

NORTH CAROLINA GENERAL ASSEMBLY



JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

REPORT TO THE 2016 SESSION of the 2015 GENERAL ASSEMBLY

APRIL 5, 2016

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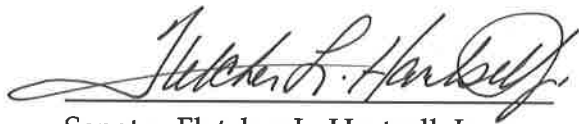
TRANSMITTAL LETTER

April 5, 2016

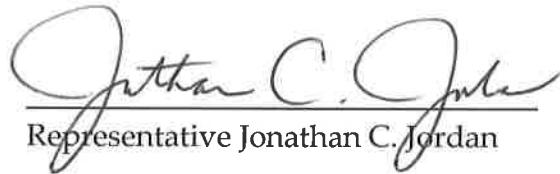
TO THE MEMBERS OF THE 2016 REGULAR SESSION
OF THE 2015 GENERAL ASSEMBLY

The Joint Legislative Administrative Procedure Oversight Committee
herewith submits to you for your consideration its report pursuant to G.S. 120-
70.101(8)

Respectfully submitted,



Senator Fletcher L. Hartsell, Jr.



Representative Jonathan C. Jordan

Co-Chairs

Joint Legislative Administrative Procedure Oversight Committee

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STATUTORY AUTHORITY

NORTH CAROLINA GENERAL STATUTES

ARTICLE 12K.

Joint Legislative Administrative Procedure Oversight Committee.

§ 120-70.100. Creation and membership of Joint Legislative Administrative Procedure Oversight Committee.

(a) The Joint Legislative Administrative Procedure Oversight Committee is established. The Committee consists of 16 members as follows:

- (1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least three of whom are members of the minority party.
- (2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

(b) Members of the Committee shall serve a term of two years beginning on January 15 of each odd-numbered year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until the member's successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

§ 120-70.101. Purpose and powers of Committee.

The Joint Legislative Administrative Procedure Oversight Committee has the following powers and duties:

- (1) To review rules to which the Rules Review Commission has objected to determine if statutory changes are needed to enable the agency to fulfill the intent of the General Assembly.
- (2) To receive reports prepared by the Rules Review Commission containing the text and a summary of each rule approved by the Commission.
- (3) Repealed by Session Laws 2009-125, s. 1, effective October 1, 2009.
- (3a) To review the activities of State occupational licensing boards to determine if the boards are operating in accordance with statutory requirements and if the boards are still necessary to achieve the purposes for which they were created. This review shall not include decisions concerning board personnel matters or determinations on individual licensing applications or individual disciplinary actions.
- (4) To review State regulatory programs to determine if the programs overlap, have conflicting goals, or could be simplified and still achieve the purpose of the regulation.
- (5) To review existing rules to determine if the rules are necessary or if the rules can be streamlined.

- (6) To review the rule-making process to determine if the procedures for adopting rules give the public adequate notice of and information about proposed rules.
- (7) To review any other concerns about administrative law to determine if statutory changes are needed.
- (8) To report to the General Assembly from time to time concerning the Committee's activities and any recommendations for statutory changes.

§ 120-70.102. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Administrative Procedure Oversight Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Committee may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be paid by the Committee.

§ 120-70.103: Repealed by Session Laws 2009-125, s. 5, effective October 1, 2009.

