

ASSEMBLY, No. 2810

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Requires active supervision of certain professional and occupational licensing boards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2018)

1 **AN ACT** concerning the State supervision of certain professional
2 and occupational licensing boards and supplementing P.L.1978,
3 c.73 (C.45:1-14 et seq.).

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

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8 1. a. Notwithstanding the provisions of any State law, rule, or
9 regulation to the contrary, a regulatory officer shall, in order to
10 provide antitrust immunity to a board consistent with federal law,
11 establish and implement a protocol consistent with the provisions of
12 this section applicable to the proposed regulations, actions and
13 decisions of any board under the regulatory officer's purview for
14 which:

15 (1) the majority of members are active market participants of the
16 profession or occupation regulated by that board; and

17 (2) but for a vacancy or vacancies in the membership of the
18 board, that board would otherwise have a majority of members that
19 are active market participants.

20 The regulatory officer shall review any potentially
21 anticompetitive regulation, action, or decision proposed by a board
22 that is under the regulatory officer's purview and meets the criteria
23 set forth in paragraph (1) or (2) of this subsection, to determine
24 whether the proposed regulation, action, or decision displaces
25 competition and, if so, whether it is consistent with and furthers or
26 promotes clearly articulated and affirmatively expressed State
27 policy or the inherent, logical, or ordinary result of that policy.

28 If it is determined as a result of that review that the proposed
29 regulation, action or decision is not consistent with and does not
30 further or promote clearly articulated and affirmatively expressed
31 State policy, or is not the inherent, logical or ordinary result of the
32 board's statutorily-delegated authority, or both, the regulatory
33 officer shall disapprove, veto, modify, amend or remand to the
34 board for the development of a factual record of the proposed
35 regulation, action or decision, as may be necessary or appropriate.

36 A proposed regulation, action, or decision shall not take effect
37 unless the regulatory officer has conducted the review authorized by
38 this section and taken such additional action as may be necessary or
39 appropriate under this section, provided that nothing in this section
40 shall be construed to create a private right of action, except as
41 provided in subsection c. of this section, or preclude any action to
42 address possible anticompetitive impacts after the proposed
43 regulation, action, or decision has taken effect. For purposes of this
44 subsection, no person licensed by the board whose action or
45 decision is under review pursuant to the protocol established
46 pursuant to this subsection shall be permitted to serve as a
47 regulatory officer's designee for the review of that board's actions
48 or decisions.

1 b. A person serving as a member of a board shall not be liable
2 in any action for damages to any person in a civil action as a result
3 of any action taken or recommendation or decision made within the
4 scope of the person's function as a member of the board which was
5 subject to review in accordance with the protocol established
6 pursuant to subsection a. of this section, unless the person acted in
7 bad faith or with malice. The Attorney General shall defend the
8 person in any civil suit and the State shall provide indemnification
9 for any damages awarded in any resulting civil action, unless the
10 person acted in bad faith or with malice.

11 c. A person may file a complaint relating to any proposed
12 regulation, action, or decision of a board that the person alleges is
13 potentially anticompetitive. The person shall file the complaint
14 with the regulatory officer who is responsible for establishing and
15 implementing the protocol to review any potentially anticompetitive
16 regulation, action, or decision proposed by the board. Within 90
17 days after the date of receipt of the complaint, the regulatory officer
18 shall:

- 19 (1) investigate the complaint;
20 (2) identify any remedies;
21 (3) if appropriate, instruct the board to respond to the complaint
22 in a specified manner; and
23 (4) issue a written response to the person who filed the
24 complaint.

25 d. As used in this section:

26 "Active market participant" means a member of a board who:

- 27 (1) is licensed or certified by the board; or
28 (2) owns or shares ownership in a business or professional
29 practice that provides any service that is subject to the regulatory
30 authority of the board.

31 "Board" means a board, committee, commission, or any other
32 entity created by law to act on behalf of the State of New Jersey to
33 license or otherwise regulate a profession or occupation in this
34 State.

