

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3073 Session of
2006

INTRODUCED BY STURLA, JOSEPHS, FRANKEL, BOYD, CALTAGIRONE,
COHEN, CRAHALLA, CREIGHTON, DeLUCA, GODSHALL, GOODMAN, JAMES,
LEACH, MANDERINO, RAMALEY, SIPTROTH, STABACK AND TIGUE,
OCTOBER 25, 2006

REFERRED TO COMMITTEE ON STATE GOVERNMENT, OCTOBER 25, 2006

AN ACT

1 Amending the act of July 2, 1993 (P.L.345, No.48) entitled "An
2 act empowering the General Counsel or his designee to issue
3 subpoenas for certain licensing board activities; providing
4 for hearing examiners in the Bureau of Professional and
5 Occupational Affairs; providing additional powers to the
6 Commissioner of Professional and Occupational Affairs; and
7 further providing for civil penalties and license
8 suspension," further providing for civil penalties; and
9 making related repeals.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 5 of the act of July 2, 1993 (P.L.345,
13 No.48) entitled "An act empowering the General Counsel or his
14 designee to issue subpoenas for certain licensing board
15 activities; providing for hearing examiners in the Bureau of
16 Professional and Occupational Affairs; providing additional
17 powers to the Commissioner of Professional and Occupational
18 Affairs; and further providing for civil penalties and license
19 suspension," is amended to read:

20 Section 5. Civil penalties.

1 (a) Authorization.--The Commissioner of Professional and
2 Occupational Affairs, after consultation with the licensing
3 boards and commissions, shall have the power to adopt a schedule
4 of civil penalties for operating without a current, registered,
5 unsuspended and unrevoked license, registration, certificate or
6 permit and for violating any provision of their respective acts
7 or regulations relating to the conduct or operation of a
8 business or facility licensed by such licensing boards and
9 commissions. The schedule of penalties shall not be applicable
10 to disciplinary matters under the jurisdiction of a licensing
11 board or commission unless that licensing board or commission
12 has approved the schedule. The schedule of penalties, guidelines
13 for their imposition and procedures for appeal shall be
14 published in the Pennsylvania Bulletin, provided that the
15 commissioner shall, within two years of such publication,
16 promulgate a regulation setting forth the schedule of penalties,
17 guidelines and procedures. Any such penalty shall not exceed the
18 sum of [\$1,000] \$10,000. Duly authorized agents of the bureau
19 shall have the power and authority to issue citations and impose
20 penalties for any such violations. Any such penalty imposed may
21 be appealed to a hearing examiner or the licensing board or
22 commission pursuant to the regulations promulgated under section
23 3(b). If the appeal is initially to a hearing examiner, the
24 relevant licensing board or commission shall render a decision
25 on any exceptions to the decision of the hearing examiner or on
26 any applications for review in accordance with section 3(d). All
27 proceedings shall be conducted in accordance with the provisions
28 of 2 Pa.C.S. (relating to administrative law and procedure).

29 (b) Additional powers.--In addition to the disciplinary
30 powers and duties of the boards and commissions within the

1 Bureau of Professional and Occupational Affairs under their
2 respective practice acts, boards and commissions shall have the
3 power, respectively:

4 (1) To impose discipline on any licensee, registrant,
5 certificate holder or permit holder who violates a lawful
6 disciplinary order of the board.

7 (2) To impose discipline on any licensee, registrant,
8 certificate holder or permit holder who aids and abets the
9 unlicensed practice of a profession, occupation or business.

10 (3) To levy a civil penalty of not more than [\$1,000]
11 \$10,000 on any corporation, partnership, institution,
12 association or sole proprietorship which aids and abets any
13 individual in the unlicensed practice of a profession. This
14 penalty shall not, however, be levied against any person
15 solely as a consequence of that person being a patient or
16 client of the unlicensed individual.

17 (c) Restrictions.--Any decisions rendered by a licensing
18 board or commission on any exceptions to the decision of a
19 hearing examiner or on any application for review in accordance
20 with section 3(d) to impose a civil penalty pursuant to this
21 section shall require the same number of votes required for the
22 licensing board or commission to impose a civil penalty under
23 any other act. Nothing in this section shall be construed to
24 restrict the powers and duties under any other act of a
25 licensing board or commission in disciplinary matters, except
26 that a licensing board or commission may not impose a civil
27 penalty under any other act for the same violation for which a
28 civil penalty has been imposed pursuant to this section.

