

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 354 Session of 2017

INTRODUCED BY TOMLINSON, BOSCOLA, MENSCH, SCHWANK, HUGHES, RAFFERTY, BROWNE AND SABATINA, FEBRUARY 15, 2017

AMENDMENTS TO HOUSE AMENDMENTS, IN SENATE, DECEMBER 11, 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. Section 1 of the act of July 2, 1993 (P.L.345,
15 No.48), entitled "An act empowering the General Counsel or his
16 designee to issue subpoenas for certain licensing board
17 activities; providing for hearing examiners in the Bureau of
18 Professional and Occupational Affairs; providing additional
19 powers to the Commissioner of Professional and Occupational
20 Affairs; and further providing for civil penalties and license
21 suspension," is amended by adding definitions to read:

22 Section 1. Definitions.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 * * *

5 "Expunge" or "expungement." Removal of a disciplinary
6 record, accomplished by:

7 (1) permanently sealing the affected record from public
8 access;

9 (2) deeming the proceedings to which the affected record
10 refers as not having occurred; and

11 (3) except with respect to any subsequent application
12 for expungement, affording the affected party the right to
13 represent that no record exists regarding the subject matter
14 of the affected record.

15 * * *

16 "Licensee." Any person holding a license, registration,
17 certificate or permit with a licensing board or commission under
18 the Bureau of Professional and Occupational Affairs in the
19 Department of State.

20 * * *

21 Section 2. The act is amended by adding sections to read:
22 Section 2.1. Reporting of sanctions and criminal proceedings.

23 (a) Duty.--A licensee, as a condition of licensure,
24 certification, registration or holding a permit, shall provide
25 written notice of the following to the appropriate licensing
26 board or commission within 30 days:

27 (1) A disciplinary action taken against the licensee by
28 a licensing agency of another jurisdiction.

29 (2) A finding or verdict of guilt, an admission of
30 guilt, a plea of nolo contendere, probation without verdict,

1 a disposition in lieu of trial or an Accelerated
2 Rehabilitative Disposition of any felony or misdemeanor
3 offense and any drug or alcohol related summary offense.

4 (b) Sanctions.--A licensing board or licensing commission
5 may take disciplinary action against a licensee who violates
6 this section.

7 Section 3.1. ~~Temporary and automatic suspension~~ SUSPENSION. <--

8 (a) Temporary suspension.--A licensing board or commission
9 may temporarily suspend a license, certificate, registration or
10 permit under circumstances as determined by the board or
11 commission to be an immediate and clear danger to the public
12 health and safety. The licensing board or commission shall issue
13 an order to that effect without a hearing, but upon due notice,
14 to the licensee concerned at the licensee's last known address,
15 which shall include a written statement of all allegations
16 against the licensee. After issuing the order, the licensing
17 board or commission shall commence formal action to suspend,
18 revoke or restrict the license, certificate, registration or
19 permit of the person concerned as otherwise provided for by law.
20 All actions shall be taken promptly and without delay.

21 (b) Hearing.--Within 30 days following the issuance of an
22 order of temporary suspension, the licensing board or commission
23 shall conduct or cause to be conducted a preliminary hearing to
24 determine whether there is a prima facie case supporting the
25 suspension. The licensee whose license, certificate,
26 registration or permit has been temporarily suspended may be
27 present at the preliminary hearing and may be represented by
28 counsel, cross-examine witnesses, inspect physical evidence,
29 call witnesses, offer evidence and testimony and make a record
30 of the proceedings. If it is determined that there is not a

1 prima facie case, the suspended license, certificate,
2 registration or permit shall be immediately restored. The
3 temporary suspension shall remain in effect until vacated by the
4 licensing board or commission, but in no event longer than 180
5 days.

6 ~~(c) Automatic suspension. A license, certificate, <--~~
7 ~~registration or permit issued by a licensing board or commission~~
8 ~~shall automatically be suspended upon:~~

9 ~~(1) the legal commitment to an institution of a licensee~~
10 ~~because of mental incompetency for any cause upon filing with~~
11 ~~the board or commission a certified copy of the commitment;~~
12 ~~or~~

13 ~~(2) conviction of a felony under the act of April 14,~~
14 ~~1972 (P.L.233, No.64), known as The Controlled Substance,~~
15 ~~Drug, Device and Cosmetic Act, or conviction of an offense~~
16 ~~under the laws of another jurisdiction which, if committed in~~
17 ~~this Commonwealth, would be a felony under The Controlled~~
18 ~~Substance, Drug, Device and Cosmetic Act.~~

19 ~~(d) Stay. Automatic suspension under subsection (c) shall~~
20 ~~not be stayed pending an appeal of a conviction.~~

21 ~~(e) (C) Restoration.--Restoration of a license, certificate, <--~~
22 ~~registration or permit shall be made as provided by law in the~~
23 ~~case of revocation or suspension of the license, certificate,~~
24 ~~registration or permit.~~

25 Section 3. Section 5(a), (b), (d.1), (d.3) and (d.4) of the
26 act are amended to read:

27 Section 5. Civil penalties.

28 (a) Authorization.--

29 (1) The Commissioner of Professional and Occupational
30 Affairs, after consultation with the licensing boards and

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

29 (2) The Commissioner of Professional and Occupational
30 Affairs shall expunge the disciplinary record of a licensee,

1 registrant, certificate holder or permit holder, if the
2 imposition of discipline was for a violation involving
3 failure to complete continuing education requirements or
4 practicing for six months or less on a lapsed license,
5 registration, certificate or permit, subject to the
6 following:

7 (i) The licensee, registrant, certificate holder or
8 permit holder must make written application to the
9 commissioner for expungement not earlier than four years
10 from the final disposition of the disciplinary record.

