

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 646 Session of  
2011

INTRODUCED BY HARPER, THOMAS, BARRAR, COHEN, DAVIDSON, FLECK,  
FRANKEL, GINGRICH, GRELL, HESS, KORTZ, MICOZZIE, MILNE,  
READSHAW, WAGNER, SANTARSIERO, GEORGE AND MAHER,  
FEBRUARY 14, 2011

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 9, 2012

## 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 and for civil  
9 penalties.

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

12 Section 1. Section 1 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 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 "Disciplinary matter." Any matter subject to a licensing  
5 board's or commission's jurisdiction in which the licensing  
6 board or commission has the authority to refuse, suspend, revoke  
7 or limit a license, registration, certificate or permit or to  
8 impose a civil penalty or other discipline under any act.

9 "Expunge" or "expungement." Removal of a disciplinary  
10 record, accomplished by:

11 (1) ~~Permanently~~ PERMANENTLY sealing the affected record ←  
12 from public access-; ←

13 (2) ~~Deeming~~ DEEMING the proceedings to which the ←  
14 affected record refers as not having occurred-; AND ←

15 (3) ~~Except~~ EXCEPT with respect to any subsequent ←  
16 application for expungement, affording the affected party the  
17 right to represent that no record exists regarding the  
18 subject matter of the affected record.

19 "Licensing boards." Those departmental or administrative  
20 boards under the Bureau of Professional and Occupational Affairs  
21 in the Department of State.

22 "Licensing commissions." Those departmental or  
23 administrative commissions under the Bureau of Professional and  
24 Occupational Affairs in the Department of State.

25 Section 2. Section 5-~~(b)~~ 5(A) of the act is amended by adding ←  
26 a paragraph to read:

27 Section 5. Civil penalties.

28 \* \* \*

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 \* \* \*

5 ~~(6) To expunge a disciplinary record of a certificate~~  
6 ~~holder, registrant or licensee subject to the following~~  
7 ~~conditions:~~

8 ~~(i) The certificate holder, registrant or licensee~~  
9 ~~must make written application to the board for expungement~~  
10 ~~no earlier than four years from the effective date of the~~  
11 ~~disciplinary record.~~

12 ~~(ii) The disciplinary record must be the only~~  
13 ~~disciplinary record that the certificate holder,~~  
14 ~~registrant or licensee has with the board.~~

15 ~~(iii) The certificate holder, registrant or licensee~~  
16 ~~must not have had a disciplinary record previously~~  
17 ~~expunged by the board.~~

18 ~~(iv) The disciplinary record must have involved~~  
19 ~~either the imposition of a civil penalty against the~~  
20 ~~certificate holder, registrant or licensee for a~~  
21 ~~violation under subsection (a) or the imposition of~~  
22 ~~discipline against the certificate holder, registrant or~~  
23 ~~licensee for a violation that, at the time of application~~  
24 ~~for expungement, would be prosecuted under subsection~~  
25 ~~(a).~~

26 (A) AUTHORIZATION.--

27 (1) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL  
28 AFFAIRS, AFTER CONSULTATION WITH THE LICENSING BOARDS AND  
29 COMMISSIONS, SHALL HAVE THE POWER TO ADOPT A SCHEDULE OF  
30 CIVIL PENALTIES FOR OPERATING WITHOUT A CURRENT, REGISTERED,



1       UNSUSPENDED AND UNREVOKED LICENSE, REGISTRATION, CERTIFICATE  
2       OR PERMIT AND FOR VIOLATING ANY PROVISION OF THEIR RESPECTIVE  
3       ACTS OR REGULATIONS RELATING TO THE CONDUCT OR OPERATION OF A  
4       BUSINESS OR FACILITY LICENSED BY SUCH LICENSING BOARDS AND  
5       COMMISSIONS. THE SCHEDULE OF PENALTIES SHALL NOT BE  
6       APPLICABLE TO DISCIPLINARY MATTERS UNDER THE JURISDICTION OF  
7       A LICENSING BOARD OR COMMISSION UNLESS THAT LICENSING BOARD  
8       OR COMMISSION HAS APPROVED THE SCHEDULE. THE SCHEDULE OF  
9       PENALTIES, GUIDELINES FOR THEIR IMPOSITION AND PROCEDURES FOR  
10      APPEAL SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN,  
11      PROVIDED THAT THE COMMISSIONER SHALL, WITHIN TWO YEARS OF  
12      SUCH PUBLICATION, PROMULGATE A REGULATION SETTING FORTH THE  
13      SCHEDULE OF PENALTIES, GUIDELINES AND PROCEDURES. ANY SUCH  
14      PENALTY SHALL NOT EXCEED THE SUM OF \$1,000 PER VIOLATION.  
15      DULY AUTHORIZED AGENTS OF THE BUREAU SHALL HAVE THE POWER AND  
16      AUTHORITY TO ISSUE CITATIONS AND IMPOSE PENALTIES FOR ANY  
17      SUCH VIOLATIONS. ANY SUCH PENALTY IMPOSED MAY BE APPEALED TO  
18      A HEARING EXAMINER OR THE LICENSING BOARD OR COMMISSION  
19      PURSUANT TO THE REGULATIONS PROMULGATED UNDER SECTION 3(B).  
20      IF THE APPEAL IS INITIALLY TO A HEARING EXAMINER, THE  
21      RELEVANT LICENSING BOARD OR COMMISSION SHALL RENDER A  
22      DECISION ON ANY EXCEPTIONS TO THE DECISION OF THE HEARING  
23      EXAMINER OR ON ANY APPLICATIONS FOR REVIEW IN ACCORDANCE WITH  
24      SECTION 3(D). ALL PROCEEDINGS SHALL BE CONDUCTED IN  
25      ACCORDANCE WITH THE PROVISIONS OF 2 PA.C.S. (RELATING TO  
26      ADMINISTRATIVE LAW AND PROCEDURE).

