

45:1-14 to 45:1-27

LEGISLATIVE HISTORY CHECKLIST

NJSA 45:1-14 to 45:1-27 (Professional boards-standards for licensing and disciplinary proceedings)

LAWS OF 1978 CHAPTER 73

Bill No. S497

Sponsor(s) Greenberg

Date Introduced Pre-filed

Committee: Assembly Judiciary, Law, Public Safety & Defense; Labor  
Senate Labor, Industry and Professions

Amended during passage Yes ~~XX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly June 26, 1978  
Senate May 22, 1978

Date of approval July 13, 1978

Following statements are attached if available:

Sponsor statement	Yes	<del>XX</del>	Below
Committee Statement: Assembly	<del>YES</del>		No
Senate	Yes	<del>XX</del>	
Fiscal Note	<del>YES</del>		No
Veto Message	<del>YES</del>		No
Message on signing	Yes	<del>XX</del>	
Following were printed:			
Reports	<del>YES</del>		No
Hearings	<del>YES</del>		No

Sponsor's statement:  
This bill sets forth uniform procedures and standards for the conduct of licensing and disciplinary proceedings before various professional boards.

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SENATE LABOR, INDUSTRY AND  
PROFESSIONS COMMITTEE

STATEMENT TO

**SENATE, No. 497**

with Senate committee amendments

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**STATE OF NEW JERSEY**

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DATED: MAY 15, 1978

Existing statutory provisions dealing with administrative law enforcement powers and standards governing license revocations, suspensions and the imposition of disciplinary sanctions by professional and occupational boards within the Division of Consumer Affairs have evolved as a result of separate enactments dating from 1894. Both the enforcement powers conferred and the bases for disciplinary action created by those acts vary from board to board.

Senate Bill No. 497 would establish uniform standards for disciplinary actions and the investigative and enforcement powers which may be exercised by the Attorney General in implementing professional and occupational licensing statutes. The purpose is to create a modern, effective enforcement mechanism consistent with the need for consumer and patient protection, to establish consistent standards for licensee conduct in dealing with the public, and to clarify the Attorney General's administrative authority in relation to the professional and occupational boards within the Division of Consumer Affairs.

To provide a full complement of remedial and protective powers in administrative actions, authority is conferred to enter cease and desist orders, to order corrective action to be taken and to order the return of any moneys, excluding consequential damages, acquired by unlawful practices. The act is deemed remedial, and does not alter any prior statutory enactments except those dealing with the substantive areas of investigative and enforcement powers and the bases for disciplinary action. Prior law is repealed and superseded only to the extent that it is inconsistent with the terms of this act.

The act would apply to the following professional and occupational boards:

1. New Jersey State Board of Certified Public Accountants,
2. New Jersey State Board of Architects,

3. State Board of Barber Examiners,
4. Board of Beauty Culture Control,
5. Board of Examiners of Electrical Contractors,
6. New Jersey State Board of Dentistry,
7. State Board of Mortuary Science of New Jersey,
8. State Board of Professional Engineers and Land Surveyors,
9. State Board of Marriage Counselor Examiners,
10. State Board of Medical Examiners,
11. New Jersey Board of Nursing,
12. New Jersey State Board of Optometrists,
13. State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians,
14. Board of Pharmacy,
15. State Board of Professional Planners,
16. State Board of Psychological Examiners,
17. State Board of Examiners of Master Plumbers,
18. State Board of Shorthand Reporting, and the
19. State Board of Veterinary Medical Examiners.

Under section 4 of the bill, in order to effectuate the provisions of the act, the Attorney General would be empowered to: a. promulgate administrative rules and regulations, b. promulgate substantive rules and regulations, and c. initiate appropriate enforcement action. However, the Attorney General would first have to advise the board or boards of his intent to pursue any or all of the foregoing and to give the board or boards 30 days to take steps in accordance with the Attorney General's advice.

