

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 354 Session of  
2017INTRODUCED BY TOMLINSON, BOSCOLA, MENSCH, SCHWANK, HUGHES,  
RAFFERTY, BROWNE AND SABATINA, FEBRUARY 15, 2017AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 21, 2017

## 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 DEFINITIONS; providing for <--  
9 reporting of sanctions and criminal proceedings and for  
10 temporary and automatic suspension; AND FURTHER PROVIDING FOR <--  
11 CIVIL PENALTIES.

12 The General Assembly of the Commonwealth of Pennsylvania  
13 hereby enacts as follows:

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

1 ~~Section 2.1. Reporting of sanctions and criminal proceedings.~~

2 ~~(a) Duty. An individual who holds a license, certificate or~~  
3 ~~registration issued by the Bureau of Professional and~~  
4 ~~Occupational Affairs shall, as a condition of licensure,~~  
5 ~~certification or registration, do all of the following:~~

6 ~~(1) Report to the appropriate licensing board or~~  
7 ~~licensing commission a disciplinary action taken against the~~  
8 ~~licensee, certificate holder or registrant by a licensing~~  
9 ~~agency of another jurisdiction.~~

10 ~~(2) Report to the appropriate licensing board or~~  
11 ~~licensing commission an arrest, indictment or conviction of~~  
12 ~~the licensee, certificate holder or registrant.~~

13 ~~(b) Time. A report under subsection (a) shall be made as~~  
14 ~~follows:~~

15 ~~(1) Within 30 days of the imposition of the sanction~~  
16 ~~described under subsection (a) (1).~~

17 ~~(2) Except as set forth in paragraph (3), within 30 days~~  
18 ~~of the earlier of:~~

19 ~~(i) an arrest under subsection (a) (2);~~

20 ~~(ii) an indictment under subsection (a) (2); or~~

21 ~~(iii) a conviction under subsection (a) (2).~~

22 ~~(3) In the case of a criminal action under subsection~~  
23 ~~(a) (2) that is initiated prior to the effective date of this~~  
24 ~~paragraph, within 30 days from the later of:~~

25 ~~(i) the date of conviction; or~~

26 ~~(ii) the effective date of this paragraph.~~

27 ~~(c) Sanctions. A licensing board or licensing commission~~  
28 ~~shall take disciplinary action against a licensee, certificate~~  
29 ~~holder or registrant who violates this section.~~

30 SECTION 1. SECTION 1 OF THE ACT OF JULY 2, 1993 (P.L.345, <--

1 NO.48), ENTITLED "AN ACT EMPOWERING THE GENERAL COUNSEL OR HIS  
2 DESIGNEE TO ISSUE SUBPOENAS FOR CERTAIN LICENSING BOARD  
3 ACTIVITIES; PROVIDING FOR HEARING EXAMINERS IN THE BUREAU OF  
4 PROFESSIONAL AND OCCUPATIONAL AFFAIRS; PROVIDING ADDITIONAL  
5 POWERS TO THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL  
6 AFFAIRS; AND FURTHER PROVIDING FOR CIVIL PENALTIES AND LICENSE  
7 SUSPENSION," IS AMENDED BY ADDING DEFINITIONS TO READ:

8 SECTION 1. DEFINITIONS.

9 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL  
10 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE  
11 CONTEXT CLEARLY INDICATES OTHERWISE:

12 \* \* \*

13 "EXPUNGE" OR "EXPUNGEMENT." REMOVAL OF A DISCIPLINARY  
14 RECORD, ACCOMPLISHED BY:

15 (1) PERMANENTLY SEALING THE AFFECTED RECORD FROM PUBLIC  
16 ACCESS;

17 (2) DEEMING THE PROCEEDINGS TO WHICH THE AFFECTED RECORD  
18 REFERS AS NOT HAVING OCCURRED; AND

19 (3) EXCEPT WITH RESPECT TO ANY SUBSEQUENT APPLICATION  
20 FOR EXPUNGEMENT, AFFORDING THE AFFECTED PARTY THE RIGHT TO  
21 REPRESENT THAT NO RECORD EXISTS REGARDING THE SUBJECT MATTER  
22 OF THE AFFECTED RECORD.

23 \* \* \*

24 "LICENSEE." ANY PERSON HOLDING A LICENSE, REGISTRATION,  
25 CERTIFICATE OR PERMIT WITH A LICENSING BOARD OR COMMISSION UNDER  
26 THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS IN THE  
27 DEPARTMENT OF STATE.

