

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 142** Session of  
2009

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INTRODUCED BY TOMLINSON, RAFFERTY, O'PAKE AND FERLO,  
JANUARY 30, 2009

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SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,  
MARCH 30, 2009

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## 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 civil penalties; PROVIDING ←  
9 FOR CONFIDENTIALITY OF INFORMATION; and making related  
10 repeals.

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

13 Section 1. Section 5 of the act of July 2, 1993 (P.L.345,  
14 No.48) entitled "An act empowering the General Counsel or his  
15 designee to issue subpoenas for certain licensing board  
16 activities; providing for hearing examiners in the Bureau of  
17 Professional and Occupational Affairs; providing additional  
18 powers to the Commissioner of Professional and Occupational  
19 Affairs; and further providing for civil penalties and license  
20 suspension," is amended to read:

21 Section 5. Civil penalties.

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

30 (b) Additional powers.--In addition to the disciplinary

1 powers and duties of the boards and commissions within the  
2 Bureau of Professional and Occupational Affairs under their  
3 respective practice acts, boards and commissions shall have the  
4 power, respectively:

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

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

15 (3) To levy a civil penalty of not more than [\$1,000]  
16 \$10,000 per violation on any corporation, partnership,  
17 institution, association or sole proprietorship which aids  
18 and abets any individual in the unlicensed practice of a  
19 profession. This penalty shall not, however, be levied  
20 against any person solely as a consequence of that person  
21 being a patient or client of the unlicensed individual.

22 (4) To levy a civil penalty of not more than \$10,000 per  
23 violation on any licensee, registrant, certificate holder,  
24 permit holder or unlicensed person who violates any provision  
25 of the applicable licensing act or board regulation.

26 (5) To assess against the respondent determined to be in  
27 violation of the disciplinary provisions administered by a  
28 licensing board or commission in a disciplinary proceeding  
29 pending before the board or commission for final  
30 determination, as part of the sanction, the costs of

1 investigation underlying that disciplinary action. The cost  
2 of investigation shall not include any associated legal fees  
3 or any cost of prosecution.

4 (c) Restrictions.--Any decisions rendered by a licensing  
5 board or commission on any exceptions to the decision of a  
6 hearing examiner or on any application for review in accordance  
7 with section 3(d) to impose a civil penalty pursuant to this  
8 section shall require the same number of votes required for the  
9 licensing board or commission to impose a civil penalty under  
10 any other act. Nothing in this section shall be construed to  
11 restrict the powers and duties under any other act of a  
12 licensing board or commission in disciplinary matters, except  
13 that a licensing board or commission may not impose a civil  
14 penalty under any other act for the same violation for which a  
15 civil penalty has been imposed pursuant to this section.

16 (d) Status of civil penalty.--Any civil penalty imposed  
17 pursuant to this section or imposed by any licensing board or  
18 commission under any other act shall be a judgment in favor of  
19 the Bureau of Professional and Occupational Affairs upon the  
20 person or the property of the person upon whom the civil penalty  
21 is imposed. The Attorney General shall be responsible for  
22 enforcing such judgments in courts of competent jurisdiction in  
23 accordance with the provisions of 42 Pa.C.S. (relating to  
24 judiciary and judicial procedure).

25 (e) Definition.--As used in this section, the term  
26 "unlicensed practice" means:

27 (1) practicing a profession or occupation or operating a  
28 business for which a license, registration, certificate or  
29 permit is required without holding a valid, unexpired,  
30 unrevoked or unsuspended authority to do so; or

1 (2) representing to the public or any person, through  
2 offerings, advertisements or the use of a title, that the  
3 individual is qualified to practice a profession, occupation  
4 or business for which a license, registration, certificate or  
5 permit is required without holding a valid, unexpired,  
6 unrevoked or unsuspended authority to do so.