29 (d) Status of civil penalty.--Any civil penalty imposed
30 pursuant to this section or imposed by any licensing board or

1 commission under any other act shall be a judgment in favor of
2 the Bureau of Professional and Occupational Affairs upon the
3 person or the property of the person upon whom the civil penalty
4 is imposed. The Attorney General shall be responsible for
5 enforcing such judgments in courts of competent jurisdiction in
6 accordance with the provisions of 42 Pa.C.S. (relating to
7 judiciary and judicial procedure).

8 (e) Definition.--As used in this section, the term
9 "unlicensed practice" means:

10 (1) practicing a profession or occupation or operating a
11 business for which a license, registration, certificate or
12 permit is required without holding a valid, unexpired,
13 unrevoked or unsuspended authority to do so; or

14 (2) representing to the public or any person, through
15 offerings, advertisements or the use of a title, that the
16 individual is qualified to practice a profession, occupation
17 or business for which a license, registration, certificate or
18 permit is required without holding a valid, unexpired,
19 unrevoked or unsuspended authority to do so.

20 Section 2. The following provisions are repealed insofar as
21 they are inconsistent with the amendment of section 5 of the
22 act:

23 (1) Section 15(b.3) of the act of June 19, 1931
24 (P.L.589, No.202), referred to as the Barbers' License Law.

25 (2) Section 10.1 of the act of May 1, 1933 (P.L.216,
26 No.76), known as The Dental Law.

27 (3) Section 20(c.2) of the act of May 3, 1933 (P.L.242,
28 No.86), referred to as the Cosmetology Law.

29 (4) Section 11(b) of the act of May 23, 1945 (P.L.913,
30 No.367), known as the Engineer, Land Surveyor and Geologist

1 Registration Law.

2 (5) Section 16(c) of the act of May 26, 1947 (P.L.318,
3 No.140), known as the CPA Law.

4 (6) Section 13(b) of the act of May 22, 1951 (P.L.317,
5 No.69), known as The Professional Nursing Law.

6 (7) Section 17(b) of the act of January 14, 1952 (1951
7 P.L.1898, No.522), known as the Funeral Director Law.

8 (8) Section 13(b) of the act of March 2, 1956 (1955
9 P.L.1206, No.375), known as the Podiatry Practice Act.

10 (9) Section 15(b) of the act of March 2, 1956 (1955
11 P.L.1211, No.376), known as the Practical Nurse Law.

12 (10) Section 8(15.1) of the act of September 27, 1961
13 (P.L.1700, No.699), known as the Pharmacy Act.

14 (11) Section 11(b) of the act of January 24, 1966 (1965
15 P.L.1527, No.535), known as the Landscape Architects'
16 Registration Law.

17 (12) Section 11(b) of the act of June 22, 1970 (P.L.378,
18 No.122), known as the Nursing Home Administrators License
19 Act.

20 (13) Section 11(b) of the act of March 23, 1972
21 (P.L.136, No.52), known as the Professional Psychologists
22 Practice Act.

23 (14) Section 28(c) of the act of December 27, 1974
24 (P.L.995, No.326), known as the Veterinary Medicine Practice
25 Act.

26 (15) Section 12(c) of the act of October 10, 1975
27 (P.L.383, No.110), known as the Physical Therapy Practice
28 Act.

29 (16) Section 305 of the act of February 19, 1980
30 (P.L.15, No.9), known as the Real Estate Licensing and

Registration Act.

(17) Section 8(c) of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act.

(18) Section 20(d) of the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law.

(19) Section 28(c) of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

(20) Section 29(b) of the act of December 22, 1983 (P.L.327, No.85), known as the Auctioneer and Auction Licensing Act.

(21) Section 703 of the act of December 16, 1986 (P.L.1646, No.188), known as the Chiropractic Practice Act.

(22) Section 17(b) of the act of July 9, 1987 (P.L.220, No.39), known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act.

(23) Section 15(b) of the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

(24) Section 908 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

Section 3. The following provisions shall apply to violations which take place on or after the effective date of this section:

(1) The amendment of section 5 of the act.

(2) Section 2 of this act.

Section 4. This act shall take effect in 60 days.