

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 1007*
Committee Substitute Favorable 6/14/16

Short Title: Amend Occupational Licensing Boards Statutes.

(Public)

Sponsors:

Referred to:

April 28, 2016

1 A BILL TO BE ENTITLED
2 AN ACT TO RESPOND TO THE HOLDING IN *NORTH CAROLINA STATE BOARD OF*
3 *DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION*, AS RECOMMENDED BY
4 THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT
5 COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 93B-1 reads as rewritten:

8 "§ 93B-1. ~~Definitions.~~Definitions; List of occupational licensing boards.

9 (a) As used in this ~~Chapter.~~Chapter, the following definitions apply:

10 (1) ~~"License" means any license (other than a privilege license).~~License. – Any
11 license, other than a privilege license, certificate, or other evidence of
12 qualification which an individual is required to obtain before he or she may
13 engage in or represent himself or herself to be a member of a particular
14 profession or occupation.

15 (2) ~~"Occupational licensing board" means any~~Occupational licensing board. – Any
16 board, committee, commission, or other agency in North Carolina which
17 receives no General Fund revenue and is established for the primary purpose of
18 regulating the entry of persons into, and/or the conduct of persons within, a
19 particular profession or occupation, and which is authorized to issue licenses;
20 "occupational licensing board" does not include State agencies, staffed by
21 full-time State employees, which as a part of their regular functions may issue
22 licenses.given statutory authority to do all of the following:

23 a. Determine minimum qualifications required for licensure for a
24 particular profession or occupation.

25 b. Issue licenses to qualified applicants.

26 c. Regulate the conduct of licensees within a particular profession or
27 occupation.

28 d. Seek injunctive relief to prohibit unlicensed individuals or entities from
29 engaging in certain activities as defined by statute.

30 e. Collect fees to support agency operations.

31 (b) Occupational licensing boards include only those boards specifically identified in this
32 subsection. No additional boards or commissions shall be added to this list without first having
33 been approved by the Joint Legislative Administrative Procedure Oversight Committee of the
34 General Assembly as being necessary in that the profession subject to licensure affects the health,
35 safety, or welfare of the public and that mandatory licensure is necessary to ensure minimum
36 standards of competency so as to protect the public from unqualified persons or unprofessional



1 conduct by persons or entities practicing in the profession. Occupational licensing boards shall
2 include only the following:

- 3 (1) Acupuncture Licensing Board.
- 4 (2) Alarm Systems Licensing Board.
- 5 (3) North Carolina Board of Landscape Architects.
- 6 (4) North Carolina Landscape Contractors' Licensing Board.
- 7 (5) Reserved.
- 8 (6) Board of Examiners for Speech and Language Pathologists and Audiologists.
- 9 (7) Reserved.
- 10 (8) Midwifery Joint Subcommittee.
- 11 (9) North Carolina Appraisal Board.
- 12 (10) North Carolina Auctioneers Commission.
- 13 (11) North Carolina Board for Licensing of Geologists.
- 14 (12) North Carolina Board for Licensing of Soil Scientists.
- 15 (13) North Carolina Board of Architecture.
- 16 (14) North Carolina Board of Athletic Trainer Examiners.
- 17 (15) North Carolina Board of Cosmetic Art Examiners.
- 18 (16) North Carolina Board of Dietetics/Nutrition.
- 19 (17) North Carolina Board of Electrolysis Examiners.
- 20 (18) North Carolina Board of Funeral Service.
- 21 (19) North Carolina Board of Licensed Professional Counselors.
- 22 (20) North Carolina Board of Massage and Bodywork Therapy.
- 23 (21) North Carolina Board of Nursing.
- 24 (22) North Carolina Board of Occupational Therapy.
- 25 (23) North Carolina Board of Pharmacy.
- 26 (24) North Carolina Board of Physical Therapy Examiners.
- 27 (25) North Carolina Board of Podiatry Examiners.
- 28 (26) North Carolina Board of Recreational Therapy Licensure.
- 29 (27) North Carolina Cemetery Commission.
- 30 (28) North Carolina Criminal Justice Education and Training Standards
31 Commission.
- 32 (29) Sheriffs' Education and Training Standards Commission.
- 33 (30) Reserved.
- 34 (31) North Carolina Home Inspector Licensure Board.
- 35 (32) North Carolina Interpreter and Transliterator Licensing Board.
- 36 (33) North Carolina Irrigation Contractors' Licensing Board.
- 37 (34) North Carolina State Licensing Board for General Contractors.
- 38 (35) North Carolina Locksmith Licensing Board.
- 39 (36) North Carolina Marriage and Family Therapy Licensure Board.
- 40 (37) North Carolina Medical Board.
- 41 (38) North Carolina On-Site Wastewater Contractors and Inspectors Certification
42 Board.
- 43 (39) North Carolina Psychology Board.
- 44 (40) North Carolina Real Estate Commission.
- 45 (41) North Carolina Respiratory Care Board.
- 46 (42) North Carolina Social Work Certification and Licensure Board.
- 47 (43) North Carolina State Board of Dental Examiners.
- 48 (44) North Carolina State Board of Examiners for Engineers and Surveyors.
- 49 (45) North Carolina State Board of Examiners for Nursing Home Administrators.
- 50 (46) North Carolina State Board of Examiners in Optometry.

