

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 538 Session of
2015INTRODUCED BY TOMLINSON, MENSCH, VANCE, SCHWANK, HUGHES,
RAFFERTY AND BOSCOLA, FEBRUARY 25, 2015AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 27, 2015

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; providing for <--
 9 reporting of sanctions and criminal proceedings and for
 10 temporary and automatic suspension; AND FURTHER PROVIDING FOR <--
 11 CIVIL PENALTIES.

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

14 Section 1. ~~The~~ SECTION 1 OF THE act of July 2, 1993 <--
 15 (P.L.345, No.48), entitled "An act empowering the General
 16 Counsel or his designee to issue subpoenas for certain licensing
 17 board activities; providing for hearing examiners in the Bureau
 18 of Professional and Occupational Affairs; providing additional
 19 powers to the Commissioner of Professional and Occupational
 20 Affairs; and further providing for civil penalties and license
 21 suspension," is amended by adding ~~sections A-DEFINITION-~~ <--

1 DEFINITIONS to read: <--

2 ~~Section 2.1. Reporting of sanctions and criminal proceedings.~~ <--

3 ~~(a) Duty. An individual who holds a license, certificate or~~
4 ~~registration issued by the Bureau of Professional and~~
5 ~~Occupational Affairs Licensure shall, as a condition of~~
6 ~~licensure, certification or registration, do all of the~~
7 ~~following:~~

8 ~~(1) Report to the appropriate licensing board or~~
9 ~~licensing commission a disciplinary action taken against the~~
10 ~~licensee, certificate holder or registrant by a licensing~~
11 ~~agency of another jurisdiction.~~

12 ~~(2) Report to the appropriate licensing board or~~
13 ~~licensing commission any arrest, indictment or conviction of~~
14 ~~the licensee, certificate holder or registrant.~~

15 ~~(b) Time. A report under subsection (a) shall be made as~~
16 ~~follows:~~

17 ~~(1) Within 30 days of the imposition of the sanction~~
18 ~~under subsection (a) (1).~~

19 ~~(2) Except as set forth in paragraph (3), within 30 days~~
20 ~~of the earlier of:~~

21 ~~(i) an arrest under subsection (a) (2);~~

22 ~~(ii) an indictment under subsection (a) (2); or~~

23 ~~(iii) a conviction under subsection (a) (2).~~

24 ~~(3) In the case of a criminal action under subsection~~
25 ~~(a) (2) which is initiated prior to the effective date of this~~
26 ~~paragraph, within 30 days from the later of:~~

27 ~~(i) the date of conviction; or~~

28 ~~(ii) the effective date of this paragraph.~~

29 ~~(c) Sanctions. A licensing board or licensing commission~~
30 ~~shall take disciplinary action against a licensee, certificate~~

1 ~~holder or registrant who violates this section.~~

2 SECTION 1. DEFINITIONS. <--

3 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
4 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
5 CONTEXT CLEARLY INDICATES OTHERWISE:

6 * * *

7 "EXPUNGE" OR "EXPUNGEMENT." REMOVAL OF A DISCIPLINARY <--
8 RECORD, ACCOMPLISHED BY:

9 (1) PERMANENTLY SEALING THE AFFECTED RECORD FROM PUBLIC
10 ACCESS;

11 (2) DEEMING THE PROCEEDINGS TO WHICH THE AFFECTED RECORD
12 REFERS AS NOT HAVING OCCURRED; AND

13 (3) EXCEPT WITH RESPECT TO ANY SUBSEQUENT APPLICATION
14 FOR EXPUNGEMENT, AFFORDING THE AFFECTED PARTY THE RIGHT TO
15 REPRESENT THAT NO RECORD EXISTS REGARDING THE SUBJECT MATTER
16 OF THE AFFECTED RECORD.

17 * * *

18 "LICENSEE." ANY PERSON HOLDING A LICENSE, REGISTRATION,
19 CERTIFICATE OR PERMIT WITH A LICENSING BOARD OR COMMISSION UNDER
20 THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS IN THE
21 DEPARTMENT OF STATE.

22 * * *

23 SECTION 2. THE ACT IS AMENDED BY ADDING SECTIONS TO READ:
24 SECTION 2.1. REPORTING OF SANCTIONS AND CRIMINAL PROCEEDINGS.

25 (A) DUTY.--A LICENSEE, AS A CONDITION OF LICENSURE,
26 CERTIFICATION, REGISTRATION OR HOLDING A PERMIT, SHALL PROVIDE
27 WRITTEN NOTICE OF THE FOLLOWING TO THE APPROPRIATE LICENSING
28 BOARD OR COMMISSION WITHIN 30 DAYS:

29 (1) A DISCIPLINARY ACTION TAKEN AGAINST THE LICENSEE BY
30 A LICENSING AGENCY OF ANOTHER JURISDICTION.

