



HOUSE BILL 701: OLB Uniform Discipline and Increase Oversight.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2017-2018 General Assembly

Committee:	House Judiciary III	Date:	April 21, 2017
Introduced by:	Reps. Jordan, Stevens	Prepared by:	Brad Krehely
Analysis of:	PCS to First Edition H701-CSR-N-14		Committee Co-Counsel

OVERVIEW: *The Proposed Committee Substitute (PCS) for House Bill 701 would require occupational licensing boards to adopt rules governing hearings in order to exercise the power to summarily suspend licenses and to increase oversight of occupational licensing boards and would make a number of changes to the statutes governing occupational licensing boards (OLBs) to increase oversight of the OLBs. The PCS rewrites Sections 1 and 2. The remainder of the PCS adds the contents of the 2nd edition of House Bill 142. These provisions passed 2nd and 3rd Readings in the House of Representatives on March 6, 2017, before House Bill 142 was modified to become "Reset of S.L. 2016-3."*

BACKGROUND: In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the US Supreme Court found that the NC Dental Board was not protected from antitrust actions under the doctrine of state action immunity because the Board was controlled by active market participants and was not subject to active supervision by the State.

Sections 3-15 are a recommendation of the Joint Legislative Administrative Procedure Oversight Committee (APO) designed to respond to the supervision concerns raised in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

BILL ANALYSIS:

Sections 1 and 2 would provide that no licensing board must summarily suspend a license unless the licensing board has adopted rules governing the conduct of its hearings in accordance with the APA.

Section 3 would amend the definition of "occupational licensing board" and create an exclusive list of all OLBs in the State. This section would also provide that no board or commission could be added to the list without the approval of the Joint Legislative Administrative Procedure Oversight Committee (APO).

Section 4 would delete the Secretary of State and the Attorney General and add the Department of Commerce, the State Auditor, the Office of State Budget and Management, and the State Controller as recipients of the annual report that OLBs are required to submit. This section would also expand the information the annual report is required to include and require OLBs to update their contact information.

Section 5 would make a conforming change.

Section 6 would increase the per diem authorization for OLB members from \$100 to \$200 per day and would require OLB members to receive training in antitrust law and State action immunity.

Section 7 would add several new sections to Chapter 93B as follows:

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- G.S. 93B-17 would require OLBs to adopt rules for the receipt and resolution of complaints, for taking disciplinary or enforcement actions against its licensees, and for taking enforcement actions against persons not licensed by the board. This new statute would also require that any interpretation, clarification, or other delineation of the scope of practice of an OLB be adopted as a rule.
- G.S. 93B-18 would clarify OLBs' authority to investigate unlicensed activity and to notify unlicensed person of possible violations of laws and rules. This section would also provide standardized language for notifying unlicensed persons and entities of possible violations of the law. The notification would not indicate that the OLB has made a finding of a violation, but may indicate the OLB's belief or opinion that an unlicensed activity may violate the OLB's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the OLB's intent to pursue administrative remedies or court proceedings.
- G.S. 93B-19 would provide that the venue for injunctive relief sought by an OLB is the superior court of the county where the defendant resides or in the county where the OLB has its principal place of business.
- G.S. 93B-20 would authorize an OLB to appear in its own name in actions for injunctive relief and authorize the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been instituted. No OLB shall issue orders independently of the superior court unless specifically authorized to do so by law.
- G.S. 93B-21 would encourage the resolution of jurisdictional disputes among OLBs by informal procedures and would authorize the use of the administrative hearing process if informal procedures fail.
- G.S. 93B-22 would require each OLB to implement a complaint process, with the requirements specified, and implement that process no later than January 1, 2018.

Sections 8, 9, and 10 would amend other statutes requiring certain information be reported by OLBs by providing that the report required by G.S. 93B-2 will satisfy these reporting requirements.

Section 11 would add a clarifying cross-reference to the statute governing the scope of agencies that may hear their own contested cases and would add the Securities Division of the Department of the Secretary of State to the list of such agencies.

Section 12 would clarify venue for superior court review of administrative final decisions.

Section 13 would provide that APO shall continue to monitor and study the effects of *North Carolina State Board of Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice jurisdiction of OLBs.

Section 14 would add to the requirements for barber certification that an applicant for certification must have a high school diploma or its equivalent. This section would also add to the approval requirements for barber schools and colleges that each student must have received a high school diploma or its equivalent.

Section 15 would amend the membership of the Public Librarian Certification Commission by eliminating the chairman of the North Carolina Association of Library Trustees and giving the Governor an additional appointment upon nomination by the North Carolina Library Association.

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EFFECTIVE DATE: The PCS would be effective when it becomes law and would apply to licensing board actions occurring on or after that date.

**Jeffrey Hudson, Staff Attorney for the Legislative Analysis Division, contributed substantially to the drafting of this summary.*