

House Bill No. 1469

An act relating to public records and meetings exemptions; creating s. 497.172, F.S.; creating a public meetings exemption for the Board of Funeral, Cemetery, and Consumer Services for those portions of 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 of exempt probable cause panel meetings for a time certain; creating a public records exemption for records relating to investigations, inspections, or examinations in process for a time certain; maintaining the public records exemptions under certain circumstances; creating a public records exemption for trade secrets; 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 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 panel of the board are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, until 10 days after a determination regarding probable cause is made pursuant to s. 497.153.

(3) EXAMINATIONS, INSPECTIONS, AND INVESTIGATIONS.—

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

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

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

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

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

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

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

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

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

2. Disclosure of the information would:

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

b. Reveal the identity of a confidential source; or

c. Reveal investigative or examination techniques or procedures.

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

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

(5) REVIEW AND REPEAL.—This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall

stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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

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

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

(c) The Legislature finds that it is a public necessity that information held by the department pursuant to an investigation of a violation of chapter 497, Florida Statutes, be made confidential and exempt from public records

requirements until the investigation is completed or ceases to be active or until 10 days after a determination regarding probable cause is made. If a subject of an investigation were able to discover that an investigation was underway, that subject could frustrate and thwart the investigation, thereby hindering the effective and efficient administration of the investigation.

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

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

(4) The Legislature finds that it is a public necessity that a trade secret, as defined in s. 688.002, Florida Statutes, held by the Department of Financial Services or the Board of Funeral, Cemetery, and Consumer Services be made confidential and exempt from public records requirements. A trade secret derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. Without an exemption from public records requirements for a trade secret held by the department or board, that trade secret becomes a public record when received and must be divulged upon request. Divulgence of any trade secret under the public records law would destroy the value of that property, causing a financial loss to the person or entity submitting the trade secret. Release of that information would give business competitors an unfair advantage and weaken the position of the person or entity supplying the trade secret in the marketplace.

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

Approved by the Governor June 8, 2005.

Filed in Office Secretary of State June 8, 2005.