

45:1-17.1
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2019 **CHAPTER:** 112

NJSA: 45:1-17.1 (Requires active supervision of certain professional and occupational licensing boards.)

BILL NO: A2810 (Substituted for S2963)

SPONSOR(S) Louis D. Greenwald and others

DATE INTRODUCED: 2/1/2018

COMMITTEE: **ASSEMBLY:** Regulated Professions

SENATE: Commerce
Budget & Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** 10/29/2018

SENATE: 2/21/2019

DATE OF APPROVAL: 5/10/2019

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (First Reprint enacted) Yes

A2810

SPONSOR'S STATEMENT: (Begins on page 3 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes Regulated Professions

SENATE: Yes Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

S2963

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes Commerce
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, ***may possibly*** be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

(continued)

VETO MESSAGE: No
GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RWH/CL

P.L. 2019, CHAPTER 112, *approved May 10, 2019*
Assembly, No. 2810 (*First Reprint*)

1 AN ACT concerning the State supervision of certain professional
2 and occupational licensing boards and supplementing P.L.1978,
3 c.73 (C.45:1-14 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. Notwithstanding the provisions of any State law, rule, or
9 regulation to the contrary, a regulatory officer shall, in order to
10 provide antitrust immunity to a board consistent with federal law,
11 establish and implement a protocol consistent with the provisions of
12 this section applicable to the proposed regulations, actions and
13 decisions of any board under the regulatory officer's purview for
14 which:

15 (1) the majority of members are active market participants of the
16 profession or occupation regulated by that board; and

17 (2) but for a vacancy or vacancies in the membership of the
18 board, that board would otherwise have a majority of members that
19 are active market participants.

20 The regulatory officer shall review any potentially
21 anticompetitive regulation, action, or decision proposed by a board
22 that is under the regulatory officer's purview and meets the criteria
23 set forth in paragraph (1) or (2) of this subsection, to determine
24 whether the proposed regulation, action, or decision displaces
25 competition and, if so, whether it is consistent with and furthers or
26 promotes clearly articulated and affirmatively expressed State
27 policy or the inherent, logical, or ordinary result of that policy.

28 If it is determined as a result of that review that the proposed
29 regulation, action or decision is not consistent with and does not
30 further or promote clearly articulated and affirmatively expressed
31 State policy, or is not the inherent, logical or ordinary result of the
32 board's statutorily-delegated authority, or both, the regulatory
33 officer shall disapprove, veto, modify, amend or remand to the
34 board for the development of a factual record of the proposed
35 regulation, action or decision, as may be necessary or appropriate.

36 A proposed regulation, action, or decision shall not take effect
37 unless the regulatory officer has conducted the review authorized by
38 this section and taken ¹**[such]**¹ additional action as may be
39 necessary or appropriate under this section, provided that nothing in
40 this section shall be construed to create a private right of action,
41 except as provided in subsection c. of this section, or preclude any
42 action to address possible anticompetitive impacts after 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.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ARP committee amendments adopted September 13, 2018.

1 proposed regulation, action, or decision ¹~~has taken effect~~ takes
2 effect¹. For ¹~~the~~ purposes of this subsection, no person licensed by
3 the board whose action or decision is under review pursuant to the
4 protocol established pursuant to this subsection shall be permitted
5 to serve as a regulatory officer's designee for the review of that
6 board's actions or decisions.

7 b. A person serving as a member of a board shall not be liable
8 in any action for damages to any person in a civil action as a result
9 of any action taken or recommendation or decision made within the
10 scope of the person's function as a member of the board which was
11 subject to review in accordance with the protocol established
12 pursuant to subsection a. of this section, unless the person acted in
13 bad faith or with malice. The Attorney General shall defend the
14 person in any civil suit and the State shall provide indemnification
15 for any damages awarded in any resulting civil action, unless the
16 person acted in bad faith or with malice.

17 c. A person may file a complaint relating to any proposed
18 regulation, action, or decision of a board that the person alleges is
19 potentially anticompetitive. The ¹~~person~~ shall file the complaint
20 with the ¹~~regulatory officer~~ who is responsible for establishing
21 ¹~~and~~ or¹ implementing the protocol to review any potentially
22 anticompetitive regulation, action, or decision proposed by the
23 board ¹~~].~~ Within 90 days after the date of receipt of the complaint,
24 the regulatory officer shall:

25 (1) investigate the complaint;
26 (2) identify any remedies;
27 (3) if appropriate, instruct the board to respond to the complaint
28 in a specified manner; and
29 (4) shall review the complaint to determine whether the
30 proposed regulation, action, or decision was reviewed pursuant to
31 subsection a. of this section. The regulatory officer shall review the
32 proposed regulation, action, or decision, pursuant to the protocol
33 established in subsection a. of this section, if:

34 (1) the regulatory officer determines that the proposed
35 regulation, action, or decision was not reviewed pursuant to
36 subsection a. of this section but is potentially anticompetitive; or

37 (2) the complaint provides new information that was not
38 previously considered during the regulatory officer's review of the
39 proposed regulation, action, or decision. In this case, the regulatory
40 officer shall take the new information into account and may
41 continue to rely on the outcome of the prior review or may take
42 action to disapprove, veto, modify, amend or remand to the board
43 for the development of a factual record of the proposed regulation,
44 action, or decision, as may be necessary or appropriate. The
45 regulatory officer shall¹ issue a written response to the person who
46 filed the complaint¹ advising that person accordingly¹.

