

GENERAL ASSEMBLY OF NORTH CAROLINA

____ SESSION

____ BILL ____

Short Title: Occupational Lic. Bd. Reporting Requirements.

(Public)

Sponsors:

Referred to:

February, 2016

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

The General Assembly of North Carolina enacts:

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

"Chapter 93B.

"Occupational Licensing Boards.

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

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

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

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

- a. Determine minimum qualifications required for licensure for a
particular profession or occupation.
- b. Issue licenses to qualified applicants.
- c. Regulate the conduct of licensees within a particular profession or
occupation.
- d. Seek injunctive relief to prohibit unlicensed individuals or entities
from engaging in certain activities as defined by statute.
- e. Collect fees to support agency operations.

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

- (1) Acupuncture Licensing Board.

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

- (47) North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors.
- (48) Reserved.
- (49) North Carolina State Board of Opticians.
- (50) North Carolina State Hearing Aid Dealers and Fitters Board.
- (51) North Carolina Substance Abuse Professional Practice Board.
- (52) North Carolina Veterinary Medical Board.
- (53) Private Protective Services Board.
- (54) Public Librarian Certification Commission.
- (55) State Board of Barber Examiners.
- (56) State Board of Certified Public Accountant Examiners.
- (57) State Board of Chiropractic Examiners.
- (58) Reserved.
- (59) State Board of Environmental Health Specialist Examiners.
- (60) State Board of Examiners of Electrical Contractors.
- (61) State Board of Examiners of Plumbing, Heating, and Fire Sprinkler Contractors.
- (62) Reserved.
- (63) State Board of Refrigeration Examiners.
- (64) State Board of Registration for Foresters.

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

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

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

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

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

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

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

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

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

~~(e)(b)~~ The reports required by this section shall be open to public inspection and shall be posted on the internet website of the occupational licensing board.

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

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

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

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

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

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

...

(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

1 from the board's staff, including its legal advisor, or from an outside educational institution such
2 as the School of Government of the University of North Carolina, on the statutes governing the
3 board and rules adopted by the board, as well as the following State or federal laws, in order to
4 better understand the obligations and limitations of a State agency:

5 (1) Chapter 150B, The Administrative Procedure Act.

6 (2) Chapter 132, The Public Records Law.

7 (3) Article 33C of Chapter 143, The Open Meetings Act.

8 (4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The
9 Defense of State Employees Law.

10 (5) Antitrust Law and State Action Immunity.

11 ~~(5) Chapter 138A, The State Government Ethics Act.~~

12 ~~(6) Chapter 120C, Lobbying.~~

13 ~~(6) The ethics education and awareness program established pursuant to~~
14 ~~G.S. 138A-14.~~

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

17 ...

18 **"§ 93B-17. 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
24 **§ 93B-18. Unlicensed activity.**

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26 (a) In addition to the powers in its enabling statutes, every occupational licensing board
27 shall have the authority to investigate unlicensed activity and notify unlicensed persons and
28 entities of the possible violation of the law and administrative rules and any civil action or
29 criminal penalty which may be imposed by a Court. Such notification shall not indicate that the
30 occupational licensing board has made any finding of a violation, but may indicate the board's
31 belief or opinion that a particular act may violate the board's enabling statutes, include factual
32 information regarding legislation and court proceedings concerning the potential violation, and
33 may provide notice of the board's bona fide intention to pursue administrative remedies or court
34 proceedings with regard to the potential violation.

35 (b) Any occupational licensing board providing notification to unlicensed persons and
36 entities of a possible violation of the law and administrative rules and any civil action or criminal
37 penalty which may be imposed by a Court shall include the following statement in such
38 notification:

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

48 **§ 93B-19. Jurisdictional disputes between boards.**

1
2 It is the policy of this State that any jurisdictional dispute among occupational licensing
3 boards should be settled through informal procedures. If the occupational licensing boards do
4 not agree to a resolution of the dispute through informal procedures, any affected board may
5 commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition
6 with the Office of Administrative Hearings and serve such petition on all of the affected boards.
7 Once such a petition is filed and the required fee is paid, the dispute shall become a "contested
8 case" and shall be conducted by the Office of Administrative Hearings under Articles 3 and 4,
9 Chapter 150B.

