
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2102 Session of
2006

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FEBRUARY 9, 2006

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
FEBRUARY 9, 2006

AN ACT

1 Providing for advocacy for victims of improper action by
2 licensed professionals; imposing functions on the
3 Commissioner of Professional and Occupational Affairs and the
4 Bureau of Professional and Occupational Affairs.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Professional
9 and Occupational Affairs Victims Advocacy Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The purpose of this act is to provide a mechanism
13 whereby a citizen who has been aggrieved by the actions of a
14 licensee may receive assistance in having the citizen's
15 interests represented before the appropriate licensing board
16 when the licensing board is considering discipline against
17 the licensee.

1 (2) This act shall be construed liberally in order to
2 promote justice and to effectuate the purpose of this act.

3 Section 3. Definitions.

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

7 "Bureau." The Bureau of Professional and Occupational
8 Affairs.

9 "Commissioner." The Commissioner of Professional and
10 Occupational Affairs.

11 "Department." The Department of State of the Commonwealth.

12 "Disciplinary matter." An action before a licensing board
13 which determines whether discipline is to be imposed upon a
14 licensee under the jurisdiction of the licensing board.

15 "Discipline." A sanction imposed by a licensing board upon a
16 licensee under its jurisdiction.

17 "License." An authorization by a licensing board to practice
18 a profession or an occupation. The term includes a temporary
19 practice permit, a temporary license, certification or
20 registration.

21 "Licensee." An individual who holds a license.

22 "Licensing board." Any of the following:

23 (1) A board or commission:

24 (i) which is empowered to license, certify or
25 register an individual as a member of a profession or
26 occupation; and

27 (ii) of which the commissioner is a member.

28 (2) The State Board of Real Estate Appraisers.

29 (3) The Navigation Commission for the Delaware River and
30 its Navigable Tributaries.

1 The term includes a hearing examiner of an entity referred to in
2 paragraph (1), (2) or (3).

3 "Victim." An individual who has filed a complaint with the
4 department against a licensee.

5 "Victim advocate." The individual holding the office
6 established in section 5(a).

7 "Victim impact statement." A statement submitted to a
8 licensing board in a disciplinary matter by a victim regarding
9 the harm the victim has suffered because of an act or omission
10 of a licensee who is subject to the disciplinary matter.

11 "Victim representative." Any of the following:

12 (1) Unless paragraph (2), (3) or (4) applies, an
13 individual related to the victim by consanguinity, affinity
14 or adoption.

15 (2) The personal representative, as defined in 20
16 Pa.C.S. § 102 (relating to definitions), of a victim.

17 (3) A guardian, as defined in 20 Pa.C.S. § 102 (relating
18 to definitions), of a victim.

19 (4) The guardian of the person of a victim who is under
20 18 years of age.

21 Section 4. Administration.

22 (a) Commissioner of Professional and Occupational Affairs.--
23 The commissioner has the following powers and duties:

24 (1) Appoint a victim advocate.

25 (2) Appoint counsel and other staff the commissioner
26 deems necessary to assist the victim advocate. Each counsel
27 must be an attorney at law. The commissioner shall fix the
28 compensation of individuals under this paragraph in
29 accordance with law.

30 (3) Supervise the work of the victim advocate, counsel

1 and staff.

2 (4) Establish a program to assure extensive and
3 continuing publicity regarding the victim advocate.

4 (b) Bureau of Professional and Occupational Affairs.--The
5 bureau has the following powers and duties:

6 (1) To maintain accurate records regarding victims'
7 names, current addresses and telephone numbers and the type
8 of victim impact statements prepared and submitted. This
9 information shall be deemed confidential and shall not be
10 discoverable or subject to subpoena.

11 (2) To promulgate forms for use by victims and the
12 victim advocate to implement this act.

13 (3) To develop informational pamphlets about this act
14 and to disseminate the pamphlets as follows:

15 (i) To victims.

16 (ii) To the public. This subparagraph includes
17 making the information contained in the pamphlet
18 available via electronic means, including an Internet
19 website.

20 Section 5. Victim advocate.

21 (a) Appointment.--

22 (1) There is established within the bureau the Office of
23 Victim Advocate.

24 (2) The victim advocate shall be appointed under section
25 4(a)(1). The victim advocate shall serve at the pleasure of
26 the commissioner.

27 (b) Functions.--The victim advocate has the following powers
28 and duties:

29 (1) To prescribe the duties of counsel and staff under
30 section 4(a)(2).

1 (2) To make the notification under section 7(a).

2 (3) Upon request of a victim, to do all of the
3 following:

4 (i) Appear in person before a licensing board on a
5 disciplinary matter involving the licensee and the
6 victim. The appearance shall be limited to representing
7 the interests of the victim, including relaying the
8 contents of a victim impact statement and other relevant
9 information.

10 (ii) Assist the victim in the preparation of a
11 victim impact statement.