47 d. As used in this section:

48 "Active market participant" means a member of a board who:

- 1 (1) is licensed or certified by the board; or
2 (2) owns or shares ownership in a business or professional
3 practice that provides any service that is subject to the regulatory
4 authority of the board.

5 “Board” means a board, committee, commission, or any other
6 entity created by law to act on behalf of the State of New Jersey to
7 license or otherwise regulate a profession or occupation in this
8 State.

9 “Regulatory officer” means:

- 10 (1) the Attorney General or the Attorney General’s designee or
11 designees, in the case of the boards located within the Division of
12 Consumer Affairs in the Department of Law and Public Safety; or
13 (2) the commissioner or the commissioner’s designee or
14 designees, in the case of a board located within another principal
15 department of the Executive Branch of State government.

16

17 2. This act shall take effect immediately.

18

19

20

21

22 Requires active supervision of certain professional and
23 occupational licensing boards.

ASSEMBLY, No. 2810

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

Requires active supervision of certain professional and occupational licensing boards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2018)

1 AN ACT concerning the State supervision of certain professional
2 and occupational licensing boards and supplementing P.L.1978,
3 c.73 (C.45:1-14 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. Notwithstanding the provisions of any State law, rule, or
9 regulation to the contrary, a regulatory officer shall, in order to
10 provide antitrust immunity to a board consistent with federal law,
11 establish and implement a protocol consistent with the provisions of
12 this section applicable to the proposed regulations, actions and
13 decisions of any board under the regulatory officer's purview for
14 which:

15 (1) the majority of members are active market participants of the
16 profession or occupation regulated by that board; and

17 (2) but for a vacancy or vacancies in the membership of the
18 board, that board would otherwise have a majority of members that
19 are active market participants.

20 The regulatory officer shall review any potentially
21 anticompetitive regulation, action, or decision proposed by a board
22 that is under the regulatory officer's purview and meets the criteria
23 set forth in paragraph (1) or (2) of this subsection, to determine
24 whether the proposed regulation, action, or decision displaces
25 competition and, if so, whether it is consistent with and furthers or
26 promotes clearly articulated and affirmatively expressed State
27 policy or the inherent, logical, or ordinary result of that policy.

28 If it is determined as a result of that review that the proposed
29 regulation, action or decision is not consistent with and does not
30 further or promote clearly articulated and affirmatively expressed
31 State policy, or is not the inherent, logical or ordinary result of the
32 board's statutorily-delegated authority, or both, the regulatory
33 officer shall disapprove, veto, modify, amend or remand to the
34 board for the development of a factual record of the proposed
35 regulation, action or decision, as may be necessary or appropriate.

36 A proposed regulation, action, or decision shall not take effect
37 unless the regulatory officer has conducted the review authorized by
38 this section and taken such additional action as may be necessary or
39 appropriate under this section, provided that nothing in this section
40 shall be construed to create a private right of action, except as
41 provided in subsection c. of this section, or preclude any action to
42 address possible anticompetitive impacts after the proposed
43 regulation, action, or decision has taken effect. For purposes of this
44 subsection, no person licensed by the board whose action or
45 decision is under review pursuant to the protocol established
46 pursuant to this subsection shall be permitted to serve as a
47 regulatory officer's designee for the review of that board's actions
48 or decisions.

1 b. A person serving as a member of a board shall not be liable
2 in any action for damages to any person in a civil action as a result
3 of any action taken or recommendation or decision made within the
4 scope of the person's function as a member of the board which was
5 subject to review in accordance with the protocol established
6 pursuant to subsection a. of this section, unless the person acted in
7 bad faith or with malice. The Attorney General shall defend the
8 person in any civil suit and the State shall provide indemnification
9 for any damages awarded in any resulting civil action, unless the
10 person acted in bad faith or with malice.

11 c. A person may file a complaint relating to any proposed
12 regulation, action, or decision of a board that the person alleges is
13 potentially anticompetitive. The person shall file the complaint
14 with the regulatory officer who is responsible for establishing and
15 implementing the protocol to review any potentially anticompetitive
16 regulation, action, or decision proposed by the board. Within 90
17 days after the date of receipt of the complaint, the regulatory officer
18 shall:

- 19 (1) investigate the complaint;
- 20 (2) identify any remedies;
- 21 (3) if appropriate, instruct the board to respond to the complaint
22 in a specified manner; and
- 23 (4) issue a written response to the person who filed the
24 complaint.

