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A bill to be entitled  
 An act relating to public records and meetings exemptions;  
 creating s. 497.172, F.S.; creating a public meetings  
 exemption for Board of Funeral, Cemetery, and Consumer  
 Services meetings conducted for the exclusive purpose of  
 developing or reviewing licensure examination questions  
 and answers; creating a public meetings exemption for  
 probable cause panel meetings of the board; creating a  
 public records exemption for records relating to the  
 scheduling of inspections and special examinations;  
 creating a public records exemption for records relating  
 to investigations, inspections, or examinations in  
 process; creating a public records exemption for trade  
 secret information of licensees and applicants; providing  
 for future review and repeal; providing findings of public  
 necessity; providing a contingent effective date.

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

Section 1. Section 497.172, Florida Statutes, is created  
 to read:

497.172 Public records exemptions; public meeting  
 exemptions.--

(1) EXAMINATION DEVELOPMENT MEETINGS.--Meetings of members  
 of the board, for the exclusive purpose of creating or reviewing  
 licensure examination questions or answers under this chapter,  
 are exempt from s. 286.011 and s. 24(b), Art. I of the State  
 Constitution.

29           (2) PROBABLE CAUSE PANEL MEETINGS.--Meetings of the  
 30 probable cause panel of the board pursuant to s. 497.153 are  
 31 exempt from s. 286.011 and s. 24(b), Art. I of the State  
 32 Constitution.

33           (3) SCHEDULING OF INSPECTIONS AND EXAMINATIONS.--Records  
 34 of the department that reveal the scheduling of inspections or  
 35 special examinations under this chapter are confidential and  
 36 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 37 Constitution, until the scheduled inspections or special  
 38 examinations have been initiated.

39           (4) EXEMPTIONS RELATING TO EXAMINATIONS, INSPECTIONS, AND  
 40 INVESTIGATIONS.--

41           (a) Except as otherwise provided in this subsection,  
 42 information held by the department pursuant to a financial  
 43 examination or inspection conducted under this chapter is  
 44 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 45 of the State Constitution, until the examination or inspection  
 46 is completed or ceases to be active.

47           (b) Except as otherwise provided in this subsection,  
 48 information, including any consumer complaint, held by the  
 49 department pursuant to an investigation of alleged unlicensed  
 50 practice in violation of this chapter is confidential and exempt  
 51 from s. 119.07(1) and s. 24(a), Art. I of the State  
 52 Constitution, until the investigation or examination is  
 53 completed or ceases to be active.

54           (c) Complaints against licensees under this chapter,  
 55 investigative records of the department relating to the  
 56 department's investigation of the complaint, and portions of the

57 record of probable cause panel proceedings, if any, relating to  
 58 consideration and action concerning such complaint shall be  
 59 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 60 of the State Constitution, until 10 days after a finding of  
 61 probable cause is made pursuant to s. 497.153.

62 (d) Notwithstanding the confidentiality required by  
 63 paragraphs (a), (b), and (c), such information may be disclosed  
 64 by the department as follows:

65 1. During and in furtherance of the investigation or  
 66 examination, the department may disclose such information to  
 67 experts engaged by the department to assist in the investigation  
 68 or examination and to witnesses, potential witnesses, or other  
 69 persons believed by the department to possibly have knowledge  
 70 pertinent to the investigation or examination, for the purpose  
 71 of obtaining such knowledge from such witnesses or persons.

72 2. To the probable cause panel of the board, for the  
 73 purpose of probable cause proceedings pursuant to s. 497.153.

74 3. To any law enforcement agency or other government  
 75 agency, for investigation or other use by the agency in the  
 76 performance of its official duties and responsibilities.

77 4. In response to a media inquiry concerning a specific  
 78 identified matter, the department may confirm that it has the  
 79 specific matter inquired about under investigation.

80 5. When the department in the course of an investigation  
 81 uncovers information of immediate and serious concern to the  
 82 public health, safety, or welfare, it may disseminate such  
 83 information as it deems necessary for the public health, safety,  
 84 or welfare.

85       (e) Information held by the department and made  
 86 confidential and exempt under paragraphs (a), (b), and (c) shall  
 87 remain confidential and exempt from s. 119.07(1), and s. 24(a),  
 88 Art. I of the State Constitution after the department's  
 89 investigation or examination is completed or ceases to be active  
 90 and after probable cause of licensees is found if the department  
 91 submits the information to any law enforcement agency or other  
 92 government administrative agency for further investigation of  
 93 matters within the jurisdiction of such other agency. Such  
 94 information shall remain exempt and confidential from s.  
 95 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 96 that agency's investigation is completed or ceases to be active.

97       (f) Information held by the department and made  
 98 confidential and exempt under paragraphs (a), (b), and (c) shall  
 99 remain confidential and exempt from s. 119.07(1), and s. 24(a),  
 100 Art. I of the State Constitution after the department completes  
 101 its investigation or examination or the investigation or  
 102 examination ceases to be active and after probable cause of  
 103 licensees is found if disclosure of the information would:

- 104       1. Jeopardize the integrity of another active  
 105 investigation or examination;
- 106       2. Reveal the identity of a confidential source; or
- 107       3. Reveal investigative or examination techniques or  
 108 procedures that the department has a reasonable good faith  
 109 belief will be utilized in future investigations or  
 110 examinations.