7 SECTION 2. THE ACT IS AMENDED BY ADDING A SECTION TO READ: ←

8 SECTION 5.1. CONFIDENTIALITY OF RECORDS OF LICENSURE BOARDS.

9 (A) GENERAL RULE.--ALL DOCUMENTS, MATERIALS OR INFORMATION  
10 UTILIZED FOR AN INVESTIGATION UNDERTAKEN BY THE BUREAU OF  
11 ENFORCEMENT AND INVESTIGATION AND THE PROSECUTION DIVISION OF  
12 THE DEPARTMENT OF STATE, OFFICE OF CHIEF COUNSEL ON BEHALF OF  
13 THE LICENSING BOARDS WITHIN THE DEPARTMENT OF STATE OR  
14 CONCERNING A LICENSURE-RELATED COMPLAINT FILED WITH THE  
15 DEPARTMENT SHALL BE CONFIDENTIAL AND PRIVILEGED. NO PERSON WHO  
16 HAS INVESTIGATED OR HAS ACCESS TO OR CUSTODY OF DOCUMENTS,  
17 MATERIALS OR INFORMATION WHICH ARE CONFIDENTIAL AND PRIVILEGED  
18 UNDER THIS SUBSECTION SHALL BE REQUIRED TO TESTIFY IN ANY  
19 JUDICIAL OR ADMINISTRATIVE PROCEEDING WITHOUT THE WRITTEN  
20 CONSENT OF THE LICENSING BOARD WHICH REGULATES THE PROFESSION  
21 INVOLVED. THIS SUBSECTION SHALL NOT PRECLUDE OR LIMIT  
22 INTRODUCTION OF THE CONTENTS OF AN INVESTIGATIVE FILE OR RELATED  
23 WITNESS TESTIMONY IN A HEARING OR PROCEEDING HELD BEFORE THE  
24 LICENSING BOARDS WITHIN THE DEPARTMENT OF STATE. THIS SUBSECTION  
25 SHALL NOT APPLY TO LETTERS TO A LICENSEE THAT DISCLOSE THE FINAL  
26 OUTCOME OF AN INVESTIGATION OR TO FINAL ADJUDICATION OR ORDERS  
27 ISSUED BY THE LICENSURE BOARD.

28 (B) CERTAIN DISCLOSURE PERMITTED.--EXCEPT AS PROVIDED UNDER  
29 SUBSECTION (A), THIS SECTION SHALL NOT PREVENT DISCLOSURE OF ANY  
30 DOCUMENTS, MATERIALS OR INFORMATION PERTAINING TO THE STATUS OF

1 A LICENSE, PERMIT OR CERTIFICATE ISSUED OR PREPARED BY THE  
2 LICENSING BOARDS, THE SHARING OF INFORMATION WITH LAW  
3 ENFORCEMENT AUTHORITIES OR PROFESSIONAL LICENSURE REGULATORY  
4 BOARDS IN OTHER JURISDICTIONS, OR INFORMATION RELATING TO A  
5 PUBLIC DISCIPLINARY PROCEEDING OR HEARING. ANY OTHER DISCLOSURE  
6 OF DOCUMENTS, MATERIALS OR INFORMATION BY EMPLOYEES OR AGENTS OF  
7 THE DEPARTMENT OF STATE, OFFICE OF CHIEF COUNSEL, BUREAU OF  
8 PROFESSIONAL AND OCCUPATIONAL AFFAIRS AND THE BUREAU OF  
9 ENFORCEMENT AND INVESTIGATION MAY BE MADE ONLY IN FURTHERANCE OF  
10 AN INVESTIGATION OR PROSECUTION OF ALLEGED VIOLATIONS OF  
11 APPLICABLE LICENSING STATUTES, CODES OR REGULATIONS. VIOLATIONS  
12 OF THE CONFIDENTIALITY AND DISCLOSURE SECTIONS SHALL SUBJECT THE  
13 EMPLOYEE OR AGENT TO ADMINISTRATIVE DISCIPLINE, INCLUDING  
14 DISCHARGE, SUSPENSION OR OTHER FORMAL OR APPROPRIATE  
15 DISCIPLINARY ACTION.

16 (C) CONFIDENTIALITY AFFIDAVITS.--ALL EMPLOYEES AND AGENTS OF  
17 THE DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL, BUREAU OF  
18 PROFESSIONAL AND OCCUPATIONAL AFFAIRS AND THE BUREAU OF  
19 ENFORCEMENT AND INVESTIGATION SHALL EXECUTE A CONFIDENTIALITY  
20 AFFIDAVIT WHICH PROVIDES THAT DOCUMENTS, MATERIALS OR  
21 INFORMATION UNDER SUBSECTION (A), OBTAINED BY EMPLOYEES AND  
22 AGENTS OF THE DEPARTMENT OF STATE, OFFICE OF CHIEF COUNSEL,  
23 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS AND THE BUREAU  
24 OF ENFORCEMENT AND INVESTIGATION SHALL BE CONSIDERED  
25 CONFIDENTIAL AND MAY BE DISCLOSED ONLY AS PERMITTED UNDER  
26 SUBSECTIONS (A) AND (B).