COMMITTEE MEMBERSHIP

JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE

2015-2016 Membership

<p>Senator Fletcher L. Hartsell, Jr., Chair 300 Legislative Office Building, Room 627 Raleigh, North Carolina 27603-5925 (919) 733-7223 Fletcher.Hartsell@ncleg.net</p>	<p>Representative Jonathan C. Jordan, Chair 300 N. Salisbury Street, Room 420 Raleigh, NC 27603-5925 (919) 733-7727 Jonathan.Jordan@ncleg.net</p>
<p>Senator Tamara Barringer 300 N. Salisbury Street, Room 620 Raleigh, NC 27603-5925 (919) 733-5653 Tamara.Barringer@ncleg.net</p>	<p>Representative Sarah Stevens, Vice Chair 300 N. Salisbury Street, Room 635 Raleigh, NC 27603-5925 (919) 715-1883 Sarah.Stevens@ncleg.net</p>
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Staff:	
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<p>Mr. Kevin King 300 N. Salisbury Street, Room 420 Raleigh, NC 27603-5925 (919) 733-7727 jordanla@ncleg.net</p>	

COMMITTEE PROCEEDINGS

The Joint Legislative Administrative Procedure Oversight Committee (Committee) met four times, the Subcommittee on Oversight of Occupational Licensing Boards met three times, and the Subcommittee on North Carolina State Board of Dental Examiners v. Federal Trade Commission met two times during the interim between the 2015 and the 2016 Regular Sessions of the General Assembly. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library and [online](#).

January 5, 2016

The Committee met on Tuesday, January 5, 2016 at 9:30 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Senator Fletcher L. Hartsell chaired the Committee and presented a brief review of the topics to be discussed;
- Ms. Karen Cochrane-Brown, Committee Co-Council, provided a review and of the opinion United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission;
- Mr. Jeff Hudson, Committee Co-Council, gave an overview of occupational licensing board reports submitted to the Committee;
- Mr. Chuck Hefren, Principal Program Evaluator, gave a review of the Program Evaluation Division study of potential centralization and oversight of occupational licensing agencies;
- Mr. Garth Dunklin, Chair, Rules Review Commission, gave an update on the status of North Carolina State Board of Education v. the State of North Carolina and the North Carolina Rules Review Commission;
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

January 21, 2016

The **Subcommittee on Oversight of Occupational Licensing Boards** met on Thursday, January 21, 2016 at 9:30 a.m.

The following business was conducted:

- Senator Andy Wells chaired the Subcommittee and presented a brief review of the topics to be discussed;
- Mr. Chuck Hefren, Principal Program Evaluator, gave a review of the Program Evaluation Division study of potential centralization and oversight of occupational licensing agencies;
- Ms. Becki Gray, Vice President for Outreach and Jon Sanders, Director of Regulatory Studies, Locke Foundation, gave a presentation on occupational licensing board issues;
- Mr. Bill Rowe, General Counsel and Director of Advocacy, North Carolina Justice Center, gave a presentation on occupational licensing boards issues from the North Carolina Justice Center;
- The Subcommittee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

The **Subcommittee on North Carolina State Board of Dental Examiners v. Federal Trade Commission** met on Thursday, January 21, 2016 at 12:30 p.m.

The following business was conducted:

- Representative Sarah Stevens chaired the Subcommittee and presented a brief review of the topics to be discussed;
- The Subcommittee viewed a web conference on active supervision after North Carolina State Board of Dental Examiners v. Federal Trade Commission, hosted by the National Conference of State Legislatures. The web conference featured: Geoffrey Green, Assistant Director, Bureau of Competition, Federal Trade Commission; and Ms. Sarah Oxenham Allen, Senior Assistant Attorney General Antitrust Unit of the Virginia Attorney General's Office;
- The Subcommittee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

February 2, 2016

The Committee met on Tuesday, February 2, 2016 at 9:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Representative Jonathan C. Jordan, chaired the Committee and presented a brief review of the topics to be discussed;
- Senator Andy Wells gave a report on the work of the Subcommittee on Oversight of Occupational Licensing Boards;
- Representative Jonathan C. Jordan gave a report on the work of the Subcommittee on North Carolina State Board of Dental Examiners v. Federal Trade Commission;
- Ms. Becki Gray, Vice President for Outreach, John Locke Foundation gave a presentation on the REINS Act (Regulations from the Executive in Need of Scrutiny Act);
- Ms. Molly Masich, Codifier of Rules, Office of Administrative Hearings, gave a report on the progress of the periodic review and expiration of existing rules as required by [G.S. 150B-21.3A](#);
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

The Subcommittee on Oversight of Occupational Licensing Boards met on Thursday, February 2, 2016 at 11:00 a.m.