With respect to substantive rules and regulations, the Attorney General would be restricted to promulgating rules and regulations dealing only with disciplinary matters and arbitrary restrictions on initial licensure.

With respect to enforcement action under section 4c. of the bill, the Attorney General could take such action only if the board's action or decision were contrary to applicable law.

Finally, with respect to investigative powers under section 5, a board again would have 30 days to respond to the Attorney General's advice that he is going to commence action.

The committee amended section 5f. of the bill to require that the Attorney General first obtain a superior court order before taking possession of evidence discovered during the course of an inspection or investigation of the licensee's business premises.

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73  
APPROVED 7-13-78

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SENATE, No. 497

# STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1978 SESSION

By Senator GREENBERG

AN ACT providing uniform enforcement powers and procedures and uniform standards for revocation, suspension and other disciplinary sanctions for professional and occupational boards within the Division of Consumer Affairs in the Department of Law and Public Safety.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. The Legislature finds and declares that effective implementa-  
2 tion of consumer protection laws and the administration of laws  
3 pertaining to the professional and occupational boards located  
4 within the Division of Consumer Affairs require uniform investi-  
5 gative and enforcement powers and procedures and uniform  
6 standards for license revocation, suspension and other disciplinary  
7 proceedings by such boards. This act is deemed remedial, and the  
8 provisions hereof should be afforded a liberal construction.

1 2. The provisions of this act shall apply to the following boards  
2 and all professions or occupations regulated by or through such  
3 boards: the New Jersey State Board of Certified Public Account-  
4 ants, the New Jersey State Board of Architects, the State Board  
5 of Barber Examiners, the Board of Beauty Culture Control, the  
6 Board of Examiners of Electrical Contractors, the New Jersey  
7 State Board of Dentistry, the State Board of Mortuary Science of  
8 New Jersey, the State Board of Professional Engineers and Land  
9 Surveyors, the State Board of Marriage Counselor Examiners,  
10 the State Board of Medical Examiners, the New Jersey Board of  
11 Nursing, the New Jersey State Board of Optometrists, the State  
12 Board of Examiners of Ophthalmic Dispensers and Ophthalmic  
13 Technicians, the Board of Pharmacy, the State Board of Profes-  
14 sional Planners, the State Board of Psychological Examiners, the

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

15 State Board of Examiners of Master Plumbers, the State Board  
16 of Shorthand Reporting, and the State Board of Veterinary Medi-  
17 cal Examiners.

1 3. As used within this act the following words or terms shall have  
2 the indicated definition unless the context clearly indicates other-  
3 wise.

4 "Board" means any professional or occupational licensing board  
5 designated in section 2 of this act.

6 "Director" means the Director of the Division of Consumer  
7 Affairs in the Department of Law and Public Safety.

8 "Person" means any natural person or his legal representative,  
9 partnership, corporation, company, trust, business entity or associa-  
10 tion, and any agent, employee, salesman, partner, officer, director,  
11 member, stockholder, associate, trustee or cestuis que trust thereof.

1 4. In implementing the provisions of this act and administering  
2 the law enforcement activities of those professional and occupa-  
3 tional boards located within the Division of Consumer Affairs, the  
4 Attorney General may :

5 a. After advice to the board or boards in question of his intent  
6 to proceed under this section, and the specific action he intends to  
7 take, and the failure of such board or boards to take steps in  
8 accordance with the advice of the Attorney General within 30 days  
9 of receipt of such advice, promulgate rules and regulations con-  
10 sistent with the provisions of this act and the Administrative  
11 Procedure Act, P. L. 1968, c. 410 (C. 52:14B-1 et seq.) governing  
12 the procedure for administrative hearings before all boards within  
13 the Division of Consumer Affairs. Such rules and regulations shall  
14 govern administrative complaints, answers thereto, issuance of  
15 subpoenas, appointment of hearing examiners, adjournments, sub-  
16 mission of proposed findings of fact and conclusions of law, the  
17 filing of briefs, and such other procedural aspects of administrative  
18 hearings before the boards as the Attorney General may deem  
19 necessary; provided, however, nothing herein authorized shall be  
20 construed to require the Attorney General to promulgate rules  
21 regarding prehearing investigative procedures.

