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SENATE DRS35190-MQ-47 (03/10)

Short Title: Occupational Lic. Bd. Reporting Requirements. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODERNIZE AND IMPROVE REPORTING REQUIREMENTS FOR
3 OCCUPATIONAL LICENSING BOARDS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 93B of the General Statutes reads as rewritten:

6 "Chapter 93B.

7 "Occupational Licensing Boards.

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

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

30 e. Collect fees to support agency operations.

31 (b) Occupational licensing boards include those boards listed in this subsection. No
32 additional boards or commissions may be added to this list without first having been approved
33 by the Joint Legislative Administrative Procedure Oversight Committee of the General
34 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) Reserved.
- 6 (4) Reserved.
- 7 (5) Board of Examiners for Speech and Language Pathologists and
8 Audiologists.
- 9 (6) Reserved.
- 10 (7) Midwifery Joint Subcommittee.
- 11 (8) North Carolina Appraisal Board.
- 12 (9) North Carolina Auctioneers Commission.
- 13 (10) North Carolina Board for Licensing of Geologists.
- 14 (11) North Carolina Board for Licensing of Soil Scientists.
- 15 (12) North Carolina Board of Architecture.
- 16 (13) North Carolina Board of Athletic Trainer Examiners.
- 17 (14) North Carolina Board of Cosmetic Art Examiners.
- 18 (15) North Carolina Board of Dietetics/Nutrition.
- 19 (16) North Carolina Board of Electrolysis Examiners.
- 20 (17) North Carolina Board of Funeral Service.
- 21 (18) North Carolina Board of Law Examiners.
- 22 (19) North Carolina Board of Licensed Professional Counselors.
- 23 (20) North Carolina Board of Massage and Bodywork Therapy.
- 24 (21) North Carolina Board of Nursing.
- 25 (22) North Carolina Board of Occupational Therapy.
- 26 (23) North Carolina Board of Pharmacy.
- 27 (24) North Carolina Board of Physical Therapy Examiners.
- 28 (25) North Carolina Board of Podiatry Examiners.
- 29 (26) North Carolina Board of Recreational Therapy Licensure.
- 30 (27) North Carolina Cemetery Commission.
- 31 (28) North Carolina Criminal Justice Education and Training Standards
32 Commission.
- 33 (29) Reserved.
- 34 (30) Reserved.
- 35 (31) North Carolina Home Inspector Licensure Board.
- 36 (32) North Carolina Interpreter and Transliterater Licensing Board.
- 37 (33) North Carolina Irrigation Contractors' Licensing Board.
- 38 (34) North Carolina Licensing Board for General Contractors.
- 39 (35) North Carolina Locksmith Licensing Board.
- 40 (36) North Carolina Marriage and Family Therapy Licensure Board.
- 41 (37) North Carolina Medical Board.
- 42 (38) North Carolina On-Site Wastewater Contractors and Inspectors Certification
43 Board.
- 44 (39) North Carolina Psychology Board.
- 45 (40) North Carolina Real Estate Commission.
- 46 (41) North Carolina Respiratory Care Board.
- 47 (42) North Carolina Social Work Certification and Licensure Board.
- 48 (43) North Carolina State Board of Dental Examiners.
- 49 (44) North Carolina State Board of Examiners for Engineers and Surveyors.
- 50 (45) North Carolina State Board of Examiners for Nursing Home Administrators.
- 51 (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 **"§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to**
22 **report.**

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

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

1 disbursed by the occupational licensing board during the previous fiscal
2 year.

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

5 (14) A report of all civil penalties, civil forfeitures, and civil fines collected and
6 remitted to the Civil Penalty and Forfeiture Fund pursuant to
7 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
10 during the prior reporting period, and the total receipts stemming from the
11 fee during the prior reporting period.

12 (16) If the occupational licensing board has a budget of at least fifty thousand
13 dollars (\$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~~
17 ~~financial report that includes the source and amount of all funds credited to the occupational~~
18 ~~licensing board and the purpose and amount of all funds disbursed by the occupational~~
19 ~~licensing board during the previous fiscal year.~~

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

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

32 **"§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

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

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

41 **"§ 93B-5. Compensation, employment, and training of board members.**

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

46 ...

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

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

- (1) Chapter 150B, The Administrative Procedure Act.
- (2) Chapter 132, The Public Records Law.
- (3) Article 33C of Chapter 143, The Open Meetings Act.
- ~~(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.~~
- ~~(5) Chapter 138A, The State Government Ethics Act.~~
- ~~(6) Chapter 120C, Lobbying.~~
- (3a) The ethics education and awareness program established pursuant to G.S. 138A-14.

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

...

"§ 93B-17. Venue for court enforcement.

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

SECTION 2. G.S. 115C-457.2 reads as rewritten:

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

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

SECTION 3. G.S. 143C-9-4 reads as rewritten:

"§ 143C-9-4. Biennial fee report.

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

SECTION 4. G.S. 143D-7 reads as rewritten:

"§ 143D-7. Agency management responsibilities.

The management of each State agency bears full responsibility for establishing and maintaining a proper system of internal control within that agency. Each principal executive

1 officer and each principal fiscal officer shall annually certify, in a manner prescribed by the
2 State Controller, that the agency has in place a proper system of internal control. The State
3 Controller shall develop policies and procedures to direct agencies in their evaluation.

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

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

14 **SECTION 5.** G.S. 150B-45(a) reads as rewritten:

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

- 18 (1) Contested tax cases. – A petition for review of a final decision in a contested
19 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
20 Wake County.
- 21 (2) Other final decisions. – A petition for review of any other final decision
22 under this Article must be filed in the superior court of the county where the
23 person aggrieved by the administrative decision resides, in the county where
24 the agency has its principal place of business, or in the case of a person
25 residing outside the State, in the county where the contested case which
26 resulted in the final decision was filed. In the event that a petitioner files a
27 petition in a county other than as provided in this subdivision, the Superior
28 Court may order a change of venue pursuant to G.S. 1-83; provided,
29 however, that improper venue shall not be grounds for dismissal of the
30 petition.

31"

32 **SECTION 6.** This act becomes effective January 1, 2016.