The following business was conducted:

- Senator Andy Wells chaired the Subcommittee and presented a brief review of the topics to be discussed;
- Mr. Jeff Hudson, Committee Counsel, gave a presentation of profiles of occupational licensing boards;
- The Subcommittee received public comment on oversight of occupational licensing boards;
- The Subcommittee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

February 18, 2016

The **Subcommittee on Oversight of Occupational Licensing Boards** scheduled for Thursday, February 18, 2016 at 9:30 a.m. was **cancelled**.

The **Subcommittee on North Carolina State Board of Dental Examiners v. Federal Trade Commission** scheduled for Thursday, February 18, 2016 at 12:30 p.m. was **cancelled**.

March 1, 2016

The Committee met on Tuesday, March 1, 2016 at 9:00 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Representative Jonathan C. Jordan, chaired the Committee and presented a brief review of the topics to be discussed;
- Senator Andy Wells gave a report on the work of the Subcommittee on Oversight of Occupational Licensing Boards;
- Representative Sarah Stevens invited discussion on the opinion of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The following people spoke before the Committee:
 - Lawrence C. Moore, III, Practicing Antitrust Attorney, Robinson, Bradshaw & Hinson, P.A.
 - Judith W. Wegner, Burton Craige Professor of Law, UNC School of Law.
 - Bobby D. White, Chief Operations Officer, North Carolina Dental Board.
 - Jack Nichols, Nichols, Choi & Lee, PLLC, Attorney for N.C. Board of Architecture, N.C. Social Work Certification & Licensure Board & N.C. Board of Opticians.
 - John M. Silverstein, Satsky & Silverstein, LLP, Vice-President, North Carolina State Bar.
 - John N. (Nick) Fountain, Young Moore & Henderson, PA., Attorney for N. C. Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, and N.C. board of Examiners of Electrical Contractors.
 - Janet B. Thoren, Legal Counsel, North Carolina Real Estate Commission.
- The Committee discussed potential issues for consideration;
- A date was then set for the next meeting followed by adjournment.

March 17, 2016

The Subcommittee on Oversight of Occupational Licensing Boards met on Thursday, March 17, 2016 at 9:30 a.m.

- Senator Andy Wells chaired the Subcommittee and presented a brief review of the topics to be discussed;
- Mr. Christopher Koopman, Research Fellow, Project for the Study of American Capitalism, Mercatus Center at George Mason University submitted documentation to the Subcommittee on occupational licensing;
- The Subcommittee received public comment on occupational licensing boards;
- The Subcommittee discussed oversight of occupational licensing boards and legislative proposals;
- The Subcommittee adjourned.

The Subcommittee on North Carolina State Board of Dental Examiners v. Federal Trade Commission met on Thursday, March 17, 2016 at 12:30 p.m.

The following business was conducted:

- Representative Jonathan C. Jordan, chaired the Subcommittee and presented a brief review of the topics to be discussed;
- The Subcommittee discussed the *North Carolina State Board of Dental Examiners v. Federal Trade Commission*;
- The Subcommittee adjourned.

April 5, 2016

The Committee met on Tuesday, April 5, 2016 at 9:30 a.m. in Room 544 of the Legislative Office Building (LOB).

The following business was conducted:

- Senator Fletcher L. Hartsell chaired the Committee and presented a brief review of the topics to be discussed;
- Consideration of legislative proposals:
 - Consideration of the legislative proposal recommended by the Subcommittee on North Carolina State Board of Dental Examiners v.

Federal Trade Commission. Approved for recommendation by the Committee (see Legislative Proposals Section);

- Consideration of the legislative proposal recommended by the Subcommittee on Oversight of Occupational Licensing Boards. Tabled;
 - Occupational Licensing Board Contact Info. Approved for recommendation by the Committee (see Legislative Proposals Section);
 - Authorize APO Studies. Approved for recommendation by the Committee (see Legislative Proposals Section);
- The Committee adopted this report.

