



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

SENATE BILL 640: Amend Occupational Licensing Board Statutes.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 26, 2024
Introduced by:	Sens. Britt, B. Newton, Daniel	Prepared by:	Chris Saunders Staff Attorney
Analysis of:	PCS to Third Edition S640-CSTQ-43		

OVERVIEW: *The Proposed Committee Substitute (PCS) to Senate Bill 640 would require occupational licensing board members to receive training in antitrust law and state action immunity and would enact new statutes regarding occupational licensing board actions.*

The PCS makes the following changes from the Third Edition:

- *Eliminates a requirement that any occupational licensing board interpretation, clarification, or other delineation of the scope of practice must be adopted as a rule.*
- *Eliminate from the notice required to be provided by an occupational licensing board to individuals suspected of engaging in the board's scope of practice the following sentence: "You are hereby notified that the opinion expressed herein is not a legal determination."*

BACKGROUND: The doctrine of state action immunity is the concept, first recognized in *Parker v. Brown*, 317 U.S. 341 (1943) that units of state and municipal government are immune from federal antitrust lawsuits for actions taken pursuant to a clearly expressed state policy that had foreseeable anticompetitive effects when enacted.

In *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the US Supreme Court held 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.

BILL ANALYSIS:

Section 1 would require occupational licensing board members to receive training in antitrust law and state action immunity as part of their required biennial training.

Section 2 would add several new sections to Chapter 93B as follows:

- G.S. 93B-17 would require occupational licensing boards 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.

Jeffrey Hudson
Director



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- G.S. 93B-18 would clarify occupational licensing boards' authority to investigate unlicensed activity and to notify unlicensed persons 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 board has made a finding of a violation but may indicate the board's belief or opinion that an unlicensed activity may violate the board's enabling statutes, include factual information regarding legislation and court proceedings concerning the potential violation, and provide notice of the board's intent to pursue administrative remedies or court actions.
- G.S. 93B-19 would provide that the venue for an injunctive relief sought by an occupational licensing board is the superior court of the county where the defendant resides or where the occupational licensing board has its principal place of business.
- G.S. 93B-20 would authorize an occupational licensing board to appear in its own name in actions for injunctive relief, authorizes the superior court to grant injunctions, restraining orders, or take other appropriate action even if criminal prosecution has been instituted. No board may 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 occupational licensing boards by informal procedures. If the dispute is cannot be resolved through informal procedures, an affected board may file a petition with the Office of Administrative Hearings.
- G.S. 93B-22 would require each occupational licensing board to implement a complaint process, that provides for the process to be described on the board's website, an electronic complaint submission form, and the ability to provide complainants with a written description of the final disposition of the complaint.

EFFECTIVE DATE: This bill would be effective when it becomes law.