25 d. As used in this section:

26 "Active market participant" means a member of a board who:

- 27 (1) is licensed or certified by the board; or
- 28 (2) owns or shares ownership in a business or professional
29 practice that provides any service that is subject to the regulatory
30 authority of the board.

31 "Board" means a board, committee, commission, or any other
32 entity created by law to act on behalf of the State of New Jersey to
33 license or otherwise regulate a profession or occupation in this
34 State.

35 "Regulatory officer" means:

- 36 (1) the Attorney General or the Attorney General's designee or
37 designees, in the case of the boards located within the Division of
38 Consumer Affairs in the Department of Law and Public Safety; or
- 39 (2) the commissioner or the commissioner's designee or
40 designees, in the case of a board located within another principal
41 department of the Executive Branch of State government.

42

43 2. This act shall take effect immediately.

44

45

46

STATEMENT

47

48 This bill directs a regulatory officer to establish and implement a
49 protocol, consistent with the provisions of the bill, applicable to the

1 review and approval of regulations, actions and decisions proposed by
2 any board under the regulatory officer's purview to determine whether
3 the proposed regulation, action, or decision has the potential to
4 displace competition, and, if so, whether it is consistent with and
5 furthers or promotes clearly articulated and affirmatively expressed
6 State policy or the inherent, logical, or ordinary result of that policy.

7 The bill defines "board" as board, committee, commission, or any
8 other entity created by law to act on behalf of the State of New
9 Jersey to license or otherwise regulate a profession or occupation in
10 this State. "Regulatory officer" means the Attorney General or the
11 Attorney General's designee or designees, in the case of the boards
12 located within the Division of Consumer Affairs in the Department
13 of Law and Public Safety, or the commissioner or the
14 commissioner's designee or designees, in the case of a board
15 located within another principal department of the Executive
16 Branch of State government.

17 The bill also provides that, if it is determined as a result of a
18 regulatory officer's review that a board's proposed regulation, action,
19 or decision is not consistent with and does not further or promote
20 clearly articulated and affirmatively expressed State policy, or is not
21 the inherent, logical or ordinary result of the board's statutorily-
22 delegated authority, or both, the regulatory officer must disapprove,
23 veto, modify, amend, or remand to the board for the development of a
24 factual record of the proposed regulation, action or decision, as may be
25 necessary or appropriate.

26 Under the provisions of the bill, a board's proposed regulation,
27 action, or decision will not take effect unless the regulatory officer has
28 conducted the review authorized by the provisions of the bill and taken
29 additional action as may be necessary or appropriate under the bill,
30 provided that no provision of the bill is to be construed to create a
31 private right of action or preclude any action to address possible
32 anticompetitive impacts after the proposed regulation, action, or
33 decision has taken effect. The bill provides that no person licensed by
34 the board whose action or decision is under review pursuant to the
35 protocol is permitted to serve as a regulatory officer's designee for the
36 review of that board's actions or decisions.

37 The bill provides that a person serving as a member of a board will
38 not be liable in any action for damages to any person in a civil action
39 as a result of any action taken or recommendation or decision made
40 within the scope of the person's function as a member of the board
41 which was subject to review in accordance with the protocol
42 established pursuant to the provisions of the bill, unless the person
43 acted in bad faith or with malice. The Attorney General must defend
44 the person in any civil suit and the State must provide indemnification
45 for any damages awarded in any resulting civil action, unless the
46 person acted in bad faith or with malice.

47 Finally, the bill permits any person to file a complaint relating to
48 any proposed regulation, action, or decision of a board that the
49 person alleges is potentially anticompetitive. The person must file

1 the complaint with the regulatory officer who is responsible for
2 establishing and implementing the protocol to review any
3 potentially anticompetitive regulation, action, or decision proposed
4 by the board. Within 90 days after the date of receipt of the
5 complaint, the regulatory officer must investigate the complaint;
6 identify any remedies; if appropriate, instruct the board to respond
7 to the complaint in a specified manner; and issue a written response
8 to the person who filed the complaint.

9 The bill is intended to maintain antitrust immunity for
10 professional and occupational licensing boards consistent with
11 federal law, specifically the decision of the United States Supreme
12 Court in North Carolina State Board of Dental Examiners v. Federal
13 Trade Commission. In that decision, the Court held that if a
14 controlling number of a board's members are active market
15 participants in the profession or occupation the board regulates,
16 then the board may invoke state-action antitrust immunity only if it
17 is subject to active supervision by the state. The provisions of this
18 bill direct the appropriate regulatory officer to provide active
19 supervision of any professional or occupational licensing board that
20 is subject to the provisions of the bill.

ASSEMBLY REGULATED PROFESSIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2810

with committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2018

The Assembly Regulated Professions Committee reports favorably and with committee amendments Assembly Bill No. 2810.

This bill, with committee amendments, directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer would also determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill defines “board” as board, committee, commission, or any other entity created by law to act on behalf of the State of New Jersey to license or otherwise regulate a profession or occupation in this State. “Regulatory officer” means the Attorney General or the Attorney General’s designee or designees, in the case of the boards located within the Division of Consumer Affairs in the Department of Law and Public Safety, or the commissioner or the commissioner’s designee or designees, in the case of a board located within another principal department of the Executive Branch of State government.

