

By the Committee on Business Regulation & Consumer Affairs
and Representative Sublette

1 A bill to be entitled
2 An act relating to regulation of professions
3 and occupations; amending ss. 455.225 and
4 455.621, F.S., relating to disciplinary
5 proceedings for boards within the Department of
6 Business and Professional Regulation and the
7 Department of Health, respectively; revising
8 provisions relating to whether failure to
9 comply with certain time limits constitutes
10 harmless error in any resulting disciplinary
11 action; providing for disclosure of the
12 existence, but not the details, of an active
13 investigation unless such disclosure would be
14 detrimental to the investigation; authorizing
15 complainants to view or obtain the
16 investigative file after an investigation is
17 complete; providing a filing deadline for any
18 response to the information contained in the
19 investigative file to be considered at the
20 probable cause hearing; including members of
21 the Legislature among those persons or agencies
22 to whom confidential information may be
23 provided for investigatory or oversight
24 purposes; allowing such persons and agencies to
25 use or investigate such information in any way
26 necessary to complete their investigatory or
27 oversight duties; authorizing the release of
28 information necessary to correct public
29 statements made about an otherwise confidential
30 disciplinary case that are false or misleading;
31 amending ss. 468.535, 490.00515, and 491.0047,

1 F.S.; correcting cross references, to conform;
2 providing an effective date.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsections (2) and (10) of section
7 455.225, Florida Statutes, are amended to read:

8 455.225 Disciplinary proceedings.--Disciplinary
9 proceedings for each board shall be within the jurisdiction of
10 the department.

11 (2) The department shall allocate sufficient and
12 adequately trained staff to expeditiously and thoroughly
13 determine legal sufficiency and investigate all legally
14 sufficient complaints. For purposes of this section, it is the
15 intent of the Legislature that the term "expeditiously" means
16 that the department ~~agency~~, for disciplinary cases under its
17 jurisdiction, shall complete the report of its initial
18 investigative findings and recommendations concerning the
19 existence of probable cause within 6 months after its receipt
20 of the complaint. The failure of the department ~~agency~~, for
21 disciplinary cases under its jurisdiction, to comply with the
22 time limits of this section while investigating a complaint
23 against a licensee constitutes harmless error in any resulting
24 subsequent disciplinary action unless an administrative law
25 judge ~~a court~~ finds that avoidable delay by the department
26 materially prejudiced the licensee ~~either the fairness of the~~
27 ~~proceeding or the correctness of the action may have been~~
28 ~~impaired by a material error in procedure or a failure to~~
29 ~~follow prescribed procedure~~. When its investigation is
30 complete and legally sufficient, the department shall prepare
31 and submit to the probable cause panel of the appropriate

1 regulatory board the investigative report of the department.
2 The report shall contain the investigative findings and the
3 recommendations of the department concerning the existence of
4 probable cause. At any time after legal sufficiency is found,
5 the department may dismiss any case, or any part thereof, if
6 the department determines that there is insufficient evidence
7 to support the prosecution of allegations contained therein.
8 The department shall provide a detailed report to the
9 appropriate probable cause panel prior to dismissal of any
10 case or part thereof, and to the subject of the complaint
11 after dismissal of any case or part thereof, under this
12 section. ~~For cases dismissed prior to a finding of probable~~
13 ~~cause, such report is confidential and exempt from s.~~
14 ~~119.07(1).~~The probable cause panel shall have access, upon
15 request, to the investigative files pertaining to a case prior
16 to dismissal of such case. If the department dismisses a case,
17 the probable cause panel may retain independent legal counsel,
18 employ investigators, and continue the investigation and
19 prosecution of the case as it deems necessary.

20 (10)(a) Except as otherwise provided in this
21 subsection, the complaint and all information obtained
22 pursuant to the investigation by the department are
23 confidential and exempt from s. 119.07(1) until 10 days after
24 probable cause has been found to exist by the probable cause
25 panel or by the department, or until the regulated
26 professional or subject of the investigation waives his or her
27 privilege of confidentiality, whichever occurs first. However,
28 in response to an inquiry about an individual licensee, the
29 department shall disclose the existence, but not the details,
30 of an active investigation, unless such disclosure would be
31 detrimental to the investigation.

1 **(b)** ~~Any~~ ~~However, this~~ exemption from s. 119.07(1)
2 under this subsection does not apply to actions against
3 unlicensed persons pursuant to s. 455.228 or the applicable
4 practice act.