1 (2) A FINDING OR VERDICT OF GUILT, AN ADMISSION OF
2 GUILT, A PLEA OF NOLO CONTENDERE, PROBATION WITHOUT VERDICT,
3 A DISPOSITION IN LIEU OF TRIAL OR AN ACCELERATED
4 REHABILITATIVE DISPOSITION OF ANY FELONY OR MISDEMEANOR
5 OFFENSE AND ANY DRUG OR ALCOHOL RELATED SUMMARY OFFENSE.

6 (B) SANCTIONS.--A LICENSING BOARD OR LICENSING COMMISSION
7 MAY TAKE DISCIPLINARY ACTION AGAINST A LICENSEE WHO VIOLATES
8 THIS SECTION.

9 Section 3.1. Temporary and automatic suspension.

10 (a) Temporary suspension.--A licensing board or ~~licensing~~ <--
11 commission may temporarily suspend a license, certificate ~~or,~~ <--
12 registration OR PERMIT under circumstances as determined by the <--
13 board or commission to be an immediate and clear danger to the
14 public health ~~and,~~ safety OR WELFARE. The LICENSING board or <--
15 commission shall issue an order to that effect without a
16 hearing, but upon due notice, to the licensee, ~~certificate~~ <--
17 holder or registrant concerned at his last known address, which
18 shall include a written statement of all allegations against the
19 licensee, ~~certificate holder or registrant.~~ The LICENSING board <--
20 or commission shall thereupon commence formal action to suspend,
21 revoke or restrict the license, certificate ~~or,~~ registration OR <--
22 PERMIT of the person concerned as otherwise provided for by law.
23 All actions shall be taken promptly and without delay.

24 (b) Hearing.--Within 30 days following the issuance of an
25 order ~~temporarily suspending a license, certificate or~~ <--
26 ~~registration~~ OF TEMPORARY SUSPENSION, the licensing board or <--
27 ~~licensing~~ commission shall conduct or cause to be conducted a <--
28 preliminary hearing to determine that there is a prima facie
29 case supporting the suspension. The licensee, ~~certificate holder~~ <--
30 ~~or registrant~~ whose license, certificate ~~or,~~ registration OR <--

1 PERMIT has been temporarily suspended may be present at the
2 preliminary hearing and may be represented by counsel, cross-
3 examine witnesses, inspect physical evidence, call witnesses,
4 offer evidence and testimony and make a record of the
5 proceedings. If it is determined that there is not a prima facie
6 case, the suspended license, certificate ~~or~~, registration OR <--
7 PERMIT shall be immediately restored. The temporary suspension
8 shall remain in effect until vacated by the LICENSING board or <--
9 commission, but in no event longer than 180 days.

10 (c) Automatic suspension.--A license, certificate ~~or~~, <--
11 registration OR PERMIT issued by a licensing board or ~~licensing~~ <--
12 commission shall automatically be suspended upon:

13 (1) the legal commitment to an institution of a
14 licensee, ~~certificate holder or registrant~~ because of mental <--
15 incompetency from any cause upon filing with the board or
16 commission a certified copy of the commitment; or

17 (2) conviction of a felony under the act of April 14,
18 1972 (P.L.233, No.64), known as The Controlled Substance,
19 Drug, Device and Cosmetic Act, or conviction of an offense
20 under the laws of another jurisdiction, which, if committed
21 in this Commonwealth, would be a felony under The Controlled
22 Substance, Drug, Device and Cosmetic Act.

23 (d) Stay.--Automatic suspension under subsection (c) shall
24 not be stayed pending any appeal of a conviction.

25 (e) Restoration.--Restoration of a license, certificate ~~or~~, <--
26 registration OR PERMIT shall be made as provided by law in the <--
27 case of revocation or suspension of the license, certificate ~~or~~, <--
28 registration OR PERMIT. <--

29 ~~(f) Definition. As used in this section, the term~~ <--
30 "conviction" shall include a judgment, an admission of guilt or

1 ~~a plea of nolo contendere.~~

2 SECTION 3. SECTION ~~5(B)~~ 5(A), (B), (D.1), (D.3) AND (D.4) OF <--
3 THE ACT, AMENDED OR ADDED JULY 17, 2009 (P.L.95, NO.25) AND <--
4 FEBRUARY 4, 2014 (P.L.16, NO.6), ARE AMENDED TO READ:

5 SECTION 5. CIVIL PENALTIES.

6 * * *

7 (A) AUTHORIZATION.-- <--

8 (1) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
9 AFFAIRS, AFTER CONSULTATION WITH THE LICENSING BOARDS AND
10 COMMISSIONS, SHALL HAVE THE POWER TO ADOPT A SCHEDULE OF
11 CIVIL PENALTIES FOR OPERATING WITHOUT A CURRENT, REGISTERED,
12 UNSUSPENDED AND UNREVOKED LICENSE, REGISTRATION, CERTIFICATE
13 OR PERMIT AND FOR VIOLATING ANY PROVISION OF THEIR RESPECTIVE
14 ACTS OR REGULATIONS RELATING TO THE CONDUCT OR OPERATION OF A
15 BUSINESS OR FACILITY LICENSED BY SUCH LICENSING BOARDS AND
16 COMMISSIONS. THE SCHEDULE OF PENALTIES SHALL NOT BE
17 APPLICABLE TO DISCIPLINARY MATTERS UNDER THE JURISDICTION OF
18 A LICENSING BOARD OR COMMISSION UNLESS THAT LICENSING BOARD
19 OR COMMISSION HAS APPROVED THE SCHEDULE. THE SCHEDULE OF
20 PENALTIES, GUIDELINES FOR THEIR IMPOSITION AND PROCEDURES FOR
21 APPEAL SHALL BE PUBLISHED IN THE PENNSYLVANIA BULLETIN,
22 PROVIDED THAT THE COMMISSIONER SHALL, WITHIN TWO YEARS OF
23 SUCH PUBLICATION, PROMULGATE A REGULATION SETTING FORTH THE
24 SCHEDULE OF PENALTIES, GUIDELINES AND PROCEDURES. ANY SUCH
25 PENALTY SHALL NOT EXCEED THE SUM OF \$1,000 PER VIOLATION.
26 DULY AUTHORIZED AGENTS OF THE BUREAU SHALL HAVE THE POWER AND
27 AUTHORITY TO ISSUE CITATIONS AND IMPOSE PENALTIES FOR ANY
28 SUCH VIOLATIONS. ANY SUCH PENALTY IMPOSED MAY BE APPEALED TO
29 A HEARING EXAMINER OR THE LICENSING BOARD OR COMMISSION
30 PURSUANT TO THE REGULATIONS PROMULGATED UNDER SECTION 3(B).

1 IF THE APPEAL IS INITIALLY TO A HEARING EXAMINER, THE
2 RELEVANT LICENSING BOARD OR COMMISSION SHALL RENDER A
3 DECISION ON ANY EXCEPTIONS TO THE DECISION OF THE HEARING
4 EXAMINER OR ON ANY APPLICATIONS FOR REVIEW IN ACCORDANCE WITH
5 SECTION 3(D). ALL PROCEEDINGS SHALL BE CONDUCTED IN
6 ACCORDANCE WITH THE PROVISIONS OF 2 PA.C.S. (RELATING TO
7 ADMINISTRATIVE LAW AND PROCEDURE).

8 (2) THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL
9 AFFAIRS SHALL EXPUNGE THE DISCIPLINARY RECORD OF A LICENSEE,
10 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER SUBJECT TO
11 THE FOLLOWING CONDITIONS:

12 (I) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR
13 PERMIT HOLDER MUST MAKE WRITTEN APPLICATION TO THE
14 COMMISSIONER FOR EXPUNGEMENT NOT EARLIER THAN FOUR YEARS
15 FROM THE FINAL DISPOSITION OF THE DISCIPLINARY RECORD.

16 (II) THE DISCIPLINARY RECORD MUST BE THE ONLY
17 DISCIPLINARY RECORD THAT THE LICENSEE, REGISTRANT,
18 CERTIFICATE HOLDER OR PERMIT HOLDER HAS WITH EITHER THE
19 COMMISSIONER OR A LICENSING BOARD OR COMMISSION UNDER THE
20 COMMISSIONER'S JURISDICTION.

21 (III) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER
22 OR PERMIT HOLDER MUST NOT BE THE SUBJECT OF AN ACTIVE
23 INVESTIGATION RELATED TO PROFESSIONAL OR OCCUPATIONAL
24 CONDUCT.

25 (IV) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR
26 PERMIT HOLDER MUST NOT BE IN A CURRENT DISCIPLINARY
27 STATUS, AND ANY FEES OR FINES ASSESSED MUST BE PAID IN
28 FULL.

