

1 reviewing licensure examination questions or answers under
2 this chapter, are exempt from s. 286.011 and s. 24(b), Art. I
3 of the State Constitution.

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

8 (3) SCHEDULING OF INSPECTIONS AND
9 EXAMINATIONS.--Records of the department which reveal the
10 scheduling of inspections or special examinations under this
11 chapter are confidential and exempt from s. 119.07(1) and s.
12 24(a), Art. I of the State Constitution, until the scheduled
13 inspections or special examinations have been initiated.

14 (4) EXEMPTIONS RELATING TO EXAMINATIONS, INSPECTIONS,
15 AND INVESTIGATIONS.--

16 (a) Except as otherwise provided in this subsection,
17 information held by the department pursuant to a financial
18 examination or inspection conducted under this chapter is
19 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
20 of the State Constitution, until the examination or inspection
21 is completed or ceases to be active.

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

29 (c) Complaints against licensees under this chapter,
30 investigative records of the department relating to the
31 department's investigation of the complaint, and portions of

1 the record of probable-cause-panel proceedings, if any,
2 relating to consideration and action concerning such complaint
3 are confidential and exempt from s. 119.07(1) and s. 24(a),
4 Art. I of the State Constitution, until 10 days after a
5 finding of probable cause is made pursuant to s. 497.153.

6 (d) Notwithstanding the confidentiality required by
7 paragraphs (a), (b), and (c), such information may be
8 disclosed by the department as follows:

9 1. During and in furtherance of the investigation or
10 examination, the department may disclose such information to
11 experts engaged by the department to assist in the
12 investigation or examination and to witnesses, potential
13 witnesses, or other persons believed by the department to
14 possibly have knowledge pertinent to the investigation or
15 examination, for the purpose of obtaining such knowledge from
16 such witnesses or persons.

17 2. To the probable-cause panel of the board, for the
18 purpose of probable-cause proceedings pursuant to s. 497.153.

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

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

25 5. When the department in the course of an
26 investigation uncovers information of immediate and serious
27 concern to the public health, safety, or welfare, it may
28 disseminate such information as it deems necessary for the
29 public health, safety, or welfare.

30 (e) Information held by the department and made
31 confidential and exempt under paragraphs (a), (b), and (c)

1 shall remain confidential and exempt from s. 119.07(1) and s.
2 24(a), Art. I of the State Constitution, after the
3 department's investigation or examination is completed or
4 ceases to be active and after probable cause of licensees is
5 found, if the department submits the information to any law
6 enforcement agency or other government administrative agency
7 for further investigation of matters within the jurisdiction
8 of such other agency. Such information shall remain exempt and
9 confidential from s. 119.07(1) and s. 24(a), Art. I of the
10 State Constitution, until that agency's investigation is
11 completed or ceases to be active.

12 (f) Information held by the department and made
13 confidential and exempt under paragraphs (a), (b), and (c)
14 shall remain confidential and exempt from s. 119.07(1) and s.
15 24(a), Art. I of the State Constitution, after the department
16 completes its investigation or examination or the
17 investigation or examination ceases to be active and after
18 probable cause of licensees is found, if disclosure of the
19 information would:

- 20 1. Jeopardize the integrity of another active
21 investigation or examination;
22 2. Reveal the identity of a confidential source; or
23 3. Reveal investigative or examination techniques or
24 procedures that the department has a reasonable good-faith
25 belief will be used in future investigations or examinations.

26 (g) For purposes of this subsection, an investigation,
27 inspection, or examination is active while the investigation,
28 inspection, or examination is proceeding with reasonable
29 dispatch and the agency has a reasonable good-faith belief
30 that the investigation, inspection, or examination may lead to
31 the filing of an administrative, civil, or criminal proceeding

1 or to the denial or conditional grant of an application for
2 license or other approval required under this chapter.