28 \* \* \*

29 SECTION 2. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:  
30 SECTION 2.1. REPORTING OF SANCTIONS AND CRIMINAL PROCEEDINGS.

1 (A) DUTY.--A LICENSEE, AS A CONDITION OF LICENSURE,  
2 CERTIFICATION, REGISTRATION OR HOLDING A PERMIT, SHALL PROVIDE  
3 WRITTEN NOTICE OF THE FOLLOWING TO THE APPROPRIATE LICENSING  
4 BOARD OR COMMISSION WITHIN 30 DAYS:

5 (1) A DISCIPLINARY ACTION TAKEN AGAINST THE LICENSEE BY  
6 A LICENSING AGENCY OF ANOTHER JURISDICTION.

7 (2) A FINDING OR VERDICT OF GUILT, AN ADMISSION OF  
8 GUILT, A PLEA OF NOLO CONTENDERE, PROBATION WITHOUT VERDICT,  
9 A DISPOSITION IN LIEU OF TRIAL OR AN ACCELERATED  
10 REHABILITATIVE DISPOSITION OF ANY FELONY OR MISDEMEANOR  
11 OFFENSE AND ANY DRUG OR ALCOHOL RELATED SUMMARY OFFENSE.

12 (B) SANCTIONS.--A LICENSING BOARD OR LICENSING COMMISSION  
13 MAY TAKE DISCIPLINARY ACTION AGAINST A LICENSEE WHO VIOLATES  
14 THIS SECTION.

15 Section 3.1. Temporary and automatic suspension.

16 (a) Temporary suspension.--A licensing board or ~~licensing~~ <--  
17 commission may temporarily suspend a license, certificate ~~or,~~ <--  
18 registration OR PERMIT under circumstances as determined by the <--  
19 board or commission to be an immediate and clear danger to the  
20 public health and safety. The LICENSING board or commission <--  
21 shall issue an order to that effect without a hearing, but upon  
22 due notice, to the licensee, ~~certificate holder or registrant~~ <--  
23 concerned at ~~his~~ THE LICENSEE'S last known address, which shall <--  
24 include a written statement of all allegations against the  
25 licensee, ~~certificate holder or registrant~~. After issuing the <--  
26 order, the LICENSING board or commission shall commence formal <--  
27 action to suspend, revoke or restrict the license, certificate  
28 ~~or,~~ registration OR PERMIT of the person concerned as otherwise <--  
29 provided for by law. All actions shall be taken promptly and  
30 without delay.

1 (b) Hearing.--Within 30 days following the issuance of an  
2 order temporarily suspending a license, certificate or <--  
3 registration OF TEMPORARY SUSPENSION, the licensing board or <--  
4 licensing commission shall conduct or cause to be conducted a <--  
5 preliminary hearing to determine whether there is a prima facie  
6 case supporting the suspension. The licensee, certificate holder <--  
7 or registrant whose license, certificate or, registration OR <--  
8 PERMIT has been temporarily suspended may be present at the  
9 preliminary hearing and may be represented by counsel, cross-  
10 examine witnesses, inspect physical evidence, call witnesses,  
11 offer evidence and testimony and make a record of the  
12 proceedings. If it is determined that there is not a prima facie  
13 case, the suspended license, certificate or, registration OR <--  
14 PERMIT shall be immediately restored. The temporary suspension  
15 shall remain in effect until vacated by the LICENSING board or <--  
16 commission, but in no event longer than 180 days.

17 (c) Automatic suspension.--A license, certificate or, <--  
18 registration OR PERMIT issued by a licensing board or licensing <--  
19 commission shall automatically be suspended upon:

20 (1) the legal commitment to an institution of a  
21 licensee, certificate holder or registrant because of mental <--  
22 incompetency for any cause upon filing with the board or  
23 commission a certified copy of the commitment; or

24 (2) conviction of a felony under the act of April 14,  
25 1972 (P.L.233, No.64), known as The Controlled Substance,  
26 Drug, Device and Cosmetic Act, or conviction of an offense  
27 under the laws of another jurisdiction which, if committed in  
28 this Commonwealth, would be a felony under The Controlled  
29 Substance, Drug, Device and Cosmetic Act.

30 (d) Stay.--Automatic suspension under subsection (c) shall

1 not be stayed pending an appeal of a conviction.