22 b. After advice to the board or boards in question of his intent  
23 to proceed under this section, and the specific action he intends  
24 to take, and the failure of such board or boards to take steps in  
25 accordance with the advice of the Attorney General within 30 days  
26 of receipt of such advice, promulgate substantive rules and regula-  
27 tions consistent with the provisions of any statute governing the  
28 activities of any licensing agency, board or committee located

29 within the Division of Consumer Affairs, which shall be limited  
30 to disciplinary matters and arbitrary restrictions on initial  
31 licensure. In addition to promulgating such rules and regulations,  
32 the Attorney General may direct that any proposed or existing  
33 regulation be amended, abandoned or repealed. Prior to the final  
34 adoption of any regulation affecting the activities of any profes-  
35 sional or occupational licensing agency, board or committee located  
36 within the division and prior to the issuance of any directive to  
37 amend, abandon or repeal any regulation, the Attorney General or  
38 his designee shall first consult with the agency, board or committee  
39 whose activities are affected regarding the proposed action.

40 c. After a full consideration of all relevant facts and the applica-  
41 ble law, may direct the initiation of any appropriate enforcement  
42 action by a professional or occupational licensing board or set  
43 aside, modify or amend, as may be necessary, any action or decision  
44 of a licensing agency, board or committee located within the Divi-  
45 sion of Consumer Affairs; provided, however, no such action shall  
46 be directed by the Attorney General in reviewing the action or  
47 decision of an agency, board or committee unless such action or  
48 decision is contrary to applicable law.

1 5. Whenever it shall appear to any board, the director or the  
2 Attorney General that a person has engaged in, or is engaging in  
3 any act or practice declared unlawful by a statute or regulation  
4 administered by such board, or when the board, the director or the  
5 Attorney General shall deem it to be in the public interest to  
6 inquire whether any such violation may exist, the board or the  
7 director through the Attorney General, or the Attorney General  
8 acting independently, may exercise any of the following investiga-  
9 tive powers:

10 a. Require any person to file on such form as may be pre-  
11 scribed, a statement or report in writing under oath, or otherwise,  
12 as to the facts and circumstances concerning the rendition of any  
13 service or conduct of any sale incidental to the discharge of any  
14 act or practice subject to an act or regulation administered by the  
15 board;

16 b. Examine under oath any person in connection with any act or  
17 practice subject to an act or regulation administered by the board;

18 c. Inspect any premises from which a licensed profession or  
19 occupation is conducted;

20 d. Examine any goods, ware or item used in the rendition of any  
21 professional or occupational service;

22 e. Examine any record, book, document, account or paper main-  
23 tained by or for any professional or occupational licensee in the

24 regular course of practicing such profession or engaging in such  
25 occupation;

26 f. For the purpose of preserving evidence of an unlawful act  
27 or practice, \***take temporary possession of**\* *pursuant to an*  
27A *order of the Seperior Court, impound*\* any record, book, docu-  
28 ment, account, paper, goods, ware, or item used or maintained by  
29 or for any board licensee in the regular course of practicing such  
30 profession or engaging in such occupation \***where such matter is**  
31 **discovered during the course of an investigation or inspection of**  
32 **premises from which a licensed activity is conducted. In the event**  
33 **possession of materials or items is taken pursuant hereto, the**  
34 **Attorney General shall, not later than 7 days following seizure**  
35 **thereof, apply to the Superior Court for an order to impound,**  
36 **seal or take possession of such evidence. Upon failure to make**  
37 **timely application for or with regard to such order, all materials**  
38 **in the possession of the Attorney General shall be returned to the**  
39 **licensee forthwith**\*. In such cases as may be necessary, the Su-  
40 perior Court may, on application of the Attorney General, issue  
41 an order \***impounding,**\* sealing \***or authorizing the taking of**  
42 **possession of**\* items or material subject to this subsection.

