

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.)

BILL: CS/SB 190

SPONSOR: Committee on Regulated Industries

SUBJECT: Regulation of Professions

DATE: March 30, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Martin</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill requires that by the year 2002, the Department of Professional and Business Regulation (department) monitor 100 percent of professional licensees for compliance with continuing education requirements. However, the department is given the discretion of monitoring fewer than 100 percent of licensees in a particular profession if the profession has a compliance program in place that indicates at least 95 percent of the licensees are in compliance with continuing education requirements. Administrative fines are authorized, as well as direction that a license may not be renewed until the fine is paid and continuing education requirements are met. Except as applied to certified public accountants, any other sanctions for failure to meet continuing education requirements are specifically prohibited.

The bill authorizes the department to implement the monitoring process. The department has the discretion of contracting with a private vendor to provide the monitoring, in accordance with specific responsibilities for the department, the vendor and continuing education providers. The bill provides that not more than \$2 of the \$5 currently collected biennially from each licensee and earmarked, prior to this bill, solely for enforcement against unlicensed activity be used to fund the costs of monitoring.

This bill substantially amends, the following sections of the Florida Statutes: 455.2281, 455.224, 468.4315, and 477.019. It also creates the following sections of the Florida Statutes: 455.2177, 455.2178, and 455.2179.

II. Present Situation:

Approximately 400,000 professionals licensed by the department must complete continuing education requirements in order to renew their licenses. The department audits approximately 3 percent of those licensees each year for continuing education compliance. It is a labor intensive, costly process and the results show that many licensees are not completing the required courses. However, the Board of Accountancy has in place a statistically sound, cost-effective monitoring

program that indicates 95 percent of certified public accountants comply with continuing education requirements.

The Regulatory Council of Community Association Managers does not have rulemaking authority to codify its decisions regarding the approval of continuing education providers, nor the ability to remove approval once it is given.

The 1998 Legislature gave the Board of Cosmetology broad authority to privatize the monitoring of continuing education compliance. The act also made discipline for noncompliance with continuing education requirements actionable only if the noncompliance was discovered during an investigation of another violation. This provision removed responsibility from the department to investigate licensees for continuing education compliance.

III. Effect of Proposed Changes:

Sections 1 and 2 provide for continuing education providers and require the department to establish a system to monitor licensee compliance with applicable continuing education requirements and to determine each licensee's continuing education status. The term "monitor" is defined as the act of determining, for each licensee, whether the licensee was in full compliance with applicable continuing education requirements as of the time of the licensee's license renewal. The department is to waive these monitoring requirements for any profession that demonstrates to the department that it has a program in place which measures compliance with continuing education requirements and can indicate that at least 95 percent of its licensees are in compliance.

The bill allows the department to phase-in the compliance system, but requires monitoring of all professions regulated by the department no later than July 1, 2002. The bill also allows the department to use department staff to operate the system or to privatize it, and establishes contract requirements and procedures for privatization.

The only provisions applicable in the absence of privatization are the monitoring requirement, a limitation in sanctions, and a grant of rulemaking authority.

If the system was privatized, there would be three entities participating in the process, the department, a vendor or vendors to operate the monitoring system, and the continuing education providers. The department would contract with a vendor or vendors for the monitoring of compliance with applicable continuing education requirements by all licensees within one or more professions regulated by the department. The vendor would create a computer database, in the form required by the department, that includes the continuing education status of each licensee based on information provided to the vendor by continuing education providers.

The department would notify each approved continuing education provider of the name and address of all vendors that monitor compliance of licensees and would specify the professions to be monitored by each vendor. Continuing education providers would notify the appropriate vendor of a licensee's completion of a course and would provide to the vendor any other information required by the department. The information would be submitted to the vendor electronically no later than 5 working days after a licensee's completion of a course.

No later than 30 days after the end of each professional license renewal period, the department would provide to the vendor a list that would include all licensees of a particular profession whose licenses had been renewed during that renewal period. The vendor would compare this list with its list of continuing education credits to determine compliance status for each licensee and would provide a report to the department within 90 days after the vendor receives the list of licensees from the department. Included with the report would be a list identifying each licensee whom the vendor had determined to be not in compliance with applicable continuing education requirements.