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

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

14 Section 2. (1) The Legislature finds that it is a
15 public necessity that meetings of the Board of Funeral,
16 Cemetery, and Consumer Services for the exclusive purpose of
17 developing or reviewing licensure examination questions or
18 answers under chapter 497, Florida Statutes, be exempted from
19 the public-meeting requirements of the laws of this state so
20 board members may propose new questions and answers and engage
21 in full and free discussion concerning existing and proposed
22 questions and answers without disclosing the questions and
23 answers to the public. If such questions and answers used or
24 to be used on licensure examinations are disclosed to the
25 public, the usefulness of such licensure examinations in
26 assuring that applicants have studied and learned the entire
27 body of knowledge necessary for the safe and competent
28 practice of their intended profession or occupation under
29 chapter 497, Florida Statutes, will be severely undermined or
30 eliminated, to the substantial detriment of the public health,
31 safety, and welfare.

1 (2) The Legislature finds that it is a public
2 necessity that meetings of the probable-cause panel of the
3 board under chapter 497, Florida Statutes, be exempted from
4 the public-meetings requirements of the laws of the state so
5 panel members may discuss with staff of the Department of
6 Health the nature and strength of the cases and the evidence
7 being presented, whether further investigation is needed and
8 the nature of such investigation, and investigative and
9 examination techniques and methods without disclosing such
10 information to the public. If such probable-cause-panel
11 meetings are open to the public, the usefulness of such
12 meetings in conducting further investigations, without the
13 subjects of such further investigations knowing much or all of
14 the department's investigative knowledge about the case and
15 what additional investigation has been requested, will be
16 thwarted and frustrated to the substantial detriment of the
17 public health, safety, and welfare.

18 (3) The Legislature finds that it is a public
19 necessity that records of the department that reveal the
20 scheduling of inspections or special examinations under
21 chapter 497, Florida Statutes, be exempted from the
22 public-records laws of the state until the scheduled
23 inspections or special examinations have been initiated so
24 that the department may schedule inspections or special
25 examinations without disclosing such schedules to the public.
26 If licensees are able to learn in advance when they are
27 scheduled to be inspected or are subject to special
28 examination, they are enabled to hide, destroy, or alter
29 records that might disclose violations of chapter 497, Florida
30 Statutes, cause a temporary change in the methods of operation
31 of their businesses in order to conceal their usual modes of

1 operation that might be in violation of chapter 497, Florida
2 Statutes, or cause employees with information about a
3 violation by the licensee to be temporarily reassigned so as
4 to reduce the chance that they might talk to the inspector or
5 examiner about the matter to the substantial detriment of the
6 public health, safety, and welfare.

7 (4)(a) The Legislature finds that it is a public
8 necessity that information, including any consumer complaint,
9 held by the department in furtherance of an investigation of
10 unlicensed activity, or an inspection or a financial
11 examination of a licensee, conducted under chapter 497,
12 Florida Statutes, be made confidential and exempt from the
13 public-records laws of the state until the investigation,
14 inspection, or examination is completed or ceases to be
15 active. If subjects of investigation, inspection, or
16 examination are able to learn of the existence or nature of
17 the investigation, inspection, or examination or, knowing of
18 it, to learn the department's knowledge or plan concerning the
19 matter, the subjects may be able to frustrate and thwart the
20 proper and legitimate investigative or examination processes
21 and mechanisms of the department by destroying, concealing, or
22 altering evidence, by tailoring the subject's statements or
23 testimony to the department to take advantage of gaps in the
24 department's investigative knowledge, or intimidating or
25 corrupting witnesses, to the substantial detriment of the
26 public health, safety, and welfare.

27 (b) The Legislature finds that it is a public
28 necessity that records of complaints against licensees,
29 records of the department relating to investigation of the
30 complaint, and the portions of the record of
31 probable-cause-panel proceedings under chapter 497, Florida

1 Statutes, be exempted from the public-records laws of the
2 state until 10 days after a finding of probable cause is made.
3 The confidentiality of such records is necessary to protect
4 the good reputation and business of licensees from unfair
5 damage that would otherwise result from disclosures regarding
6 complaints that are found to be without sufficient merit as to
7 justify formal disciplinary action.

8 (c) The Legislature finds that it is a public
9 necessity that information made confidential and exempt under
10 paragraphs (a) and (b) continue to remain confidential and
11 exempt from the public-records laws of the state after the
12 department's investigation or examination is completed or
13 ceases to be active and after probable cause of licensees is
14 found, if the department submits the information to any law
15 enforcement or other government administrative agency for
16 further investigation of matters within the jurisdiction of
17 such other agency, until that agency's investigation is
18 completed or ceases to be active. If such information is
19 disclosed to the public, subjects of investigation by such
20 other agencies may be able to frustrate or thwart such other
21 investigations by the methods identified in paragraph (a).

