

By Senator Turner

36-730-98

See HB 3317

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 amending s. 491.0047, F.S.; providing for
 4 application of public records exemptions in ss.
 5 455.621(2) and (10) and 455.707(3)(e) and
 6 (5)(a), F.S., to certain information concerning
 7 art therapists, registered art therapist
 8 interns, and provisional art therapists;
 9 providing for application of the public
 10 meetings exemption in s. 455.621(4), F.S., to
 11 proceedings of a probable cause panel with
 12 respect to investigations concerning such
 13 practitioners; providing for future review and
 14 repeal; providing a finding of public
 15 necessity; providing a contingent effective
 16 date.

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

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 20 Section 1. Section 491.0047, Florida Statutes, is
 21 amended to read:

22 491.0047 Exemptions from public records and meetings
 23 requirements.--

24 (1) The exemptions from s. 119.07(1) provided by ss.
 25 455.621 ~~455.225~~(2) and (10) and 455.707 ~~455.261~~(3)(e) and
 26 (5)(a) also apply to information concerning ~~a provisional~~
 27 ~~psychologist regulated by the Agency for Health Care~~
 28 ~~Administration and the Department of Health under chapter 490,~~
 29 a registered clinical social worker intern, a registered
 30 marriage and family therapist intern, a registered mental
 31 health counselor intern, a provisional clinical social worker,

1 a provisional marriage and family therapist, or a provisional
2 mental health counselor regulated by the Agency for Health
3 Care Administration and the department of Health under this
4 chapter. The exemption from s. 286.011 provided by s. 455.621
5 ~~455.225~~(4) also applies to the proceedings of a probable cause
6 panel with respect to an investigation concerning a
7 ~~provisional psychologist~~, a registered clinical social worker
8 intern, a registered marriage and family therapist intern, a
9 registered mental health counselor intern, a provisional
10 clinical social worker, a provisional marriage and family
11 therapist, or a provisional mental health counselor regulated
12 by the agency and department under ~~chapter 490~~ or this
13 chapter. This subsection ~~section~~ is subject to the Open
14 Government Sunset Review Act of 1995 in accordance with s.
15 119.15 and shall stand repealed on October 2, 2002, unless
16 reviewed and saved from repeal through reenactment by the
17 Legislature.

18 (2) The exemptions from s. 119.07(1) provided by ss.
19 455.621(2) and (10) and 455.707(3)(e) and (5)(a) also apply to
20 information concerning an art therapist, a registered art
21 therapist intern, or a provisional art therapist regulated by
22 the Agency for Health Care Administration and the department
23 under this chapter. The exemption from s. 286.011 provided by
24 s. 455.621(4) also applies to the proceedings of a probable
25 cause panel with respect to an investigation concerning an art
26 therapist, a registered art therapist intern, or a provisional
27 art therapist regulated by the agency and department under
28 this chapter. This subsection is subject to the Open
29 Government Sunset Review Act of 1995 in accordance with s.
30 119.15 and shall stand repealed on October 2, 2003, unless
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1 reviewed and saved from repeal through reenactment by the
2 Legislature.

3 Section 2. Subsections (2), (4), and (10) of section
4 455.621, Florida Statutes, read:

5 455.621 Disciplinary proceedings.--Disciplinary
6 proceedings for each board shall be within the jurisdiction of
7 the department.

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

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

15 (4) The determination as to whether probable cause
16 exists shall be made by majority vote of a probable cause
17 panel of the board, or by the department, as appropriate. Each
18 regulatory board shall provide by rule that the determination
19 of probable cause shall be made by a panel of its members or
20 by the department. Each board may provide by rule for multiple
21 probable cause panels composed of at least two members. Each
22 board may provide by rule that one or more members of the
23 panel or panels may be a former board member. The length of
24 term or repetition of service of any such former board member
25 on a probable cause panel may vary according to the direction
26 of the board when authorized by board rule. Any probable cause
27 panel must include one of the board's former or present
28 consumer members, if one is available, is willing to serve,
29 and is authorized to do so by the board chairman. Any probable
30 cause panel must include a present board member. Any probable
31 cause panel must include a former or present professional

1 board member. However, any former professional board member
2 serving on the probable cause panel must hold an active valid
3 license for that profession. All proceedings of the panel are
4 exempt from s. 286.011 until 10 days after probable cause has
5 been found to exist by the panel or until the subject of the
6 investigation waives his privilege of confidentiality. The
7 probable cause panel may make a reasonable request, and upon
8 such request the department shall provide such additional
9 investigative information as is necessary to the determination
10 of probable cause. A request for additional investigative
11 information shall be made within 15 days from the date of
12 receipt by the probable cause panel of the investigative
13 report of the department or the agency. The probable cause
14 panel or the department, as may be appropriate, shall make its
15 determination of probable cause within 30 days after receipt
16 by it of the final investigative report of the department. The
17 secretary may grant extensions of the 15-day and the 30-day
18 time limits. In lieu of a finding of probable cause, the
19 probable cause panel, or the department if there is no board,
20 may issue a letter of guidance to the subject. If, within the
21 30-day time limit, as may be extended, the probable cause
22 panel does not make a determination regarding the existence of
23 probable cause or does not issue a letter of guidance in lieu
24 of a finding of probable cause, the department must make a
25 determination regarding the existence of probable cause within
26 10 days after the expiration of the time limit. If the
27 probable cause panel finds that probable cause exists, it
28 shall direct the department to file a formal complaint against
29 the licensee. The department shall follow the directions of
30 the probable cause panel regarding the filing of a formal
31 complaint. If directed to do so, the department shall file a

