

SENATE, No. 2963

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

Sponsored by:

Senator NELLIE POU
District 35 (Bergen and Passaic)

Co-Sponsored by:

Senators Cardinale and T.Kean

SYNOPSIS

Requires active supervision of certain professional and occupational licensing boards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/16/2018)

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 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 takes effect. For the 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 regulatory officer who is
14 responsible for establishing or implementing the protocol to review
15 any potentially anticompetitive regulation, action, or decision
16 proposed by the board shall review the complaint to determine
17 whether the proposed regulation, action, or decision was reviewed
18 pursuant to subsection a. of this section. The regulatory officer
19 shall review the proposed regulation, action, or decision, pursuant
20 to the protocol established in subsection a. of this section, if:

21 (1) the regulatory officer determines that the proposed
22 regulation, action, or decision was not reviewed pursuant to
23 subsection a. of this section but is potentially anticompetitive; or

24 (2) the complaint provides new information that was not
25 previously considered during the regulatory officer's review of the
26 proposed regulation, action, or decision. In this case, the regulatory
27 officer shall take the new information into account and may
28 continue to rely on the outcome of the prior review or may take
29 action to disapprove, veto, modify, amend or remand to the board
30 for the development of a factual record of the proposed regulation,
31 action, or decision, as may be necessary or appropriate. The
32 regulatory officer shall issue a written response to the person who
33 filed the complaint advising that person accordingly.

34 d. As used in this section:

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

36 (1) is licensed or certified by the board; or

37 (2) owns or shares ownership in a business or professional
38 practice that provides any service that is subject to the regulatory
39 authority of the board.

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

44 "Regulatory officer" means:

45 (1) the Attorney General or the Attorney General's designee or
46 designees, in the case of the boards located within the Division of
47 Consumer Affairs in the Department of Law and Public Safety; or

1 (2) the commissioner or the commissioner's designee or
2 designees, in the case of a board located within another principal
3 department of the Executive Branch of State government.

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5 2. This act shall take effect immediately.

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8 STATEMENT

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10 This bill directs a regulatory officer to establish and implement a
11 protocol for the review and approval of regulations, actions and
12 decisions proposed by a professional board to determine whether
13 the proposed regulation, action, or decision has the potential to
14 displace competition. The regulatory officer would also determine
15 whether a proposal is consistent with and furthers or promotes
16 clearly articulated and affirmatively expressed State policy or the
17 inherent, logical, or ordinary result of that policy.

18 The bill defines "board" as a board, committee, commission, or
19 any other entity created by law to act on behalf of the State of New
20 Jersey to license or otherwise regulate a profession or occupation in
21 this State. "Regulatory officer" means the Attorney General or the
22 Attorney General's designee or designees, in the case of the boards
23 located within the Division of Consumer Affairs in the Department
24 of Law and Public Safety, or the commissioner or the
25 commissioner's designee or designees, in the case of a board
26 located within another principal department of the Executive
27 Branch of State government.

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

37 Under the provisions of the bill, a board's proposed regulation,
38 action, or decision will not take effect unless the regulatory officer
39 has conducted the review authorized by the provisions of the bill
40 and taken additional action as may be necessary or appropriate
41 under the bill, provided that no provision of the bill is to be
42 construed to create a private right of action or preclude any action
43 to address possible anticompetitive impacts after the proposed
44 regulation, action, or decision has taken effect. The bill provides
45 that no person licensed by the board whose action or decision is
46 under review pursuant to the protocol is permitted to serve as a
47 regulatory officer's designee for the review of that board's actions
48 or decisions.

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

11 Finally, the bill permits any person to file a complaint relating to
12 a proposed regulation, action, or decision of a board that the person
13 alleges is potentially anticompetitive. The regulatory officer would
14 review the complaint if:

15 (1) the regulation, action, or decision was not reviewed pursuant
16 to the bill's provisions but is potentially anticompetitive; or

17 (2) the complaint provides new information that was not
18 previously considered during the review, in which case the
19 regulatory officer would take this information into account.

20 The bill is intended to maintain antitrust immunity for
21 professional and occupational licensing boards consistent with
22 federal law, specifically the decision of the United States Supreme
23 Court in North Carolina State Board of Dental Examiners v. Federal
24 Trade Commission. In that decision, the Court held that if a
25 controlling number of a board's members are active market
26 participants in the profession or occupation the board regulates,
27 then the board may invoke state-action antitrust immunity only if it
28 is subject to active supervision by the state. The provisions of this
29 bill direct the appropriate regulatory officer to provide active
30 supervision of any professional or occupational licensing board that
31 is subject to the provisions of the bill.