11 (ii) The disciplinary record must be the only
12 disciplinary record that the licensee, registrant,
13 certificate holder or permit holder has with either the
14 commissioner or a licensing board or commission under the
15 commissioner's jurisdiction.

16 (iii) The licensee, registrant, certificate holder
17 or permit holder must not be the subject of an active
18 investigation related to professional or occupational
19 conduct.

20 (iv) The licensee, registrant, certificate holder or
21 permit holder must not be in a current disciplinary
22 status, and any fees or fines assessed must be paid in
23 full.

24 (v) The licensee, registrant, certificate holder or
25 permit holder must not have had a disciplinary record
26 previously expunged by the commissioner.

27 (vi) Disciplinary records involving imposition of
28 discipline for violations other than those identified in
29 this paragraph shall not be eligible for expungement.

30 (vii) The licensee, registrant, certificate holder

1 or permit holder shall pay all costs associated with the
2 expungement as established by the commissioner by
3 regulation.

4 (3) Nothing in this subsection shall prohibit a licensing
5 board or commission from using a previous discipline for any
6 regulatory purpose or from releasing records of a previous
7 discipline upon request from law enforcement or other
8 governmental body as permitted by law.

9 (b) Additional powers.--In addition to the disciplinary
10 powers and duties of the boards and commissions within the
11 Bureau of Professional and Occupational Affairs under their
12 respective practice acts, boards and commissions shall have the
13 power, respectively:

14 (1) To impose discipline, including, but not limited to,
15 a civil penalty of up to \$10,000 per violation on any
16 licensee[, registrant, certificate holder, permit holder] or
17 unlicensed person who violates a lawful disciplinary order of
18 the board.

19 (2) To impose discipline, including, but not limited to,
20 a civil penalty of up to \$10,000 per violation on any
21 licensee[, registrant, certificate holder, permit holder] or
22 unlicensed person who aids and abets the unlicensed practice
23 of a profession, occupation or business.

24 (3) To levy a civil penalty of not more than \$10,000 per
25 violation on any corporation, partnership, institution,
26 association or sole proprietorship which aids and abets any
27 individual in the unlicensed practice of a profession. This
28 penalty shall not, however, be levied against any person
29 solely as a consequence of that person being a patient or
30 client of the unlicensed individual.

1 (4) To levy a civil penalty of not more than \$10,000 per
2 violation on any licensee[, registrant, certificate holder,
3 permit holder] or unlicensed person who violates any
4 provision of the applicable licensing act or board
5 regulation.

6 (5) To assess against the respondent determined to be in
7 violation of the disciplinary provisions administered by a
8 licensing board or commission in a disciplinary proceeding
9 pending before the board or commission for final
10 determination, as part of the sanction, the costs of
11 investigation underlying that disciplinary action. The cost
12 of investigation shall not include those costs incurred by
13 the board or commission after the filing of formal actions or
14 disciplinary charges against the respondent.

15 (6) To collect all fees, costs, fines and penalties
16 assessed as a result of a disciplinary proceeding before a
17 licensing board or commission.

18 (7) To deny, suspend or revoke a license, registration,
19 certification or permit for failure to pay any penalty, fee,
20 interest or cost assessed as a result of a disciplinary
21 proceeding before a licensing board or commission.

22 * * *

23 (d.1) Entry of judgment.--Within 60 months of the final
24 disposition of a disciplinary case, if an unpaid civil penalty,
25 fee, interest and cost of a licensee[, registrant, certificate
26 holder or permit holder] total \$1,000 or more, the licensing
27 board or commission, or its respective agent, may transmit a
28 copy of the final disposition to the prothonotary of the court
29 of common pleas in the county where the licensee[, registrant,
30 certificate holder or permit holder,] or property of the

1 licensee[, registrant, certificate holder or permit holder,]
2 upon whom the penalty, fee, interest and cost are imposed is
3 located. The prothonotary shall enter and docket the same
4 without requiring payment of costs as a condition precedent to
5 the entry thereof. The total of the penalty, fee, interest and
6 cost shall be entered as a judgment upon the licensee[,
7 registrant, certificate holder or permit holder] regardless of
8 whether the amount has been ordered to be paid in installments.

9 * * *

10 (d.3) Execution.--A writ of execution may directly issue
11 upon the lien without the issuance and prosecution to judgment
12 of a writ of scire facias, provided that a notice of the filing
13 and the effect of the lien be provided to the licensee[,
14 registrant, certificate holder or permit holder] not less than
15 ten days before the execution on the lien. Notice may be sent by
16 registered mail to the last known address of the licensee[,
17 registrant, certificate holder or permit holder].

18 (d.4) Exception to execution.--The lien shall have no effect
19 upon any stock of goods, wares or merchandise regularly sold or
20 leased in the ordinary course of business by the licensee[,
21 registrant, certificate holder or permit holder] against whom
22 the lien has been entered, unless and until a writ of execution
23 has been issued and a levy made upon the stock of goods, wares
24 and merchandise.

25 * * *

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