

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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

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

AS AMENDED ON SECOND CONSIDERATION, MAY 5, 2009

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.

22 (a) Authorization.--The Commissioner of Professional and

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

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

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

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

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

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

1 ~~of investigation shall not include any associated legal fees~~ ←
2 ~~or any cost of prosecution~~ THOSE COSTS INCURRED BY THE BOARD ←
3 ~~OR COMMISSION AFTER THE FILING OF FORMAL ACTIONS OR~~
4 ~~DISCIPLINARY CHARGES AGAINST THE RESPONDENT.~~

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

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

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

28 (1) practicing a profession or occupation or operating a
29 business for which a license, registration, certificate or
30 permit is required without holding a valid, unexpired,

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

8 Section 2. The act is amended by adding a section to read:

9 Section 5.1. Confidentiality of records of licensure boards.

10 (a) General rule.--All documents, materials or information ←

11 utilized for an investigation RECORDS UNDER SECTION 708(B)(17) ←

12 OF THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN AS THE

13 RIGHT-TO-KNOW LAW, RELATING TO A NONCRIMINAL INVESTIGATION,

14 INCLUDING PROSECUTORIAL MEMOS AND TRANSCRIPTS OF DEPOSITIONS,

15 undertaken by the Bureau of Enforcement and Investigation and

16 the Prosecution Division of the Department of State, Office of

17 Chief Counsel on behalf of the licensing boards within the

18 Department of State or concerning a licensure-related complaint

19 filed with the department shall be confidential and privileged.

20 No person who has investigated or has access to or custody of

21 documents, materials or information which are confidential and

22 privileged under this subsection shall be required to testify in

23 any judicial or administrative proceeding UNLESS DIRECTED TO DO ←

24 SO BY A COURT OF COMPETENT JURISDICTION without the written

25 consent of the licensing board which regulates the profession

26 involved. This subsection shall not preclude or limit

27 introduction of the contents of an investigative file or related

28 witness testimony in a hearing or proceeding held before the

29 licensing boards within the Department of State. This subsection ←

30 SECTION shall not apply to letters to a licensee OR OTHER ←

1 DOCUMENTS that disclose the final outcome of an investigation or
2 to final adjudication or orders issued by the licensure board.

3 (b) Certain disclosure permitted.--Except as provided under
4 subsection (a), this section shall not prevent disclosure of any
5 documents, materials or information pertaining to the status of
6 a license, permit or certificate issued or prepared by the
7 licensing boards, the sharing of information with law
8 enforcement authorities or professional licensure regulatory
9 boards in other jurisdictions, or information relating to a
10 public disciplinary proceeding or hearing. Any other disclosure

11 of documents, materials or information by employees or agents of ←

12 OF RECORDS UNDER SECTION 708(B) (17) OF THE RIGHT-TO-KNOW LAW ←

13 RELATING TO A NONCRIMINAL INVESTIGATION, INCLUDING PROSECUTORIAL

14 MEMOS AND TRANSCRIPTS OF DEPOSITIONS BY EMPLOYEES OR AGENTS OF

15 the Department of State, Office of Chief Counsel, Bureau of

16 Professional and Occupational Affairs and the Bureau of

17 Enforcement and Investigation may be made only in furtherance of

18 an investigation or prosecution of alleged violations of

19 applicable licensing statutes, codes or regulations. Violations

20 of the confidentiality and disclosure sections THIS SUBSECTION ←

21 shall subject the employee or agent to administrative

22 discipline, including discharge, suspension or other formal or

23 appropriate disciplinary action.

24 (c) Confidentiality affidavits.--All employees and agents of

25 the Department of State Office of Chief Counsel, Bureau of

26 Professional and Occupational Affairs and the Bureau of

27 Enforcement and Investigation shall execute a confidentiality

28 affidavit which provides that documents, materials or

29 information under subsection (a), obtained by employees and

30 agents of the Department of State, Office of Chief Counsel,

1 Bureau of Professional and Occupational Affairs and the Bureau
2 of Enforcement and Investigation shall be considered
3 confidential and may be disclosed only as permitted under
4 subsections (a) and (b).

5 (d) Waiver prohibited.--A licensing board or commission may
6 not require an applicant to waive any confidentiality provided
7 for under this section as a condition for the approval of a
8 license or any other action of the board.

9 Section 3. The following provisions are repealed insofar as
10 they are inconsistent with the amendment of section 5 of the
11 act:

12 (1) Section 15(b.3) of the act of June 19, 1931 (P.L.
13 589, No.202), referred to as the Barbers' License Law.

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

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

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

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

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

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

27 (8) Section 13(b) of the act of March 2, 1956 (1955 P.L.
28 1206, No.375), known as the Podiatry Practice Act.

29 (9) Section 15(b) of the act of March 2, 1956 (1955 P.L.
30 1211, No.376), known as the Practical Nurse Law.

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

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

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

9 (13) Section 11(b) of the act of March 23, 1972 (P.L.
10 136, No.52), known as the Professional Psychologists Practice
11 Act.

12 (14) Section 28(c) of the act of December 27, 1974 (P.L.
13 995, No.326), known as the Veterinary Medicine Practice Act.

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

16 (16) Section 305 of the act of February 19, 1980 (P.L.
17 15, No.9), known as the Real Estate Licensing and
18 Registration Act.

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

21 (18) Section 20(d) of the act of December 14, 1982 (P.L.
22 1227, No.281), known as the Architects Licensure Law.

23 (19) Section 28(c) of the act of December 22, 1983 (P.L.
24 306, No.84), known as the Board of Vehicles Act.

25 (20) Section 29(b) of the act of December 22, 1983 (P.L.
26 327, No.85), known as the Auctioneer and Auction Licensing
27 Act.

28 (21) Section 703 of the act of December 16, 1986 (P.L.
29 1646, No.188), known as the Chiropractic Practice Act.

30 (22) Section 17(b) of the act of July 9, 1987 (P.L.220,

1 No.39), known as the Social Workers, Marriage and Family
2 Therapists and Professional Counselors Act.

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

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

9 (25) Section 15 of the act of October 9, 2008 (P.L.
10 1438, No. 118), known as the Massage Therapy Law.

11 (26) Section 702 of the act of October 9, 2008 (P.L.
12 1363, No. 100), known as the Crane Operator Licensure Act.

13 Section 4. This act shall apply to violations which take
14 place on or after the effective date of this section.

15 Section 5. This act shall take effect in 60 days.