



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

SENATE BILL NO. 538

PRINTERS NO. 1134

PRIME SPONSOR: Tomlinson

### COST / (SAVINGS)

FUND	FY 2014/15	FY 2015/16
Department of State Restricted Accounts*	\$0	See "Fiscal Impact"

\* Includes the Professional Licensure Augmentation Account, the State Board of Medicine Restricted Account, the State Board of Osteopathic Medicine Restricted Account and the State Board of Podiatry Restricted Account

**SUMMARY:** This legislation requires licensees of all boards within the Bureau of Professional and Occupational Affairs to report disciplinary actions taken by a licensing agency of another state, and felony, misdemeanor and drug or alcohol related summary convictions, to their licensing board within 30 days; provides temporary and automatic license suspension authority for all boards; and authorizes the Commissioner of the Bureau of Professional and Occupational Affairs to expunge the disciplinary record of a licensee. This legislation would take effect in 60 days.

**ANALYSIS:** This legislation amends Act 48 of 1993 as follows:

**Reporting of Sanctions and Criminal Proceedings:** This legislation adds a new Section 2.1 to require any person holding a license, registration, certificate or permit with a board or commission under the Bureau of Professional and Occupational Affairs (BPOA) to report any disciplinary action taken against them by another state's licensing agency, and any conviction (including probation without verdict and ARD) of a felony, misdemeanor or drug or alcohol related summary offense, to their appropriate licensing board or commission within 30 days. A licensing board or commission may take disciplinary action for failure to report.

**Temporary and Automatic Suspensions:** The legislation adds a new Section 3.1 to give all boards and commissions under BPOA temporary and automatic suspension authority.

A board or commission may temporarily suspend a license, registration, certificate or permit if they determine an immediate and clear danger to the public health, safety or welfare exists. In such cases, the board or commission shall provide a written statement of all allegations against the licensee, and shall commence formal action to suspend, revoke or restrict the license, registration, certificate or permit. Within 30 days of the temporary suspension a preliminary hearing must be conducted to determine if there is a prima facie case supporting the suspension. If there is no case supporting suspension the license shall be immediately restored. The temporary suspension shall remain in effect until vacated, but in no event shall it last longer than 180 days.

A license, registration, certificate or permit shall automatically be suspended when the individual is convicted of a felony under the Controlled Substance, Drug, Device and Cosmetic Act (Act 64 of 1972), or is legally committed to an institution because of mental incompetency.

**Expungement of Disciplinary Records:** This legislation directs the Commissioner of BPOA to expunge a disciplinary record upon written application of the licensee if the applicant satisfies the following criteria:

- 1) The record must be at least 4 years old;
- 2) The record must be the only disciplinary record the applicant has;
- 3) The applicant must not be the subject of an active investigation related to professional or occupational conduct;
- 4) The applicant must not be in a current disciplinary status and any fees or fines assessed must be paid in full;
- 5) The applicant must not have had a disciplinary record previously expunged;
- 6) The applicant must wait at least 4 years from the effective date of the disciplinary record before applying for expungement of a record involving failure to complete continuing education or practice of 6 months or less on a lapsed license;
- 7) The applicant must wait 10 years from the effective date of the record before applying for expungement of a record involving any other violation, but disciplinary records involving a violation which resulted in license suspension or revocation are not eligible for expungement under any circumstances.

Expungement seals the affected record from public access and allows the licensee to represent that no record exists. However, BPOA and the licensing board shall continue to maintain the record and may release it upon request from law enforcement or other governmental body as permitted by law.

**FISCAL IMPACT:** According to the Governor's Budget Office (GBO) and the Department of State (DOS), the various Boards of the BPOA would have to review and process an application for approval of an Act 48 Expungement. There are more than 8,000 disciplinary actions issued by BPOA that are over ten years old and the DOS cannot predict how many disciplinary actions would meet the criteria under this legislation or how many licensees would request expungement; therefore, specific costs are not available. It is important to note that the Commissioner of the BPOA will have the ability to establish a fee for expungement by regulation which would offset any costs, such as administrative and legal staff time as well as some IT staff time. The legislation would have no adverse fiscal impact on the General Fund.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** June 27, 2015

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*