The bill also provides that if a regulatory officer determines, as a result of the officer’s review, that a board’s proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board’s statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

Under the provisions of the bill, a board’s proposed regulation, action, or decision will not take effect unless the regulatory officer has conducted the review authorized by the provisions of the bill and taken additional action as may be necessary or appropriate under the bill, provided that no provision of the bill is to be construed to create a private right of action or preclude any action to address possible

anticompetitive impacts after the proposed regulation, action, or decision has taken effect. The bill provides that no person licensed by the board whose action or decision is under review pursuant to the protocol is permitted to serve as a regulatory officer's designee for the review of that board's actions or decisions.

The bill provides that a person serving as a member of a board will not be liable in any action for damages to any person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established pursuant to the provisions of the bill, unless the person acted in bad faith or with malice. The Attorney General must defend the person in any civil suit and the State must provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits any person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

- (1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or
- (2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The provisions of this bill direct the appropriate regulatory officer to provide active supervision of any professional or occupational licensing board that is subject to the provisions of the bill.

Committee Amendments:

The committee amendments revise the provisions related to the public complaint process to prevent redundant review and clarify that a regulatory officer is to advise the complainant of the regulatory officer's determination.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2810

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 2810 (1R).

Assembly Bill No. 2810 (1R) directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer is also required to determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill defines “board” as board, committee, commission, or any other entity created by law to act on behalf of the State of New Jersey to license or otherwise regulate a profession or occupation in this State. “Regulatory officer” means the Attorney General or the Attorney General’s designee or designees, in the case of the boards located within the Division of Consumer Affairs in the Department of Law and Public Safety, or the commissioner or the commissioner’s designee or designees, in the case of a board located within another principal department of the Executive Branch of State government.

The bill also provides that if a regulatory officer determines, as a result of the officer’s review, that a board’s proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board’s statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

Under the provisions of the bill, a board’s proposed regulation, action, or decision will not take effect unless the regulatory officer has conducted the review authorized by the provisions of the bill and taken additional action as may be necessary or appropriate under the bill, provided that no provision of the bill is to be construed to create a private right of action or preclude any action to address possible anticompetitive impacts after the proposed regulation, action, or

decision has taken effect. The bill provides that no person licensed by the board whose action or decision is under review pursuant to the protocol is permitted to serve as a regulatory officer's designee for the review of that board's actions or decisions.

The bill provides that a person serving as a member of a board will not be liable in any action for damages to any person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established pursuant to the provisions of the bill, unless the person acted in bad faith or with malice. The Attorney General is required to defend the person in any civil suit and the State is required to provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits any person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

(1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or

(2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The provisions of this bill direct the appropriate regulatory officer to provide active supervision of any professional or occupational licensing board that is subject to the provisions of the bill.

As reported, this bill is identical to Senate No. 2963, as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards.

The OLS estimates that there may be an increase in State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the State already oversees regulation proposals and adoptions, there may be additional staff and related administrative expenses required to assure regulatory proposals and other board actions are not anti-competitive in effect.

The OLS further estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 2810

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: NOVEMBER 2, 2018

SUMMARY

- Synopsis:** Requires active supervision of certain professional and occupational licensing boards.
- Type of Impact:** Annual State Expenditure Increase.
- Agencies Affected:** Department of Law and Public Safety; other Executive Branch departments with professional and occupational boards.

Office of Legislative Services Estimate

Fiscal Impact	
State Cost	Indeterminate Annual Increase

- The Office of Legislative Services (OLS) anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards.
- The OLS estimates that there may be an increase in State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the State already oversees regulation proposals and adoptions, there may be additional staff and related administrative expenses required to assure regulatory proposals and other board actions are not anti-competitive in effect.
- The OLS further estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State.

BILL DESCRIPTION

This bill implements active supervision of professional and occupational boards by an appropriate State regulatory officer. The bill directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed

by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer would also determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill provides that if a regulatory officer determines, as a result of the officer's review, that a board's proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board's statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

The bill also provides that a person serving as a member of a board will not be liable in any action for damages to a person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established under the bill, unless the person acted in bad faith or with malice. The Attorney General would defend the person in any civil suit and the State would provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits a person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

(1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or

(2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The bill would protect board members from being personally sued for board actions by directing State regulatory officers to provide active supervision of professional boards.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards. The OLS estimates that there may be increased State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the

State already oversees regulation proposals and adoptions, there may be additional staff and related administrative expenses, required to assure that regulatory proposals and other board actions are not anti-competitive in effect. The OLS also estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State. Without additional information, the OLS is unable to determine the cost of implementing the bill or project the frequency and cost of claims against board members.