2 (e) Restoration.--Restoration of a license, certificate or, <--  
3 registration OR PERMIT shall be made as provided by law in the <--  
4 case of revocation or suspension of the license, certificate or, <--  
5 registration OR PERMIT. <--

6 (f) Definition. As used in this section, the term <--  
7 "conviction" shall include a judgment, an admission of guilt or  
8 a plea of nolo contendere.

9 SECTION 3. SECTION 5(A), (B), (D.1), (D.3) AND (D.4) OF THE <--  
10 ACT ARE AMENDED TO READ:

11 SECTION 5. CIVIL PENALTIES.

12 (A) AUTHORIZATION.--

13 (1) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL  
14 AFFAIRS, AFTER CONSULTATION WITH THE LICENSING BOARDS AND  
15 COMMISSIONS, SHALL HAVE THE POWER TO ADOPT A SCHEDULE OF  
16 CIVIL PENALTIES FOR OPERATING WITHOUT A CURRENT, REGISTERED,  
17 UNSUSPENDED AND UNREVOKED LICENSE, REGISTRATION, CERTIFICATE  
18 OR PERMIT AND FOR VIOLATING ANY PROVISION OF THEIR RESPECTIVE  
19 ACTS OR REGULATIONS RELATING TO THE CONDUCT OR OPERATION OF A  
20 BUSINESS OR FACILITY LICENSED BY SUCH LICENSING BOARDS AND  
21 COMMISSIONS. THE SCHEDULE OF PENALTIES SHALL NOT BE  
22 APPLICABLE TO DISCIPLINARY MATTERS UNDER THE JURISDICTION OF  
23 A LICENSING BOARD OR COMMISSION UNLESS THAT LICENSING BOARD  
24 OR COMMISSION HAS APPROVED THE SCHEDULE. THE SCHEDULE OF  
25 PENALTIES, GUIDELINES FOR THEIR IMPOSITION AND PROCEDURES FOR  
26 APPEAL SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN,  
27 PROVIDED THAT THE COMMISSIONER SHALL, WITHIN TWO YEARS OF  
28 SUCH PUBLICATION, PROMULGATE A REGULATION SETTING FORTH THE  
29 SCHEDULE OF PENALTIES, GUIDELINES AND PROCEDURES. ANY SUCH  
30 PENALTY SHALL NOT EXCEED THE SUM OF \$1,000 PER VIOLATION.

1 DULY AUTHORIZED AGENTS OF THE BUREAU SHALL HAVE THE POWER AND  
2 AUTHORITY TO ISSUE CITATIONS AND IMPOSE PENALTIES FOR ANY  
3 SUCH VIOLATIONS. ANY SUCH PENALTY IMPOSED MAY BE APPEALED TO  
4 A HEARING EXAMINER OR THE LICENSING BOARD OR COMMISSION  
5 PURSUANT TO THE REGULATIONS PROMULGATED UNDER SECTION 3(B).  
6 IF THE APPEAL IS INITIALLY TO A HEARING EXAMINER, THE  
7 RELEVANT LICENSING BOARD OR COMMISSION SHALL RENDER A  
8 DECISION ON ANY EXCEPTIONS TO THE DECISION OF THE HEARING  
9 EXAMINER OR ON ANY APPLICATIONS FOR REVIEW IN ACCORDANCE WITH  
10 SECTION 3(D). ALL PROCEEDINGS SHALL BE CONDUCTED IN  
11 ACCORDANCE WITH THE PROVISIONS OF 2 PA.C.S. (RELATING TO  
12 ADMINISTRATIVE LAW AND PROCEDURE).

13 (2) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL  
14 AFFAIRS SHALL EXPUNGE THE DISCIPLINARY RECORD OF A LICENSEE,  
15 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER, IF THE  
16 IMPOSITION OF DISCIPLINE WAS FOR A VIOLATION INVOLVING  
17 FAILURE TO COMPLETE CONTINUING EDUCATION REQUIREMENTS OR  
18 PRACTICING FOR SIX MONTHS OR LESS ON A LAPSED LICENSE,  
19 REGISTRATION, CERTIFICATE OR PERMIT, SUBJECT TO THE  
20 FOLLOWING:

21 (I) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
22 PERMIT HOLDER MUST MAKE WRITTEN APPLICATION TO THE  
23 COMMISSIONER FOR EXPUNGEMENT NOT EARLIER THAN FOUR YEARS  
24 FROM THE FINAL DISPOSITION OF THE DISCIPLINARY RECORD.

