

By the Committee on Regulated Industries

315-1921A-99

1 A bill to be entitled
2 An act relating to regulation of professions
3 and occupations under the Department of
4 Business and Professional Regulation; creating
5 s. 455.2177, F.S.; requiring the department to
6 establish a system to monitor licensee
7 compliance with applicable continuing education
8 requirements; authorizing the department to
9 contract with one or more vendors for the
10 monitoring of compliance with applicable
11 continuing education requirements by all
12 licensees within one or more professions
13 regulated by the department; providing contract
14 terms and conditions; providing for funding of
15 contracts; providing sanctions for failure to
16 comply and requiring notice thereof; providing
17 for disposition of fine revenues; providing for
18 exclusivity of sanctions over certain other
19 disciplinary provisions; providing for a
20 dispute resolution process; providing for
21 suspension of a contract for failure of a
22 vendor to meet its contract obligations;
23 providing for waiver under specified
24 circumstances; providing rulemaking authority;
25 creating s. 455.2178, F.S.; providing
26 requirements of continuing education providers
27 with respect to cooperating with such vendors;
28 providing conditions on approval of continuing
29 education providers; providing for revocation
30 of provider approval for failure to comply;
31 providing rulemaking authority; creating s.

1 455.2179, F.S.; providing limits on continuing
2 education provider approval; providing for
3 cease and desist orders and revocation of
4 provider approval thereunder; amending s.
5 455.2281, F.S.; providing for allocation of
6 certain funds to cover the costs of continuing
7 education compliance monitoring; providing for
8 crediting, by profession, fines collected under
9 the compliance monitoring system; providing for
10 inclusion of financial and statistical data
11 resulting from compliance monitoring as a
12 separate category in the department's quarterly
13 management report to each board; amending s.
14 455.224, F.S.; providing for adoption by the
15 department of rules to permit the issuance of
16 citations, whether or not there is a board;
17 amending s. 468.4315, F.S.; authorizing the
18 Regulatory Council of Community Association
19 Managers to adopt rules relating to continuing
20 education providers; amending s. 477.019, F.S.;
21 revising provisions relating to continuing
22 education requirements of cosmetologists;
23 providing an effective date.

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

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27 Section 1. Section 455.2177, Florida Statutes, is
28 created to read:

29 455.2177 Monitoring of compliance with continuing
30 education requirements.--

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1 (1) The department shall establish a system to monitor
2 licensee compliance with applicable continuing education
3 requirements and to determine each licensee's continuing
4 education status. The department is authorized to provide for
5 a phase-in of the compliance monitoring system, but the system
6 must provide for monitoring of compliance with applicable
7 continuing education requirements by all professions regulated
8 by the department no later than July 1, 2002. The compliance
9 monitoring system may use staff of the department or may be
10 privatized. As used in this section, the term "monitor" means
11 the act of determining, for each licensee, whether the
12 licensee was in full compliance with applicable continuing
13 education requirements as of the time of the licensee's
14 license renewal.

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

17 (a) The department may contract pursuant to s. 287.057
18 with a vendor or vendors for the monitoring of compliance with
19 applicable continuing education requirements by all licensees
20 within one or more professions regulated by the department.
21 The contract shall include, but need not be limited to, the
22 following terms and conditions:

23 1.a. The vendor shall create a computer database, in
24 the form required by the department, that includes the
25 continuing education status of each licensee and shall provide
26 a report to the department within 90 days after the vendor
27 receives the list of licensees to be monitored as provided in
28 sub-subparagraph b. The report shall be in a format determined
29 by the department and shall include each licensee's continuing
30 education status by license number, hours of continuing
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1 education credit per cycle, and such other information the
2 department deems necessary.

3 b. No later than 30 days after the end of each renewal
4 period, the department shall provide to the vendor a list that
5 includes all licensees of a particular profession whose
6 licenses were renewed during a particular renewal period. In
7 order to account for late renewals, the department shall
8 provide the vendor with such updates to the list as are
9 mutually determined to be necessary.