The OLS estimates that there may be additional costs associated with a regulatory officer's initial review of a board's proposed regulation, action or decision, and an additional cost if a determination would result in disapproving, vetoing, modifying, amending, or remanding to the board for development of a factual record of the proposed regulation, action or decision, as necessary or appropriate. This review may rely on existing staff and resources, but this will likely differ among the overseeing State entities. There are two scenarios in which an additional review by a regulatory officer would be required, due to a complaint alleging a proposal is anticompetitive: (1) when a regulatory officer determines the proposal was not initially reviewed; or (2) if the complaint provides new information that was not considered during the initial review. In response to these scenarios, the regulatory officer is authorized to review the proposal which may lead to further action. The subsequent review and potential action would be an additional variable cost to the State, depending on each circumstance.

The indemnification of board members authorized under the bill may result in increased State expenditures; however, this may vary significantly from year to year, on a case-by-case basis. Notably, current law already requires indemnification in certain cases, and the resulting costs of expanding this protection may be absorbed within the General Fund or existing departmental budgets. For instance, under N.J.S.A.45:9-19.11, members of the State Board of Medical Examiners are not liable for any claims against them within the scope of their service to the board member if the action or recommendation was made without malice. Under this statute, the Attorney General is required to defend the person in any civil suit and the State is to provide indemnification for any damages awarded.

This bill impacts a significant number of professional and occupational licensing boards in the State. The State's "Licensed Occupations" database provides an alphabetical list of occupations that require a license in New Jersey. This database lists over 200 licensed professions, about half of which are regulated by the Division of Consumer Affairs or the Department of Law and Public Safety; other Executive Branch departments, like the Department of Environmental Protection, regulate licensed professionals with a substantive scope of practice subject to that department's purview. The division's website states that it maintains 48 professional and occupational licensing boards that oversee and regulate more than 750,000 individuals and businesses in New Jersey.

Section: Commerce, Labor and Industry

*Analyst: Amy Denholtz
Senior Research Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE, No. 2963

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 24, 2018

Sponsored by:

Senator NELLIE POU
District 35 (Bergen and Passaic)

Co-Sponsored by:

Senators Cardinale and T.Kean

SYNOPSIS

Requires active supervision of certain professional and occupational licensing boards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/16/2018)

1 AN ACT concerning the State supervision of certain professional
2 and occupational licensing boards and supplementing P.L.1978,
3 c.73 (C.45:1-14 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. a. Notwithstanding the provisions of any State law, rule, or
9 regulation to the contrary, a regulatory officer shall, in order to
10 provide antitrust immunity to a board consistent with federal law,
11 establish and implement a protocol consistent with the provisions of
12 this section applicable to the proposed regulations, actions and
13 decisions of any board under the regulatory officer's purview for
14 which:

15 (1) the majority of members are active market participants of the
16 profession or occupation regulated by that board; and

17 (2) but for a vacancy or vacancies in the membership of the
18 board, that board would otherwise have a majority of members that
19 are active market participants.

20 The regulatory officer shall review any potentially
21 anticompetitive regulation, action, or decision proposed by a board
22 that is under the regulatory officer's purview and meets the criteria
23 set forth in paragraph (1) or (2) of this subsection, to determine
24 whether the proposed regulation, action, or decision displaces
25 competition and, if so, whether it is consistent with and furthers or
26 promotes clearly articulated and affirmatively expressed State
27 policy or the inherent, logical, or ordinary result of that policy.

28 If it is determined as a result of that review that the proposed
29 regulation, action or decision is not consistent with and does not
30 further or promote clearly articulated and affirmatively expressed
31 State policy, or is not the inherent, logical or ordinary result of the
32 board's statutorily-delegated authority, or both, the regulatory
33 officer shall disapprove, veto, modify, amend or remand to the
34 board for the development of a factual record of the proposed
35 regulation, action or decision, as may be necessary or appropriate.

36 A proposed regulation, action, or decision shall not take effect
37 unless the regulatory officer has conducted the review authorized by
38 this section and taken additional action as may be necessary or
39 appropriate under this section, provided that nothing in this section
40 shall be construed to create a private right of action, except as
41 provided in subsection c. of this section, or preclude any action to
42 address possible anticompetitive impacts after the proposed
43 regulation, action, or decision takes effect. For the purposes of this
44 subsection, no person licensed by the board whose action or
45 decision is under review pursuant to the protocol established
46 pursuant to this subsection shall be permitted to serve as a
47 regulatory officer's designee for the review of that board's actions
48 or decisions.

1 b. A person serving as a member of a board shall not be liable
2 in any action for damages to any person in a civil action as a result
3 of any action taken or recommendation or decision made within the
4 scope of the person's function as a member of the board which was
5 subject to review in accordance with the protocol established
6 pursuant to subsection a. of this section, unless the person acted in
7 bad faith or with malice. The Attorney General shall defend the
8 person in any civil suit and the State shall provide indemnification
9 for any damages awarded in any resulting civil action, unless the
10 person acted in bad faith or with malice.