10
11
12 **SECTION 2.** G.S. 115C-457.2 reads as rewritten:
13 **"§ 115C-457.2. Remittance of moneys to the Fund.**

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

29 **SECTION 3.** G.S. 143C-9-4 reads as rewritten:
30 **"§ 143C-9-4. Biennial fee report.**

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

39 **SECTION 4.** G.S. 143D-7 reads as rewritten:
40 **"§ 143D-7. Agency management responsibilities.**

41 The management of each State agency bears full responsibility for establishing and
42 maintaining a proper system of internal control within that agency. Each principal executive
43 officer and each principal fiscal officer shall annually certify, in a manner prescribed by the State
44 Controller, that the agency has in place a proper system of internal control. The State Controller
45 shall develop policies and procedures to direct agencies in their evaluation.

46 The management of each State agency also bears the responsibility periodically to submit
47 accurate and complete financial information to the State Controller for compilation into North
48 Carolina State government's various financial reports and other related financial information
49 disseminated to the public. With the submission of such periodic reports to the State Controller,

1 each agency's principal executive officer and each agency's principal fiscal officer shall certify,
2 in a manner prescribed by the State Controller, to the accuracy and completeness of the financial
3 information submitted.

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

7
8 **SECTION 5.** G.S. 150B reads as rewritten:

9 ...

10 **§ 150B-4. Declaratory rulings and petitions for injunctive relief.**

11 ...

12 (c) An occupational licensing board as defined in Chapter 93B-1 of the General Statutes
13 may appear in its own name in superior court in actions for injunctive relief to restrain the
14 violation of the provisions of a statute administered by the board or of a rule or
15 order of the board. The superior court shall have the jurisdiction to grant these
16 injunctions, restraining orders, or take other appropriate action even if criminal prosecution has
17 been or may be instituted as a result of the violations, or whether the person is a licensee of the
18 board. The superior court may award the board the reasonable costs, including attorney fees,
19 associated with the investigation and prosecution of any violation. No board shall issue such
20 orders independently of the superior court unless specifically authorized to do so by law.

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22 ...

23
24 **§ 150B-38. Scope; hearing required; notice; venue.**

25
26 (a) The provisions of this Article shall apply to:

- 27 (1) Occupational licensing agencies.
28 (2) The State Banking Commission, the Commissioner of Banks, and the Credit Union
29 Division of the Department of Commerce.
30 (3) The Department of Insurance and the Commissioner of Insurance.
31 (4) The State Chief Information Officer in the administration of the provisions of
32 Article 3D of Chapter 147 of the General Statutes.
33 (5) The North Carolina State Building Code Council.
34 (6) The State Board of Elections in the administration of any investigation or audit
35 under the provisions of Article 22A of Chapter 163 of the General Statutes.
36 (7) The Private Protective Services Board; the Alarm Systems Licensing Board; the
37 North Carolina Justice Education and Training Standards Commission; and the
38 North Carolina Sheriffs' Education and Training Standards.

39 ...

40
41 **§ 150B-45. Procedure for seeking review; waiver.**

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

- 45 (1) Contested tax cases. – A petition for review of a final decision in a contested
46 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
47 Wake County.
48 (2) Other final decisions. – A petition for review of any other final decision under
49 this Article must be filed in the superior court of the county where the person

aggrieved by the administrative decision resides, in the county where the agency has its principal place of business, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed. In the event that a petitioner files a petition in a county other than as provided in this subdivision, the Superior Court may order a change of venue pursuant to G.S. 1-83; provided, however, that improper venue shall not be grounds for dismissal of the petition.

...."

SECTION 6. This act becomes effective January 1, 2017.