10 2.a. Before the vendor informs the department of the
11 status of any licensee the vendor has determined is not in
12 compliance with continuing education requirements, the vendor,
13 acting on behalf of the department, shall provide the licensee
14 with a notice stating that the vendor has determined that the
15 licensee is not in compliance with applicable continuing
16 education requirements. The notice shall also include the
17 licensee's continuing education record for the renewal period,
18 as shown in the records of the vendor, and a description of
19 the process for correcting the vendor's record under
20 sub-subparagraph b.

21 b. The vendor shall give the licensee 45 days to
22 correct the vendor's information. The vendor shall correct a
23 record only on the basis of evidence of compliance supplied to
24 the vendor by a continuing education provider.

25 3.a. The vendor must provide the department, with the
26 report required under subparagraph 1., a list, in a form
27 determined by the department, identifying each licensee who
28 the vendor has determined is not in compliance with applicable
29 continuing education requirements.

30 b. The vendor shall provide the department with access
31 to such information and services as the department deems

1 necessary to ensure that the actions of the vendor conform to
2 the contract and to the duties of the department and the
3 vendor under this subsection.

4 4. The department shall ensure the vendor access to
5 such information from continuing education providers as is
6 necessary to determine the continuing education record of each
7 licensee. The vendor shall inform the department of any
8 provider that fails to provide such information to the vendor.

9 5. If the vendor fails to comply with a provision of
10 the contract, the vendor is obligated to pay the department
11 liquidated damages in the amounts specified in the contract.

12 6. The department's payments to the vendor must be
13 based on the number of licensees monitored. The department may
14 allocate from the unlicensed activity account of any
15 profession under s. 455.2281 up to \$2 per licensee for the
16 monitoring of that profession's licensees under this
17 subsection, which allocations are the exclusive source of
18 funding for contracts under this subsection.

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

21 (b) When it receives notice from a vendor that a
22 licensee is not in compliance with continuing education
23 requirements, the department shall send the licensee written
24 notice that disciplinary actions will be taken, together with
25 a description of the remedies available to the licensee under
26 the dispute resolution process created under paragraph (c). If
27 a licensee does not prevail in the dispute resolution process,
28 the department:

29 1. May impose an administrative fine in the amount of
30 \$500 against the licensee; however, the department may reduce
31 the amount of the fine to \$250 if the licensee comes into

1 compliance with the applicable continuing education
2 requirements within 90 days after imposition of the original
3 fine. All proceeds of fines under this subparagraph shall be
4 deposited in the appropriate unlicensed activity account under
5 s. 455.2281.

6 2. May refuse any further renewal of the licensee's
7 license unless the licensee has paid the fine and satisfied
8 the applicable continuing education requirements.

9 (c) The department is authorized to adopt by rule a
10 process for the resolution of disputes between a vendor and a
11 continuing education provider, between a vendor and a
12 licensee, and between a licensee and a continuing education
13 provider. The process shall ensure all parties a fair
14 opportunity to correct any erroneous information. If the
15 parties are unable to reach an agreement, the department shall
16 determine the resolution of the dispute.

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

21 (3) Notwithstanding any other provision of law to the
22 contrary and regardless of whether the compliance monitoring
23 system is privatized, neither the department nor a board may
24 impose any sanction other than the sanctions specified in
25 paragraph (2)(b) for the failure of a licensee to meet
26 continuing education requirements. This subsection does not
27 apply to actions under chapter 473.

28 (4) The department shall waive the continuing
29 education monitoring requirements of this section for any
30 profession that demonstrates to the department that it has a
31 program in place which measures compliance with continuing

1 education requirements through statistical sampling techniques
2 or other methods and can indicate that at least 95 percent of
3 its licensees are in compliance.

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

6 Section 2. Section 455.2178, Florida Statutes, is
7 created to read:

8 455.2178 Continuing education providers.--If the
9 monitoring of compliance with continuing education
10 requirements is privatized pursuant to s. 455.2177:

11 (1)(a) The department shall notify each approved
12 continuing education provider of the name and address of all
13 vendors that monitor compliance of licensees under s.
14 455.2177. If the department contracts with more than one
15 vendor under s. 455.2177, the notice shall specify the
16 professions to be monitored by each vendor.

