council  
12 pursuant to as authorized in s. 455.594(1).

13 Section 94. Subsection (16) of section 459.022,  
14 Florida Statutes, 1998 Supplement, is amended to read:

15 459.022 Physician assistants.--

16 (16) LEGAL SERVICES.--~~The Department of Legal Affairs~~  
17 ~~shall provide~~ Legal services shall be provided to the council  
18 pursuant to as authorized in s. 455.594(1).

19 Section 95. Section 455.2177, Florida Statutes, is  
20 created to read:

21 455.2177 Monitoring of compliance with continuing  
22 education requirements.--

23 (1) The department shall establish a system to monitor  
24 licensee compliance with applicable continuing education  
25 requirements and to determine each licensee's continuing  
26 education status. The department is authorized to provide for  
27 a phase-in of the compliance monitoring system, but the system  
28 must provide for monitoring of compliance with applicable  
29 continuing education requirements by all professions regulated  
30 by the department no later than July 1, 2002. The compliance  
31 monitoring system may use staff of the department or may be

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1 privatized. As used in this section, the term "monitor" means  
2 the act of determining, for each licensee, whether the  
3 licensee was in full compliance with applicable continuing  
4 education requirements as of the time of the licensee's  
5 license renewal.

6 (2) If the compliance monitoring system required under  
7 this section is privatized, the following provisions apply:

8 (a) The department may contract pursuant to s. 287.057  
9 with a vendor or vendors for the monitoring of compliance with  
10 applicable continuing education requirements by all licensees  
11 within one or more professions regulated by the department.  
12 The contract shall include, but need not be limited to, the  
13 following terms and conditions:

14 1.a. The vendor shall create a computer database, in  
15 the form required by the department, that includes the  
16 continuing education status of each licensee and shall provide  
17 a report to the department within 90 days after the vendor  
18 receives the list of licensees to be monitored as provided in  
19 sub-subparagraph b. The report shall be in a format determined  
20 by the department and shall include each licensee's continuing  
21 education status by license number, hours of continuing  
22 education credit per cycle, and such other information the  
23 department deems necessary.

24 b. No later than 30 days after the end of each renewal  
25 period, the department shall provide to the vendor a list that  
26 includes all licensees of a particular profession whose  
27 licenses were renewed during a particular renewal period. In  
28 order to account for late renewals, the department shall  
29 provide the vendor with such updates to the list as are  
30 mutually determined to be necessary.

31 2.a. Before the vendor informs the department of the

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1 status of any licensee the vendor has determined is not in  
2 compliance with continuing education requirements, the vendor,  
3 acting on behalf of the department, shall provide the licensee  
4 with a notice stating that the vendor has determined that the  
5 licensee is not in compliance with applicable continuing  
6 education requirements. The notice shall also include the  
7 licensee's continuing education record for the renewal period,  
8 as shown in the records of the vendor, and a description of  
9 the process for correcting the vendor's record under  
10 sub-subparagraph b.

11 b. The vendor shall give the licensee 45 days to  
12 correct the vendor's information. The vendor shall correct a  
13 record only on the basis of evidence of compliance supplied to  
14 the vendor by a continuing education provider.

15 3.a. The vendor must provide the department, with the  
16 report required under subparagraph 1., a list, in a form  
17 determined by the department, identifying each licensee who  
18 the vendor has determined is not in compliance with applicable  
19 continuing education requirements.

20 b. The vendor shall provide the department with access  
21 to such information and services as the department deems  
22 necessary to ensure that the actions of the vendor conform to  
23 the contract and to the duties of the department and the  
24 vendor under this subsection.

25 4. The department shall ensure the vendor access to  
26 such information from continuing education providers as is  
27 necessary to determine the continuing education record of each  
28 licensee. The vendor shall inform the department of any  
29 provider that fails to provide such information to the vendor.

30 5. If the vendor fails to comply with a provision of  
31 the contract, the vendor is obligated to pay the department

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1 liquidated damages in the amounts specified in the contract.

2 6. The department's payments to the vendor must be  
3 based on the number of licensees monitored. The department may  
4 allocate from the unlicensed activity account of any  
5 profession under s. 455.2281 up to \$2 per licensee for the  
6 monitoring of that profession's licensees under this  
7 subsection, which allocations are the exclusive source of  
8 funding for contracts under this subsection.

