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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 92 Session of  
2015

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INTRODUCED BY HARPER, BARRAR, COHEN, EVERETT, GRELL, JAMES,  
KORTZ, LONGIETTI, MURT AND GIBBONS, JANUARY 21, 2015

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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,  
JANUARY 21, 2015

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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 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.

21 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the  
2 context clearly indicates otherwise:

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

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

10 (1) permanently sealing the affected record from public  
11 access;

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

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

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

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

24 Section 2. Section 5(a) of the act, amended July 17, 2009  
25 (P.L.95, No.25), is amended to read:

26 Section 5. Civil penalties.

27 (a) Authorization.--

28 (1) The Commissioner of Professional and Occupational  
29 Affairs, after consultation with the licensing boards and  
30 commissions, shall have the power to adopt a schedule of

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

28 (2) The Commissioner of Professional and Occupational  
29 Affairs shall expunge the disciplinary record of a licensee,  
30 registrant, certificate holder or permit holder subject to

1 the following conditions:

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

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

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

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

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

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

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

30 (B) Any violation, except those which resulted

1 in license suspension or revocation, in which at  
2 least ten years have elapsed since the final  
3 disposition of the disciplinary record at the time of  
4 application for expungement.

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

8 (vii) The licensee, registrant, certificate holder  
9 or permit holder shall pay all costs associated with the  
10 expungement as established by the commissioner by  
11 regulation.

12 (3) Nothing in this subsection shall prohibit a  
13 licensing board or commission from using a previous  
14 discipline for any regulatory purpose or from releasing  
15 records of a previous discipline upon request from law  
16 enforcement or other governmental body as permitted by law.

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