- 1 (47) North Carolina State Board of Examiners of Fee-Based Practicing Pastoral
2 Counselors.
3 (48) Reserved.
4 (49) North Carolina State Board of Opticians.
5 (50) North Carolina State Hearing Aid Dealers and Fitters Board.
6 (51) North Carolina Substance Abuse Professional Practice Board.
7 (52) North Carolina Veterinary Medical Board.
8 (53) Private Protective Services Board.
9 (54) Public Librarian Certification Commission.
10 (55) State Board of Barber Examiners.
11 (56) State Board of Certified Public Accountant Examiners.
12 (57) State Board of Chiropractic Examiners.
13 (58) Reserved.
14 (59) State Board of Environmental Health Specialist Examiners.
15 (60) State Board of Examiners of Electrical Contractors.
16 (61) State Board of Examiners of Plumbing, Heating, and Fire Sprinkler
17 Contractors.
18 (62) Reserved.
19 (63) State Board of Refrigeration Examiners.
20 (64) State Board of Registration for Foresters."

21 **SECTION 2.** G.S. 93B-2 reads as rewritten:

22 "**§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to**
23 **report.**

24 (a) No later than October 31 of each year, each occupational licensing board shall file
25 electronically with the ~~Secretary of State, the Attorney General, and the Joint Legislative~~
26 Administrative Procedure Oversight ~~Committee~~ Committee, the Department of Commerce, the
27 State Auditor, the Office of State Budget and Management, and the State Controller an annual
28 report containing all of the following information:

- 29 (1) The address of the board, and the names of its members and officers.
30 (1a) The total number of licensees supervised by the board.
31 (2) The number of persons who applied to the board for examination.
32 (3) The number who were refused examination.
33 (4) The number who took the examination.
34 (5) The number to whom initial licenses were issued.
35 (5a) The number who failed the examination.
36 (6) The number who applied for license by reciprocity or comity.
37 (7) The number who were granted licenses by reciprocity or comity.
38 (7a) The number of official complaints received involving licensed and unlicensed
39 activities.
40 (7b) The number of disciplinary actions taken against licensees, or other actions
41 taken against nonlicensees, including injunctive relief.
42 (8) The number of licenses suspended or revoked.
43 (9) The number of licenses terminated for any reason other than failure to pay the
44 required renewal fee.
45 (10) The substance of any anticipated request by the occupational licensing board to
46 the General Assembly to amend statutes related to the occupational licensing
47 board.
48 (11) The substance of any anticipated change in rules adopted by the occupational
49 licensing board or the substance of any anticipated adoption of new rules by the
50 occupational licensing board.

1 (12) A financial report that includes the source and amount of all funds credited to
2 the occupational licensing board and the purpose and amount of all funds
3 disbursed by the occupational licensing board during the previous fiscal year.

4 (13) The certification of a proper system of internal control and other financial
5 information as required by G.S. 143D-7.

6 (14) A report of all civil penalties, civil forfeitures, and civil fines collected and
7 remitted to the Civil Penalty and Forfeiture Fund pursuant to G.S. 115C-457.2.

8 (15) The statute or rule authorizing each fee collected, the amount of the fee, the
9 date the fee was last changed, the number of times the fee was collected during
10 the prior reporting period, and the total receipts resulting from the fee during
11 the prior reporting period.