25 (II) THE DISCIPLINARY RECORD MUST BE THE ONLY  
26 DISCIPLINARY RECORD THAT THE LICENSEE, REGISTRANT,  
27 CERTIFICATE HOLDER OR PERMIT HOLDER HAS WITH EITHER THE  
28 COMMISSIONER OR A LICENSING BOARD OR COMMISSION UNDER THE  
29 COMMISSIONER'S JURISDICTION.

30 (III) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER

1 OR PERMIT HOLDER MUST NOT BE THE SUBJECT OF AN ACTIVE  
2 INVESTIGATION RELATED TO PROFESSIONAL OR OCCUPATIONAL  
3 CONDUCT.

4 (IV) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
5 PERMIT HOLDER MUST NOT BE IN A CURRENT DISCIPLINARY  
6 STATUS, AND ANY FEES OR FINES ASSESSED MUST BE PAID IN  
7 FULL.

8 (V) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
9 PERMIT HOLDER MUST NOT HAVE HAD A DISCIPLINARY RECORD  
10 PREVIOUSLY EXPUNGED BY THE COMMISSIONER.

11 (VI) DISCIPLINARY RECORDS INVOLVING IMPOSITION OF  
12 DISCIPLINE FOR VIOLATIONS OTHER THAN THOSE IDENTIFIED IN  
13 THIS PARAGRAPH SHALL NOT BE ELIGIBLE FOR EXPUNGEMENT.

14 (VII) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER  
15 OR PERMIT HOLDER SHALL PAY ALL COSTS ASSOCIATED WITH THE  
16 EXPUNGEMENT AS ESTABLISHED BY THE COMMISSIONER BY  
17 REGULATION.

18 (3) NOTHING IN THIS SUBSECTION SHALL PROHIBIT A LICENSING  
19 BOARD OR COMMISSION FROM USING A PREVIOUS DISCIPLINE FOR ANY  
20 REGULATORY PURPOSE OR FROM RELEASING RECORDS OF A PREVIOUS  
21 DISCIPLINE UPON REQUEST FROM LAW ENFORCEMENT OR OTHER  
22 GOVERNMENTAL BODY AS PERMITTED BY LAW.

23 (B) ADDITIONAL POWERS.--IN ADDITION TO THE DISCIPLINARY  
24 POWERS AND DUTIES OF THE BOARDS AND COMMISSIONS WITHIN THE  
25 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS UNDER THEIR  
26 RESPECTIVE PRACTICE ACTS, BOARDS AND COMMISSIONS SHALL HAVE THE  
27 POWER, RESPECTIVELY:

28 (1) TO IMPOSE DISCIPLINE, INCLUDING, BUT NOT LIMITED TO,  
29 A CIVIL PENALTY OF UP TO \$10,000 PER VIOLATION ON ANY  
30 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER, PERMIT HOLDER] OR



1 UNLICENSED PERSON WHO VIOLATES A LAWFUL DISCIPLINARY ORDER OF  
2 THE BOARD.

3 (2) TO IMPOSE DISCIPLINE, INCLUDING, BUT NOT LIMITED TO,  
4 A CIVIL PENALTY OF UP TO \$10,000 PER VIOLATION ON ANY  
5 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER, PERMIT HOLDER] OR  
6 UNLICENSED PERSON WHO AIDS AND ABETS THE UNLICENSED PRACTICE  
7 OF A PROFESSION, OCCUPATION OR BUSINESS.

8 (3) TO LEVY A CIVIL PENALTY OF NOT MORE THAN \$10,000 PER  
9 VIOLATION ON ANY CORPORATION, PARTNERSHIP, INSTITUTION,  
10 ASSOCIATION OR SOLE PROPRIETORSHIP WHICH AIDS AND ABETS ANY  
11 INDIVIDUAL IN THE UNLICENSED PRACTICE OF A PROFESSION. THIS  
12 PENALTY SHALL NOT, HOWEVER, BE LEVIED AGAINST ANY PERSON  
13 SOLELY AS A CONSEQUENCE OF THAT PERSON BEING A PATIENT OR  
14 CLIENT OF THE UNLICENSED INDIVIDUAL.

15 (4) TO LEVY A CIVIL PENALTY OF NOT MORE THAN \$10,000 PER  
16 VIOLATION ON ANY LICENSEE[, REGISTRANT, CERTIFICATE HOLDER,  
17 PERMIT HOLDER] OR UNLICENSED PERSON WHO VIOLATES ANY  
18 PROVISION OF THE APPLICABLE LICENSING ACT OR BOARD  
19 REGULATION.

