

1 A bill to be entitled

2 An act relating to public records and meetings exemptions;
 3 creating s. 497.172, F.S.; creating a public meetings
 4 exemption for the Board of Funeral, Cemetery, and Consumer
 5 Services for those portions of meetings conducted for the
 6 exclusive purpose of developing or reviewing licensure
 7 examination questions and answers; creating a public
 8 meetings exemption for probable cause panel meetings of
 9 the board; creating a public records exemption for records
 10 of exempt probable cause panel meetings for a time
 11 certain; creating a public records exemption for records
 12 relating to investigations, inspections, or examinations
 13 in process for a time certain; maintaining the public
 14 records exemptions under certain circumstances; creating a
 15 public records exemption for trade secrets; providing for
 16 future review and repeal; providing findings of public
 17 necessity; providing a contingent effective date.

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

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

23 497.172 Public records exemptions; public meetings
 24 exemptions.--

25 (1) EXAMINATION DEVELOPMENT MEETINGS.--Those portions of
 26 meetings of the board at which licensure examination questions
 27 or answers under this chapter are discussed are exempt from s.
 28 286.011 and s. 24(b), Art. I of the State Constitution.

29 (2) PROBABLE CAUSE PANEL.--

30 (a) Meetings of the probable cause panel of the board,
 31 pursuant to s. 497.153, are exempt from s. 286.011 and s. 24(b),
 32 Art. I of the State Constitution.

33 (b) Records of exempt meetings of the probable cause panel
 34 of the board are exempt from s. 119.07(1) and s. 24(a), Art. I
 35 of the State Constitution, until 10 days after a determination
 36 regarding probable cause is made pursuant to s. 497.153.

37 (3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.--

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

44 (b) Except as otherwise provided in this subsection,
 45 information held by the department pursuant to an inspection
 46 conducted under this chapter is confidential and exempt from s.
 47 119.07(1) and s. 24(a), Art. I of the State Constitution, until
 48 the inspection is completed or ceases to be active.

49 (c) Except as otherwise provided in this subsection,
 50 information held by the department pursuant to an investigation
 51 of a violation of this chapter is confidential and exempt from
 52 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 53 until the investigation is completed or ceases to be active or
 54 until 10 days after a determination regarding probable cause is
 55 made pursuant to s. 497.153.

56 (d) Information made confidential and exempt pursuant to
57 this subsection may be disclosed by the department as follows:

58 1. To the probable cause panel of the board, for the
59 purpose of probable cause proceedings pursuant to s. 497.153.

60 2. To any law enforcement agency or other government
61 agency in the performance of its official duties and
62 responsibilities.

63 3. If the department uncovers information of immediate and
64 serious concern to the public health, safety, or welfare, it may
65 disseminate such information as it deems necessary for the
66 public health, safety, or welfare.

67 (e) Information made confidential and exempt pursuant to
68 this subsection shall remain confidential and exempt from s.
69 119.07(1) and s. 24(a), Art. I of the State Constitution after
70 the examination, inspection, or investigation is completed or
71 ceases to be active if:

72 1. The department submits the information to any law
73 enforcement agency or other administrative agency for further
74 examination or investigation. The information shall remain
75 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
76 of the State Constitution until that agency's examination or
77 investigation is completed or ceases to be active.

78 2. Disclosure of the information would:

79 a. Jeopardize the integrity of another active
80 investigation or examination;

81 b. Reveal the identity of a confidential source; or

82 c. Reveal investigative or examination techniques or
83 procedures.

84 (f) For purposes of this subsection, an examination,
 85 inspection, or investigation shall be considered active so long
 86 as the examination, inspection, or investigation is proceeding
 87 with reasonable dispatch and the department has a reasonable
 88 good faith belief that the examination, inspection, or
 89 investigation may lead to the filing of an administrative,
 90 civil, or criminal proceeding or to the denial or conditional
 91 grant of an application for license or other approval required
 92 under this chapter.

93 (4) TRADE SECRETS.--Trade secrets, as defined in s.
 94 688.002, held by the department or board, are confidential and
 95 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 96 Constitution.

97 (5) REVIEW AND REPEAL.--This section is subject to the
 98 Open Government Sunset Review Act of 1995 in accordance with s.
 99 119.15, and shall stand repealed on October 2, 2010, unless
 100 reviewed and saved from repeal through reenactment by the
 101 Legislature.

