
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 336 Session of
2013

INTRODUCED BY HARPER, DAVIS, FABRIZIO, HESS, LONGIETTI,
BENNINGHOFF, FLECK, CALTAGIRONE, CLYMER, DENLINGER, GIBBONS,
MURT, EVERETT AND JAMES, JANUARY 24, 2013

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL
LICENSURE, IN SENATE, AS AMENDED, MAY 7, 2014

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 sealing the affected record from public
12 access;

13 (2) deeming the proceedings to which the affected record
14 refers as not having occurred; and

15 (3) except with respect to any subsequent application
16 for expungement, affording the affected party the right to
17 represent that no record exists regarding the subject matter
18 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(a) of the act, amended July 17, 2009
26 (P.L.95, No.25), is amended to read:

27 Section 5. Civil penalties.

28 (a) Authorization.--

29 (1) The Commissioner of Professional and Occupational
30 Affairs, after consultation with the licensing boards and

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

1 registrant, certificate holder or permit holder subject to
2 the following conditions:

3 (i) The licensee, registrant, certificate holder or
4 permit holder must make written application to the
5 commissioner for expungement not earlier than four years
6 from the final disposition of the disciplinary record.

7 (ii) The disciplinary record must be the only
8 disciplinary record that the licensee, registrant,
9 certificate holder or permit holder has with either the
10 commissioner or a licensing board or commission under the
11 commissioner's jurisdiction.

12 (iii) The licensee, registrant, certificate holder
13 or permit holder must not be the subject of an active
14 investigation related to professional or occupational
15 conduct.

16 (iv) The licensee, registrant, certificate holder or
17 permit holder must not be in a current disciplinary
18 status, and any fees or fines assessed must be paid in
19 full.

20 (v) The licensee, registrant, certificate holder or
21 permit holder must not have had a disciplinary record
22 previously expunged by the commissioner.

23 (vi) The imposition of discipline must have been for
24 a violation involving:

25 (A) ~~Failure~~ FAILURE to complete continuing <--
26 education requirements or practicing for six months
27 or less on a lapsed license, registration,
28 certificate or permit. At least four years must have <--
29 elapsed since the final disposition of the
30 disciplinary record at the time of application for

1 expungement.

2 ~~(B) Any violation, except those which resulted~~
3 ~~in license suspension or revocation, in which at~~
4 ~~least ten years have elapsed since the final~~
5 ~~disposition of the disciplinary record at the time of~~
6 ~~application for expungement. PERMIT; OR~~ <--

7 (B) FAILURE TO RENEW AND PROVIDING
8 MISINFORMATION TO THE LICENSING BOARD RESULTING FROM
9 THE FAILURE TO RENEW THE LICENSE.

10 AT LEAST FOUR YEARS MUST HAVE ELAPSED SINCE THE FINAL
11 DISPOSITION OF THE DISCIPLINARY RECORD AT THE TIME OF
12 APPLICATION FOR EXPUNGEMENT UNDER CLAUSES (A) AND (B).

13 Disciplinary records involving imposition of discipline
14 for violations other than those identified in clauses (A)
15 and (B) shall not be eligible for expungement.

16 (vii) The licensee, registrant, certificate holder
17 or permit holder shall pay all costs associated with the
18 expungement as established by the commissioner by
19 regulation.

20 (3) Nothing in this subsection shall prohibit a
21 licensing board or commission from using a previous
22 discipline for any regulatory purpose or from releasing
23 records of a previous discipline upon request from law
24 enforcement or other governmental body as permitted by law.

25 * * *

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