5 **(c)** Upon completion of an ~~the~~ investigation and
6 pursuant to a written request by the complainant or the
7 subject, the department shall provide the complainant or
8 subject an opportunity to inspect the investigative file or,
9 at the complainant's or subject's expense, forward to that
10 person ~~the subject~~ a copy of the investigative file. The
11 complainant or subject may make the request to view or obtain
12 the file at any point after the investigation is complete and
13 may file a written response to the information contained in
14 the investigative file. Such response must be filed within 20
15 days prior to the date the probable cause hearing is to take
16 place in order to be considered at the probable cause hearing,
17 unless an extension of time has been granted by the
18 department.

19 **(d)** This subsection does not prohibit the department
20 from providing such information to any elected member of the
21 Legislature, any law enforcement agency, or to any other
22 regulatory agency, and the receiving person or agency may
23 utilize or investigate the information in whatever way is
24 necessary to complete the investigatory or oversight duties of
25 that person or agency.

26 **(e)** If public statements that are false or misleading
27 are made about an otherwise confidential disciplinary case,
28 the department may disclose all information necessary to
29 correct such false or misleading statements.

30 Section 2. Subsections (2) and (10) of section
31 455.621, Florida Statutes, are amended to read:

1 455.621 Disciplinary proceedings.--Disciplinary
2 proceedings for each board shall be within the jurisdiction of
3 the department.
4 (2) The department shall allocate sufficient and
5 adequately trained staff to expeditiously and thoroughly
6 determine legal sufficiency and investigate all legally
7 sufficient complaints. For purposes of this section, it is the
8 intent of the Legislature that the term "expeditiously" means
9 that the department complete the report of its initial
10 investigative findings and recommendations concerning the
11 existence of probable cause within 6 months after its receipt
12 of the complaint. The failure of the department, for
13 disciplinary cases under its jurisdiction, to comply with the
14 time limits of this section while investigating a complaint
15 against a licensee constitutes harmless error in any resulting
16 ~~subsequent~~ disciplinary action unless an administrative law
17 judge ~~a court~~ finds that avoidable delay by the department
18 materially prejudiced the licensee ~~either the fairness of the~~
19 ~~proceeding or the correctness of the action may have been~~
20 ~~impaired by a material error in procedure or a failure to~~
21 ~~follow prescribed procedure~~. When its investigation is
22 complete and legally sufficient, the department shall prepare
23 and submit to the probable cause panel of the appropriate
24 regulatory board the investigative report of the department.
25 The report shall contain the investigative findings and the
26 recommendations of the department concerning the existence of
27 probable cause. At any time after legal sufficiency is found,
28 the department may dismiss any case, or any part thereof, if
29 the department determines that there is insufficient evidence
30 to support the prosecution of allegations contained therein.
31 The department shall provide a detailed report to the

1 appropriate probable cause panel prior to dismissal of any
2 case or part thereof, and to the subject of the complaint
3 after dismissal of any case or part thereof, under this
4 section. ~~For cases dismissed prior to a finding of probable~~
5 ~~cause, such report is confidential and exempt from s.~~
6 ~~119.07(1).~~The probable cause panel shall have access, upon
7 request, to the investigative files pertaining to a case prior
8 to dismissal of such case. If the department dismisses a case,
9 the probable cause panel may retain independent legal counsel,
10 employ investigators, and continue the investigation and
11 prosecution of the case as it deems necessary.

12 (10)(a) Except as otherwise provided in this
13 subsection, the complaint and all information obtained
14 pursuant to the investigation by the department are
15 confidential and exempt from s. 119.07(1) until 10 days after
16 probable cause has been found to exist by the probable cause
17 panel or by the department, or until the regulated
18 professional or subject of the investigation waives his or her
19 privilege of confidentiality, whichever occurs first. However,
20 in response to an inquiry about an individual licensee, the
21 department shall disclose the existence, but not the details,
22 of an active investigation, unless such disclosure would be
23 detrimental to the investigation.

24 (b) Any exemption from s. 119.07(1) under this
25 subsection does not apply to actions against unlicensed
26 persons pursuant to s. 455.637 or the applicable practice act.

