

Bill No. SB 2344

Barcode 203248

CHAMBER ACTION

Senate

House

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The Committee on Governmental Oversight and Productivity
(Sebesta) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

(2) PROBABLE CAUSE PANEL.--

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

(b) Records of exempt meetings of the probable cause

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1 panel of the board are exempt from s. 119.07(1) and s. 24(a),
2 Art. I of the State Constitution, until 10 days after a
3 determination regarding probable cause is made pursuant to s.
4 497.153.

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

6 (a) Except as otherwise provided in this subsection,
7 information held by the department pursuant to a financial
8 examination conducted under this chapter is confidential and
9 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
10 Constitution, until the examination is completed or ceases to
11 be active.

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

17 (c) Except as otherwise provided in this subsection,
18 information held by the department pursuant to an
19 investigation of a violation of this chapter is confidential
20 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
21 Constitution until the investigation is completed or ceases to
22 be active or until 10 days after a determination regarding
23 probable cause is made pursuant to s. 497.153.

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

27 1. To the probable cause panel of the board, for the
28 purpose of probable cause panel proceedings pursuant to s.
29 497.153.

30 2. To any law enforcement agency or other government
31 agency in the performance of its official duties and

1 responsibilities.

2 3. If the department uncovers information of immediate
3 and serious concern to the public health, safety, or welfare,
4 it may disseminate such information as it deems necessary for
5 the public health, safety, or welfare.

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

11 1. The department submits the information to any law
12 enforcement agency or other administrative agency for further
13 examination or investigation. The information shall remain
14 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
15 of the State Constitution until that agency's examination or
16 investigation is completed or ceases to be active.

17 2. Disclosure of the information would:

18 a. Jeopardize the integrity of another active
19 investigation or examination;

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

21 c. Reveal investigative or examination techniques or
22 procedures.

23 (f) For purposes of this subsection, an examination,
24 inspection, or investigation shall be considered active so
25 long as the examination, inspection, or investigation is
26 proceeding with reasonable dispatch and the department has a
27 reasonable good-faith belief that the examination, inspection,
28 or investigation may lead to the filing of an administrative,
29 civil, or criminal proceeding or to the denial or conditional
30 grant of an application for license or other approval required
31 under this chapter.

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1 (4) TRADE SECRETS.--Trade secrets, as defined in s.
 2 688.002, held by the department or board are confidential and
 3 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 4 Constitution.

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

10 Section 2. (1) The Legislature finds that it is a
 11 public necessity that those portions of meetings of the Board
 12 of Funeral, Cemetery, and Consumer Services at which licensure
 13 examination questions or answers, under chapter 497, Florida
 14 Statutes, are discussed be made exempt from public-meetings
 15 requirements. Without the exemption, board members might not
 16 propose new questions and answers, and engage in full and free
 17 discussion concerning existing and proposed questions and
 18 answers. If questions and answers for licensure examinations
 19 are disclosed to the public, the usefulness of those licensure
 20 examinations in assuring that applicants have studied and
 21 learned the entire body of knowledge necessary for the safe
 22 and competent practice of their intended profession or
 23 occupation under chapter 497, Florida Statutes, would be
 24 severely undermined or eliminated. Therefore, without this
 25 exemption, the effective and efficient administration of the
 26 licensure process would be jeopardized.

27 (2) The Legislature finds that it is a public
 28 necessity that meetings of the probable cause panel of the
 29 board, under chapter 497, Florida Statutes, be made exempt
 30 from public-meetings requirements. The Legislature also finds
 31 that it is a public necessity that records of exempt meetings

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1 of the probable cause panel be made exempt from public-records
2 requirements, until 10 days after a determination regarding
3 probable cause is made. If probable cause panel meetings and
4 records of those meetings are open to the public, the purpose
5 of those meetings would be thwarted and frustrated to the
6 substantial detriment of the public health, safety, and
7 welfare. Public oversight is still maintained because the
8 records of those meetings are preserved and are available to
9 the public after a determination of probable cause is made.

10 (3)(a) The Legislature finds that it is a public
11 necessity that information held by the Department of Financial
12 Services pursuant to a financial examination conducted under
13 chapter 497, Florida Statutes, be made confidential and exempt
14 from public-records requirements until the examination is
15 completed or ceases to be active. If a subject of a financial
16 examination were able to discover that an examination was
17 underway, that subject could frustrate and thwart the
18 examination, thereby hindering the effective and efficient
19 administration of the examination.

20 (b) The Legislature finds that it is a public
21 necessity that information held by the department pursuant to
22 an inspection conducted under chapter 497, Florida Statutes,
23 be made confidential and exempt from public-records
24 requirements until the inspection is completed or ceases to be
25 active. The premature release of such information could
26 frustrate and thwart the inspection if the subject of an
27 inspection were made aware that an inspection was to occur,
28 thereby hindering the effective and efficient administration
29 of the inspection.

30 (c) The Legislature finds that it is a public
31 necessity that information held by the department pursuant to

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1 an investigation of a violation of chapter 497, Florida
 2 Statutes, be made confidential and exempt from public-records
 3 requirements until the investigation is completed or ceases to
 4 be active, or until 10 days after a determination regarding
 5 probable cause is made. If a subject of an investigation were
 6 able to discover that an investigation was underway, that
 7 subject could frustrate and thwart the investigation, thereby
 8 hindering the effective and efficient administration of the
 9 investigation.

10 (d) The Legislature finds that it is a public
 11 necessity to maintain the confidential and exempt status of
 12 the examination or investigation information if it has been
 13 provided to a law enforcement agency or other administrative
 14 agency for further examination or investigation. Release of
 15 such information prior to the completion of that examination
 16 or investigation would jeopardize the integrity of the
 17 examination or investigation.

18 (e) The Legislature finds that it is a public
 19 necessity to maintain the confidential and exempt status of
 20 the examination, inspection, or investigation information if
 21 release of such information would jeopardize the integrity of
 22 another active investigation or examination, reveal the
 23 identity of a confidential source, or reveal investigative or
 24 examination techniques or procedures. If such information were
 25 disclosed to the public, subjects of such other investigations
 26 could frustrate or thwart those investigations, jeopardize the
 27 safety of the confidential source, or affect the ability of
 28 the department to conduct investigations or examinations.

29 (4) The Legislature finds that it is a public
 30 necessity that a trade secret, as defined in section 688.002,
 31 Florida Statutes, held by the Department of Financial Services

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1 or the Board of Funeral, Cemetery, and Consumer Services be
2 made confidential and exempt from public-records requirements.
3 A trade secret derives independent economic value, actual or
4 potential, from not being generally known to, and not being
5 readily ascertainable by proper means by, other persons who
6 can obtain economic value from its disclosure or use. Without
7 an exemption from public-records requirements for a trade
8 secret held by the department or board, that trade secret
9 becomes a public record when received and must be divulged
10 upon request. Divulgence of any trade secret under the
11 public-records law would destroy the value of that property,
12 causing a financial loss to the person or entity submitting
13 the trade secret. Release of that information would give
14 business competitors an unfair advantage and weaken the
15 position of the person or entity supplying the trade secret,
16 in the marketplace.

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

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23 ===== T I T L E A M E N D M E N T =====

24 And the title is amended as follows:

25 Delete everything before the enacting clause

26

27 and insert:

28 A bill to be entitled
29 An act relating to public records and meetings
30 exemptions; creating s. 497.172, F.S.; creating
31 a public-meetings exemption for Board of

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

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