

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; amending  
5           s. 455.32, F.S.; revising the Management  
6           Privatization Act; providing definitions;  
7           authorizing the department, pursuant to board,  
8           commission, or council request, to establish  
9           and contract with a nonprofit corporation to  
10          perform support services specified pursuant to  
11          contract for the applicable profession;  
12          requiring development of a business case  
13          subject to executive and legislative approval;  
14          providing corporation organization, powers,  
15          duties, and staff; authorizing per diem and  
16          reimbursement for travel expenses; requiring  
17          adherence to the code of ethics for public  
18          officers and employees; providing sovereign  
19          immunity; providing for corporation boards of  
20          directors and for contract managers; providing  
21          contract requirements; establishing financing,  
22          reporting, recordkeeping, and audit  
23          requirements; providing for quarterly  
24          assessment and annual certification of contract  
25          compliance; providing requirements in the event  
26          any provision of the section is held  
27          unconstitutional; amending s. 455.2177, F.S.;  
28          revising requirements for the monitoring of  
29          continuing education compliance; removing  
30          provisions relating to privatization and  
31          dispute resolution; revising penalties for

1 failure to comply with continuing education  
2 requirements; revising requirements for waiver  
3 of such monitoring; providing rulemaking  
4 authority; amending s. 455.2178, F.S.; revising  
5 reporting requirements for continuing education  
6 providers; removing provisions relating to  
7 private vendors; revising penalties for  
8 noncompliant continuing education providers;  
9 providing for conduct of investigations and  
10 prosecutions of noncompliant continuing  
11 education providers; providing rulemaking  
12 authority; amending s. 455.2179, F.S.; revising  
13 continuing education provider and course  
14 approval procedures; revising penalties for  
15 failing to teach approved course content;  
16 providing for conduct of investigations and  
17 prosecutions of noncompliant continuing  
18 education providers; providing rulemaking  
19 authority; amending s. 455.2281, F.S., relating  
20 to unlicensed activities; removing a  
21 cross-reference to conform; amending s.  
22 481.205, F.S., relating to the Board of  
23 Architecture and Interior Design; removing a  
24 cross-reference to conform; amending s.  
25 509.013, F.S.; defining the term "third party  
26 provider" for purposes of public lodging and  
27 public food service establishments; amending s.  
28 509.049, F.S.; revising provisions regarding  
29 approval of foods safety training programs and  
30 responsibilities of public food service  
31 establishments, employees, and third party

1 providers of training; revising rulemaking  
 2 authority; providing penalties; providing an  
 3 effective date.

4  
 5 Be It Enacted by the Legislature of the State of Florida:

6  
 7 Section 1. Section 455.32, Florida Statutes, is  
 8 amended to read:

9 (Substantial rewording of section. See  
 10 s. 455.32, F.S., for present text.)

11 455.32 Management Privatization Act.--

12 (1) This section shall be known by the popular name  
 13 the "Management Privatization Act."

14 (2) The purpose of this section is to create a model  
 15 for contracting with nonprofit corporations to provide  
 16 services for the regulation of Florida's professionals which  
 17 will ensure a consistent, effective application of regulatory  
 18 provisions and appropriate budgetary oversight to achieve the  
 19 most efficient use of public funds. Nonprofit corporations may  
 20 be established pursuant to this section to provide  
 21 administrative, examination, licensing, investigative, and  
 22 prosecutorial services to any board created within the  
 23 department pursuant to chapter 20 in accordance with the  
 24 provisions of this chapter and the applicable practice act. No  
 25 additional entities may be created to provide these services.

26 (3) As used in this section, the term:

27 (a) "Board" means any board, commission, or council  
 28 created within the department pursuant to chapter 20.

29 (b) "Corporation" means any nonprofit corporation with  
 30 which the department contracts pursuant to subsection (14).

31

1        (c) "Department" means the Department of Business and  
2 Professional Regulation.

3        (d) "Contract manager" means an employee of the  
4 department who serves as a liaison between the department, the  
5 board, and the corporation and is responsible for ensuring  
6 that the police powers of the state are not exercised by the  
7 corporation, while also serving as the contract monitor.

8        (e) "Business case" means a needs assessment,  
9 financial feasibility study, and corporate financial model as  
10 specified in paragraph (4).

11        (f) "Performance standards and measurable outcomes"  
12 shall include, but not be limited to, timeliness and  
13 qualitative criteria for the activities specified in paragraph  
14 (6)(o).

15        (g) "Secretary" means the Secretary of Business and  
16 Professional Regulation.

17        (4) Based upon the request of any board, the  
18 department is authorized to establish and contract with a  
19 nonprofit corporation to provide administrative, examination,  
20 licensing, investigative, and prosecutorial services to that  
21 board, in accordance with the provisions of this chapter and  
22 the applicable practice act and as specified in a contract  
23 between the department and the corporation. The privatization  
24 request must contain a business case that includes a needs  
25 assessment and financial feasibility study performed by the  
26 board or an entity commissioned by a majority vote of the  
27 board. The needs assessment must contain specific performance  
28 standards and measurable outcomes and an evaluation of the  
29 department's current and projected performance in regard to  
30 those standards. The feasibility study must include the  
31 financial status of the board for the current fiscal year and

1 the next 2 fiscal years. A financial model for the corporation  
2 must also be developed which includes projected costs and  
3 expenses for the first 2 years of operation and specific  
4 performance standards and measurable outcomes. The business  
5 case must be approved by the Executive Office of the Governor  
6 and the Legislative Budget Commission prior to the  
7 establishment of the nonprofit corporation.

8 (5) Any such corporation may hire staff as necessary  
9 to carry out its functions. Such staff are not public  
10 employees for the purposes of chapter 110 or chapter 112,  
11 except that the board of directors and the employees of the  
12 corporation are subject to the provisions of s. 112.061 and  
13 part III of chapter 112. The provisions of s. 768.28 apply to  
14 each such corporation, which is deemed to be a corporation  
15 primarily acting as an instrumentality of the state but which  
16 is not an agency within the meaning of s. 20.03(11).

17 (6) Each corporation created to perform the functions  
18 provided in this section shall:

19 (a) Be a Florida corporation not for profit,  
20 incorporated under the provisions of chapter 617.

21 (b) Provide administrative, examination, licensing,  
22 investigative, and prosecutorial services to the board, which  
23 services may include unlicensed activity investigations and  
24 prosecutions, in accordance with the provisions of this  
25 chapter, the applicable practice act, and the contract  
26 required by this section.

27 (c) Receive, hold, and administer property and make  
28 only prudent expenditures directly related to the  
29 responsibilities of the applicable board and in accordance  
30 with the contract required by this section.  
31

1       (d) Be approved by the department to operate for the  
2 benefit of the board and in the best interest of the state.

3       (e) Operate under a fiscal year that begins on July 1  
4 of each year and ends on June 30 of the following year.

5       (f) Be funded through appropriations allocated to the  
6 regulation of the relevant profession from the Professional  
7 Regulation Trust Fund pursuant to s. 455.219.

8       (g) Have a five-member board of directors, three of  
9 whom are to be appointed by the applicable board and must be  
10 licensees regulated by that board and two of whom are to be  
11 appointed by the secretary and are laypersons not regulated by  
12 that board. Initially, one member shall be appointed for 2  
13 years, two members shall be appointed for 3 years, and two  
14 members shall be appointed for 4 years. One layperson shall be  
15 appointed to a 3-year term and one layperson shall be  
16 appointed to a 4-year term. Thereafter, all appointments shall  
17 be for 4-year terms. No new member shall serve more than two  
18 consecutive terms. Failure to attend three consecutive  
19 meetings shall be deemed a resignation from the board of  
20 directors, and the vacancy shall be filled by a new  
21 appointment. No professional board member may also serve on  
22 the board of directors for the corporation.

23       (h) Select its officers in accordance with its bylaws.  
24 The members of the board of directors may be removed by the  
25 Governor, for the same reasons that a board member may be  
26 removed pursuant to s. 455.209.

27       (i) Select the president of the corporation, who shall  
28 manage the operations of the corporation, subject to the  
29 approval of the board.

30       (j) Use a portion of the interest derived from the  
31 corporation account to offset the costs associated with the

1 use of credit cards for payment of fees by applicants or  
2 licensees.

3 (k) Operate under a written contract with the  
4 department.

5 (l) Provide for an annual financial audit of its  
6 financial accounts and records by an independent certified  
7 public accountant. The annual audit report shall include a  
8 management letter in accordance with s. 11.45 and a detailed  
9 supplemental schedule of expenditures for each expenditure  
10 category. The annual audit report must be submitted to the  
11 board, the department, and the Auditor General for review.

12 (m) Provide for all employees and nonemployees charged  
13 with the responsibility of receiving and depositing fee and  
14 fine revenues to have a faithful performance bond in such an  
15 amount and according to such terms as shall be determined in  
16 the contract.

17 (n) Keep financial and statistical information as  
18 necessary to completely disclose the financial condition and  
19 operation of the corporation and as requested by the Office of  
20 Program Policy Analysis and Government Accountability, the  
21 Auditor General, and the department.

22 (o) Submit to the secretary, the board, and the  
23 Legislature, on or before October 1 of each year, a report  
24 describing all of the activities of the corporation for the  
25 previous fiscal year which includes, but is not limited to,  
26 information concerning the programs and funds that have been  
27 transferred to the corporation. The report must include:

- 28 1. The number of license renewals.  
29 2. The number of license applications received.  
30 3. The number of license applications approved and  
31 denied and the number of licenses issued.

- 1        4. The average time required to issue a license.
- 2        5. The number of examinations administered and the
- 3 number of applicants who passed or failed the examination.
- 4        6. The number of complaints received.
- 5        7. The number of complaints determined to be legally
- 6 sufficient.
- 7        8. The number of complaints dismissed.
- 8        9. The number of complaints determined to have
- 9 probable cause.
- 10       10. The number of administrative complaints issued and
- 11 the status of the complaints.
- 12       11. The number and nature of disciplinary actions
- 13 taken by the board.
- 14       12. All revenues received and all expenses incurred by
- 15 the corporation during the preceding fiscal year in its
- 16 performance of the duties under the contract.
- 17       13. Any audit performed under paragraph (1), including
- 18 financial reports and performance audits.
- 19       14. The status of the compliance of the corporation
- 20 with all performance-based program measures adopted by the
- 21 board.
- 22       (p) Meet or exceed the requirements of the business
- 23 case developed by the board and approved by the Executive
- 24 Office of the Governor and the Legislative Budget Commission.
- 25       (7) The department shall annually certify that the
- 26 corporation is complying with the terms of the contract in a
- 27 manner consistent with the goals and purposes of the board and
- 28 in the best interest of the state. If the department
- 29 determines the corporation is not compliant with the terms of
- 30 the contract, including performance standards and measurable
- 31



1 outcomes, the contract may be terminated as provided in  
2 paragraph (14)(e).

3 (8) Nothing in this section shall limit the ability of  
4 the corporation to enter into contracts and perform all other  
5 acts incidental to those contracts which are necessary for the  
6 administration of its affairs and for the attainment of its  
7 purposes.

8 (9) The corporation may acquire by lease, and  
9 maintain, use, and operate, any real or personal property  
10 necessary to perform the duties provided by the contract and  
11 this section.

12 (10) The corporation may exercise the authority  
13 assigned to the department or board under this section or the  
14 practice act of the relevant profession, pursuant to the  
15 contract, including but not limited to initiating disciplinary  
16 investigations for unlicensed practice of the relevant  
17 profession. The corporation may make a determination of legal  
18 sufficiency to begin the investigative process as provided in  
19 s. 455.225. However, the department or the board may not  
20 delegate to the corporation, by contract or otherwise, the  
21 authority for determining probable cause to pursue  
22 disciplinary action against a licensee, taking final action on  
23 license actions or on disciplinary cases, or adopting  
24 administrative rules under chapter 120.

25 (11) The department shall retain the independent  
26 authority to open, investigate, or prosecute any cases or  
27 complaints, as necessary to protect the public health, safety,  
28 or welfare. In addition, the department shall retain sole  
29 authority to issue emergency suspension or restriction orders  
30 pursuant to s. 120.60 or may delegate concurrent authority for  
31 this purpose to the relevant professional board.

1       (12) The corporation is the sole source and depository  
2 for the records of the board, including all historical  
3 information and records. The corporation shall maintain those  
4 records in accordance with the guidelines of the Department of  
5 State and shall not destroy any records prior to the limits  
6 imposed by the Department of State.

7       (13) The board shall provide by rule for the  
8 procedures the corporation must follow to ensure that all  
9 licensure examinations are secure while under the  
10 responsibility of the corporation and that there is an  
11 appropriate level of monitoring during the licensure  
12 examinations.

13       (14) The contract between the department and the  
14 corporation must be in compliance with this section and other  
15 applicable laws. The department shall retain responsibility  
16 for any duties it currently exercises relating to its police  
17 powers and any other current duty that is not provided to the  
18 corporation by contract or this section. The contract shall  
19 provide, at a minimum, that:

20       (a) The corporation provide administrative,  
21 examination, licensing, investigative, and prosecutorial  
22 services in accordance with the provisions of this section and  
23 the practice act of the relevant profession. The prosecutorial  
24 functions of the corporation shall include the authority to  
25 pursue investigations leading to unlicensed practice  
26 complaints, with the approval of and at the direction of the  
27 relevant professional board. With approval of the department  
28 and the board, the corporation may subcontract for specialized  
29 services for the investigation and prosecution of unlicensed  
30 activity pursuant to this chapter. The corporation shall be  
31 required to report all criminal matters, including unlicensed

1 activity that constitutes a crime, to the state attorney for  
2 criminal prosecution pursuant to s. 455.2277.

3 (b) The articles of incorporation and bylaws of the  
4 corporation be approved by the department.

5 (c) The corporation submit an annual budget for  
6 approval by the department. If the department's appropriations  
7 request differs from the budget submitted by the corporation,  
8 the relevant professional board shall be permitted to  
9 authorize the inclusion in the appropriations request a  
10 comment or statement of disagreement with the department's  
11 request.

12 (d) The corporation utilize the department's licensing  
13 and computerized database system.

14 (e) The corporation be annually certified by the  
15 department as complying with the terms of the contract in a  
16 manner consistent with the goals and purposes of the board and  
17 in the best interest of the state. As part of the annual  
18 certification, the department shall make quarterly assessments  
19 regarding contract compliance by the corporation. The contract  
20 must also provide for methods and mechanisms for resolving any  
21 situation in which the assessment and certification process  
22 determines noncompliance, to include termination.

23 (f) The department employ a contract manager to  
24 actively monitor the activities of the corporation to ensure  
25 compliance with the contract, the provisions of this chapter,  
26 and the applicable practice act.

27 (g) The corporation be funded through appropriations  
28 allocated to the regulation of the relevant profession from  
29 the Professional Regulation Trust Fund.

30 (h) If the corporation is no longer approved to  
31 operate for the board or the board ceases to exist, all

1 moneys, records, data, and property held in trust by the  
2 corporation for the benefit of the board revert to the  
3 department, or the state if the department ceases to exist.  
4 All records and data in a computerized database must be  
5 returned to the department in a form that is compatible with  
6 the computerized database of the department.

7 (i) The corporation secure and maintain, during the  
8 term of the contract and for all acts performed during the  
9 term of the contract, all liability insurance coverages in an  
10 amount to be approved by the department to defend, indemnify,  
11 and hold harmless the corporation and its officers and  
12 employees, the department and its employees, the board, and  
13 the state against all claims arising from state and federal  
14 laws. Such insurance coverage must be with insurers qualified  
15 and doing business in the state. The corporation must provide  
16 proof of insurance to the department. The department and its  
17 employees, the board, and the state are exempt from and are  
18 not liable for any sum of money which represents a deductible,  
19 which sums shall be the sole responsibility of the  
20 corporation. Violation of this paragraph shall be grounds for  
21 terminating the contract.

22 (j) The board, in lieu of the department, shall retain  
23 board counsel pursuant to the requirements of s. 455.221. The  
24 corporation, out of its allocated budget, shall pay all costs  
25 of representation by the board counsel, including salary and  
26 benefits, travel, and any other compensation traditionally  
27 paid by the department to other board counsels.

28 (k) The corporation, out of its allocated budget, pay  
29 to the department all costs incurred by the corporation or the  
30 board for the Division of Administrative Hearings of the  
31

1 Department of Management Services and any other cost for  
2 utilization of these state services.

3 (l) The corporation, out of its allocated budget, pay  
4 to the department all direct and indirect costs associated  
5 with the monitoring of the contract, including salary and  
6 benefits, travel, and other related costs traditionally paid  
7 to state employees.

8 (m) The corporation comply with the performance  
9 standards and measurable outcomes developed by the board and  
10 the department. The performance standards and measurable  
11 outcomes must be specified within the contract.

12 (15) Corporation records are public records subject to  
13 the provisions of s. 119.07(1) and s. 24(a), Art. I of the  
14 State Constitution; however, public records exemptions set  
15 forth in ss. 455.217, 455.225, and 455.229 for records held by  
16 the department shall apply to records held by the corporation.  
17 In addition, all meetings of the board of directors are open  
18 to the public in accordance with s. 286.011 and s. 24(b), Art.  
19 I of the State Constitution. The department and the board  
20 shall have access to all records of the corporation as  
21 necessary to exercise their authority to approve and supervise  
22 the contract. The Auditor General and the Office of Program  
23 Policy Analysis and Government Accountability shall have  
24 access to all records of the corporation as necessary to  
25 conduct financial and operational audits or examinations.

26 (16) If any provision of this section is held to be  
27 unconstitutional or is held to violate the state or federal  
28 antitrust laws, the following shall occur:

29 (a) The corporation shall cease and desist from  
30 exercising any powers and duties enumerated in this section.

31

1           (b) The department shall resume the performance of  
2 such activities. The department shall regain and receive,  
3 hold, invest, and administer property and make expenditures  
4 for the benefit of the board.

5           (c) The Executive Office of the Governor,  
6 notwithstanding chapter 216, may reestablish positions, budget  
7 authority, and salary rate necessary to carry out the  
8 department's responsibilities related to the board.

9           Section 2. Section 455.2177, Florida Statutes, is  
10 amended to read:

11           455.2177 Monitoring of compliance with continuing  
12 education requirements.--

13           (1) The department shall establish a system to monitor  
14 licensee compliance with applicable continuing education  
15 requirements and to determine each licensee's continuing  
16 education status. ~~The department is authorized to provide for~~  
17 ~~a phase in of the compliance monitoring system, but the system~~  
18 ~~must provide for monitoring of compliance with applicable~~  
19 ~~continuing education requirements by all professions regulated~~  
20 ~~by the department no later than July 1, 2002. The compliance~~  
21 ~~monitoring system may use staff of the department or may be~~  
22 ~~privatized.~~ As used in this section, the term "monitor" means  
23 the act of determining, for each licensee, whether the  
24 licensee was in full compliance with applicable continuing  
25 education requirements as of the time of the licensee's  
26 license renewal.

27           ~~(2) If the compliance monitoring system required under~~  
28 ~~this section is privatized, the following provisions apply:~~

29           ~~(a) The department may contract pursuant to s. 287.057~~  
30 ~~with a vendor or vendors for the monitoring of compliance with~~  
31 ~~applicable continuing education requirements by all licensees~~

1 ~~within one or more professions regulated by the department.~~  
2 ~~The contract shall include, but need not be limited to, the~~  
3 ~~following terms and conditions:~~

4       ~~1.a. The vendor shall create a computer database, in~~  
5 ~~the form required by the department, that includes the~~  
6 ~~continuing education status of each licensee and shall provide~~  
7 ~~a report to the department within 90 days after the vendor~~  
8 ~~receives the list of licensees to be monitored as provided in~~  
9 ~~sub-subparagraph b. The report shall be in a format determined~~  
10 ~~by the department and shall include each licensee's continuing~~  
11 ~~education status by license number, hours of continuing~~  
12 ~~education credit per cycle, and such other information the~~  
13 ~~department deems necessary.~~

14       ~~b. No later than 30 days after the end of each renewal~~  
15 ~~period, the department shall provide to the vendor a list that~~  
16 ~~includes all licensees of a particular profession whose~~  
17 ~~licenses were renewed during a particular renewal period. In~~  
18 ~~order to account for late renewals, the department shall~~  
19 ~~provide the vendor with such updates to the list as are~~  
20 ~~mutually determined to be necessary.~~

21       ~~2.a. Before the vendor informs the department of the~~  
22 ~~status of any licensee the vendor has determined is not in~~  
23 ~~compliance with continuing education requirements, the vendor,~~  
24 ~~acting on behalf of the department, shall provide the licensee~~  
25 ~~with a notice stating that the vendor has determined that the~~  
26 ~~licensee is not in compliance with applicable continuing~~  
27 ~~education requirements. The notice shall also include the~~  
28 ~~licensee's continuing education record for the renewal period,~~  
29 ~~as shown in the records of the vendor, and a description of~~  
30 ~~the process for correcting the vendor's record under~~  
31 ~~sub-subparagraph b.~~

1           ~~b. The vendor shall give the licensee 45 days to~~  
2 ~~correct the vendor's information. The vendor shall correct a~~  
3 ~~record only on the basis of evidence of compliance supplied to~~  
4 ~~the vendor by a continuing education provider.~~

5           ~~3.a. The vendor must provide the department, with the~~  
6 ~~report required under subparagraph 1., a list, in a form~~  
7 ~~determined by the department, identifying each licensee who~~  
8 ~~the vendor has determined is not in compliance with applicable~~  
9 ~~continuing education requirements.~~

10           ~~b. The vendor shall provide the department with access~~  
11 ~~to such information and services as the department deems~~  
12 ~~necessary to ensure that the actions of the vendor conform to~~  
13 ~~the contract and to the duties of the department and the~~  
14 ~~vendor under this subsection.~~

15           ~~4. The department shall ensure the vendor access to~~  
16 ~~such information from continuing education providers as is~~  
17 ~~necessary to determine the continuing education record of each~~  
18 ~~licensee. The vendor shall inform the department of any~~  
19 ~~provider that fails to provide such information to the vendor.~~

20           ~~5. If the vendor fails to comply with a provision of~~  
21 ~~the contract, the vendor is obligated to pay the department~~  
22 ~~liquidated damages in the amounts specified in the contract.~~

23           ~~6. The department's payments to the vendor must be~~  
24 ~~based on the number of licensees monitored. The department may~~  
25 ~~allocate from the unlicensed activity account of any~~  
26 ~~profession under s. 455.2281 up to \$2 per licensee for the~~  
27 ~~monitoring of that profession's licensees under this~~  
28 ~~subsection, which allocations are the exclusive source of~~  
29 ~~funding for contracts under this subsection.~~

30           ~~7. A continuing education provider is not eligible to~~  
31 ~~be a vendor under this subsection.~~



1           ~~(b) When it receives notice from a vendor that a~~  
2 ~~licensee is not in compliance with continuing education~~  
3 ~~requirements, the department shall send the licensee written~~  
4 ~~notice that disciplinary actions will be taken, together with~~  
5 ~~a description of the remedies available to the licensee under~~  
6 ~~the dispute resolution process created under paragraph (c). If~~  
7 ~~a licensee does not prevail in the dispute resolution process,~~  
8 ~~the department:~~

9           ~~1. May impose an administrative fine in the amount of~~  
10 ~~\$500 against the licensee; however, the department may reduce~~  
11 ~~the amount of the fine to \$250 if the licensee comes into~~  
12 ~~compliance with the applicable continuing education~~  
13 ~~requirements within 90 days after imposition of the original~~  
14 ~~fine. All proceeds of fines under this subparagraph shall be~~  
15 ~~deposited in the appropriate unlicensed activity account under~~  
16 ~~s. 455.2281.~~

17           ~~(2)2.~~ May refuse any further renewal of a the  
18 licensee's license until unless the licensee has paid the fine  
19 and satisfied all the applicable continuing education  
20 requirements. This subsection does not preclude the department  
21 or boards from imposing additional penalties pursuant to the  
22 applicable practice act or rules adopted pursuant thereto.

23           ~~(c) The department is authorized to adopt by rule a~~  
24 ~~process for the resolution of disputes between a vendor and a~~  
25 ~~continuing education provider, between a vendor and a~~  
26 ~~licensee, and between a licensee and a continuing education~~  
27 ~~provider. The process shall ensure all parties a fair~~  
28 ~~opportunity to correct any erroneous information. If the~~  
29 ~~parties are unable to reach an agreement, the department shall~~  
30 ~~determine the resolution of the dispute.~~

31

1           ~~(d) Upon the failure of a vendor to meet its~~  
2 ~~obligations under a contract as provided in paragraph (a), the~~  
3 ~~department may suspend the contract and enter into an~~  
4 ~~emergency contract under s. 287.057(5).~~

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

12           ~~(3)(4)~~ The department may ~~shall~~ waive the continuing  
13 education monitoring requirements of this section for any  
14 profession that demonstrates to the department that the  
15 monitoring system places an undue burden on the profession.  
16 The department shall waive the continuing education monitoring  
17 requirements of this section for any profession that it has a  
18 program in place which measures compliance with continuing  
19 education requirements through statistical sampling techniques  
20 or other methods and can indicate that at least 95 percent of  
21 its licensees are in compliance.

22           ~~(4)(5)~~ The department may ~~is authorized to~~ adopt rules  
23 under ss. 120.536(1) and 120.54 to implement this section.

24           Section 3. Section 455.2178, Florida Statutes, is  
25 amended to read:

26           455.2178 Continuing education providers.--~~If the~~  
27 ~~monitoring of compliance with continuing education~~  
28 ~~requirements is privatized pursuant to s. 455.2177:~~

29           ~~(1)(a) The department shall notify each approved~~  
30 ~~continuing education provider of the name and address of all~~  
31 ~~vendors that monitor compliance of licensees under s.~~

1 ~~455.2177. If the department contracts with more than one~~  
2 ~~vendor under s. 455.2177, the notice shall specify the~~  
3 ~~professions to be monitored by each vendor.~~

4       (1)(b) Each continuing education provider shall  
5 provide to the department ~~appropriate vendor~~ such information  
6 regarding the continuing education status of licensees as the  
7 department determines is necessary ~~for the vendor~~ to carry out  
8 its duties under s. 455.2177, in an electronic format ~~s.~~  
9 ~~455.2177(2), in a form~~ determined by the department. After a  
10 licensee's completion of a course, the information must be  
11 submitted to the department ~~vendor~~ electronically no later  
12 than 30 calendar ~~5 business~~ days thereafter or prior to the  
13 licensee's renewal date, whichever occurs sooner ~~after a~~  
14 ~~licensee's completion of a course. The foregoing applies only~~  
15 if the profession has not been granted a waiver from the  
16 monitoring requirements under s. 455.2177. Upon the request of  
17 a licensee, the provider must also furnish to the department ~~a~~  
18 ~~vendor~~ information regarding courses completed by the  
19 licensee.

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

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

29       (4) The department may fine, suspend, or immediately  
30 revoke approval of any continuing education provider that  
31 fails to comply with its duties under this section. Such fine

1 may not exceed \$500 per violation. Investigations and  
 2 prosecutions of a provider's failure to comply with its duties  
 3 under this section shall be conducted pursuant to s. 455.225.

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

16 (6) The department may ~~has the authority to~~ adopt  
 17 rules under ss. 120.536(1) and 120.54 to implement this  
 18 section.

19 Section 4. Section 455.2179, Florida Statutes, is  
 20 amended to read:

21 455.2179 Continuing education provider and course  
 22 approval; cease and desist orders.--

23 (1) If a board, or the department if there is no  
 24 board, requires completion of continuing education as a  
 25 requirement for renewal of a license, the board, or the  
 26 department if there is no board, shall approve providers of  
 27 the continuing education. The approval of ~~a~~ continuing  
 28 education providers and courses ~~provider~~ must be for a  
 29 specified period of time, not to exceed 4 years. An approval  
 30 that does not include such a time limitation may remain in  
 31 effect pursuant to the applicable practice act or the rules

1 ~~adopted under the applicable practice act only until July 1,~~  
2 ~~2001, unless earlier replaced by an approval that includes~~  
3 ~~such a time limitation.~~

4 (2) The board, or the department if there is no,~~on~~  
5 ~~its own motion or at the request of a board,~~ shall issue an  
6 order requiring a person or entity to cease and desist from  
7 offering any continuing education programs for licensees, and  
8 fining, suspending, or revoking any approval of the provider  
9 previously granted by the board, or the department if there is  
10 no ~~or a board,~~ if the board, or the department if there is no  
11 ~~or a board,~~ determines that the person or entity failed to  
12 provide appropriate continuing education services that conform  
13 to approved course material. Such fine may not exceed \$500 per  
14 violation. Investigations and prosecutions of a provider's  
15 failure to comply with its duties under this section shall be  
16 conducted under s. 455.225.

17 (3) Each board authorized to approve continuing  
18 education providers, or the department if there is no board,  
19 may establish, by rule, a fee not to exceed \$250 for anyone  
20 seeking approval to provide continuing education courses and  
21 may establish, by rule, a biennial fee not to exceed \$250 for  
22 the renewal of providership of such courses. The Florida Real  
23 Estate Commission, authorized under the provisions of chapter  
24 475 to approve prelicensure, precertification, and  
25 postlicensure education providers, may establish, by rule, an  
26 application fee not to exceed \$250 for anyone seeking approval  
27 to offer prelicensure, precertification, or postlicensure  
28 education courses and may establish, by rule, a biennial fee  
29 not to exceed \$250 for the renewal of such courses. Such  
30 post-licensure education courses are subject to the reporting,  
31

1 monitoring, and compliance provisions of this section and ss.  
2 455.2177 and 455.2178.

3 (4) The department and each affected board may adopt  
4 rules pursuant to ss. 120.536(1) and 120.54 to implement the  
5 provisions of this section.

6 Section 5. Section 455.2281, Florida Statutes, is  
7 amended to read:

8 455.2281 Unlicensed activities; fees; disposition.--In  
9 order to protect the public and to ensure a consumer-oriented  
10 department, it is the intent of the Legislature that vigorous  
11 enforcement of regulation for all professional activities is a  
12 state priority. All enforcement costs should be covered by  
13 professions regulated by the department. Therefore, the  
14 department shall impose, upon initial licensure and each  
15 renewal thereof, a special fee of \$5 per licensee. Such fee  
16 shall be in addition to all other fees collected from each  
17 licensee and shall fund efforts to combat unlicensed activity.  
18 Any profession regulated by the department which offers  
19 services that are not subject to regulation when provided by  
20 an unlicensed person may use funds in its unlicensed activity  
21 account to inform the public of such situation. The board with  
22 concurrence of the department, or the department when there is  
23 no board, may earmark \$5 of the current licensure fee for this  
24 purpose, if such board, or profession regulated by the  
25 department, is not in a deficit and has a reasonable cash  
26 balance. A board or profession regulated by the department may  
27 authorize the transfer of funds from the operating fund  
28 account to the unlicensed activity account of that profession  
29 if the operating fund account is not in a deficit and has a  
30 reasonable cash balance. The department shall make direct  
31 charges to this fund by profession and shall not allocate

1 indirect overhead. The department shall seek board advice  
2 regarding enforcement methods and strategies prior to  
3 expenditure of funds; however, the department may, without  
4 board advice, allocate funds to cover the costs of continuing  
5 education compliance monitoring under s. 455.2177. The  
6 department shall directly credit, by profession, revenues  
7 received from the department's efforts to enforce licensure  
8 provisions, ~~including revenues received from fines collected~~  
9 ~~under s. 455.2177~~. The department shall include all financial  
10 and statistical data resulting from unlicensed activity  
11 enforcement and from continuing education compliance  
12 monitoring as separate categories in the quarterly management  
13 report provided for in s. 455.219. The department shall not  
14 charge the account of any profession for the costs incurred on  
15 behalf of any other profession. For an unlicensed activity  
16 account, a balance which remains at the end of a renewal cycle  
17 may, with concurrence of the applicable board and the  
18 department, be transferred to the operating fund account of  
19 that profession.

20 Section 6. Paragraph (b) of subsection (3) of section  
21 481.205, Florida Statutes, is amended to read:

22 481.205 Board of Architecture and Interior Design.--

23 (3)

24 (b) ~~Notwithstanding the provisions of s. 455.32(13),~~

25 The board, ~~in lieu of the department,~~ shall contract with a  
26 corporation or other business entity pursuant to s. 287.057(3)  
27 to provide investigative, legal, prosecutorial, and other  
28 services necessary to perform its duties.

29 Section 7. Present subsections (10), (11), and (12) of  
30 section 509.013, Florida Statutes, are renumbered subsections

31

1 (11), (12), and (13), respectively, and a new subsection (10)  
2 is added to that section, to read:

3 509.013 Definitions.--As used in this chapter, the  
4 term:

5 (10) "Third party provider" means, for purposes of s.  
6 509.049, any provider of an approved food safety training  
7 program that provides training or such a training program to a  
8 public food service establishment that is not under common  
9 ownership or control with the provider.

10 Section 8. Subsections (3), (4), and (5) of section  
11 509.049, Florida Statutes, are amended, present subsection (6)  
12 of that section is redesignated as subsection (7), and new  
13 subsections (6) and (8) are added to that section, to read:

14 509.049 Food service employee training.--

15 (3) Any food safety training program established and  
16 administered to food service handler employees utilized at a  
17 licensed public food service establishment prior to July 1,  
18 2000, shall may be submitted by the operator or the third  
19 party provider to the division for its review and approval on  
20 or before September 1, 2004. If the food safety training  
21 program is found to be in substantial compliance with the  
22 division's required criteria and is approved by the division,  
23 nothing in this section shall preclude any other operator of a  
24 food service establishment from also utilizing the approved  
25 program or require the employees of any operator to receive  
26 training from or pay a fee to the division's contracted  
27 provider. Review and approval by the division of a program or  
28 programs under this section shall include, but need not be  
29 limited to, verification that the licensed public food service  
30 establishment utilized the program prior to July 1, 2000, and  
31



1 the minimum food safety standards adopted by the division in  
2 accordance with this section.

3 (4) Approval of a program is subject to the provider's  
4 continued compliance with the division's minimum program  
5 standards. The division may conduct random audits of any  
6 approved programs to determine compliance and may audit any  
7 program if it has reason to believe a program is not in  
8 compliance with this section. The division may revoke a  
9 program's approval if it finds a program is not in compliance  
10 with this section or the rules adopted under this section.

11 (5) It shall be the duty of each ~~the licensee of the~~  
12 public food service establishment to provide training in  
13 accordance with the described rule to all food service  
14 employees of the public food service establishment under the  
15 licensee's supervision or control. The public food service  
16 establishment licensee may designate any ~~a~~ certified food  
17 service manager to perform this function ~~as an agent of the~~  
18 ~~licensee~~. Food service employees must receive certification  
19 within 60 days after employment. Certification pursuant to  
20 this section shall remain valid for 3 years. All public food  
21 service establishments must provide the division with proof of  
22 employee training upon request, including, but not limited to,  
23 at the time of any division inspection of the establishment.  
24 Proof of training for each food service employee shall include  
25 the name of the trained employee, the date of birth of the  
26 trained employee, the date the training occurred, and the  
27 approved food safety training program used.

28 (6)(a) Third party providers shall issue to a public  
29 food service establishment an original certificate for each  
30 employee certified by the provider and an original card to be  
31 provided to each certified employee. Such card or certificate

1 shall be produced by the certified food service employee or by  
2 the public food service establishment, respectively, in its  
3 duly issued original form upon request of the division.

4 (b) Effective January 1, 2005, each third party  
5 provider shall provide the following information on each  
6 employee upon certification and recertification: the name of  
7 the certified food service employee, the employee's date of  
8 birth, the employing food service establishment, the name of  
9 the certified food manager who conducted the training, the  
10 training date, and the certification expiration date. This  
11 information shall be reported electronically to the division,  
12 in a format prescribed by the division, within 30 days of  
13 certification or recertification. The division shall compile  
14 the information into an electronic database that is not  
15 directly or indirectly owned, maintained, or installed by any  
16 nongovernmental provider of food service training. A public  
17 food service establishment that trains its employees using its  
18 own in-house, proprietary food safety training program  
19 approved by the division, and which uses its own employees to  
20 provide this training, shall be exempt from the electronic  
21 reporting requirements of this paragraph, and from the card or  
22 certificate requirement of paragraph (a).

23 (7)(6) The division may adopt rules pursuant to ss.  
24 120.536(1) and 120.54 necessary to administer this section.  
25 The rules may require:

26 (a) The use of application forms, which may require,  
27 but need not be limited to, the identification of training  
28 components of the program and an applicant affidavit attesting  
29 to the accuracy of the information provided in the  
30 application;

31

1           (b) Third party providers to maintain and  
2 electronically submit information concerning establishments  
3 where they provide training or training programs pursuant to  
4 this section;

5           (c) Specific subject matter related to food safety for  
6 use in training program components; and

7           (d) The public food service establishment licensee to  
8 be responsible for providing proof of employee training  
9 pursuant to this section, and the division may request  
10 production of such proof upon inspection of the establishment.

11           (8) The following are violations for which the  
12 division may impose administrative fines of up to \$1,000 on a  
13 public food service establishment, or suspend or revoke the  
14 approval of a particular provider's use of a food safety  
15 training program:

16           (a) Failure of a public food service establishment to  
17 provide proof of training pursuant to subsection (5) upon  
18 request by the division or an original certificate to the  
19 division when required pursuant to paragraph (6)(a).

20           (b) Failure of a third party provider to submit  
21 required records pursuant to paragraph (6)(b) or to provide  
22 original certificates or cards to a public food service  
23 establishment or employee pursuant to paragraph (6)(a).

24           (c) Participating in falsifying any training record.

25           (d) Failure of the program to maintain the division's  
26 minimum program standards.

27           Section 9. This act shall take effect July 1, 2004.  
28  
29  
30  
31