9 7. A continuing education provider is not eligible to  
10 be a vendor under this subsection.

11 (b) When it receives notice from a vendor that a  
12 licensee is not in compliance with continuing education  
13 requirements, the department shall send the licensee written  
14 notice that disciplinary actions will be taken, together with  
15 a description of the remedies available to the licensee under  
16 the dispute resolution process created under paragraph (c). If  
17 a licensee does not prevail in the dispute resolution process,  
18 the department:

19 1. May impose an administrative fine in the amount of  
20 \$500 against the licensee; however, the department may reduce  
21 the amount of the fine to \$250 if the licensee comes into  
22 compliance with the applicable continuing education  
23 requirements within 90 days after imposition of the original  
24 fine. All proceeds of fines under this subparagraph shall be  
25 deposited in the appropriate unlicensed activity account under  
26 s. 455.2281.

27 2. May refuse any further renewal of the licensee's  
28 license unless the licensee has paid the fine and satisfied  
29 the applicable continuing education requirements.

30 (c) The department is authorized to adopt by rule a  
31 process for the resolution of disputes between a vendor and a

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1 continuing education provider, between a vendor and a  
2 licensee, and between a licensee and a continuing education  
3 provider. The process shall ensure all parties a fair  
4 opportunity to correct any erroneous information. If the  
5 parties are unable to reach an agreement, the department shall  
6 determine the resolution of the dispute.

7 (d) Upon the failure of a vendor to meet its  
8 obligations under a contract as provided in paragraph (a), the  
9 department may suspend the contract and enter into an  
10 emergency contract under s. 287.057(3).

11 (3) Notwithstanding any other provision of law to the  
12 contrary and regardless of whether the compliance monitoring  
13 system is privatized, neither the department nor a board may  
14 impose any sanction other than the sanctions specified in  
15 paragraph (2)(b) for the failure of a licensee to meet  
16 continuing education requirements. This subsection does not  
17 apply to actions under chapter 473.

18 (4) The department shall waive the continuing  
19 education monitoring requirements of this section for any  
20 profession that demonstrates to the department that it has a  
21 program in place which measures compliance with continuing  
22 education requirements through statistical sampling techniques  
23 or other methods and can indicate that at least 95 percent of  
24 its licensees are in compliance.

25 (5) The department is authorized to adopt rules to  
26 implement this section.

27 Section 96. Section 455.2178, Florida Statutes, is  
28 created to read:

29 455.2178 Continuing education providers.--If the  
30 monitoring of compliance with continuing education  
31 requirements is privatized pursuant to s. 455.2177:

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1           (1)(a) The department shall notify each approved  
2 continuing education provider of the name and address of all  
3 vendors that monitor compliance of licensees under s.  
4 455.2177. If the department contracts with more than one  
5 vendor under s. 455.2177, the notice shall specify the  
6 professions to be monitored by each vendor.

7           (b) Each continuing education provider shall provide  
8 to the appropriate vendor such information regarding the  
9 continuing education status of licensees as the department  
10 determines is necessary for the vendor to carry out its duties  
11 under s. 455.2177(2), in a form determined by the department.  
12 The information must be submitted to the vendor electronically  
13 no later than 5 business days after a licensee's completion of  
14 a course. Upon the request of a licensee, the provider must  
15 also furnish to a vendor information regarding courses  
16 completed by the licensee.

17           (2) Each continuing education provider shall retain  
18 all records relating to a licensee's completion of continuing  
19 education courses for at least 4 years after completion of a  
20 course.

21           (3) A continuing education provider may not be  
22 approved, and the approval may not be renewed, unless the  
23 provider agrees in writing to provide such cooperation with  
24 vendors under s. 455.2177 as the department deems necessary or  
25 appropriate.

26           (4) The department may immediately revoke approval of  
27 any continuing education provider that fails to comply with  
28 its duties under this section.

29           (5) For the purpose of determining which persons or  
30 entities must meet the reporting, recordkeeping, and access  
31 provisions of this section, the board of any profession



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1 subject to this section, or the department if there is no  
2 board, shall, by rule, adopt a definition of the term  
3 "continuing education provider" applicable to the profession's  
4 continuing education requirements. The intent of the rule  
5 shall be to ensure that all records and information necessary  
6 to carry out the requirements of this section and s. 455.2177  
7 are maintained and transmitted accordingly and to minimize  
8 disputes as to what person or entity is responsible for  
9 maintaining and reporting such records and information.