12 (16) If the occupational licensing board has a budget of at least fifty thousand dollars
13 (\$50,000), a financial audit of its operations.

14 ~~(b) No later than October 31 of each year, each occupational licensing board shall file~~
15 ~~electronically with the Secretary of State, the Attorney General, the Office of State Budget and~~
16 ~~Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial~~
17 ~~report that includes the source and amount of all funds credited to the occupational licensing board~~
18 ~~and the purpose and amount of all funds disbursed by the occupational licensing board during the~~
19 ~~previous fiscal year.~~

20 (c) The reports required by this section shall be open to public inspection and
21 shall be posted on the Internet Web site of the occupational licensing board.

22 (d) The Joint Legislative Administrative Procedure Oversight Committee shall review the
23 reports submitted pursuant to this section and shall notify any board that fails to file the reports
24 required by this section. Failure of a board to comply with the reporting requirements of this
25 section by October 31 of each year shall result in a suspension of the board's authority to expend
26 any funds until such time as the board files the required reports. Suspension of a board's authority
27 to expend funds under this subsection shall not affect the board's duty to issue and renew licenses
28 or the validity of any application or license for which fees have been tendered in accordance with
29 law. Each board shall adopt rules establishing a procedure for implementing this subsection and
30 shall maintain an escrow account into which any fees tendered during a board's period of
31 suspension under this subsection shall be deposited."

32 **SECTION 3.** G.S. 93B-4 reads as rewritten:

33 "**§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

34 (a) The State Auditor shall audit occupational licensing boards from time to time to ensure
35 their proper operation. The books, records, and operations of each occupational licensing board
36 shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the
37 General Statutes. In accordance with G.S. 147-64.7(b), the State Auditor may contract with
38 independent professionals to meet the requirements of this section.

39 ~~(b) Each occupational licensing board with a budget of at least fifty thousand dollars~~
40 ~~(\$50,000) shall conduct an annual financial audit of its operations and provide a copy to the State~~
41 ~~Auditor."~~

42 **SECTION 4.** G.S. 93B-5 reads as rewritten:

43 "**§ 93B-5. Compensation, employment, and training of board members.**

44 (a) ~~Board~~ Notwithstanding the provisions of G.S. 138-5, board members shall receive as
45 compensation for their services per diem not to exceed ~~one~~ two hundred dollars ~~(\$100.00)~~
46 (\$200.00) for each day during which they are engaged in the official business of the board.

47 ...

48 (g) Within six months of a board member's initial appointment to the board, and at least
49 once within every two calendar years thereafter, a board member shall receive training, either from
50 the board's staff, including its legal advisor, or from an outside educational institution such as the
51 School of Government of the University of North Carolina, on the statutes governing the board

1 and rules adopted by the board, as well as the following State and federal laws, in order to better
2 understand the obligations and limitations of a State agency:

- 3 (1) Chapter 150B, The Administrative Procedure Act.
- 4 (2) Chapter 132, The Public Records Law.
- 5 (3) Article 33C of Chapter 143, The Open Meetings Act.
- 6 (4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The
7 Defense of State Employees Law.
- 8 (5) Chapter 138A, The State Government Ethics Act.
- 9 (6) Chapter 120C, Lobbying.
- 10 (7) Antitrust law and State action immunity.

11 Completion of the training requirements contained in Chapter 138A and Chapter 120C of the
12 General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection."

13 **SECTION 5.(a)** Chapter 93B of the General Statutes is amended by adding six new
14 sections to read:

15 **"§ 93B-17. Occupational licensing board rule making.**

16 (a) Each occupational licensing board shall adopt rules for the receipt and resolution of
17 complaints, for taking disciplinary or enforcement actions against its licensees, and for taking
18 enforcement actions against persons not licensed by the board.

19 (b) Any interpretation, clarification, or other delineation of the scope of practice of an
20 occupational licensing board shall be adopted as a rule.