LEGISLATIVE PROPOSALS

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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D

BILL DRAFT 2015-SBz-25 [v.2] (03/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
03/31/2016 10:47:04 AM

Short Title: Authorize APO Studies.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED

2 AN ACT TO AUTHORIZE THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE
3 OVERSIGHT COMMITTEE TO STUDY CERTAIN ISSUES, AS RECOMMENDED BY
4 THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT
5 COMMITTEE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The Joint Legislative Administrative Procedure Oversight Committee
8 may continue to study issues related to occupational licensing boards. As part of this study, the
9 Committee may consider any of the following:

10 (1) Oversight of occupational licensing boards, generally.

11 (2) Oversight of the North Carolina State Bar.

12 (3) Disciplinary actions and procedures of occupational licensing boards

13 The Committee may report the results of this study, if any, including any legislative
14 proposals, to the 2017 General Assembly.

15 **SECTION 2.** The Joint Legislative Administrative Procedure Oversight Committee
16 may study whether there are certain categories of contested cases in which the burden of proof
17 should be placed with the agency. The Committee may report the results of this study, if any,
18 including any legislative proposals, to the 2017 General Assembly.

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

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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D

BILL DRAFT 2015-SBz-29 [v.2] (03/31)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
04/01/2016 10:09:05 AM

Short Title: Occupational Licensing Board Contact Info. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE OCCUPATIONAL LICENSING BOARDS TO PROVIDE AND
3 UPDATE CONTACT INFORMATION, AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE.
5 The General Assembly of North Carolina enacts:
6 SECTION 1. G.S. 93B-2 is amended by adding a new subsection to read:
7 "(c1) Each occupational licensing board shall provide the Joint Legislative Administrative
8 Procedure Oversight Committee with the name and contact information of the individual
9 responsible for filing the reports required by this section. Each occupational licensing board shall
10 keep this information current and notify the Committee within 30 days of any changes in this
11 information."
12 SECTION 2. This act is effective when it becomes law.

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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D

BILL DRAFT 2015-SBz-21 [v.10] (03/02)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
03/31/2016 01:16:40 PM

Short Title: Amend Occupational Licensing Boards Statutes.

(Public)

Sponsors:

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 five new sections to read:

"§ 93B-17. Occupational licensing board rulemaking.

(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

1 notification shall not indicate that the occupational licensing board has made any finding of a
2 violation, but may indicate the board's belief or opinion that a particular act may violate the
3 board's enabling statutes, include factual information regarding legislation and court proceedings
4 concerning the potential violation, and provide notice of the board's intention to pursue
5 administrative remedies or court proceedings with regard to the potential violation.

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

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

20 **"§ 93B-19. Venue for court enforcement.**

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

25 **"§ 93B-20. Injunctive Relief.**

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

33 **"§ 93B-21. Jurisdictional disputes between boards.**

34 It is the policy of the State that jurisdictional disputes among occupational licensing boards
35 shall be resolved through informal procedures. If a jurisdictional dispute among occupational
36 licensing boards cannot be resolved through informal procedures, any affected board may
37 commence an administrative proceeding to resolve the jurisdictional dispute by filing a petition
38 with the Office of Administrative Hearings and serve the petition on all affected boards. Once
39 the petition is filed and the required fee is paid, the dispute shall become a contested case and
40 shall be conducted by the Office of Administrative Hearings under Articles 3 and 4 of Chapter
41 150B of the General Statutes.

42 **"§ 93B-22. Complaint process.**

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

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

1 **SECTION 3.** The Joint Legislative Administrative Procedure Oversight Committee
2 shall continue to monitor and study the effects of the opinion in North Carolina State Board of
3 Dental Examiners v. Federal Trade Commission and other issues related to the scope of practice
4 jurisdiction of occupational licensing boards.

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

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