10 (6) The department has the authority to adopt rules to  
11 implement this section.

12 Section 97. Section 455.2179, Florida Statutes, is  
13 created to read:

14 455.2179 Continuing education provider approval; cease  
15 and desist orders.--

16 (1) If a board, or the department if there is no  
17 board, requires approval of a continuing education provider,  
18 the approval must be for a specified period of time, not to  
19 exceed 4 years. An approval that does not include such a time  
20 limitation may remain in effect only until July 1, 2001,  
21 unless earlier replaced by an approval that includes such a  
22 time limitation.

23 (2) The department, on its own motion or at the  
24 request of a board, shall issue an order requiring a person or  
25 entity to cease and desist from offering any continuing  
26 education programs for licensees, and revoking any approval of  
27 the provider previously granted by the department or a board,  
28 if the department or a board determines that the person or  
29 entity failed to provide appropriate continuing education  
30 services that conform to approved course material.

31 Section 98. Section 455.2281, Florida Statutes, is

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1 amended to read:

2           455.2281 Unlicensed activities; fees; disposition.--In  
3 order to protect the public and to ensure a consumer-oriented  
4 department, it is the intent of the Legislature that vigorous  
5 enforcement of regulation for all professional activities is a  
6 state priority. All enforcement costs should be covered by  
7 professions regulated by the department. Therefore, the  
8 department shall impose, upon initial licensure and each  
9 renewal thereof, a special fee of \$5 per licensee. Such fee  
10 shall be in addition to all other fees collected from each  
11 licensee and shall fund efforts to combat unlicensed activity.  
12 The board with concurrence of the department, or the  
13 department when there is no board, may earmark \$5 of the  
14 current licensure fee for this purpose, if such board, or  
15 profession regulated by the department, is not in a deficit  
16 and has a reasonable cash balance. The department shall make  
17 direct charges to this fund by profession and shall not  
18 allocate indirect overhead. The department shall seek board  
19 advice regarding enforcement methods and strategies prior to  
20 expenditure of funds; however, the department may, without  
21 board advice, allocate funds to cover the costs of continuing  
22 education compliance monitoring under s. 455.2177. The  
23 department shall directly credit, by profession, revenues  
24 received from the department's efforts to enforce licensure  
25 provisions, including revenues received from fines collected  
26 under s. 455.2177. The department shall include all financial  
27 and statistical data resulting from unlicensed activity  
28 enforcement and from continuing education compliance  
29 monitoring as a separate categories category in the quarterly  
30 management report provided for in s. 455.219. The department  
31 shall not charge the account of any profession for the costs

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1 incurred on behalf of any other profession. For an unlicensed  
2 activity account, a balance which remains at the end of a  
3 renewal cycle may, with concurrence of the applicable board  
4 and the department, be transferred to the operating fund  
5 account of that profession.

6 Section 99. Subsection (1) of section 455.224, Florida  
7 Statutes, is amended to read:

8 455.224 Authority to issue citations.--

9 (1) Notwithstanding s. 455.225, the board, or the  
10 department ~~when there is no board,~~ shall adopt rules to permit  
11 the issuance of citations. The citation shall be issued to the  
12 subject and shall contain the subject's name and address, the  
13 subject's license number if applicable, a brief factual  
14 statement, the sections of the law allegedly violated, and the  
15 penalty imposed. The citation must clearly state that the  
16 subject may choose, in lieu of accepting the citation, to  
17 follow the procedure under s. 455.225. If the subject disputes  
18 the matter in the citation, the procedures set forth in s.  
19 455.225 must be followed. However, if the subject does not  
20 dispute the matter in the citation with the department within  
21 30 days after the citation is served, the citation becomes a  
22 final order and constitutes discipline. The penalty shall be a  
23 fine or other conditions as established by rule.

24 Section 100. Subsection (2) of section 468.4315,  
25 Florida Statutes, 1998 Supplement, is amended to read:

26 468.4315 Regulatory Council of Community Association  
27 Managers.--

28 (2) The council may adopt rules relating to the  
29 licensure examination, continuing education requirements,  
30 continuing education providers, fees, and professional  
31 practice standards to assist the department in carrying out

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1 the duties and authorities conferred upon the department by  
2 this part.