21 **"§ 93B-18. Unlicensed activity.**

22 (a) An occupational licensing board shall have the authority to investigate unlicensed
23 activity and notify unlicensed persons and entities of the possible violation of the law and
24 administrative rules and any civil action or criminal penalty that may be imposed by a court. The
25 notification shall not indicate that the occupational licensing board has made any finding of a
26 violation but may indicate the board's belief or opinion that a particular act may violate the board's
27 enabling statutes, include factual information regarding legislation and court proceedings
28 concerning the potential violation, and provide notice of the board's intention to pursue
29 administrative remedies or court proceedings with regard to the potential violation.

30 (b) Any occupational licensing board providing notification to unlicensed persons and
31 entities of a possible violation of the law and administrative rules and any civil action or criminal
32 penalty that may be imposed by a court shall include the following statement in the notification:

33 You are hereby notified that the opinion expressed herein is not a legal
34 determination. An occupational licensing board does not have the authority to order
35 you to discontinue your current practices. Only a court may determine that you
36 have violated or are violating any law and, if appropriate, impose a remedy or
37 penalty for the violation. Further, pursuant to G.S. 150B-4, you may have the right,
38 prior to initiation of any court action by the occupational licensing board, to request
39 a declaratory ruling regarding whether your particular conduct is lawful. You are
40 further notified that any right to a declaratory ruling supplements any other legal
41 rights that you may already have to establish the legality of your conduct with
42 respect to the goods or services you offer or provide.

43 **"§ 93B-19. Venue for court enforcement.**

44 The venue for occupational licensing boards seeking court order for injunctive relief or to
45 show cause for failure to comply with a subpoena lawfully issued by the occupational licensing
46 board shall be in the superior court of the county where the defendant resides or in the county
47 where the occupational licensing board has its principal place of business.

48 **"§ 93B-20. Injunctive relief.**

49 An occupational licensing board may appear in its own name in superior court in actions for
50 injunctive relief to restrain the violation of the provisions of a statute administered by the board or
51 a rule or order of the board. The superior court shall have the jurisdiction to grant these

1 injunctions, restraining orders, or take other appropriate action even if criminal prosecution has
2 been or may be instituted as a result of the violations, or whether the person is a licensee of the
3 board. No board shall issue such orders independently of the superior court unless specifically
4 authorized to do so by law.

5 **"§ 93B-21. Jurisdictional disputes between boards.**

6 It is the policy of the State that jurisdictional disputes among occupational licensing boards
7 shall be resolved through informal procedures. If a jurisdictional dispute among occupational
8 licensing boards cannot be resolved through informal procedures, any affected board may
9 commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition
10 with the Office of Administrative Hearings and serve the petition on all affected boards. Once the
11 petition is filed and the required fee is paid, the dispute shall become a contested case and shall be
12 conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter 150B of the
13 General Statutes.

14 **"§ 93B-22. Complaint process.**

15 Each occupational licensing board shall develop and implement a complaint process that
16 provides for all of the following:

- 17 (1) A description of the complaint process on the board's Web site, including the
18 types of violations that are under the jurisdictional authority of the board.
- 19 (2) Electronic complaint submission via the board's Web site, including a
20 prominently displayed link to a complaint form.
- 21 (3) The ability to provide complainants with a written description of the final
22 disposition of each complaint."

23 **SECTION 5.(b)** The complaint process provided for in G.S. 93B-22 shall be
24 implemented and active on each board's Web site no later than January 1, 2017.

25 **SECTION 6.** G.S. 115C-457.2 reads as rewritten:

26 **"§ 115C-457.2. Remittance of moneys to the Fund.**

27 The clear proceeds of all civil penalties, civil forfeitures, and civil fines that are collected by a
28 State agency and that the General Assembly is authorized to place in a State fund pursuant to
29 Article IX, Section 7(b) of the Constitution shall be remitted to the Office of State Budget and
30 Management by the officer having custody of the funds within 10 days after the close of the
31 calendar month in which the revenues were received or collected. Notwithstanding any other law,
32 all such funds shall be deposited in the Civil Penalty and Forfeiture Fund. The clear proceeds of
33 these funds include the full amount of all civil penalties, civil forfeitures, and civil fines collected
34 under authority conferred by the State, diminished only by the actual costs of collection, not to
35 exceed twenty percent (20%) of the amount collected. The collection cost percentage to be used by
36 a State agency shall be established and approved by the Office of State Budget and Management
37 on an annual basis based upon the computation of actual collection costs by each agency for the
38 prior fiscal year. Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual
39 reporting obligation imposed under this section by including the information required in the
40 occupational licensing board's annual report required pursuant to G.S. 93B-2."

