

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE BILL DRS45438-SBz-21* (03/02)

Short Title: Amend Occupational Licensing Boards Statutes. (Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO RESPOND TO THE HOLDING IN *NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION*, AS RECOMMENDED BY THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 93B-5(g) reads as rewritten:

"(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution 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 and federal 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.
- (7) Antitrust law and State action immunity.

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."

SECTION 2. Chapter 93B of the General Statutes is amended by adding six new sections to read:

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

(a) Each occupational licensing board shall 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.

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

"§ 93B-18. Unlicensed activity.

(a) An occupational licensing board shall have the authority to investigate unlicensed activity and notify unlicensed persons and entities of the possible violation of the law and administrative rules and any civil action or criminal penalty that may be imposed by a court. The notification shall not indicate that the occupational licensing board has made any finding of a



1 violation but may indicate the board's belief or opinion that a particular act may violate the board's
2 enabling statutes, include factual information regarding legislation and court proceedings
3 concerning the potential violation, and provide notice of the board's intention to pursue
4 administrative remedies or court proceedings with regard to the potential violation.

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

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

18 **"§ 93B-19. Venue for court enforcement.**

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

23 **"§ 93B-20. Injunctive relief.**

24 An occupational licensing board may appear in its own name in superior court in actions for
25 injunctive relief to restrain the violation of the provisions of a statute administered by the board or
26 a rule or order of the board. The superior court shall have the jurisdiction to grant these
27 injunctions, restraining orders, or take other appropriate action even if criminal prosecution has
28 been or may be instituted as a result of the violations, or whether the person is a licensee of the
29 board. No board shall issue such orders independently of the superior court unless specifically
30 authorized to do so by law.

31 **"§ 93B-21. Jurisdictional disputes between boards.**

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

40 **"§ 93B-22. Complaint process.**

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

- 43 (1) A description of the complaint process on the board's Web site, including the
44 types of violations that are under the jurisdictional authority of the board.
- 45 (2) Electronic complaint submission via the board's Web site, including a
46 prominently displayed link to a complaint form.
- 47 (3) The ability to provide complainants with a written description of the final
48 disposition of each complaint."

49 **SECTION 3.** 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 4.** This act is effective when it becomes law.