29 (V) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER OR
30 PERMIT HOLDER MUST NOT HAVE HAD A DISCIPLINARY RECORD

1 PREVIOUSLY EXPUNGED BY THE COMMISSIONER.

2 (VI) THE IMPOSITION OF DISCIPLINE MUST HAVE BEEN FOR
3 A VIOLATION INVOLVING:

4 (A) FAILURE TO COMPLETE CONTINUING EDUCATION
5 REQUIREMENTS OR PRACTICING FOR SIX MONTHS OR LESS ON
6 A LAPSED LICENSE, REGISTRATION, CERTIFICATE OR
7 PERMIT. AT LEAST FOUR YEARS MUST HAVE ELAPSED SINCE
8 THE FINAL DISPOSITION OF THE DISCIPLINARY RECORD AT
9 THE TIME OF APPLICATION FOR EXPUNGEMENT.

10 (B) ANY VIOLATION, EXCEPT THOSE WHICH RESULTED
11 IN LICENSE SUSPENSION OR REVOCATION, IN WHICH AT
12 LEAST TEN YEARS HAVE ELAPSED SINCE THE FINAL
13 DISPOSITION OF THE DISCIPLINARY RECORD AT THE TIME OF
14 APPLICATION FOR EXPUNGEMENT.

15 DISCIPLINARY RECORDS INVOLVING IMPOSITION OF DISCIPLINE
16 FOR VIOLATIONS OTHER THAN THOSE IDENTIFIED IN CLAUSES (A)
17 AND (B) SHALL NOT BE ELIGIBLE FOR EXPUNGEMENT.

18 (VII) THE LICENSEE, REGISTRANT, CERTIFICATE HOLDER
19 OR PERMIT HOLDER SHALL PAY ALL COSTS ASSOCIATED WITH THE
20 EXPUNGEMENT AS ESTABLISHED BY THE COMMISSIONER BY
21 REGULATION.

22 (3) NOTHING IN THIS SUBSECTION SHALL PROHIBIT A
23 LICENSING BOARD OR COMMISSION FROM USING A PREVIOUS
24 DISCIPLINE FOR ANY REGULATORY PURPOSE OR FROM RELEASING
25 RECORDS OF A PREVIOUS DISCIPLINE UPON REQUEST FROM LAW
26 ENFORCEMENT OR OTHER GOVERNMENTAL BODY AS PERMITTED BY LAW.

27 (B) ADDITIONAL POWERS.--IN ADDITION TO THE DISCIPLINARY
28 POWERS AND DUTIES OF THE BOARDS AND COMMISSIONS WITHIN THE
29 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS UNDER THEIR
30 RESPECTIVE PRACTICE ACTS, BOARDS AND COMMISSIONS SHALL HAVE THE

1 POWER, RESPECTIVELY:

2 (1) TO IMPOSE DISCIPLINE, INCLUDING, BUT NOT LIMITED TO,
3 A CIVIL PENALTY OF UP TO \$10,000 PER VIOLATION ON ANY
4 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER, PERMIT HOLDER] OR
5 UNLICENSED PERSON WHO VIOLATES A LAWFUL DISCIPLINARY ORDER OF
6 THE BOARD.

7 (2) TO IMPOSE DISCIPLINE, INCLUDING, BUT NOT LIMITED TO,
8 A CIVIL PENALTY OF UP TO \$10,000 PER VIOLATION ON ANY
9 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER, PERMIT HOLDER] OR
10 UNLICENSED PERSON WHO AIDS AND ABETS THE UNLICENSED PRACTICE
11 OF A PROFESSION, OCCUPATION OR BUSINESS.

12 (3) TO LEVY A CIVIL PENALTY OF NOT MORE THAN \$10,000 PER
13 VIOLATION ON ANY CORPORATION, PARTNERSHIP, INSTITUTION,
14 ASSOCIATION OR SOLE PROPRIETORSHIP WHICH AIDS AND ABETS ANY
15 INDIVIDUAL IN THE UNLICENSED PRACTICE OF A PROFESSION. THIS
16 PENALTY SHALL NOT, HOWEVER, BE LEVIED AGAINST ANY PERSON
17 SOLELY AS A CONSEQUENCE OF THAT PERSON BEING A PATIENT OR
18 CLIENT OF THE UNLICENSED INDIVIDUAL.

19 (4) TO LEVY A CIVIL PENALTY OF NOT MORE THAN \$10,000 PER
20 VIOLATION ON ANY LICENSEE[, REGISTRANT, CERTIFICATE HOLDER,
21 PERMIT HOLDER] OR UNLICENSED PERSON WHO VIOLATES ANY
22 PROVISION OF THE APPLICABLE LICENSING ACT OR BOARD
23 REGULATION.

