

By Senator Silver

38-888-98

See HB 1197

1 A bill to be entitled
2 An act relating to regulation of professions
3 and occupations; amending ss. 455.225, 455.621,
4 F.S., relating to disciplinary proceedings for
5 boards within the Department of Business and
6 Professional Regulation and the Department of
7 Health, respectively; providing for
8 confidentiality while an investigation is
9 active; authorizing disclosure within a
10 specified period after a determination
11 regarding probable cause; authorizing
12 disclosure of an active investigation under
13 certain circumstances; providing an effective
14 date.

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

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18 Section 1. Subsections (2) and (10) of section
19 455.225, Florida Statutes, are amended to read:
20 455.225 Disciplinary proceedings.--Disciplinary
21 proceedings for each board shall be within the jurisdiction of
22 the department.

23 (2) The department shall allocate sufficient and
24 adequately trained staff to expeditiously and thoroughly
25 determine legal sufficiency and investigate all legally
26 sufficient complaints. ~~For purposes of this section, it is the~~
27 ~~intent of the Legislature that the term "expeditiously" means~~
28 ~~that the agency, for disciplinary cases under its~~
29 ~~jurisdiction, shall complete the report of its initial~~
30 ~~investigative findings and recommendations concerning the~~
31 ~~existence of probable cause within 6 months after its receipt~~

1 ~~of the complaint. The failure of the agency, for disciplinary~~
2 ~~cases under its jurisdiction, to comply with the time limits~~
3 ~~of this section while investigating a complaint against a~~
4 ~~licensee constitutes harmless error in any subsequent~~
5 ~~disciplinary action unless a court finds that either the~~
6 ~~fairness of the proceeding or the correctness of the action~~
7 ~~may have been impaired by a material error in procedure or a~~
8 ~~failure to follow prescribed procedure.~~When its investigation
9 is complete and legally sufficient, the department shall
10 prepare and submit to the probable cause panel of the
11 appropriate regulatory board the investigative report of the
12 department. The report shall contain the investigative
13 findings and the recommendations of the department concerning
14 the existence of probable cause. At any time after legal
15 sufficiency is found, the department may dismiss any case, or
16 any part thereof, if the department determines that there is
17 insufficient evidence to support the prosecution of
18 allegations contained therein. The department shall provide a
19 detailed report to the appropriate probable cause panel prior
20 to dismissal of any case or part thereof, and to the subject
21 of the complaint after dismissal of any case or part thereof,
22 under this section. ~~For cases dismissed prior to a finding of~~
23 ~~probable cause, such report is confidential and exempt from s.~~
24 ~~119.07(1).~~The probable cause panel shall have access, upon
25 request, to the investigative files pertaining to a case prior
26 to dismissal of such case. If the department dismisses a case,
27 the probable cause panel may retain independent legal counsel,
28 employ investigators, and continue the investigation and
29 prosecution of the case as it deems necessary.

30 (10) The complaint and all information obtained
31 pursuant to an ~~the~~ investigation by the department are

1 confidential and exempt from s. 119.07(1) until such
2 investigation ceases to be active. For purposes of this
3 subsection, an investigation is considered "active" so long as
4 the department or any law enforcement or administrative agency
5 is proceeding with reasonable dispatch and has a reasonable,
6 good-faith belief that the investigation may lead to the
7 filing of administrative, civil, or criminal proceedings. An
8 investigation ceases to be active when the department
9 dismisses the case prior to a finding of probable cause and
10 the board has not exercised its option to pursue the case or
11 10 days after the board, or the department when there is no
12 board, makes a determination regarding probable cause. All
13 information, records, and transcriptions regarding a complaint
14 that has been determined to be legally sufficient to state a
15 claim within the jurisdiction of the department or the
16 applicable board become available to the public when the
17 investigation ceases to be active, except information that is
18 otherwise confidential or exempt from s. 119.07(1). However,
19 in response to an inquiry about an individual licensee, the
20 department may disclose the existence of an active
21 investigation initiated by the department based on reasonable
22 cause to believe that the alleged violation under
23 investigation involves the potential for substantial physical,
24 psychological, or financial harm to the public. The department
25 need not disclose the existence of an investigation if it
26 determines that such disclosure would be detrimental to the
27 investigation ~~10 days after probable cause has been found to~~
28 ~~exist by the probable cause panel or by the department, or~~
29 ~~until the regulated professional or subject of the~~
30 ~~investigation waives his or her privilege of confidentiality,~~
31 ~~whichever occurs first. Any~~ However, this exemption from s.

1 119.07(1) under this section does not apply to actions against
2 unlicensed persons pursuant to s. 455.228 or the applicable
3 practice act. Upon completion of an the investigation, but
4 prior to submission to the probable cause panel, and pursuant
5 to a written request received within 30 days after the
6 notification of the existence of an investigation by a the
7 subject receiving a copy of the complaint that resulted in the
8 initiation of an investigation, the department shall provide
9 the subject an opportunity to inspect the investigative file
10 or, at the subject's expense, forward to the subject a copy of
11 the investigative file. The subject may file a written
12 response to the information contained in the investigative
13 file. Such response must be filed within 20 days after the
14 subject's opportunity to inspect, or, if requested, from the
15 subject's receipt of a copy of the investigative file, unless
16 an extension of time has been granted by the department. This
17 subsection does not prohibit the department from providing
18 such information to any law enforcement agency or to any other
19 regulatory agency.

