

FOR CONSIDERATION By the Committee on Banking and Insurance

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 497.172, F.S., relating
4 to certain meetings of and records held by the Board
5 of Funeral, Cemetery, and Consumer Services within the
6 Department of Financial Services; revising exemptions
7 from public-meetings requirements for meetings of the
8 board at which licensure examination questions or
9 answers are discussed and for meetings of the board's
10 probable cause panel; providing recordkeeping
11 requirements for such meetings; providing an exemption
12 from public-records requirements for photographs of
13 dead human bodies, or parts thereof, which are held by
14 the department in the course of an investigation or
15 inspection; providing certain exceptions; providing
16 that the exemption applies to photographs obtained by
17 the department before the effective date of the act;
18 providing for future legislative review and repeal of
19 the exemption under the Open Government Sunset Review
20 Act; providing a finding of public necessity;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

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25 Section 1. Section 497.172, Florida Statutes, is amended to
26 read:

27 497.172 Public records exemptions; public meetings
28 exemptions.—

29 (1) EXAMINATION DEVELOPMENT MEETINGS.—Those portions of

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30 meetings of the board at which licensure examination questions
31 or answers under this chapter are discussed are exempt from s.
32 286.011 and s. 24(b), Art. I of the State Constitution. All
33 exempt portions of meetings shall be recorded and transcribed.
34 The board shall record the times of commencement and termination
35 of the meeting, all discussion and proceedings, the names of all
36 persons present at any time, and the names of all persons
37 speaking. An exempt portion of any meeting may not be off the
38 record.

39 (2) PROBABLE CAUSE PANEL.—

40 (a) Meetings of the probable cause panel of the board,
41 pursuant to s. 497.153, are exempt from s. 286.011 and s. 24(b),
42 Art. I of the State Constitution. All exempt portions of
43 meetings shall be recorded and transcribed.

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

48 (3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.—

49 (a) Except as otherwise provided in this subsection,
50 information held by the department pursuant to a financial
51 examination conducted under this chapter is confidential and
52 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
53 Constitution, until the examination is completed or ceases to be
54 active.

55 (b) Except as otherwise provided in this subsection,
56 information held by the department pursuant to an inspection
57 conducted under this chapter is confidential and exempt from s.
58 119.07(1) and s. 24(a), Art. I of the State Constitution, until

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59 the inspection is completed or ceases to be active.

60 (c) Except as otherwise provided in this subsection,
61 information held by the department pursuant to an investigation
62 of a violation of this chapter is confidential and exempt from
63 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
64 until the investigation is completed or ceases to be active or
65 until 10 days after a determination regarding probable cause is
66 made pursuant to s. 497.153.

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

- 69 1. To the probable cause panel of the board, for the
70 purpose of probable cause proceedings pursuant to s. 497.153.
- 71 2. To any law enforcement agency or other government agency
72 in the performance of its official duties and responsibilities.
- 73 3. If the department uncovers information of immediate and
74 serious concern to the public health, safety, or welfare, it may
75 disseminate such information as it deems necessary for the
76 public health, safety, or welfare.

77 (e) Information made confidential and exempt pursuant to
78 this subsection shall remain confidential and exempt from s.
79 119.07(1) and s. 24(a), Art. I of the State Constitution after
80 the examination, inspection, or investigation is completed or
81 ceases to be active if:

- 82 1. The department submits the information to any law
83 enforcement agency or other administrative agency for further
84 examination or investigation. The information shall remain
85 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
86 of the State Constitution until that agency's examination or
87 investigation is completed or ceases to be active.

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88 2. Disclosure of the information would:

89 a. Jeopardize the integrity of another active investigation
90 or examination;

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

92 c. Reveal investigative or examination techniques or
93 procedures.

94 (f) For purposes of this subsection, an examination,
95 inspection, or investigation shall be considered active so long
96 as the examination, inspection, or investigation is proceeding
97 with reasonable dispatch and the department has a reasonable
98 good faith belief that the examination, inspection, or
99 investigation may lead to the filing of an administrative,
100 civil, or criminal proceeding or to the denial or conditional
101 grant of an application for license or other approval required
102 under this chapter.

103 (4) TRADE SECRETS; PHOTOGRAPHS OF DECEASED PERSONS.—

104 (a) Trade secrets, as defined in s. 688.002, held by the
105 department or board, are confidential and exempt from s.
106 119.07(1) and s. 24(a), Art. I of the State Constitution.

107 (b) Photographs of dead human bodies, or parts thereof,
108 which are taken, obtained by, or in the possession of the
109 department before, on, or after October 2, 2010, and which are
110 held as part of an investigation or inspection under this
111 chapter are confidential and exempt from s. 119.07(1) and s.
112 24(a), Art. I of the State Constitution, unless, in relation to
113 the decedent, a surviving spouse consents in writing to the
114 public release of such photographs. If there is no surviving
115 spouse, release of the photographs shall be determined by the
116 legally authorized person pursuant to s. 497.005(37).

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117 Notwithstanding the confidentiality required by this paragraph,
118 such photographs may be displayed to the board and its probable
119 cause panel in the course of proceedings under this chapter, and
120 may be displayed and used as evidence in administrative, civil,
121 or criminal proceedings, subject to any applicable rules of
122 evidence. The court or administrative law judge in such
123 proceedings may issue such orders as deemed necessary or
124 advisable, requiring the parties to the litigation to maintain
125 the confidentiality of such photographs, in order to protect the
126 survivors of the deceased person depicted in the photographs
127 from unnecessary emotional trauma that may result from the
128 publication of such photographs.

129 (5) REVIEW AND REPEAL.—This section is subject to the Open
130 Government Sunset Review Act in accordance with s. 119.15, and
131 shall stand repealed on October 2, 2015 ~~2010~~, unless reviewed
132 and saved from repeal through reenactment by the Legislature.

133 Section 2. The Legislature finds that it is a public
134 necessity that photographs of dead human bodies in the
135 possession of the Board of Funeral, Cemetery, and Consumer
136 Services within the Department of Financial Services be made
137 confidential and exempt from the requirements of s. 119.07(1),
138 Florida Statutes, and s. 24(a), Article I of the State
139 Constitution. The Legislature finds that such photographs show
140 dead human bodies in graphic and often disturbing fashion. Such
141 photographs may depict or describe the deceased nude, bruised,
142 bloodied, broken, with bullet or other wounds, cut open,
143 dismembered, or decapitated. As such, photographs of dead human
144 bodies are highly sensitive and, if viewed or publicized, could
145 result in trauma, sorrow, humiliation, or emotional injury to

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146 the immediate family of the deceased, as well as injury to the
147 memory of the deceased. The Legislature finds that the existence
148 of the Internet and the proliferation of personal computers
149 throughout the world encourages and promotes the wide
150 dissemination of photographs instantly at all hours of the day
151 and that widespread unauthorized dissemination of photographs
152 would subject the immediate family of the deceased to continuous
153 injury. The Legislature further finds that the exemption
154 provided in this act should be given retroactive application
155 because it is remedial in nature.

156 Section 3. This act shall take effect October 1, 2010.