Prior to submitting this report, however, the vendor, acting on behalf of the department, would provide all non-compliant licensees with a notice stating that the vendor had determined that the licensee was not in compliance with applicable continuing education requirements. The notice also would include the licensee's continuing education record for the renewal period, as shown in the records of the vendor, and a description of the process for correcting the vendor's record. The vendor would correct a record only on the basis of evidence of compliance supplied to the vendor by a continuing education provider. The licensee would have 45 days to correct the vendor's information.

Upon receipt of a notice from a vendor that a licensee was not in compliance with continuing education requirements, the department would send the licensee written notice that disciplinary actions would be taken, together with a description of the remedies available to the licensee under a dispute resolution process to be created by department rule. This dispute resolution process would provide for the resolution of disputes between a vendor and a continuing education provider, between a vendor and a licensee, and between a licensee and a continuing education provider. The process would ensure all parties a fair opportunity to correct any erroneous information. If the parties were unable to reach an agreement, the department would determine the resolution of the dispute. If a licensee did not prevail in the dispute resolution process, the department could impose an administrative fine in the amount of \$500 against the licensee. The department could reduce the fine to \$250 if the licensee complied with the applicable continuing education requirements within 90 days after imposition of the original fine. The department also could refuse any further renewal of the licensee's license unless the licensee paid the fine and satisfied the applicable continuing education requirements. Except as applied to certified public accountants, any other sanctions for failure to meet continuing education requirements are specifically prohibited.

If a vendor failed to meet its contractual obligations, the department could suspend the contract and enter into an emergency contract. Additionally, the vendor would be obligated to pay the department liquidated damages in the amounts specified in the contract.

The department's payments to the vendor would be proportionate to the number of licensees monitored. The department would allocate from the unlicensed activity account of any profession up to \$2 per licensee for the monitoring of that profession's licensees, with these allocations being the exclusive source of funding.

Under the bill, a continuing education provider could neither be approved nor renewed, unless the provider agreed in writing to cooperate with vendors as the department deems necessary or

appropriate. The department could immediately revoke approval of any continuing education provider that failed to comply with its duties under this section.

Section 3 provides that if a board, or the department if there is no board, requires approval of a continuing education provider, the approval must be for a specified period of time, not to exceed 4 years. An approval that does not include such a time limitation may remain in effect only until July 1, 2001, unless earlier replaced by an approval that includes such a time limitation.

If the department or a board determines that a person or entity failed to provide appropriate continuing education services that conform to approved course material, the department, on its own motion or at the request of a board, must issue an order requiring the person or entity to cease and desist from offering any continuing education programs for licensees, and revoking any approval of the provider previously granted by the department or a board.

Section 4 amends s. 455.2281, F.S., to allow the department to allocate funds to cover the costs of continuing education compliance monitoring without board advice. Revenues derived from fines collected under s. 455.2177, F.S., are to be directly credited by the department by profession and included as separate categories in the quarterly management report provided for in s. 455.219, F.S.

Section 5 amends s. 455.224(1), F.S., to establish that the department can adopt rules to permit the issuance of sanctions.

Section 6 amends s. 468.4315, F.S., to give the Regulatory Council of Community Association Managers rulemaking authority relating to continuing education providers.

Section 7 amends the cosmetology act to delete the privatization and discipline provisions in s. 477.019, F.S., because they conflict with the provisions of this bill.

Section 8 provides for an effective date of July 1, 1999.

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:

The cost of privatization of continuing education requirement monitoring will be borne through existing fees. The contract vendor would receive the additional income generated by the contract.

C. Government Sector Impact:

The department estimates that it will cost approximately \$50,000, mostly in software modification costs, to modify its existing computer system in order for it to have the ability to electronically receive reporting data from the continuing education providers and use that data to implement the continuing education monitoring system as it relates to license renewal.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill is a companion to HB 1977.

VIII. Amendments:

None.