11 c. A person may file a complaint relating to any proposed
12 regulation, action, or decision of a board that the person alleges is
13 potentially anticompetitive. The regulatory officer who is
14 responsible for establishing or implementing the protocol to review
15 any potentially anticompetitive regulation, action, or decision
16 proposed by the board shall review the complaint to determine
17 whether the proposed regulation, action, or decision was reviewed
18 pursuant to subsection a. of this section. The regulatory officer
19 shall review the proposed regulation, action, or decision, pursuant
20 to the protocol established in subsection a. of this section, if:

21 (1) the regulatory officer determines that the proposed
22 regulation, action, or decision was not reviewed pursuant to
23 subsection a. of this section but is potentially anticompetitive; or

24 (2) the complaint provides new information that was not
25 previously considered during the regulatory officer's review of the
26 proposed regulation, action, or decision. In this case, the regulatory
27 officer shall take the new information into account and may
28 continue to rely on the outcome of the prior review or may take
29 action to disapprove, veto, modify, amend or remand to the board
30 for the development of a factual record of the proposed regulation,
31 action, or decision, as may be necessary or appropriate. The
32 regulatory officer shall issue a written response to the person who
33 filed the complaint advising that person accordingly.

34 d. As used in this section:

35 "Active market participant" means a member of a board who:

36 (1) is licensed or certified by the board; or

37 (2) owns or shares ownership in a business or professional
38 practice that provides any service that is subject to the regulatory
39 authority of the board.

40 "Board" means a board, committee, commission, or any other
41 entity created by law to act on behalf of the State of New Jersey to
42 license or otherwise regulate a profession or occupation in this
43 State.

44 "Regulatory officer" means:

45 (1) the Attorney General or the Attorney General's designee or
46 designees, in the case of the boards located within the Division of
47 Consumer Affairs in the Department of Law and Public Safety; or

1 (2) the commissioner or the commissioner's designee or
2 designees, in the case of a board located within another principal
3 department of the Executive Branch of State government.

4

5 2. This act shall take effect immediately.

6

7

8

STATEMENT

9

10 This bill directs a regulatory officer to establish and implement a
11 protocol for the review and approval of regulations, actions and
12 decisions proposed by a professional board to determine whether
13 the proposed regulation, action, or decision has the potential to
14 displace competition. The regulatory officer would also determine
15 whether a proposal is consistent with and furthers or promotes
16 clearly articulated and affirmatively expressed State policy or the
17 inherent, logical, or ordinary result of that policy.

18 The bill defines "board" as a board, committee, commission, or
19 any other entity created by law to act on behalf of the State of New
20 Jersey to license or otherwise regulate a profession or occupation in
21 this State. "Regulatory officer" means the Attorney General or the
22 Attorney General's designee or designees, in the case of the boards
23 located within the Division of Consumer Affairs in the Department
24 of Law and Public Safety, or the commissioner or the
25 commissioner's designee or designees, in the case of a board
26 located within another principal department of the Executive
27 Branch of State government.

28 The bill also provides that if a regulatory officer determines, as a
29 result of the officer's review, that a board's proposed regulation,
30 action, or decision is not consistent with and does not further or
31 promote clearly articulated and affirmatively expressed State
32 policy, or is not the inherent, logical or ordinary result of the
33 board's statutorily-delegated authority, or both, the regulatory
34 officer must disapprove, veto, modify, amend, or remand to the
35 board for the development of a factual record of the proposed
36 regulation, action or decision, as may be necessary or appropriate.

37 Under the provisions of the bill, a board's proposed regulation,
38 action, or decision will not take effect unless the regulatory officer
39 has conducted the review authorized by the provisions of the bill
40 and taken additional action as may be necessary or appropriate
41 under the bill, provided that no provision of the bill is to be
42 construed to create a private right of action or preclude any action
43 to address possible anticompetitive impacts after the proposed
44 regulation, action, or decision has taken effect. The bill provides
45 that no person licensed by the board whose action or decision is
46 under review pursuant to the protocol is permitted to serve as a
47 regulatory officer's designee for the review of that board's actions
48 or decisions.

1 The bill provides that a person serving as a member of a board
2 will not be liable in any action for damages to any person in a civil
3 action as a result of any action taken or recommendation or decision
4 made within the scope of the person's function as a member of the
5 board which was subject to review in accordance with the protocol
6 established pursuant to the provisions of the bill, unless the person
7 acted in bad faith or with malice. The Attorney General must
8 defend the person in any civil suit and the State must provide
9 indemnification for any damages awarded in any resulting civil
10 action, unless the person acted in bad faith or with malice.

11 Finally, the bill permits any person to file a complaint relating to
12 a proposed regulation, action, or decision of a board that the person
13 alleges is potentially anticompetitive. The regulatory officer would
14 review the complaint if:

15 (1) the regulation, action, or decision was not reviewed pursuant
16 to the bill's provisions but is potentially anticompetitive; or

17 (2) the complaint provides new information that was not
18 previously considered during the review, in which case the
19 regulatory officer would take this information into account.