111       (g) For purposes of this subsection, an investigation,  
 112 inspection, or examination shall be considered active so long as

113 the investigation, inspection, or examination is proceeding with  
 114 reasonable dispatch and the agency has a reasonable good faith  
 115 belief that the investigation, inspection, or examination may  
 116 lead to the filing of an administrative, civil, or criminal  
 117 proceeding or to the denial or conditional grant of an  
 118 application for license or other approval required under this  
 119 chapter.

120 (5) EXEMPTIONS RELATED TO TRADE SECRETS.--Records of the  
 121 department or board that reveal any trade secret of a licensee  
 122 or applicant for license or approval, under this chapter, as the  
 123 term "trade secret" is defined in s. 812.081, are to the extent  
 124 of such trade secret information exempt from s. 119.07(1) and s.  
 125 24(a), Art. I of the State Constitution.

126 (6) REVIEW AND REPEAL.--This section is subject to the  
 127 Open Government Sunset Review Act of 1995 in accordance with s.  
 128 119.15, and shall stand repealed on October 2, 2010, unless  
 129 reviewed and saved from repeal through reenactment by the  
 130 Legislature.

131 Section 2. (1) The Legislature finds that it is a public  
 132 necessity that meetings of the Board of Funeral, Cemetery, and  
 133 Consumer Services for the exclusive purpose of developing or  
 134 reviewing licensure examination questions or answers under  
 135 chapter 497, Florida Statutes, be exempted from the public  
 136 meeting requirements of the laws of this state so board members  
 137 may propose new questions and answers and engage in full and  
 138 free discussion concerning existing and proposed questions and  
 139 answers without disclosing the questions and answers to the  
 140 public. If such questions and answers used or to be used on

141 licensure examinations are disclosed to the public, the  
142 usefulness of such licensure examinations in assuring that  
143 applicants have studied and learned the entire body of knowledge  
144 necessary for the safe and competent practice of their intended  
145 profession or occupation under chapter 497, Florida Statutes,  
146 will be severely undermined or eliminated, to the substantial  
147 detriment of the public health, safety, and welfare.

148 (2) The Legislature finds that it is a public necessity  
149 that meetings of the probable cause panel of the board under  
150 chapter 497, Florida Statutes, be exempted from the public  
151 meeting requirements of the laws of the state so panel members  
152 may discuss with staff of the Department of Health the nature  
153 and strength of the cases and evidence being presented, whether  
154 further investigation is needed and the nature of such  
155 investigation, and investigative and examination techniques and  
156 methods without disclosing such information to the public. If  
157 such probable cause panel meetings are open to the public, the  
158 usefulness of such meetings in conducting further  
159 investigations, without the subjects of such further  
160 investigations knowing much or all of the department's  
161 investigative knowledge about the case and what additional  
162 investigation has been requested, will be thwarted and  
163 frustrated to the substantial detriment of the public health,  
164 safety, and welfare.

165 (3) The Legislature finds that it is a public necessity  
166 that records of the department that reveal the scheduling of  
167 inspections or special examinations under chapter 497, Florida  
168 Statutes, be exempted from the public records laws of the state

169 until the scheduled inspections or special examinations have  
 170 been initiated so the department may schedule inspections or  
 171 special examinations without disclosing such schedules to the  
 172 public. If licensees are able to learn in advance when they are  
 173 scheduled to be inspected or subject to special examination,  
 174 they are enabled to hide, destroy, or alter records that might  
 175 disclose violations of chapter 497, Florida Statutes, cause a  
 176 temporary change in their methods of operation of their business  
 177 in order to conceal their usual modes of operation that might be  
 178 in violation of chapter 497, Florida Statutes, or cause  
 179 employees with information about a violation by the licensee to  
 180 be temporarily reassigned so as to reduce the chance they might  
 181 talk to the inspector or examiner about the matter to the  
 182 substantial detriment of the public health, safety, and welfare.

183 (4)(a) The Legislature finds that it is a public necessity  
 184 that information, including any consumer complaint, held by the  
 185 department in furtherance of an investigation of unlicensed  
 186 activity, an inspection, or a financial examination of a  
 187 licensee conducted under chapter 497 , Florida Statutes, be made  
 188 confidential and exempt from the public records laws of the  
 189 state until the investigation, inspection, or examination is  
 190 completed or ceases to be active. If subjects of investigation,  
 191 inspection, or examination are able to learn of the existence or  
 192 nature of the investigation, inspection, or examination or,  
 193 knowing of such existence or nature, to learn the department's  
 194 knowledge or plan concerning the matter, the subjects may be  
 195 able to frustrate and thwart the proper and legitimate  
 196 investigative or examination processes and mechanisms of the

197 department by destroying, concealing, or altering evidence, by  
 198 tailoring the subject's statements or testimony to the  
 199 department to take advantage of gaps in the department's  
 200 investigative knowledge, or intimidating or corrupting  
 201 witnesses, to the substantial detriment of the public health,  
 202 safety, and welfare.

