

ASSEMBLY, No. 4273

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED OCTOBER 20, 2016

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

SYNOPSIS

Requires State supervision of certain professional and occupational licensing boards.

CURRENT VERSION OF TEXT

As introduced.



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.).
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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 provide active supervision of any board under the regulatory
12 officer's purview for which:

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

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

18 The regulatory officer shall review, and is authorized to amend,
19 repeal, or set aside, any regulation, action, or decision made by a
20 board that is under the regulatory officer's purview, and is subject
21 to active supervision pursuant to paragraph (1) or (2) of this
22 subsection, that the regulatory officer has determined to have the
23 potential to displace competition and that is inconsistent with and
24 does not further or promote clearly articulated affirmatively
25 expressed State policy or the inherent, logical, or ordinary result of
26 that policy.

27 b. As used in this section:

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

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

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

33 "Board" means a board, committee, commission, or any other
34 entity created by law to license or otherwise regulate a profession or
35 occupation in this State.

36 "Regulatory officer" means:

37 (1) the Attorney General or the Attorney General's designee, in
38 the case of the boards located within the Division of Consumer
39 Affairs in the Department of Law and Public Safety; or

40 (2) the commissioner or the commissioner's designee, in the
41 case of a board located within another principal department of the
42 Executive Branch of State government.
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44 2. This act shall take effect immediately.

STATEMENT

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This bill directs a regulatory officer to provide active supervision of a professional or occupational licensing board located within the Division of Consumer Affairs in the Department of Law and Public Safety or within any other principal department of the Executive Branch of State government if the membership of the board is comprised of a majority of active market participants, or if the board's membership would be comprised of a majority of active market participants but for a vacancy or vacancies in membership. The bill requires the regulatory officer to review any regulation, action, or decision made by a board that is under the regulatory officer's purview, and authorizes the regulatory officer to amend, repeal, or set aside any regulation, action, or decision made by that board that is determined to have the potential to displace competition and that is inconsistent with and does not further or promote clearly articulated affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill defines "active market participant" as a board member who is licensed or certified by that board, or who owns or shares ownership in a business or professional practice that provides any service that is subject to the regulatory authority of that board. The bill defines "board" as a board, committee, commission, or any other entity created by law to license or otherwise regulate a profession or occupation in this State. The bill also defines "regulatory officer" as the Attorney General or the Attorney General's designee, in the case of boards located within the Division of Consumer Affairs in the Department of Law and Public Safety, or the commissioner or the commissioner's designee, in the case of boards located within another principal department of the Executive Branch of State government.

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