20 Section 2. Subsections (2) and (10) of section
21 455.621, Florida Statutes, are amended to read:

22 455.621 Disciplinary proceedings.--Disciplinary
23 proceedings for each board shall be within the jurisdiction of
24 the department.

25 (2) The department shall allocate sufficient and
26 adequately trained staff to expeditiously and thoroughly
27 determine legal sufficiency and investigate all legally
28 sufficient complaints. For purposes of this section, it is the
29 intent of the Legislature that the term "expeditiously" means
30 that the department complete the report of its initial
31 investigative findings and recommendations concerning the

1 existence of probable cause within 6 months after its receipt
2 of the complaint. The failure of the department, for
3 disciplinary cases under its jurisdiction, to comply with the
4 time limits of this section while investigating a complaint
5 against a licensee constitutes harmless error in any
6 subsequent disciplinary action unless a court finds that
7 either the fairness of the proceeding or the correctness of
8 the action may have been impaired by a material error in
9 procedure or a failure to follow prescribed procedure. When
10 its investigation is complete and legally sufficient, the
11 department shall prepare and submit to the probable cause
12 panel of the appropriate regulatory board the investigative
13 report of the department. The report shall contain the
14 investigative findings and the recommendations of the
15 department concerning the existence of probable cause. At any
16 time after legal sufficiency is found, the department may
17 dismiss any case, or any part thereof, if the department
18 determines that there is insufficient evidence to support the
19 prosecution of allegations contained therein. The department
20 shall provide a detailed report to the appropriate probable
21 cause panel prior to dismissal of any case or part thereof,
22 and to the subject of the complaint after dismissal of any
23 case or part thereof, under this section. ~~For cases dismissed~~
24 ~~prior to a finding of probable cause, such report is~~
25 ~~confidential and exempt from s. 119.07(1).~~The probable cause
26 panel shall have access, upon request, to the investigative
27 files pertaining to a case prior to dismissal of such case. If
28 the department dismisses a case, the probable cause panel may
29 retain independent legal counsel, employ investigators, and
30 continue the investigation and prosecution of the case as it
31 deems necessary.

1 (10) The complaint and all information obtained
2 pursuant to an ~~the~~ investigation by the department are
3 confidential and exempt from s. 119.07(1) until such
4 investigation ceases to be active. For purposes of this
5 subsection, an investigation is considered "active" so long as
6 the department or any law enforcement or administrative agency
7 is proceeding with reasonable dispatch and has a reasonable,
8 good-faith belief that the investigation may lead to the
9 filing of administrative, civil, or criminal proceedings. An
10 investigation ceases to be active when the department
11 dismisses the case prior to a finding of probable cause and
12 the board has not exercised its option to pursue the case or
13 10 days after the board, or the department when there is no
14 board, makes a determination regarding probable cause. All
15 information, records, and transcriptions regarding a complaint
16 that has been determined to be legally sufficient to state a
17 claim within the jurisdiction of the department or the
18 applicable board become available to the public when the
19 investigation ceases to be active, except information that is
20 otherwise confidential or exempt from s. 119.07(1). However,
21 in response to an inquiry about an individual licensee, the
22 department may disclose the existence of an active
23 investigation initiated by the department based on reasonable
24 cause to believe that the alleged violation under
25 investigation involves the potential for substantial physical,
26 psychological, or financial harm to the public. The department
27 need not disclose the existence of an investigation if it
28 determines that such disclosure would be detrimental to the
29 investigation. Any exemption from s. 119.07(1) under this
30 section does not apply to actions against unlicensed persons
31 pursuant to s. 455.637 or the applicable practice act ~~10 days~~

1 ~~after probable cause has been found to exist by the probable~~
2 ~~cause panel or by the department, or until the regulated~~
3 ~~professional or subject of the investigation waives his~~
4 ~~privilege of confidentiality, whichever occurs first.~~ Upon
5 completion of an the investigation, but prior to submission to
6 the probable cause panel, and pursuant to a written request
7 received within 30 days after the notification of the
8 existence of an investigation by a the subject receiving a
9 copy of the complaint that resulted in the initiation of an
10 investigation, the department shall provide the subject an
11 opportunity to inspect the investigative file or, at the
12 subject's expense, forward to the subject a copy of the
13 investigative file. Notwithstanding s. 455.667, the subject
14 may inspect or receive a copy of any expert witness report or
15 patient record connected with the investigation if the subject
16 agrees in writing to maintain the confidentiality of any
17 information received under this subsection until 10 days after
18 probable cause is found and to maintain the confidentiality of
19 patient records pursuant to s. 455.667. The subject may file a
20 written response to the information contained in the
21 investigative file. Such response must be filed within 20 days
22 after the subject's opportunity to inspect, or, if requested,
23 from the subject's receipt of a copy of the investigative
24 file, unless an extension of time has been granted by the
25 department. This subsection does not prohibit the department
26 from providing such information to any law enforcement agency
27 or to any other regulatory agency.

28 Section 3. This act shall take effect October 1 of the
29 year in which enacted.
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LEGISLATIVE SUMMARY

With respect to disciplinary proceedings for boards within the Department of Business and Professional Regulation and the Department of Health, provides for confidentiality while an investigation is active and authorizes disclosure of an active investigation under certain circumstances. (See bill for details.)