

AMENDMENTS TO SENATE BILL NO. 538

Sponsor: REPRESENTATIVE HARPER

Printer's No. 1108

1 Amend Bill, page 1, line 21, by striking out "A DEFINITION"

2 and inserting

3 definitions

4 Amend Bill, page 3, by inserting between lines 5 and 6

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 Amend Bill, page 5, line 20, by striking out "5(B)" and

17 inserting

18 5(a), (b)

19 Amend Bill, page 5, line 21, by inserting after "ADDED"

20 July 17, 2009 (P.L.95, No.25) and

21 Amend Bill, page 5, line 24, by striking out all of said line

22 and inserting

23 (a) Authorization.--

24 (1) The Commissioner of Professional and Occupational
25 Affairs, after consultation with the licensing boards and
26 commissions, shall have the power to adopt a schedule of
27 civil penalties for operating without a current, registered,
28 unsuspended and unrevoked license, registration, certificate
29 or permit and for violating any provision of their respective
30 acts or regulations relating to the conduct or operation of a
31 business or facility licensed by such licensing boards and

1 commissions. The schedule of penalties shall not be
2 applicable to disciplinary matters under the jurisdiction of
3 a licensing board or commission unless that licensing board
4 or commission has approved the schedule. The schedule of
5 penalties, guidelines for their imposition and procedures for
6 appeal shall be published in the Pennsylvania Bulletin,
7 provided that the commissioner shall, within two years of
8 such publication, promulgate a regulation setting forth the
9 schedule of penalties, guidelines and procedures. Any such
10 penalty shall not exceed the sum of \$1,000 per violation.
11 Duly authorized agents of the bureau shall have the power and
12 authority to issue citations and impose penalties for any
13 such violations. Any such penalty imposed may be appealed to
14 a hearing examiner or the licensing board or commission
15 pursuant to the regulations promulgated under section 3(b).
16 If the appeal is initially to a hearing examiner, the
17 relevant licensing board or commission shall render a
18 decision on any exceptions to the decision of the hearing
19 examiner or on any applications for review in accordance with
20 section 3(d). All proceedings shall be conducted in
21 accordance with the provisions of 2 Pa.C.S. (relating to
22 administrative law and procedure).

23 (2) The Commissioner of Professional and Occupational
24 Affairs shall expunge the disciplinary record of a licensee,
25 registrant, certificate holder or permit holder subject to
26 the following conditions:

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

31 (ii) The disciplinary record must be the only
32 disciplinary record that the licensee, registrant,
33 certificate holder or permit holder has with either the
34 commissioner or a licensing board or commission under the
35 commissioner's jurisdiction.

36 (iii) The licensee, registrant, certificate holder
37 or permit holder must not be the subject of an active
38 investigation related to professional or occupational
39 conduct.

40 (iv) The licensee, registrant, certificate holder or
41 permit holder must not be in a current disciplinary
42 status, and any fees or fines assessed must be paid in
43 full.

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

47 (vi) The imposition of discipline must have been for
48 a violation involving:

49 (A) Failure to complete continuing education
50 requirements or practicing for six months or less on
51 a lapsed license, registration, certificate or

1 permit. At least four years must have elapsed since
2 the final disposition of the disciplinary record at
3 the time of application for expungement.

4 (B) Any violation, except those which resulted
5 in license suspension or revocation, in which at
6 least ten years have elapsed since the final
7 disposition of the disciplinary record at the time of
8 application for expungement.

9 Disciplinary records involving imposition of discipline
10 for violations other than those identified in clauses (A)
11 and (B) shall not be eligible for expungement.

12 (vii) The licensee, registrant, certificate holder
13 or permit holder shall pay all costs associated with the
14 expungement as established by the commissioner by
15 regulation.

16 (3) Nothing in this subsection shall prohibit a
17 licensing board or commission from using a previous
18 discipline for any regulatory purpose or from releasing
19 records of a previous discipline upon request from law
20 enforcement or other governmental body as permitted by law.