35 "Regulatory officer" means:

- 36 (1) the Attorney General or the Attorney General's designee or
37 designees, in the case of the boards located within the Division of
38 Consumer Affairs in the Department of Law and Public Safety; or
39 (2) the commissioner or the commissioner's designee or
40 designees, in the case of a board located within another principal
41 department of the Executive Branch of State government.

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43 2. This act shall take effect immediately.

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STATEMENT

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48 This bill directs a regulatory officer to establish and implement a
49 protocol, consistent with the provisions of the bill, applicable to the

1 review and approval of regulations, actions and decisions proposed by
2 any board under the regulatory officer's purview to determine whether
3 the proposed regulation, action, or decision has the potential to
4 displace competition, and, if so, whether it is consistent with and
5 furthers or promotes clearly articulated and affirmatively expressed
6 State policy or the inherent, logical, or ordinary result of that policy.

7 The bill defines "board" as board, committee, commission, or any
8 other entity created by law to act on behalf of the State of New
9 Jersey to license or otherwise regulate a profession or occupation in
10 this State. "Regulatory officer" means the Attorney General or the
11 Attorney General's designee or designees, in the case of the boards
12 located within the Division of Consumer Affairs in the Department
13 of Law and Public Safety, or the commissioner or the
14 commissioner's designee or designees, in the case of a board
15 located within another principal department of the Executive
16 Branch of State government.

17 The bill also provides that, if it is determined as a result of a
18 regulatory officer's review that a board's proposed regulation, action,
19 or decision is not consistent with and does not further or promote
20 clearly articulated and affirmatively expressed State policy, or is not
21 the inherent, logical or ordinary result of the board's statutorily-
22 delegated authority, or both, the regulatory officer must disapprove,
23 veto, modify, amend, or remand to the board for the development of a
24 factual record of the proposed regulation, action or decision, as may be
25 necessary or appropriate.

26 Under the provisions of the bill, a board's proposed regulation,
27 action, or decision will not take effect unless the regulatory officer has
28 conducted the review authorized by the provisions of the bill and taken
29 additional action as may be necessary or appropriate under the bill,
30 provided that no provision of the bill is to be construed to create a
31 private right of action or preclude any action to address possible
32 anticompetitive impacts after the proposed regulation, action, or
33 decision has taken effect. The bill provides that no person licensed by
34 the board whose action or decision is under review pursuant to the
35 protocol is permitted to serve as a regulatory officer's designee for the
36 review of that board's actions or decisions.

37 The bill provides that a person serving as a member of a board will
38 not be liable in any action for damages to any person in a civil action
39 as a result of any action taken or recommendation or decision made
40 within the scope of the person's function as a member of the board
41 which was subject to review in accordance with the protocol
42 established pursuant to the provisions of the bill, unless the person
43 acted in bad faith or with malice. The Attorney General must defend
44 the person in any civil suit and the State must provide indemnification
45 for any damages awarded in any resulting civil action, unless the
46 person acted in bad faith or with malice.

47 Finally, the bill permits any person to file a complaint relating to
48 any proposed regulation, action, or decision of a board that the
49 person alleges is potentially anticompetitive. The person must file

1 the complaint with the regulatory officer who is responsible for
2 establishing and implementing the protocol to review any
3 potentially anticompetitive regulation, action, or decision proposed
4 by the board. Within 90 days after the date of receipt of the
5 complaint, the regulatory officer must investigate the complaint;
6 identify any remedies; if appropriate, instruct the board to respond
7 to the complaint in a specified manner; and issue a written response
8 to the person who filed the complaint.

9 The bill is intended to maintain antitrust immunity for
10 professional and occupational licensing boards consistent with
11 federal law, specifically the decision of the United States Supreme
12 Court in North Carolina State Board of Dental Examiners v. Federal
13 Trade Commission. In that decision, the Court held that if a
14 controlling number of a board's members are active market
15 participants in the profession or occupation the board regulates,
16 then the board may invoke state-action antitrust immunity only if it
17 is subject to active supervision by the state. The provisions of this
18 bill direct the appropriate regulatory officer to provide active
19 supervision of any professional or occupational licensing board that
20 is subject to the provisions of the bill.