41 **SECTION 7.** G.S. 143C-9-4 reads as rewritten:

42 **"§ 143C-9-4. Biennial fee report.**

43 The Office of State Budget and Management shall prepare a report biennially on the fees
44 charged by each State department, bureau, division, board, commission, institution, and agency
45 during the previous two fiscal years. The report shall include the statutory or regulatory authority
46 for each fee, the amount of the fee, when the amount of the fee was last changed, the number of
47 times the fee was collected during the prior fiscal year, and the total receipts from the fee during
48 the prior fiscal year. The Office of State Budget and Management shall obtain the information
49 required under this section for occupational licensing boards as defined in G.S. 93B-1 from the
50 annual report filed by each occupational licensing board pursuant to G.S. 93B-2."

51 **SECTION 8.** G.S. 143D-7 reads as rewritten:

1 **"§ 143D-7. Agency management responsibilities.**

2 (a) The management of each State agency bears full responsibility for establishing and
3 maintaining a proper system of internal control within that agency. Each principal executive
4 officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State
5 Controller, that the agency has in place a proper system of internal control. The State Controller
6 shall develop policies and procedures to direct agencies in their evaluation.

7 (b) The management of each State agency also bears the responsibility periodically to
8 submit accurate and complete financial information to the State Controller for compilation into
9 North Carolina State government's various financial reports and other related financial information
10 disseminated to the public. With the submission of such periodic reports to the State Controller,
11 each agency's principal executive officer and each agency's principal fiscal officer shall certify, in
12 a manner prescribed by the State Controller, to the accuracy and completeness of the financial
13 information submitted.

14 (c) Occupational licensing boards as defined in G.S. 93B-1 shall satisfy the annual
15 reporting obligation imposed under this section by including the information required in the
16 occupational licensing board's annual report required pursuant to G.S. 93B-2."

17 **SECTION 9.** G.S. 150B-38(a) reads as rewritten:

18 **"§ 150B-38. Scope; hearing required; notice; venue.**

19 (a) The provisions of this Article shall apply to:

- 20 (1) Occupational licensing agencies-boards, as defined by G.S. 93B-1.
21 (2) The State Banking Commission, the Commissioner of Banks, and the Credit
22 Union Division of the Department of Commerce.
23 (3) The Department of Insurance and the Commissioner of Insurance.
24 (4) The State Chief Information Officer in the administration of the provisions of
25 Article 14 of Chapter 143B of the General Statutes.
26 (5) The North Carolina State Building Code Council.
27 (6) The State Board of Elections in the administration of any investigation or audit
28 under the provisions of Article 22A of Chapter 163 of the General Statutes."

29 **SECTION 10.** G.S. 150B-45 reads as rewritten:

30 **"§ 150B-45. Procedure for seeking review; waiver.**

31 (a) Procedure. – To obtain judicial review of a final decision under this Article, the person
32 seeking review must file a petition within 30 days after the person is served with a written copy of
33 the decision. The petition must be filed as follows:

- 34 (1) Contested tax cases. – A petition for review of a final decision in a contested
35 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
36 Wake County.
37 (2) Other final decisions. – A petition for review of any other final decision under
38 this Article must be filed in the superior court of the county where the person
39 aggrieved by the administrative decision resides, in the county where the
40 agency has its principal place of business, or in the case of a person residing
41 outside the State, in the county where the contested case which resulted in the
42 final decision was filed. If a petitioner files a petition in a county other than as
43 provided in this subdivision, the superior court may order a change of venue
44 pursuant to G.S. 1-83; provided, however, that improper venue shall not be
45 grounds for dismissal of the petition.

46 (b) Waiver. – A person who fails to file a petition within the required time waives the right
47 to judicial review under this Article. For good cause shown, however, the superior court may
48 accept an untimely petition."

49 **SECTION 11.** The Joint Legislative Administrative Procedure Oversight Committee
50 shall continue to monitor and study the effects of the opinion in *North Carolina State Board of*

1 *Dental Examiners v. Federal Trade Commission* and other issues related to the scope of practice
2 jurisdiction of occupational licensing boards.

3 **SECTION 12.** This act is effective when it becomes law.