20 (5) TO ASSESS AGAINST THE RESPONDENT DETERMINED TO BE IN  
21 VIOLATION OF THE DISCIPLINARY PROVISIONS ADMINISTERED BY A  
22 LICENSING BOARD OR COMMISSION IN A DISCIPLINARY PROCEEDING  
23 PENDING BEFORE THE BOARD OR COMMISSION FOR FINAL  
24 DETERMINATION, AS PART OF THE SANCTION, THE COSTS OF  
25 INVESTIGATION UNDERLYING THAT DISCIPLINARY ACTION. THE COST  
26 OF INVESTIGATION SHALL NOT INCLUDE THOSE COSTS INCURRED BY  
27 THE BOARD OR COMMISSION AFTER THE FILING OF FORMAL ACTIONS OR  
28 DISCIPLINARY CHARGES AGAINST THE RESPONDENT.

29 (6) TO COLLECT ALL FEES, COSTS, FINES AND PENALTIES  
30 ASSESSED AS A RESULT OF A DISCIPLINARY PROCEEDING BEFORE A

1 LICENSING BOARD OR COMMISSION.

2 (7) TO DENY, SUSPEND OR REVOKE A LICENSE, REGISTRATION,  
3 CERTIFICATION OR PERMIT FOR FAILURE TO PAY ANY PENALTY, FEE,  
4 INTEREST OR COST ASSESSED AS A RESULT OF A DISCIPLINARY  
5 PROCEEDING BEFORE A LICENSING BOARD OR COMMISSION.

6 \* \* \*

7 (D.1) ENTRY OF JUDGMENT.--WITHIN 60 MONTHS OF THE FINAL  
8 DISPOSITION OF A DISCIPLINARY CASE, IF AN UNPAID CIVIL PENALTY,  
9 FEE, INTEREST AND COST OF A LICENSEE[, REGISTRANT, CERTIFICATE  
10 HOLDER OR PERMIT HOLDER] TOTAL \$1,000 OR MORE, THE LICENSING  
11 BOARD OR COMMISSION, OR ITS RESPECTIVE AGENT, MAY TRANSMIT A  
12 COPY OF THE FINAL DISPOSITION TO THE PROTHONOTARY OF THE COURT  
13 OF COMMON PLEAS IN THE COUNTY WHERE THE LICENSEE[, REGISTRANT,  
14 CERTIFICATE HOLDER OR PERMIT HOLDER,] OR PROPERTY OF THE  
15 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER,]  
16 UPON WHOM THE PENALTY, FEE, INTEREST AND COST ARE IMPOSED IS  
17 LOCATED. THE PROTHONOTARY SHALL ENTER AND DOCKET THE SAME  
18 WITHOUT REQUIRING PAYMENT OF COSTS AS A CONDITION PRECEDENT TO  
19 THE ENTRY THEREOF. THE TOTAL OF THE PENALTY, FEE, INTEREST AND  
20 COST SHALL BE ENTERED AS A JUDGMENT UPON THE LICENSEE[,  
21 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] REGARDLESS OF  
22 WHETHER THE AMOUNT HAS BEEN ORDERED TO BE PAID IN INSTALLMENTS.

23 \* \* \*

24 (D.3) EXECUTION.--A WRIT OF EXECUTION MAY DIRECTLY ISSUE  
25 UPON THE LIEN WITHOUT THE ISSUANCE AND PROSECUTION TO JUDGMENT  
26 OF A WRIT OF SCIRE FACIAS, PROVIDED THAT A NOTICE OF THE FILING  
27 AND THE EFFECT OF THE LIEN BE PROVIDED TO THE LICENSEE[,  
28 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] NOT LESS THAN  
29 TEN DAYS BEFORE THE EXECUTION ON THE LIEN. NOTICE MAY BE SENT BY  
30 REGISTERED MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE[,

1 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER].

2 (D.4) EXCEPTION TO EXECUTION.--THE LIEN SHALL HAVE NO EFFECT  
3 UPON ANY STOCK OF GOODS, WARES OR MERCHANDISE REGULARLY SOLD OR  
4 LEASED IN THE ORDINARY COURSE OF BUSINESS BY THE LICENSEE[,  
5 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] AGAINST WHOM  
6 THE LIEN HAS BEEN ENTERED, UNLESS AND UNTIL A WRIT OF EXECUTION  
7 HAS BEEN ISSUED AND A LEVY MADE UPON THE STOCK OF GOODS, WARES  
8 AND MERCHANDISE.

9 \* \* \*

10 Section 2 4. This act shall take effect in 60 days.

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