20 The bill is intended to maintain antitrust immunity for
21 professional and occupational licensing boards consistent with
22 federal law, specifically the decision of the United States Supreme
23 Court in North Carolina State Board of Dental Examiners v. Federal
24 Trade Commission. In that decision, the Court held that if a
25 controlling number of a board's members are active market
26 participants in the profession or occupation the board regulates,
27 then the board may invoke state-action antitrust immunity only if it
28 is subject to active supervision by the state. The provisions of this
29 bill direct the appropriate regulatory officer to provide active
30 supervision of any professional or occupational licensing board that
31 is subject to the provisions of the bill.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 2963

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2018

The Senate Commerce Committee reports favorably Senate Bill No. 2963.

This bill directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer would also determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill defines “board” as a board, committee, commission, or any other entity created by law to act on behalf of the State of New Jersey to license or otherwise regulate a profession or occupation in this State. “Regulatory officer” means the Attorney General or the Attorney General’s designee or designees, in the case of the boards located within the Division of Consumer Affairs in the Department of Law and Public Safety, or the commissioner or the commissioner’s designee or designees, in the case of a board located within another principal department of the Executive Branch of State government.

The bill also provides that if a regulatory officer determines, as a result of the officer’s review, that a board’s proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board’s statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

Under the provisions of the bill, a board’s proposed regulation, action, or decision will not take effect unless the regulatory officer has conducted the review authorized by the provisions of the bill and taken additional action as may be necessary or appropriate under the bill, provided that no provision of the bill is to be construed to create a private right of action or preclude any action to address possible anticompetitive impacts after the proposed regulation, action, or decision has taken effect. The bill provides that no person licensed by the board whose action or decision is

under review pursuant to the protocol is permitted to serve as a regulatory officer's designee for the review of that board's actions or decisions.

The bill provides that a person serving as a member of a board will not be liable in any action for damages to any person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established pursuant to the provisions of the bill, unless the person acted in bad faith or with malice. The Attorney General must defend the person in any civil suit and the State must provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits any person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

- (1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or
- (2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The provisions of this bill direct the appropriate regulatory officer to provide active supervision of any professional or occupational licensing board that is subject to the provisions of the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2963

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2963.

Senate Bill No. 2963 directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer is also required to determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill defines “board” as board, committee, commission, or any other entity created by law to act on behalf of the State of New Jersey to license or otherwise regulate a profession or occupation in this State. “Regulatory officer” means the Attorney General or the Attorney General’s designee or designees, in the case of the boards located within the Division of Consumer Affairs in the Department of Law and Public Safety, or the commissioner or the commissioner’s designee or designees, in the case of a board located within another principal department of the Executive Branch of State government.

The bill also provides that if a regulatory officer determines, as a result of the officer’s review, that a board’s proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board’s statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

Under the provisions of the bill, a board’s proposed regulation, action, or decision will not take effect unless the regulatory officer has conducted the review authorized by the provisions of the bill and taken additional action as may be necessary or appropriate under the bill, provided that no provision of the bill is to be construed to create a private right of action or preclude any action to address possible anticompetitive impacts after the proposed regulation, action, or decision has taken effect. The bill provides that no person licensed by the board whose action or decision is under review pursuant to the

protocol is permitted to serve as a regulatory officer's designee for the review of that board's actions or decisions.

The bill provides that a person serving as a member of a board will not be liable in any action for damages to any person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established pursuant to the provisions of the bill, unless the person acted in bad faith or with malice. The Attorney General is required to defend the person in any civil suit and the State is required to provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits any person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

- (1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or
- (2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The provisions of this bill direct the appropriate regulatory officer to provide active supervision of any professional or occupational licensing board that is subject to the provisions of the bill.

As reported, this bill is identical to Assembly Bill No. 2810 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards.

The OLS estimates that there may be an increase in State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the State already oversees

regulation proposals and adoptions, there may be additional staff and related administrative expenses required to assure regulatory proposals and other board actions are not anti-competitive in effect.

The OLS further estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2963
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: DECEMBER 12, 2018

SUMMARY

- Synopsis:** Requires active supervision of certain professional and occupational licensing boards.
- Type of Impact:** Annual State Expenditure Increase.
- Agencies Affected:** Department of Law and Public Safety; other Executive Branch departments with professional and occupational boards.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Annual Increase		

- The Office of Legislative Services (OLS) anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards.
- The OLS estimates that there may be an increase in State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the State already oversees regulation proposals and adoptions, there may be additional staff and related administrative expenses required to assure regulatory proposals and other board actions are not anti-competitive in effect.
- The OLS further estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State.

BILL DESCRIPTION

This bill implements active supervision of professional and occupational boards by an appropriate State regulatory officer. The bill directs a regulatory officer to establish and implement a protocol for the review and approval of regulations, actions and decisions proposed



by a professional board to determine whether the proposed regulation, action, or decision has the potential to displace competition. The regulatory officer would also determine whether a proposal is consistent with and furthers or promotes clearly articulated and affirmatively expressed State policy or the inherent, logical, or ordinary result of that policy.