17 (b) Each continuing education provider shall provide
18 to the appropriate vendor such information regarding the
19 continuing education status of licensees as the department
20 determines is necessary for the vendor to carry out its duties
21 under s. 455.2177(2), in a form determined by the department.
22 The information must be submitted to the vendor electronically
23 no later than 5 business days after a licensee's completion of
24 a course. Upon the request of a licensee, the provider must
25 also furnish to a vendor information regarding courses
26 completed by the licensee.

27 (2) Each continuing education provider shall retain
28 all records relating to a licensee's completion of continuing
29 education courses for at least 4 years after completion of a
30 course.

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

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

9 (5) For the purpose of determining which persons or
10 entities must meet the reporting, recordkeeping, and access
11 provisions of this section, the board of any profession
12 subject to this section, or the department if there is no
13 board, shall, by rule, adopt a definition of the term
14 "continuing education provider" applicable to the profession's
15 continuing education requirements. The intent of the rule
16 shall be to ensure that all records and information necessary
17 to carry out the requirements of this section and s. 455.2177
18 are maintained and transmitted accordingly and to minimize
19 disputes as to what person or entity is responsible for
20 maintaining and reporting such records and information.

21 (6) The department has the authority to adopt rules to
22 implement this section.

23 Section 3. Section 455.2179, Florida Statutes, is
24 created to read:

25 455.2179 Continuing education provider approval; cease
26 and desist orders.--

27 (1) If a board, or the department if there is no
28 board, requires approval of a continuing education provider,
29 the approval must be for a specified period of time, not to
30 exceed 4 years. An approval that does not include such a time
31 limitation may remain in effect only until July 1, 2001,

1 unless earlier replaced by an approval that includes such a
2 time limitation.

3 (2) The department, on its own motion or at the
4 request of a board, shall issue an order requiring a person or
5 entity to cease and desist from offering any continuing
6 education programs for licensees, and revoking any approval of
7 the provider previously granted by the department or a board,
8 if the department or a board determines that the person or
9 entity failed to provide appropriate continuing education
10 services that conform to approved course material.

11 Section 4. Section 455.2281, Florida Statutes, is
12 amended to read:

13 455.2281 Unlicensed activities; fees; disposition.--In
14 order to protect the public and to ensure a consumer-oriented
15 department, it is the intent of the Legislature that vigorous
16 enforcement of regulation for all professional activities is a
17 state priority. All enforcement costs should be covered by
18 professions regulated by the department. Therefore, the
19 department shall impose, upon initial licensure and each
20 renewal thereof, a special fee of \$5 per licensee. Such fee
21 shall be in addition to all other fees collected from each
22 licensee and shall fund efforts to combat unlicensed activity.
23 The board with concurrence of the department, or the
24 department when there is no board, may earmark \$5 of the
25 current licensure fee for this purpose, if such board, or
26 profession regulated by the department, is not in a deficit
27 and has a reasonable cash balance. The department shall make
28 direct charges to this fund by profession and shall not
29 allocate indirect overhead. The department shall seek board
30 advice regarding enforcement methods and strategies prior to
31 expenditure of funds; however, the department may, without

1 board advice, allocate funds to cover the costs of continuing
2 education compliance monitoring under s. 455.2177. The
3 department shall directly credit, by profession, revenues
4 received from the department's efforts to enforce licensure
5 provisions, including revenues received from fines collected
6 under s. 455.2177. The department shall include all financial
7 and statistical data resulting from unlicensed activity
8 enforcement and from continuing education compliance
9 monitoring as a separate categories category in the quarterly
10 management report provided for in s. 455.219. The department
11 shall not charge the account of any profession for the costs
12 incurred on behalf of any other profession. For an unlicensed
13 activity account, a balance which remains at the end of a
14 renewal cycle may, with concurrence of the applicable board
15 and the department, be transferred to the operating fund
16 account of that profession.

