

## CHAPTER 2010-76

### House Bill No. 7117

An act relating to a review under the Open Government Sunset Review Act; amending s. 497.172, F.S., which provides exemptions from public meetings and public records requirements for the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services and for certain information held by the Department of Financial Services; requiring a recording of a closed meeting of the board wherein licensure examination questions or answers are discussed; creating a public record exemption for a recording of the closed meeting; providing for future legislative review and repeal of the exemption; requiring a recording of a closed meeting of a probable cause panel of the board; removing the scheduled repeal of exemptions within the section; providing a statement of public necessity; providing an effective date.

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

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

497.172 Public records exemptions; public meetings exemptions.—

(1) EXAMINATION DEVELOPMENT MEETINGS.—

(a) 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. The closed meeting must be recorded and no portion of the closed meeting may be off the record. The recording shall be maintained by the board.

(b) The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

(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. The entire closed meeting must be recorded and no portion of the closed meeting may be off the record. The recording shall be maintained by the board.

(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 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. The Legislature finds that it is a public necessity to make exempt from public records requirements the recording generated during those portions of meetings of the Board of Funeral, Cemetery, and Consumer Services at which licensure examination questions or answers are discussed. The release of such recordings would compromise those discussions of the board which took place during a closed meeting and would negate the public meeting exemption. Further, current law already provides a public record exemption for licensure examination questions and answers. As such, release of the recording generated during those closed portions of meetings would compromise the current protections already afforded such questions and answers. Thus, the effective and efficient administration of the licensure examination process would be compromised without this exemption.

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

Approved by the Governor May 11, 2010.

Filed in Office Secretary of State May 11, 2010.