43 In order to accomplish the objectives of this act or any act or  
44 regulation administered by a board, the Attorney General may  
45 hold such investigative hearings as may be necessary and may  
46 issue subpoenas to compel the attendance of any person or the  
47 production of books, records or papers at any such hearing or  
48 inquiry.

1 6. If any person shall fail or refuse to file any statement or  
2 report or refuse access to premises from which a licensed pro-  
3 fession or occupation is conducted in any lawfully conducted  
4 investigative matter or fail to obey a subpoena issued pursuant to  
5 this act, the Attorney General may apply to the Superior Court  
6 and obtain an order:

7 a. Adjudging such person in contempt of court; or

8 b. Granting such other relief as may be required; or

9 c. Suspending the license of any such person unless and until  
10 compliance with the subpoena or investigative demand is effected.

1 7. If any person shall refuse to testify or produce any book,  
2 paper, or other document in any proceeding under this act for the  
3 reason that the testimony or evidence, documentary or otherwise,  
4 required of him may tend to incriminate him, convict him of a  
5 crime, or subject him to a penalty or forfeiture, and shall, not-  
6 withstanding, be directed to testify or to produce such book, paper,  
7 or document by the Attorney General, he shall comply with such  
8 direction.

9 A person who is entitled by law to, and does assert such privilege,  
10 and who complies with such direction of the Attorney General shall  
11 not thereafter be prosecuted or subjected to any penalty or for-  
12 feiture in any criminal proceeding which arises out of and relates  
13 to the subject matter of the proceeding. No person so testifying  
14 shall be exempt from prosecution or punishment for perjury or  
15 false swearing committed by him in giving such testimony or from  
16 any civil or administrative action arising from such testimony.

1 8. A board may refuse to admit a person to an examination or  
2 may refuse to issue or may suspend or revoke any certificate, regis-  
3 tration or license issued by the board upon proof that the applicant  
4 or holder of such certificate, registration or license

5 a. Has obtained a certificate, registration, license or authoriza-  
6 tion to sit for an examination, as the case may be, through fraud,  
7 deception, or misrepresentation;

8 b. Has engaged in the use or employment of dishonesty, fraud,  
9 deception, misrepresentation, false promise or false pretense;

10 c. Has engaged in gross negligence, gross malpractice or gross  
11 incompetence;

12 d. Has engaged in repeated acts of negligence, malpractice or  
13 incompetence;

14 e. Has engaged in professional or occupational misconduct as  
15 may be determined by the board;

16 f. Has been convicted of any crime involving moral turpitude  
17 or any crime relating adversely to the activity regulated by the  
18 board. For the purpose of this subsection a plea of guilty, non vult,  
19 nolo contendere or any other such disposition of alleged criminal  
20 activity shall be deemed a conviction;

21 g. Has had his authority to engage in the activity regulated by  
22 the board revoked or suspended by any other state, agency or  
23 authority for reasons consistent with this section;

24 h. Has violated or failed to comply with the provisions of any  
25 act or regulation administered by the board;

26 i. Is incapable, for medical or any other good cause, of discharg-  
27 ing the functions of a licensee in a manner consistent with the  
28 public's health, safety and welfare.