1 formal complaint against the subject of the investigation and
2 prosecute that complaint pursuant to chapter 120. However, the
3 department may decide not to prosecute the complaint if it
4 finds that probable cause has been improvidently found by the
5 panel. In such cases, the department shall refer the matter to
6 the board. The board may then file a formal complaint and
7 prosecute the complaint pursuant to chapter 120. The
8 department shall also refer to the board any investigation or
9 disciplinary proceeding not before the Division of
10 Administrative Hearings pursuant to chapter 120 or otherwise
11 completed by the department within 1 year after the filing of
12 a complaint. The department, for disciplinary cases under its
13 jurisdiction, must establish a uniform reporting system to
14 quarterly refer to each board the status of any investigation
15 or disciplinary proceeding that is not before the Division of
16 Administrative Hearings or otherwise completed by the
17 department within 1 year after the filing of the complaint.
18 Annually, the department if there is no board, or each board
19 must establish a plan to reduce or otherwise close any
20 investigation or disciplinary proceeding that is not before
21 the Division of Administrative Hearings or otherwise completed
22 by the department within 1 year after the filing of the
23 complaint. A probable cause panel or a board may retain
24 independent legal counsel, employ investigators, and continue
25 the investigation as it deems necessary; all costs thereof
26 shall be paid from a trust fund used by the department to
27 implement this part. All proceedings of the probable cause
28 panel are exempt from s. 120.525.

29 (10) The complaint and all information obtained
30 pursuant to the investigation by the department are
31 confidential and exempt from s. 119.07(1) until 10 days after

1 probable cause has been found to exist by the probable cause
2 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 the investigation and pursuant to a written
6 request by the subject, the department shall provide the
7 subject an opportunity to inspect the investigative file or,
8 at the subject's expense, forward to the subject a copy of the
9 investigative file. Notwithstanding s. 455.667, the subject
10 may inspect or receive a copy of any expert witness report or
11 patient record connected with the investigation if the subject
12 agrees in writing to maintain the confidentiality of any
13 information received under this subsection until 10 days after
14 probable cause is found and to maintain the confidentiality of
15 patient records pursuant to s. 455.667. The subject may file a
16 written response to the information contained in the
17 investigative file. Such response must be filed within 20
18 days, unless an extension of time has been granted by the
19 department. This subsection does not prohibit the department
20 from providing such information to any law enforcement agency
21 or to any other regulatory agency.

22 Section 3. Paragraph (e) of subsection (3) and
23 paragraph (a) of subsection (5) of section 455.707, Florida
24 Statutes, read:

25 455.707 Treatment programs for impaired
26 practitioners.--

27 (3)

28 (e) The probable cause panel, or the department when
29 there is no board, shall work directly with the consultant,
30 and all information concerning a practitioner obtained from
31 the consultant by the panel, or the department when there is

1 no board, shall remain confidential and exempt from the
2 provisions of s. 119.07(1), subject to the provisions of
3 subsections (5) and (6).

4 (5)(a) An approved treatment provider shall, upon
5 request, disclose to the consultant all information in its
6 possession regarding the issue of a licensee's impairment and
7 participation in the treatment program. All information
8 obtained by the consultant and department pursuant to this
9 section is confidential and exempt from the provisions of s.
10 119.07(1), subject to the provisions of this subsection and
11 subsection (6). Failure to provide such information to the
12 consultant is grounds for withdrawal of approval of such
13 program or provider.

14 Section 4. The Legislature finds that the disclosure
15 of information concerning an investigation of a practitioner
16 regulated under chapter 491, Florida Statutes, and the
17 disclosure of information concerning an impaired practitioner
18 regulated under chapter 491, Florida Statutes, would
19 constitute an unwarranted invasion into the personal privacy
20 of the practitioner. In addition, the Legislature finds that
21 it is necessary that the meetings of a probable cause panel
22 investigating a practitioner regulated under chapter 491,
23 Florida Statutes, be exempt from s. 286.011, Florida Statutes,
24 until 10 days after probable cause has been found to exist by
25 the panel or until the subject of the investigation waives his
26 or her privilege of confidentiality. Therefore, the
27 Legislature finds that it is a public necessity that certain
28 information of the Agency for Health Care Administration and
29 the Department of Health with respect to an art therapist, a
30 registered art therapist intern, or a provisional art
31 therapist be kept confidential and exempt from disclosure

1 under the public records law. The Legislature further finds
2 that it is a public necessity that proceedings of a probable
3 cause panel with respect to an art therapist, a registered art
4 therapist intern, or a provisional art therapist be exempt for
5 a certain period from the public meetings law.

6 Section 5. This act shall take effect on the same date
7 that House Bill or similar legislation revising chapter
8 491, Florida Statutes, to create the categories of art
9 therapists specified in this act takes effect, if such
10 legislation is adopted in the same legislative session or an
11 extension thereof.

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14 HOUSE SUMMARY

15 Provides for application of public records exemptions in
16 ss. 455.621(2) and (10) and 455.707(3)(e) and (5)(a),
17 F.S., to certain information concerning art therapists,
18 registered art therapist interns, and provisional art
19 therapists. Provides for application of the public
20 meetings exemption in s. 455.621(4), F.S., to proceedings
21 of a probable cause panel with respect to investigations
22 concerning such practitioners. Provides for future review
23 and repeal. Provides a finding of public necessity.
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