3 Section 101. Subsection (7) of section 477.019,  
4 Florida Statutes, 1998 Supplement, is amended to read:

5 477.019 Cosmetologists; qualifications; licensure;  
6 supervised practice; license renewal; endorsement; continuing  
7 education.--

8 (7)(a) The board shall prescribe by rule continuing  
9 education requirements intended to ensure protection of the  
10 public through updated training of licensees and registered  
11 specialists, not to exceed 16 hours biennially, as a condition  
12 for renewal of a license or registration as a specialist under  
13 this chapter. Continuing education courses shall include, but  
14 not be limited to, the following subjects as they relate to  
15 the practice of cosmetology: human immunodeficiency virus and  
16 acquired immune deficiency syndrome; Occupational Safety and  
17 Health Administration regulations; workers' compensation  
18 issues; state and federal laws and rules as they pertain to  
19 cosmetologists, cosmetology, salons, specialists, specialty  
20 salons, and booth renters; chemical makeup as it pertains to  
21 hair, skin, and nails; and environmental issues. Courses given  
22 at cosmetology conferences may be counted toward the number of  
23 continuing education hours required if approved by the board.

24 ~~(b) The department may privatize provider and course~~  
25 ~~approval and the monitoring of continuing education~~  
26 ~~requirements under a contract which ensures that the services~~  
27 ~~will be without cost to the department or board, including the~~  
28 ~~cost of appropriate oversight by the department. The~~  
29 ~~department may contract with one or more private entities for~~  
30 ~~the provision of such services, including the collection of~~  
31 ~~fees for the services rendered. The department and board shall~~

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1 ~~retain final authority for licensure decisions, rulemaking~~  
2 ~~related to continuing education system requirements,~~  
3 ~~noncompliance noticing, and overall implementation of any~~  
4 ~~privatization project under this subsection.~~

5       **(b)(e)** Any person whose occupation or practice is  
6 confined solely to hair braiding, or hair wrapping, or body  
7 wrapping is exempt from the continuing education requirements  
8 of this subsection.

9       **(c)(d)** ~~Notwithstanding any provision of law to the~~  
10 ~~contrary, enforcement of mandatory continuing education~~  
11 ~~requirements pursuant to this chapter shall be accomplished~~  
12 ~~only as a secondary action when a person is investigated for~~  
13 ~~another violation. However,~~The board may, by rule, require  
14 any licensee in violation of a continuing education  
15 requirement to take a refresher course or refresher course and  
16 examination in addition to any other penalty. The number of  
17 hours for the refresher course may not exceed 48 hours.

18  
19 (Redesignate subsequent sections.)

20  
21  
22 ===== T I T L E    A M E N D M E N T =====

23 And the title is amended as follows:

24       On page 169, line 7, delete that line

25  
26 and insert:

27       An act relating to commerce; amending s. 11.62,  
28       F.S.; providing criteria for evaluating  
29       proposals for new regulation of a profession or  
30       occupation based on the effect of such  
31       regulation on job creation or retention;

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1 requiring proponents of legislation to regulate  
2 a profession or occupation not already  
3 regulated to provide additional cost  
4 information; amending ss. 455.201, 455.517,  
5 F.S.; prohibiting the Department of Business  
6 and Professional Regulation and the Department  
7 of Health and their regulatory boards from  
8 creating any regulation that has an  
9 unreasonable effect on job creation or  
10 retention or on employment opportunities;  
11 providing for evaluation of proposals to  
12 increase the regulation of already regulated  
13 professions to determine the effect of such  
14 regulation on job creation or retention and  
15 employment opportunities; creating s. 455.2035,  
16 F.S.; providing rulemaking authority to the  
17 Department of Business and Professional  
18 Regulation for the regulation of any profession  
19 under its jurisdiction which does not have a  
20 regulatory board; creating s. 455.2123, F.S.;