24 (5) TO ASSESS AGAINST THE RESPONDENT DETERMINED TO BE IN
25 VIOLATION OF THE DISCIPLINARY PROVISIONS ADMINISTERED BY A
26 LICENSING BOARD OR COMMISSION IN A DISCIPLINARY PROCEEDING
27 PENDING BEFORE THE BOARD OR COMMISSION FOR FINAL
28 DETERMINATION, AS PART OF THE SANCTION, THE COSTS OF
29 INVESTIGATION UNDERLYING THAT DISCIPLINARY ACTION. THE COST
30 OF INVESTIGATION SHALL NOT INCLUDE THOSE COSTS INCURRED BY

1 THE BOARD OR COMMISSION AFTER THE FILING OF FORMAL ACTIONS OR
2 DISCIPLINARY CHARGES AGAINST THE RESPONDENT.

3 (6) TO COLLECT ALL FEES, COSTS, FINES AND PENALTIES
4 ASSESSED AS A RESULT OF A DISCIPLINARY PROCEEDING BEFORE A
5 LICENSING BOARD OR COMMISSION.

6 (7) TO DENY, SUSPEND OR REVOKE A LICENSE, REGISTRATION,
7 CERTIFICATION OR PERMIT FOR FAILURE TO PAY ANY PENALTY, FEE,
8 INTEREST OR COST ASSESSED AS A RESULT OF A DISCIPLINARY
9 PROCEEDING BEFORE A LICENSING BOARD OR COMMISSION.

10 * * *

11 (D.1) ENTRY OF JUDGMENT.--WITHIN 60 MONTHS OF THE FINAL
12 DISPOSITION OF A DISCIPLINARY CASE, IF AN UNPAID CIVIL PENALTY,
13 FEE, INTEREST AND COST OF A LICENSEE[, REGISTRANT, CERTIFICATE
14 HOLDER OR PERMIT HOLDER] TOTAL \$1,000 OR MORE, THE LICENSING
15 BOARD OR COMMISSION, OR ITS RESPECTIVE AGENT, MAY TRANSMIT A
16 COPY OF THE FINAL DISPOSITION TO THE PROTHONOTARY OF THE COURT
17 OF COMMON PLEAS IN THE COUNTY WHERE THE LICENSEE[, REGISTRANT,
18 CERTIFICATE HOLDER OR PERMIT HOLDER,] OR PROPERTY OF THE
19 LICENSEE[, REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER,]
20 UPON WHOM THE PENALTY, FEE, INTEREST AND COST ARE IMPOSED IS
21 LOCATED. THE PROTHONOTARY SHALL ENTER AND DOCKET THE SAME
22 WITHOUT REQUIRING PAYMENT OF COSTS AS A CONDITION PRECEDENT TO
23 THE ENTRY THEREOF. THE TOTAL OF THE PENALTY, FEE, INTEREST AND
24 COST SHALL BE ENTERED AS A JUDGMENT UPON THE LICENSEE[,
25 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] REGARDLESS OF
26 WHETHER THE AMOUNT HAS BEEN ORDERED TO BE PAID IN INSTALLMENTS.

27 * * *

28 (D.3) EXECUTION.--A WRIT OF EXECUTION MAY DIRECTLY ISSUE
29 UPON THE LIEN WITHOUT THE ISSUANCE AND PROSECUTION TO JUDGMENT
30 OF A WRIT OF SCIRE FACIAS, PROVIDED THAT A NOTICE OF THE FILING

1 AND THE EFFECT OF THE LIEN BE PROVIDED TO THE LICENSEE[,
2 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] NOT LESS THAN
3 TEN DAYS BEFORE THE EXECUTION ON THE LIEN. NOTICE MAY BE SENT BY
4 REGISTERED MAIL TO THE LAST KNOWN ADDRESS OF THE LICENSEE[,
5 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER].

6 (D.4) EXCEPTION TO EXECUTION.--THE LIEN SHALL HAVE NO EFFECT
7 UPON ANY STOCK OF GOODS, WARES OR MERCHANDISE REGULARLY SOLD OR
8 LEASED IN THE ORDINARY COURSE OF BUSINESS BY THE LICENSEE[,
9 REGISTRANT, CERTIFICATE HOLDER OR PERMIT HOLDER] AGAINST WHOM
10 THE LIEN HAS BEEN ENTERED, UNLESS AND UNTIL A WRIT OF EXECUTION
11 HAS BEEN ISSUED AND A LEVY MADE UPON THE STOCK OF GOODS, WARES
12 AND MERCHANDISE.

13 * * *

14 Section 2 4. This act shall take effect in 60 days.

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