The bill provides that if a regulatory officer determines, as a result of the officer's review, that a board's proposed regulation, action, or decision is not consistent with and does not further or promote clearly articulated and affirmatively expressed State policy, or is not the inherent, logical or ordinary result of the board's statutorily-delegated authority, or both, the regulatory officer must disapprove, veto, modify, amend, or remand to the board for the development of a factual record of the proposed regulation, action or decision, as may be necessary or appropriate.

The bill also provides that a person serving as a member of a board will not be liable in any action for damages to a person in a civil action as a result of any action taken or recommendation or decision made within the scope of the person's function as a member of the board which was subject to review in accordance with the protocol established under the bill, unless the person acted in bad faith or with malice. The Attorney General would defend the person in any civil suit and the State would provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

Finally, the bill permits a person to file a complaint relating to a proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer would review the complaint if:

(1) the regulation, action, or decision was not reviewed pursuant to the bill's provisions but is potentially anticompetitive; or

(2) the complaint provides new information that was not previously considered during the review, in which case the regulatory officer would take this information into account.

The bill is intended to maintain antitrust immunity for professional and occupational licensing boards consistent with federal law, specifically the decision of the United States Supreme Court in North Carolina State Board of Dental Examiners v. Federal Trade Commission. In that decision, the Court held that if a controlling number of a board's members are active market participants in the profession or occupation the board regulates, then the board may invoke state-action antitrust immunity only if it is subject to active supervision by the state. The bill would protect board members from being personally sued for board actions by directing State regulatory officers to provide active supervision of professional boards.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that implementing this bill will result in an indeterminate increase in State costs for any Executive Branch department overseeing a professional or occupational licensing or regulatory board. The OLS notes that the bill would especially impact the Division of Consumer Affairs and the Department of Law and Public Safety, which oversee a majority of these boards. The OLS estimates that there may be increased State costs associated with implementing the protocol for reviewing board regulations, actions and decisions. While the

State already oversees regulation proposals and adoptions, there may be additional staff and related administrative expenses, required to assure that regulatory proposals and other board actions are not anti-competitive in effect. The OLS also estimates that the defense of board actions and indemnification of board members will be an ongoing cost sustained by the State. Without additional information, the OLS is unable to determine the cost of implementing the bill or project the frequency and cost of claims against board members.

The OLS estimates that there may be additional costs associated with a regulatory officer's initial review of a board's proposed regulation, action or decision, and an additional cost if a determination would result in disapproving, vetoing, modifying, amending, or remanding to the board for development of a factual record of the proposed regulation, action or decision, as necessary or appropriate. This review may rely on existing staff and resources, but this will likely differ among the overseeing State entities. There are two scenarios in which an additional review by a regulatory officer would be required, due to a complaint alleging a proposal is anticompetitive: (1) when a regulatory officer determines the proposal was not initially reviewed; or (2) if the complaint provides new information that was not considered during the initial review. In response to these scenarios, the regulatory officer is authorized to review the proposal which may lead to further action. The subsequent review and potential action would be an additional variable cost to the State, depending on each circumstance.

The indemnification of board members authorized under the bill may result in increased State expenditures; however, this may vary significantly from year to year, on a case-by-case basis. Notably, current law already requires indemnification in certain cases, and the resulting costs of expanding this protection may be absorbed within the General Fund or existing departmental budgets. For instance, under N.J.S.A.45:9-19.11, members of the State Board of Medical Examiners are not liable for any claims against them within the scope of their service to the board member if the action or recommendation was made without malice. Under this statute, the Attorney General is required to defend the person in any civil suit and the State is to provide indemnification for any damages awarded.

This bill impacts a significant number of professional and occupational licensing boards in the State. The State's "Licensed Occupations" database provides an alphabetical list of occupations that require a license in New Jersey. This database lists over 200 licensed professions, about half of which are regulated by the Division of Consumer Affairs or the Department of Law and Public Safety; other Executive Branch departments, like the Department of Environmental Protection, regulate licensed professionals with a substantive scope of practice subject to that department's purview. The division's website states that it maintains 48 professional and occupational licensing boards that oversee and regulate more than 750,000 individuals and businesses in New Jersey.

Section: *Law and Public Safety*

Analyst: *Kristin Brunner Santos*
 Senior Fiscal Analyst

Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



Newark, N.J.

Governor Murphy Takes Action on Legislation

05/10/2019

TRENTON – Today, Governor Phil Murphy signed the following bills and resolutions into law:

A2810 (Greenwald, Murphy/Pou) - Requires active supervision of certain professional and occupational licensing boards.

A4285 (Lopez, Quijano, Armato/Vitale, Singleton) - Requires Commissioner of Health to develop voluntary registry to collect cancer incidence data from firefighters.

A4416 (Swain, Karabinchak, Timberlake/Kean, Greenstein) - