

By Senator Ostalkiewicz

12-135-98

1                                   A bill to be entitled  
2           An act relating to professions, occupations,  
3           and businesses; prohibiting specified state  
4           agencies from penalizing a person for violating  
5           specified regulations of which the person had  
6           no knowledge; prohibiting such agencies from  
7           enforcing regulations applicable to the  
8           collection of taxes or to professions,  
9           occupations, or businesses when specified  
10          conditions are met; providing a defense for  
11          enforcement actions in specified circumstances;  
12          providing an effective date.

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

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16           Section 1. (1) A state agency that collects taxes or  
17 regulates the activities of any profession, occupation, or  
18 business and that has knowledge that a person has violated one  
19 of the regulations applicable to the payment of those taxes or  
20 applicable to the profession, occupation, or business may not  
21 institute a criminal, civil, or administrative proceeding  
22 against the person to impose a penalty for the violation or to  
23 compel compliance with the regulation until it informs the  
24 person of the requirements of the regulation and gives the  
25 person a reasonable time to comply. However, this prohibition  
26 does not apply if the violation constitutes a felony under  
27 state law or if the violator had prior actual knowledge of the  
28 requirements of the regulation.

29           (2) In any criminal, civil, or administrative  
30 proceeding to impose a penalty for a violation of, or to  
31 compel compliance with, the regulation, it is a defense that

1 the state agency has a pattern of failure to enforce the  
2 regulation with respect to substantially the same violation  
3 committed by others.

4       Section 2. A state agency that collects taxes or  
5 regulates the activities of any profession, occupation, or  
6 business and that has actual knowledge that a person has  
7 violated one of the regulations applicable to the payment of  
8 those taxes or applicable to the profession, occupation, or  
9 business or, with the exercise of due diligence, should have  
10 known of the violation, is estopped from enforcing the  
11 regulation against the person if the state agency had actual  
12 or imputed knowledge of the violation for a period of more  
13 than 1 year and did not give the violator notice of the  
14 requirements of the regulation within that time. This  
15 prohibition does not apply if the violator had prior actual  
16 knowledge of the requirements of the regulation.

17       Section 3. This act shall take effect upon becoming a  
18 law.

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21 SENATE SUMMARY

22 Prohibits any state agency that collects taxes or  
23 regulates any profession, occupation, or business from  
24 enforcing a regulation until it gives the violator notice  
25 of noncompliance and time to comply. Provides that it is  
26 a defense in an enforcement proceeding if the agency has  
27 shown a pattern of nonenforcement. However, this does  
28 not apply to a violation that is a felony or to the  
29 violation of any regulation that the violator had prior  
30 actual knowledge of. If the state agency had actual or  
31 constructive knowledge of the violation for more than 1  
year and failed to give the violator notice of the  
requirements of the regulation, it is estopped from  
enforcing it against the person in the future unless the  
person had prior actual knowledge of the requirements  
within the 1-year period.