1 9. In addition or as an alternative, as the case may be, to revok-  
2 ing, suspending or refusing to renew any license, registration or  
3 certificate issued by it, a board may, after affording an opportunity  
4 to be heard:

5 a. Issue a letter of warning, reprimand, or censure with regard  
6 to any act, conduct or practice which in the judgment of the board



7 upon consideration of all relevant facts and circumstances does not  
8 warrant the initiation of formal action;

9 b. Assess civil penalties in accordance with this act;

10 c. Order that any person violating any provision of an act or  
11 regulation administered by such board to cease and desist from  
12 future violations thereof or to take such affirmative corrective ac-  
13 tion as may be necessary with regard to any act or practice found  
14 unlawful by the board;

15 d. Order any person found to have violated any provision of an  
16 act or regulation administered by such board to restore to any  
17 person aggrieved by an unlawful act or practice, any moneys or  
18 property, real or personal, acquired by means of such act or prac-  
19 tice; provided, however, no board shall order restoration in a dollar  
20 amount greater than those moneys received by a licensee or his  
21 agent or any other person violating the act or regulation adminis-  
22 tered by the board;

23 e. Order any person, as a condition for continued, reinstated or  
24 renewed licensure, to secure medical or such other professional  
25 treatment as may be necessary to properly discharge licensee func-  
26 tions.

27 A board may, upon a duly verified application of the Attorney  
28 General alleging an act or practice violating any provision of an  
29 act or regulation administered by such board, enter a temporary  
30 order suspending or limiting any license issued by the board pend-  
31 ing plenary hearing on an administrative complaint; provided,  
32 however, no such temporary order shall be entered unless the ap-  
33 plication made to the board palpably demonstrates a clear and  
34 imminent danger to the public health, safety and welfare and notice  
35 of such application is given to the licensee affected by such order.

36 In any administrative proceeding commenced on a complaint  
37 alleging a violation of an act or regulation administered by a board,  
38 such board may issue subpoenas to compel the attendance of wit-  
39 nesses or the production of books, records, or documents at the  
40 hearing on the complaint.

1 10. Whenever it shall appear to a board, the director or the  
2 Attorney General that a violation of any act, including the unli-  
3 censed practice of the regulated profession or occupation, or  
4 regulation administered by such board has occurred, is occurring,  
5 or will occur, the Attorney General, in addition to any other pro-  
6 ceeding authorized by law, may seek and obtain in a summary  
7 proceeding in the Superior Court an injunction prohibiting such  
8 act or practice. In any such proceeding the court may assess a

9 civil penalty in accordance with the provisions of this act, order  
10 restoration to any person in interest of any moneys or property,  
11 real or personal, acquired by means of an unlawful act or practice  
12 and may enter such orders as may be necessary to prevent the  
13 performance of an unlawful practice in the future and to fully  
14 remedy any past unlawful activity. In any action brought pursuant  
15 to this section, the court shall not suspend or revoke any license  
16 issued by a board.

1 11. Upon the failure of any person to comply within 10 days  
2 after service of any order of a board directing payment of penal-  
3 ties or restoration of moneys or property, the Attorney General  
4 or the secretary of such board may issue a certificate to the Clerk  
5 of the Superior Court that such person is indebted to the State  
6 for the payment of such penalty and the moneys or property  
7 ordered restored. A copy of such certificate shall be served upon  
8 the person against whom the order was entered. Thereupon the  
9 clerk shall immediately enter upon his record of docketed judg-  
10 ments the name of the person so indebted and of the State, a  
11 designation of the statute under which the penalty is imposed, the  
12 amount of the penalty imposed, and amount of moneys ordered  
13 restored, a listing of property ordered restored, and the date of the  
14 certification. Such entry shall have the same force and effect as  
15 the entry of a docketed judgment in the Superior Court, and the  
16 Attorney General shall have all rights and remedies of a judgment  
17 creditor in addition to exercising any other available remedies.  
18 Such entry, however, shall be without prejudice to the right of  
19 appeal to the Appellate Division of the Superior Court from the  
20 board's order.

21 An action to enforce the provisions of any order entered by a  
22 board or to collect any penalty levied thereby may be brought in  
23 any municipal or county district court or the Superior Court in  
24 summary manner pursuant to the Penalty Enforcement Act,  
25 (N. J. S. 2A:58-1 et seq.) and the rules of court governing the  
26 collection of civil penalties. Process in such action shall be by  
27 summons or warrant, and in the event that the defendant fails to  
28 answer such action, the court shall issue a warrant for the defen-  
29 dant's arrest for the purpose of bringing such person before the  
30 court to satisfy any order entered.