27           (2) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL  
28           AFFAIRS SHALL EXPUNGE THE DISCIPLINARY RECORD OF A LICENSEE,  
29           REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER SUBJECT TO  
30           THE FOLLOWING CONDITIONS:

1           (I) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
2           PERMIT HOLDER MUST MAKE WRITTEN APPLICATION TO THE  
3           COMMISSIONER FOR EXPUNGEMENT NOT EARLIER THAN FOUR YEARS  
4           FROM THE FINAL DISPOSITION OF THE DISCIPLINARY RECORD.

5           (II) THE DISCIPLINARY RECORD MUST BE THE ONLY  
6           DISCIPLINARY RECORD THAT THE LICENSEE, REGISTRANT,  
7           CERTIFICATE HOLDER OR PERMIT HOLDER HAS WITH EITHER THE  
8           COMMISSIONER OR A LICENSING BOARD OR COMMISSION UNDER THE  
9           COMMISSIONER'S JURISDICTION.

10           (III) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER  
11           OR PERMIT HOLDER MUST NOT BE THE SUBJECT OF AN ACTIVE  
12           INVESTIGATION RELATED TO PROFESSIONAL OR OCCUPATIONAL  
13           CONDUCT.

14           (IV) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
15           PERMIT HOLDER MUST NOT BE IN A CURRENT DISCIPLINARY  
16           STATUS, AND ANY FEES OR FINES ASSESSED MUST BE PAID IN  
17           FULL.

18           (V) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR  
19           PERMIT HOLDER MUST NOT HAVE HAD A DISCIPLINARY RECORD  
20           PREVIOUSLY EXPUNGED BY THE COMMISSIONER.

21           (VI) THE IMPOSITION OF DISCIPLINE MUST HAVE BEEN FOR  
22           A VIOLATION INVOLVING:

23                   (A) FAILURE TO COMPLETE CONTINUING EDUCATION  
24                   REQUIREMENTS OR PRACTICING FOR SIX MONTHS OR LESS ON  
25                   A LAPSED LICENSE, REGISTRATION, CERTIFICATE OR  
26                   PERMIT. AT LEAST FOUR YEARS MUST HAVE ELAPSED SINCE  
27                   THE FINAL DISPOSITION OF THE DISCIPLINARY RECORD AT  
28                   THE TIME OF APPLICATION FOR EXPUNGEMENT.

29                   (B) ANY VIOLATION, EXCEPT THOSE WHICH RESULTED  
30                   IN LICENSE SUSPENSION OR REVOCATION, IN WHICH AT

1           LEAST TEN YEARS HAVE ELAPSED SINCE THE FINAL  
2           DISPOSITION OF THE DISCIPLINARY RECORD AT THE TIME OF  
3           APPLICATION FOR EXPUNGEMENT.

4           DISCIPLINARY RECORDS INVOLVING IMPOSITION OF DISCIPLINE  
5           FOR VIOLATIONS OTHER THAN THOSE IDENTIFIED IN CLAUSES (A)  
6           AND (B) SHALL NOT BE ELIGIBLE FOR EXPUNGEMENT.

7           (VII) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER  
8           OR PERMIT HOLDER SHALL PAY ALL COSTS ASSOCIATED WITH THE  
9           EXPUNGEMENT AS ESTABLISHED BY THE COMMISSIONER BY  
10          REGULATION.

11          (3) NOTHING IN THIS SUBSECTION SHALL PROHIBIT A  
12          LICENSING BOARD OR COMMISSION FROM USING A PREVIOUS  
13          DISCIPLINE FOR ANY REGULATORY PURPOSE OR FROM RELEASING  
14          RECORDS OF A PREVIOUS DISCIPLINE UPON REQUEST FROM LAW  
15          ENFORCEMENT OR OTHER GOVERNMENTAL BODY AS PERMITTED BY LAW.

16          \* \* \*

17          Section 3. This act shall take effect in 60 days.