27 (D) WAIVER PROHIBITED.--A LICENSING BOARD OR COMMISSION MAY  
28 NOT REQUIRE AN APPLICANT TO WAIVE ANY CONFIDENTIALITY PROVIDED  
29 FOR UNDER THIS SECTION AS A CONDITION FOR THE APPROVAL OF A  
30 LICENSE OR ANY OTHER ACTION OF THE BOARD.



1 Section 23. The following provisions are repealed insofar as  
2 they are inconsistent with the amendment of section 5 of the  
3 act:

4 (1) Section 15(b.3) of the act of June 19, 1931 (P.L.  
5 589, No.202), referred to as the Barbers' License Law.

6 (2) Section 10.1 of the act of May 1, 1933 (P.L.216, No.  
7 76), known as The Dental Law.

8 (3) Section 20(c.2) of the act of May 3, 1933 (P.L.242,  
9 No.86), referred to as the Cosmetology Law.

10 (4) Section 11(b) of the act of May 23, 1945 (P.L.913,  
11 No.367), known as the Engineer, Land Surveyor and Geologist  
12 Registration Law.

13 (5) Section 16(c) of the act of May 26, 1947 (P.L.318,  
14 No.140), known as the CPA Law.

15 (6) Section 13(b) of the act of May 22, 1951 (P.L.317,  
16 No.69), known as The Professional Nursing Law.

17 (7) Section 17(b) of the act of January 14, 1952 (1951  
18 P.L.1898, No.522), known as the Funeral Director Law.

19 (8) Section 13(b) of the act of March 2, 1956 (1955 P.L.  
20 1206, No.375), known as the Podiatry Practice Act.

21 (9) Section 15(b) of the act of March 2, 1956 (1955 P.L.  
22 1211, No.376), known as the Practical Nurse Law.

23 (10) Section 8(15.1) of the act of September 27, 1961  
24 (P.L.1700, No.699), known as the Pharmacy Act.

25 (11) Section 11(b) of the act of January 24, 1966 (1965  
26 P.L.1527, No.535), known as the Landscape Architects'  
27 Registration Law.

28 (12) Section 11(b) of the act of June 22, 1970 (P.L.378,  
29 No.122), known as the Nursing Home Administrators License  
30 Act.

1           (13) Section 11(b) of the act of March 23, 1972 (P.L.  
2 136, No.52), known as the Professional Psychologists Practice  
3 Act.

4           (14) Section 28(c) of the act of December 27, 1974 (P.L.  
5 995, No.326), known as the Veterinary Medicine Practice Act.

6           (15) Section 12(c) of the act of October 10, 1975 (P.L.  
7 383, No.110), known as the Physical Therapy Practice Act.

8           (16) Section 305 of the act of February 19, 1980 (P.L.  
9 15, No.9), known as the Real Estate Licensing and  
10 Registration Act.

11           (17) Section 8(c) of the act of June 6, 1980 (P.L.197,  
12 No.57), known as the Optometric Practice and Licensure Act.

13           (18) Section 20(d) of the act of December 14, 1982 (P.L.  
14 1227, No.281), known as the Architects Licensure Law.

15           (19) Section 28(c) of the act of December 22, 1983 (P.L.  
16 306, No.84), known as the Board of Vehicles Act.

17           (20) Section 29(b) of the act of December 22, 1983 (P.L.  
18 327, No.85), known as the Auctioneer and Auction Licensing  
19 Act.

20           (21) Section 703 of the act of December 16, 1986 (P.L.  
21 1646, No.188), known as the Chiropractic Practice Act.

22           (22) Section 17(b) of the act of July 9, 1987 (P.L.220,  
23 No.39), known as the Social Workers, Marriage and Family  
24 Therapists and Professional Counselors Act.

25           (23) Section 15(b) of the act of July 10, 1990 (P.L.404,  
26 No.98), known as the Real Estate Appraisers Certification  
27 Act.

28           (24) Section 908 of the act of March 20, 2002 (P.L.154,  
29 No.13), known as the Medical Care Availability and Reduction  
30 of Error (Mcare) Act.



1           (25) Section 15 of the act of October 9, 2008 (P.L.  
2    1438, No. 118), known as the Massage Therapy Law.

3           (26) Section 702 of the act of October 9, 2008 (P.L.  
4    1363, No. 100), known as the Crane Operator Licensure Act.

5    Section ~~3~~4. This act shall apply to violations which take       ←  
6 place on or after the effective date of this section.

7    Section ~~4~~5. This act shall take effect in 60 days.               ←