102 Section 2. (1) The Legislature finds that it is a public
 103 necessity that those portions of meetings of the Board of
 104 Funeral, Cemetery, and Consumer Services at which licensure
 105 examination questions or answers under chapter 497, Florida
 106 Statutes, are discussed be made exempt from public meetings
 107 requirements. Without the exemption, board members might not
 108 propose new questions and answers and engage in full and free
 109 discussion concerning existing and proposed questions and
 110 answers. If questions and answers for licensure examinations are
 111 disclosed to the public, the usefulness of those licensure

112 examinations in ensuring that applicants have studied and
113 learned the entire body of knowledge necessary for the safe and
114 competent practice of their intended profession or occupation
115 under chapter 497, Florida Statutes, would be severely
116 undermined or eliminated. Therefore, without this exemption, the
117 effective and efficient administration of the licensure process
118 would be jeopardized.

119 (2) The Legislature finds that it is a public necessity
120 that meetings of the probable cause panel of the board under
121 chapter 497, Florida Statutes, be made exempt from the public
122 meetings requirements. The Legislature also finds that it is a
123 public necessity that records of exempt meetings of the probable
124 cause panel be made exempt from public records requirements
125 until 10 days after a determination regarding probable cause is
126 made. If probable cause panel meetings and records of those
127 meetings are open to the public, the purpose of those meetings
128 would be thwarted and frustrated to the substantial detriment of
129 the public health, safety, and welfare. Public oversight is
130 still maintained because the records of those meetings are
131 preserved and are available to the public after a determination
132 of probable cause is made.

133 (3) (a) The Legislature finds that it is a public necessity
134 that information held by the Department of Financial Services
135 pursuant to a financial examination conducted under chapter 497,
136 Florida Statutes, be made confidential and exempt from public
137 records requirements until the examination is completed or
138 ceases to be active. If a subject of a financial examination
139 were able to discover that an examination was underway, that

140 subject could frustrate and thwart the examination, thereby
141 hindering the effective and efficient administration of the
142 examination.

143 (b) The Legislature finds that it is a public necessity
144 that information held by the department pursuant to an
145 inspection conducted under chapter 497, Florida Statutes, be
146 made confidential and exempt from public records requirements
147 until the inspection is completed or ceases to be active. The
148 premature release of such information could frustrate and thwart
149 the inspection if the subject of an inspection were made aware
150 that an inspection was to occur, thereby hindering the effective
151 and efficient administration of the inspection.

152 (c) The Legislature finds that it is a public necessity
153 that information held by the department pursuant to an
154 investigation of a violation of chapter 497, Florida Statutes,
155 be made confidential and exempt from public records requirements
156 until the investigation is completed or ceases to be active or
157 until 10 days after a determination regarding probable cause is
158 made. If a subject of an investigation were able to discover
159 that an investigation was underway, that subject could frustrate
160 and thwart the investigation, thereby hindering the effective
161 and efficient administration of the investigation.

162 (d) The Legislature finds that it is a public necessity to
163 maintain the confidential and exempt status of the examination
164 or investigation information if it has been provided to a law
165 enforcement agency or other administrative agency for further
166 examination or investigation. Release of such information prior

167 to the completion of that examination or investigation would
168 jeopardize the integrity of the examination or investigation.

169 (e) The Legislature finds that it is a public necessity to
170 maintain the confidential and exempt status of the examination,
171 inspection, or investigation information if release of such
172 information would jeopardize the integrity of another active
173 investigation or examination, reveal the identity of a
174 confidential source, or reveal investigative or examination
175 techniques or procedures. If such information were disclosed to
176 the public, subjects of such other investigations could
177 frustrate or thwart those investigations, jeopardize the safety
178 of the confidential source, or affect the ability of the
179 department to conduct investigations or examinations.

180 (4) The Legislature finds that it is a public necessity
181 that a trade secret, as defined in s. 688.002, Florida Statutes,
182 held by the Department of Financial Services or the Board of
183 Funeral, Cemetery, and Consumer Services be made confidential
184 and exempt from public records requirements. A trade secret
185 derives independent economic value, actual or potential, from
186 not being generally known to, and not being readily
187 ascertainable by proper means by, other persons who can obtain
188 economic value from its disclosure or use. Without an exemption
189 from public records requirements for a trade secret held by the
190 department or board, that trade secret becomes a public record
191 when received and must be divulged upon request. Divulgence of
192 any trade secret under the public records law would destroy the
193 value of that property, causing a financial loss to the person
194 or entity submitting the trade secret. Release of that

195 information would give business competitors an unfair advantage
196 and weaken the position of the person or entity supplying the
197 trade secret in the marketplace.

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