1 12. Any person violating any provision of an act or regulation  
2 administered by a board shall, in addition to any other sanctions  
3 provided herein, be liable to a civil penalty of not more than  
4 \$2,500.00 for the first offense and not more than \$5,000.00 for the

5 second and each subsequent offense. For the purpose of construing  
6 this section, each transaction or statutory violation shall constitute  
7 a separate offense; provided, however, a second or subsequent  
8 offense shall not be deemed to exist unless an administrative or  
9 court order has been entered in a prior, separate and independent  
10 proceeding. In lieu of an administrative proceeding or an action  
11 in the Superior Court, the Attorney General may bring an action in  
12 the name of any board for the collection or enforcement of civil  
13 penalties for the violation of any provision of an act or regulation  
14 administered by such board. Such action may be brought in sum-  
15 mary manner pursuant to the Penalty Enforcement Act (N. J. S.  
16 2A:58-1 et seq.) and the rules of court governing actions for the  
17 collection of civil penalties in the municipal or county district  
18 court where the offense occurred. Process in such action may be  
19 by summons or warrant and in the event that the defendant in such  
20 action fails to answer such action, the court shall, upon finding an  
21 unlawful act or practice to have been committed by the defendant,  
22 issue a warrant for the defendant's arrest in order to bring such  
23 person before the court to satisfy the civil penalties imposed. In  
24 any action commenced pursuant to this section, the court may  
25 order restored to any person in interest any moneys or property  
26 acquired by means of an unlawful act or practice. Any action  
27 alleging the unlicensed practice of a profession or occupation shall  
28 be brought pursuant to this section or, where injunctive relief is  
29 sought, by an action commenced in the Superior Court. In any  
30 action brought pursuant to this act, a board or the court may order  
31 the payment of costs for the use of the State.

1 13. All acts and parts of acts inconsistent with this act are  
2 hereby superseded and repealed.

1 14. If any provision of this law or the application thereof to  
2 any person or circumstance is held invalid, the invalidity shall not  
3 affect other provisions or applications of the law which can be  
4 given effect without the invalid provision or application, and to  
5 this end the provisions of this law are severable.

1 15. This act shall take effect immediately.

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FROM THE OFFICE OF THE GOVERNOR

JULY 13, 1978

FOR FURTHER INFORMATION

FOR IMMEDIATE RELEASE

ANNE BURNS

Governor Brendan Byrne today signed into law S-497, sponsored by Senator Martin Greenberg (D-Essex) which provides for uniform enforcement of the many separate statutes dealing with the professional boards within the jurisdiction of the Department of Law and Public Safety.

"This bill is an important part of this Administration's commitment to consumers. It will help make professional boards more responsive to consumer's needs as well as to the needs of the professionals being regulated," the Governor said.

The legislation provides for uniform rules and procedures for administrative hearings and uniform sanctions and enforcement provisions. The Attorney General may develop these procedures if, after giving a board 30 days notice and an opportunity to develop regulations, the board does not act.

It also gives the Attorney General the authority to develop regulations regarding disciplinary matters and restrictions on licensure. The Attorney General is given the power to direct the initiation of appropriate enforcement actions and set aside, modify or amend any action or decision of the board.

The bill provides for uniform investigative powers for the boards, the Attorney General and the Director of Consumer Affairs through the A.G. This includes the authority to examine any record, book, document, account or paper maintained by or for any professional or occupational licensee.

In addition, the bill provides for uniform standards for suspension or revocation of a license. It also states that a person violating any provision of an act or regulation administered by a board may be liable to a civil penalty of not more than \$2,500 for the first offense and not more than \$5,000 for subsequent offenses.

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