27 (c) Upon completion of an the investigation and
28 pursuant to a written request by the complainant or the
29 subject, the department shall provide the complainant or
30 subject an opportunity to inspect the investigative file or,
31 at the complainant's or subject's expense, forward to that

1 ~~person the subject~~ a copy of the investigative file.
2 Notwithstanding s. 455.667, the subject may inspect or receive
3 a copy of any expert witness report or patient record
4 connected with the investigation if the subject agrees in
5 writing to maintain the confidentiality of any information
6 received under this subsection until 10 days after probable
7 cause is found and to maintain the confidentiality of patient
8 records pursuant to s. 455.667. The complainant or subject may
9 make the request to view or obtain the file at any point after
10 the investigation is complete and may file a written response
11 to the information contained in the investigative file. Such
12 response must be filed within 20 days prior to the date the
13 probable cause hearing is to take place in order to be
14 considered at the probable cause hearing, unless an extension
15 of time has been granted by the department.

16 (d) This subsection does not prohibit the department
17 from providing such information to any elected member of the
18 Legislature, any law enforcement agency, or to any other
19 regulatory agency, and the receiving person or agency may
20 utilize or investigate the information in whatever way is
21 necessary to complete the investigatory or oversight duties of
22 that person or agency.

23 (e) If public statements that are false or misleading
24 are made about an otherwise confidential disciplinary case,
25 the department may disclose all information necessary to
26 correct such false or misleading statements.

27 Section 3. Subsection (2) of section 468.535, Florida
28 Statutes, is amended to read:

29 468.535 Investigations; audits; review.--

30 (2) All material compiled by the department in any
31 investigation, audit, review of a proposed change of ownership

1 of an employee leasing company, or other review under this
2 part is subject to ss. 455.225(10)~~(2)~~ and 455.229(1).

3 Section 4. Section 490.00515, Florida Statutes, is
4 amended to read:

5 490.00515 Exemptions from public records and meetings
6 requirements.--The exemptions from s. 119.07(1) provided by
7 ss. 455.225~~(2)~~ and (10) and 455.707~~455.261~~(3)(e) and (5)(a)
8 also apply to information concerning a provisional
9 psychologist regulated by the Agency for Health Care
10 Administration and the Department of Health under this
11 chapter, a registered clinical social worker intern, a
12 registered marriage and family therapist intern, a registered
13 mental health counselor intern, a provisional clinical social
14 worker, a provisional marriage and family therapist, or a
15 provisional mental health counselor regulated by the Agency
16 for Health Care Administration and the Department of Health
17 under chapter 491. The exemption from s. 286.011 provided by
18 s. 455.225(4) also applies to the proceedings of a probable
19 cause panel with respect to an investigation concerning a
20 provisional psychologist, a registered clinical social worker
21 intern, a registered marriage and family therapist intern, a
22 registered mental health counselor intern, a provisional
23 clinical social worker, a provisional marriage and family
24 therapist, or a provisional mental health counselor regulated
25 by the agency and department under this chapter or chapter
26 491. This section is subject to the Open Government Sunset
27 Review Act of 1995 in accordance with s. 119.15 and shall
28 stand repealed on October 2, 2002, unless reviewed and saved
29 from repeal through reenactment by the Legislature.

30 Section 5. Section 491.0047, Florida Statutes, is
31 amended to read:

1 491.0047 Exemptions from public records and meetings
2 requirements.--The exemptions from s. 119.07(1) provided by
3 ~~ss. 455.225(2) and (10) and 455.707455.261(3)(e) and (5)(a)~~
4 also apply to information concerning a provisional
5 psychologist regulated by the Agency for Health Care
6 Administration and the Department of Health under chapter 490,
7 a registered clinical social worker intern, a registered
8 marriage and family therapist intern, a registered mental
9 health counselor intern, a provisional clinical social worker,
10 a provisional marriage and family therapist, or a provisional
11 mental health counselor regulated by the Agency for Health
12 Care Administration and the Department of Health under this
13 chapter. The exemption from s. 286.011 provided by s.
14 455.225(4) also applies to the proceedings of a probable cause
15 panel with respect to an investigation concerning a
16 provisional psychologist, a registered clinical social worker
17 intern, a registered marriage and family therapist intern, a
18 registered mental health counselor intern, a provisional
19 clinical social worker, a provisional marriage and family
20 therapist, or a provisional mental health counselor regulated
21 by the agency and department under chapter 490 or this
22 chapter. This section is subject to the Open Government Sunset
23 Review Act of 1995 in accordance with s. 119.15 and shall
24 stand repealed on October 2, 2002, unless reviewed and saved
25 from repeal through reenactment by the Legislature.

26 Section 6. This act shall take effect January 1 of the
27 year after the year in which enacted.

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