

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 17, 1998 Revised: 2/17/98 \_\_\_\_\_

Subject: Rules

|    | <u>Analyst</u> | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u>          |
|----|----------------|-----------------------|------------------|------------------------|
| 1. | <u>Emrich</u>  | <u>Deffenbaugh</u>    | <u>BI</u>        | <u>Fav/1 amendment</u> |
| 2. | _____          | _____                 | _____            | _____                  |
| 3. | _____          | _____                 | _____            | _____                  |
| 4. | _____          | _____                 | _____            | _____                  |
| 5. | _____          | _____                 | _____            | _____                  |

**I. Summary:**

This bill provides the statutory authorization for provisions of two Department of Insurance rules which the agency deems necessary, but which currently exceed the agency’s rulemaking authority. The bill authorizes the department to adopt rules establishing standards for the regulation and discipline of continuing education (CE) course providers and instructors. The bill allows the department to investigate improper conduct by such persons as well as customer representatives. It further authorizes the department to impose administrative fines in addition to other penalties for licensees, appointees and other persons and increases such fines for willful violations on the part of such persons.

This bill creates section 626.2816 and amends sections 626.601 and 626.681 of the Florida Statutes.

**II. Present Situation:**

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

The Joint Administrative Procedures Committee (J.A.P.C.) reports that some 5,850 rules or portions of rules were reported as exceeding the agency's rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the F.A.C. However, 2,240 rules contained in the F.A.C. were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Thus, during the 1998 legislative session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agency's rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

The Department of Insurance has identified provisions of two rules that exceed the agency's statutory rulemaking authority which relate to the regulation of continuing education (CE) courses and the imposition of administrative fines on certain persons who are licensed or approved by the department. Rule 4-228.210, F.A.C., promulgated in 1993, authorizes the forms to be used by applicants in submitting CE information to the department and imposes penalties upon a department finding of a violation of CE requirements by course providers, school officials, instructors or monitors. Penalties range in scope from ordering the refund of all course tuition and fees to the imposition of an administrative fine or revocation of the authority to instruct continuing education courses. Rule 4-228.220, F.A.C., also promulgated in 1993, specifies licensee and nonresident licensee CE requirements and penalties.

### **III. Effect of Proposed Changes:**

Pursuant to the explanation noted above under "Present Situation," the Department of Insurance proposed the present legislation relating to the regulation of CE providers, instructors, customer representatives, licensees, appointees and other persons.

Under the bill, the department shall adopt rules for the approval, regulation and discipline of CE course providers and instructors to ensure such persons have the knowledge, competence, and integrity to fulfill CE requirements. Furthermore, the department may investigate these individuals as well as customer representatives. The bill provides for the imposition of administrative fines in addition to suspension, revocation or approval for licensees, appointees and other persons, and increases such fines from \$2,500 to \$3,500 for willful violations. Additionally, the department may suspend, revoke or not approve such persons if they fail to pay the administrative penalties.

The effective date of the bill is July 1, 1998.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The bill addresses issues that are beyond the scope of the rules in question. The strike-everything amendment, summarized below, appropriately limits the scope of the bill.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Banking and Insurance:

The amendment specifies that CE course providers, instructors, school officials and monitor groups must be approved by the department before offering CE courses. The department is authorized to adopt rules to specify standards for the approval, regulation and discipline of licensees, course providers, instructors, school officials and monitor groups to ensure that such

persons have the knowledge, competence, and integrity to fulfill the educational objectives mandated under the Insurance Code. The department may promulgate forms and adopt rules establishing a process by which compliance with CE requirements can be determined. Under this amendment, the department may investigate CE providers, instructors, school officials and monitor groups and impose administrative fines or suspend, revoke, refuse to approve or disapprove such persons as CE providers. Such individuals will be subject to the same administrative fines (up to \$500 or, if willful, up to \$2,500) currently assessed against agents and other licensees. Should such individuals fail to pay the fine, the department may suspend, revoke or not approve such persons to provide CE instruction. (WITH TITLE AMENDMENT)

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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