17 Section 5. Subsection (1) of section 455.224, Florida
18 Statutes, is amended to read:

19 455.224 Authority to issue citations.--

20 (1) Notwithstanding s. 455.225, the board, or the
21 department ~~when there is no board,~~ shall adopt rules to permit
22 the issuance of citations. The citation shall be issued to the
23 subject and shall contain the subject's name and address, the
24 subject's license number if applicable, a brief factual
25 statement, the sections of the law allegedly violated, and the
26 penalty imposed. The citation must clearly state that the
27 subject may choose, in lieu of accepting the citation, to
28 follow the procedure under s. 455.225. If the subject disputes
29 the matter in the citation, the procedures set forth in s.
30 455.225 must be followed. However, if the subject does not
31 dispute the matter in the citation with the department within

1 30 days after the citation is served, the citation becomes a
2 final order and constitutes discipline. The penalty shall be a
3 fine or other conditions as established by rule.

4 Section 6. Subsection (2) of section 468.4315, Florida
5 Statutes, 1998 Supplement, is amended to read:

6 468.4315 Regulatory Council of Community Association
7 Managers.--

8 (2) The council may adopt rules relating to the
9 licensure examination, continuing education requirements,
10 continuing education providers, fees, and professional
11 practice standards to assist the department in carrying out
12 the duties and authorities conferred upon the department by
13 this part.

14 Section 7. Subsection (7) of section 477.019, Florida
15 Statutes, 1998 Supplement, is amended to read:

16 477.019 Cosmetologists; qualifications; licensure;
17 supervised practice; license renewal; endorsement; continuing
18 education.--

19 (7)(a) The board shall prescribe by rule continuing
20 education requirements intended to ensure protection of the
21 public through updated training of licensees and registered
22 specialists, not to exceed 16 hours biennially, as a condition
23 for renewal of a license or registration as a specialist under
24 this chapter. Continuing education courses shall include, but
25 not be limited to, the following subjects as they relate to
26 the practice of cosmetology: human immunodeficiency virus and
27 acquired immune deficiency syndrome; Occupational Safety and
28 Health Administration regulations; workers' compensation
29 issues; state and federal laws and rules as they pertain to
30 cosmetologists, cosmetology, salons, specialists, specialty
31 salons, and booth renters; chemical makeup as it pertains to

1 hair, skin, and nails; and environmental issues. Courses given
2 at cosmetology conferences may be counted toward the number of
3 continuing education hours required if approved by the board.

4 ~~(b) The department may privatize provider and course~~
5 ~~approval and the monitoring of continuing education~~
6 ~~requirements under a contract which ensures that the services~~
7 ~~will be without cost to the department or board, including the~~
8 ~~cost of appropriate oversight by the department. The~~
9 ~~department may contract with one or more private entities for~~
10 ~~the provision of such services, including the collection of~~
11 ~~fees for the services rendered. The department and board shall~~
12 ~~retain final authority for licensure decisions, rulemaking~~
13 ~~related to continuing education system requirements,~~
14 ~~noncompliance noticing, and overall implementation of any~~
15 ~~privatization project under this subsection.~~

16 (b)(c) Any person whose occupation or practice is
17 confined solely to hair braiding or hair wrapping is exempt
18 from the continuing education requirements of this subsection.

19 (c)(d) ~~Notwithstanding any provision of law to the~~
20 ~~contrary, enforcement of mandatory continuing education~~
21 ~~requirements pursuant to this chapter shall be accomplished~~
22 ~~only as a secondary action when a person is investigated for~~
23 ~~another violation. However,~~The board may, by rule, require
24 any licensee in violation of a continuing education
25 requirement to take a refresher course or refresher course and
26 examination in addition to any other penalty. The number of
27 hours for the refresher course may not exceed 48 hours.

28 Section 8. This act shall take effect July 1, 1999.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 190

4 Requires the Department of Business and Professional
5 Regulation by July 1, 2002, to monitor 100% of professional
6 licenses for compliance with continuing education
7 requirements.

8 Allows the department to privatize the compliance monitoring
9 system, in accordance with specific responsibilities that are
10 spelled out for the department, the contract vendor, and the
11 continuing education provider.

12 Allows the department to allocate funds to cover the costs of
13 continuing education compliance monitoring without board
14 advice.

15 Establishes that the department or the applicable board can
16 adopt rules to permit the issuance of sanctions.

17 Gives the Regulatory Council of Community Association Managers
18 rulemaking authority relating to continuing education
19 providers.

20 Amends the cosmetology act to delete privatization and
21 discipline provisions that conflict with the provisions of
22 this bill.