12 (iii) Submit a written or videotaped victim impact
13 statement to a licensing board.

14 (4) To notify a victim of the disposition of a
15 disciplinary matter in which the victim has submitted a
16 victim impact statement.

17 Section 6. Right of victim impact statement.

18 (a) Presentation.--

19 (1) A victim has the right to present a victim impact
20 statement in a disciplinary matter involving the victim.
21 Subject to section 7(b)(3)(ii), the statement may be made in
22 any of the following manners:

23 (i) In person by:

24 (A) the victim;

25 (B) the victim advocate; or

26 (C) if the victim is incapacitated, deceased or
27 under 18 years of age, the victim representative.

28 (ii) Conference call by:

29 (A) the victim; or

30 (B) if the victim is incapacitated, deceased or

1 under 18 years of age, the victim representative.

2 (iii) Submission of a videotaped or written victim
3 impact statement of:

4 (A) the victim; or

5 (B) if the victim is incapacitated, deceased or
6 under 18 years of age, the victim representative.

7 (b) Contents.--A victim impact statement may include
8 information concerning the:

9 (1) nature and extent of physical, psychological or
10 emotional harm suffered by the victim;

11 (2) extent of loss of earnings or inability to work
12 suffered by the victim; and

13 (3) effect of harm on the victim's family.

14 (c) Timing.--The victim impact statement shall be presented
15 before discipline is imposed by any of the following:

16 (1) A hearing examiner who is empowered to impose
17 discipline.

18 (2) A licensing board which imposes discipline on the
19 basis of:

20 (i) a report or certified record of a hearing
21 examiner; or

22 (ii) its own hearing.

23 (d) Use.--

24 (1) A victim impact statement shall be made part of the
25 record of a disciplinary matter.

26 (2) A victim impact statement may not be used as
27 evidence by a licensing board in determining whether the
28 licensee has violated the law.

29 (3) A victim impact statement may only be considered by
30 a licensing board after a determination has been made that

1 the licensee has violated the law for the purpose of deciding
2 on the proper discipline.

3 Section 7. Procedure for victim impact statement.

4 (a) Victim advocate.--

5 (1) No later than 90 days before a disciplinary matter
6 involving a victim is scheduled to be heard by a licensing
7 board, the victim advocate shall notify the victim of all of
8 the following:

9 (i) That there is a disciplinary matter involving
10 the victim.

11 (ii) The date and time that the disciplinary matter
12 will be heard.

13 (iii) The process regarding a disciplinary matter,
14 including the right of a victim to submit a victim impact
15 statement.

16 (2) The victim advocate shall notify the victim at the
17 victim's last known mailing address via registered mail,
18 return receipt requested.

19 (3) If the victim is deceased, a minor or incapacitated,
20 the victim advocate shall notify a victim representative.

21 (b) Victim.--

22 (1) A victim has the duty to reasonably cooperate with
23 the victim advocate. This paragraph includes providing a
24 current mailing address and a change of address.

25 (2) The following time requirements apply:

26 (i) Within 14 days of receipt of the notice under
27 subsection (a), the victim or the victim representative
28 must notify the victim advocate of the intention to
29 submit a written or videotaped impact statement.

30 (ii) Within 60 days of the receipt of the notice

1 under subsection (a), the victim or the victim
2 representative must submit a written or videotaped victim
3 impact statement to the victim advocate.

4 (3) If the time requirements of paragraph (2) are not
5 met, the following apply:

6 (i) The right to submit a victim impact statement
7 under section 6(a)(1)(i) or (ii) shall not be waived.

8 (ii) Unless the victim advocate excuses the failure
9 upon a finding of good cause, the right to submit a
10 victim impact statement under section 6(a)(1)(iii) shall
11 be waived.

12 Section 8. Confidentiality of records.

13 Except as set forth in section 6(d)(1), information obtained
14 or produced by the victim advocate, the bureau or the
15 commissioner during the process of preparing or submitting a
16 victim impact statement:

17 (1) shall be confidential and privileged;

18 (2) except as otherwise provided by law, shall be used
19 only for the processing or submitting of a victim impact
20 statement;

21 (3) shall not be subject to subpoena or discovery; and

22 (4) shall not be introduced into evidence in any
23 judicial or administrative proceeding.

24 Section 9. Judicial review.

25 There shall be no right of judicial review by a victim on any
26 of the following:

27 (1) The type of consideration given to a victim impact
28 statement by a licensing board.

29 (2) A decision regarding whether to excuse a failure
30 under section 7(b)(3)(ii).

1 Section 29. Applicability.

2 This act shall apply to disciplinary matters initiated by
3 complaints filed with the department on or after the effective
4 date of this section.

5 Section 30. Effective date.

6 This act shall take effect as follows:

7 (1) The following provisions shall take effect in 60
8 days:

9 (i) Section 6.

10 (ii) Section 7.

11 (iii) Section 29.

12 (2) The remainder of this act shall take effect
13 immediately.