22 (d) The Legislature finds that it is a public
23 necessity that information made confidential and exempt under
24 paragraphs (a) and (b) continue to remain exempt from the
25 public-records laws of the state after the department's
26 investigation or examination is completed or ceases to be
27 active and after probable cause of licensees is found to the
28 extent such disclosure would jeopardize the integrity of
29 another active investigation or examination of the department.
30 If such information is disclosed to the public, subjects of
31 such other investigations are able to frustrate or thwart such

1 other investigations by the methods identified in paragraph
2 (a).

3 (e) The Legislature finds that it is a public
4 necessity that such information made confidential and exempt
5 under paragraphs (a) and (b) continue to remain exempt from
6 the public-records laws of the state after the department's
7 investigation or examination is completed or ceases to be
8 active, and after a finding of probable cause of licensees is
9 found, to the extent that disclosure would reveal the identity
10 of a confidential source. If such information is disclosed to
11 the public, the willingness of such confidential sources to
12 come forward and provide information on violations of the laws
13 of the state would likely be eliminated to the substantial
14 detriment of the enforcement of the laws of the state.

15 (f) The Legislature finds that it is a public
16 necessity that such records continue to remain exempt from the
17 public records laws of the state after the investigation or
18 examination is completed or ceases to be active and after
19 there is a finding of probable cause as to a licensee to the
20 extent that disclosure would reveal investigative or
21 examination techniques or procedures that the department has a
22 reasonable good-faith belief will be utilized in future
23 investigations or examinations. If such information is
24 disclosed to the public, subjects of other investigations by
25 the department may be able to thwart or frustrate the proper
26 enforcement of the laws of this state.

27 (5) The Legislature finds that it is a public
28 necessity that trade secrets of applicants and licensees under
29 chapter 497, Florida Statutes, be exempt from the
30 public-records laws of this state in order to allow effective
31 and efficient regulation under chapter 497, Florida Statutes,

1 without unfairly exposing applicants and licensees to the
2 unfair loss of their trade secrets. The Legislature finds that
3 it is necessary for the department and the board to be given
4 access to trade-secret information of applicants and licensees
5 in order for the department and board to perform their
6 assigned responsibilities in evaluating applications,
7 conducting financial examinations, and investigating
8 complaints. Such trade-secret information may include, but is
9 not limited to: existing or proposed internal business
10 processes and procedures of applicants or licensees which such
11 applicants or licensees believe provide them with a
12 significant commercial advantage over competitors; lists of
13 suppliers and terms of contracts negotiated with such
14 suppliers which applicants or licensees believe provide them a
15 competitive advantage; and business plans of applicants or
16 licensees which, if publicly disclosed, would allow
17 competitors to frustrate or counter such plans. The
18 Legislature further finds that it is necessary from time to
19 time for the department and the board to make record of such
20 trade-secret information for the purpose of communicating such
21 information among department staff or board members having
22 responsibilities regarding evaluating applications or
23 conducting investigations and examinations. The Legislature
24 finds that the loss of such trade secrets would work to the
25 substantial detriment of residents of this state in reducing
26 useful and beneficial innovation and improvements in products
27 and services and prices offered to such residents.

28 Section 3. This act shall take effect October 1, 2005,
29 but shall not take effect unless SB _____ or substantially
30 similar legislation is adopted in the same legislative session
31 or an extension thereof and becomes a law.

SENATE SUMMARY

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Creates a public-meetings exemption for meetings of the Board of Funeral, Cemetery, and Consumer Services conducted for the exclusive purpose of developing or reviewing licensure examination questions and answers. Creates a public-meetings exemption for probable-cause-panel meetings of the board. Creates a public-records exemption for records relating to the scheduling of inspections and special examinations. Creates a public-records exemption for records relating to investigations or examinations in process. Creates a public-records exemption for trade-secret information of licensees and applicants. Provides for future legislative review and repeal under the Open Government Sunset Review Act. Provides a statement of public necessity.