21 authorizing the use of distance learning to  
22 satisfy continuing education requirements;  
23 creating s. 455.2124, F.S.; authorizing  
24 proration of continuing education requirements;  
25 amending s. 455.213, F.S.; requiring  
26 fingerprint cards with applications for  
27 registration, certification, or licensure in  
28 certain professions; providing for use of such  
29 cards for criminal history record checks of  
30 applicants; amending s. 468.453, F.S.; applying  
31 such fingerprint card requirements to

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1 applicants for licensure as an athlete agent;  
2 amending s. 475.175, F.S.; applying such  
3 fingerprint card requirements to persons  
4 applying to take the examination for licensure  
5 as a real estate broker or salesperson;  
6 amending s. 475.615, F.S.; applying such  
7 fingerprint card requirements to applicants for  
8 registration, certification, or licensure as a  
9 real estate appraiser; creating s. 455.2255,  
10 F.S.; providing for the department to classify  
11 disciplinary actions according to severity;  
12 providing for the periodic clearing of certain  
13 violations from the disciplinary record;  
14 amending s. 455.227, F.S.; providing for denial  
15 or renewal of a license under certain  
16 circumstances; amending s. 455.564, F.S.;  
17 clarifying continuing education requirements;  
18 amending s. 477.013, F.S.; redefining the terms  
19 "cosmetology" and "specialty" and defining the  
20 terms "body wrapping" and "skin care services";  
21 amending s. 477.0132, F.S.; requiring  
22 registration of persons whose occupation or  
23 practice is body wrapping; requiring a  
24 registration fee and certain education;  
25 amending s. 477.026, F.S.; providing for the  
26 registration fee; amending s. 477.0265, F.S.;  
27 prohibiting advertising or implying that skin  
28 care services or body wrapping have any  
29 relationship to the practice of massage  
30 therapy; providing penalties; amending s.  
31 477.029, F.S.; prohibiting holding oneself out

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1 as a body wrapper unless licensed, registered,  
2 or otherwise authorized under chapter 477,  
3 F.S.; providing penalties; providing rulemaking  
4 authority; amending ss. 455.209, 455.221,  
5 455.541, and 455.594, F.S.; revising provisions  
6 relating to the provision of legal services for  
7 regulatory boards under the Department of  
8 Business and Professional Regulation and the  
9 Department of Health; providing for the funding  
10 of such services; amending ss. 458.347 and  
11 459.022, F.S., relating to physician  
12 assistants, to conform; creating s. 455.2177,  
13 F.S.; requiring the department to establish a  
14 system to monitor licensee compliance with  
15 applicable continuing education requirements;  
16 authorizing the department to contract with one  
17 or more vendors for the monitoring of  
18 compliance with applicable continuing education  
19 requirements by all licensees within one or  
20 more professions regulated by the department;  
21 providing contract terms and conditions;  
22 providing for funding of contracts; providing  
23 sanctions for failure to comply and requiring  
24 notice thereof; providing for disposition of  
25 fine revenues; providing for exclusivity of  
26 sanctions over certain other disciplinary  
27 provisions; providing for a dispute resolution  
28 process; providing for suspension of a contract  
29 for failure of a vendor to meet its contract  
30 obligations; providing for waiver under  
31 specified circumstances; providing rulemaking



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1 authority; creating s. 455.2178, F.S.;

2 providing requirements of continuing education

3 providers with respect to cooperating with such

4 vendors; providing conditions on approval of

5 continuing education providers; providing for

6 revocation of provider approval for failure to

7 comply; providing rulemaking authority;

8 creating s. 455.2179, F.S.; providing limits on

9 continuing education provider approval;

10 providing for cease and desist orders and

11 revocation of provider approval thereunder;

12 amending s. 455.2281, F.S.; providing for

13 allocation of certain funds to cover the costs

14 of continuing education compliance monitoring;

15 providing for crediting, by profession, fines

16 collected under the compliance monitoring

17 system; providing for inclusion of financial

18 and statistical data resulting from compliance

19 monitoring as a separate category in the

20 department's quarterly management report to

21 each board; amending s. 455.224, F.S.;

22 providing for adoption by the department of

23 rules to permit the issuance of citations,

24 whether or not there is a board; amending s.

25 468.4315, F.S.; authorizing the Regulatory

26 Council of Community Association Managers to

27 adopt rules relating to continuing education

28 providers; amending s. 477.019, F.S.; revising

29 provisions relating to continuing education

30 requirements of cosmetologists;

31