203 (b) The Legislature finds that it is a public necessity  
 204 that records of complaints against licensees, records of the  
 205 department relating to investigation of the complaint, and the  
 206 portions of the record of probable cause panel proceedings under  
 207 chapter 497, Florida Statutes, be exempted from the public  
 208 records laws of the state until 10 days after a finding of  
 209 probable cause is made. The confidentiality of such records is  
 210 necessary to protect the good reputation and business of  
 211 licensees from unfair damage that would otherwise result from  
 212 disclosures regarding complaints that are found to be without  
 213 sufficient merit as to justify formal disciplinary action.

214 (c) The Legislature finds that it is a public necessity  
 215 that information made confidential and exempt under paragraphs  
 216 (a) and (b) continue to remain confidential and exempt from the  
 217 public records laws of the state after the department's  
 218 investigation or examination is completed or ceases to be active  
 219 and after probable cause of licensees is found if the department  
 220 submits the information to any law enforcement or other  
 221 government administrative agency for further investigation of  
 222 matters within the jurisdiction of such other agency until that  
 223 agency's investigation is completed or ceases to be active. If  
 224 such information is disclosed to the public, subjects of



225 investigation by such other agencies may be able to frustrate or  
226 thwart such other investigations by the methods identified in  
227 paragraph (a).

228 (d) The Legislature finds that it is a public necessity  
229 that information made confidential and exempt under paragraphs  
230 (a) and (b) continue to remain exempt from the public records  
231 laws of the state after the department's investigation or  
232 examination is completed or ceases to be active and after  
233 probable cause of licensees is found to the extent such  
234 disclosure would jeopardize the integrity of another active  
235 investigation or examination of the department. If such  
236 information is disclosed to the public, subjects of such other  
237 investigations are able to frustrate or thwart such other  
238 investigations by the methods identified in paragraph (a).

239 (e) The Legislature finds that it is a public necessity  
240 that such information made confidential and exempt under  
241 paragraphs (a) and (b) continue to remain exempt from the public  
242 records laws of the state after the department's investigation  
243 or examination is completed or ceases to be active and after a  
244 finding of probable cause of licensees is found to the extent  
245 that disclosure would reveal the identity of a confidential  
246 source. If such information is disclosed to the public, the  
247 willingness of such confidential sources to come forward and  
248 provide information on violations of the laws of the state would  
249 likely be eliminated to the substantial detriment of the  
250 enforcement of the laws of the state.

251 (f) The Legislature finds that it is a public necessity  
252 that such records continue to remain exempt from the public

253 records laws of the state after the investigation or examination  
254 is completed or ceases to be active and after there is a finding  
255 of probable cause as to a licensee to the extent that disclosure  
256 would reveal investigative or examination techniques or  
257 procedures that the department has reasonable good faith belief  
258 will be utilized in future investigations or examinations. If  
259 such information is disclosed to the public, subjects of other  
260 investigations by the department may be able to thwart or  
261 frustrate the proper enforcement of the laws of this state.

262 (5) The Legislature finds that it is a public necessity  
263 that trade secrets of applicants and licensees under chapter  
264 497, Florida Statutes, be exempt from the public records laws of  
265 this state in order to allow effective and efficient regulation  
266 under chapter 497, Florida Statutes, without unfairly exposing  
267 applicants and licensees to the unfair loss of their trade  
268 secrets. The Legislature finds that it is necessary for the  
269 department and the board to be given access to trade secret  
270 information of applicants and licensees in order for the  
271 department and board to perform their assigned responsibilities  
272 in evaluating applications, conducting financial examinations,  
273 and investigating complaints. Such trade secret information may  
274 include, but is not limited to: existing or proposed internal  
275 business processes and procedures of applicants or licensees  
276 that such applicants or licensees believe provide them with a  
277 significant commercial advantage over competitors; lists of  
278 suppliers and terms of contracts negotiated with such suppliers  
279 that applicants or licensees believe provide them a competitive  
280 advantage; and business plans of applicants or licensees that,

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281 if publicly disclosed, would allow competitors to frustrate or  
282 counter such plans. The Legislature further finds that it is  
283 necessary from time to time for the department and the board to  
284 make record of such trade secret information for the purpose of  
285 communicating such information among department staff or board  
286 members having responsibilities regarding evaluating  
287 applications or conducting investigations and examinations. The  
288 Legislature finds that the loss of such trade secrets would work  
289 to the substantial detriment of residents of this state in  
290 reducing useful and beneficial innovation and improvements in  
291 products and services and prices offered to such residents.

292 Section 3. This act shall take effect October 1, 2005, if  
293 HB 529 or substantially similar legislation is adopted in the  
294 same legislative session or an extension thereof and becomes a  
295 law.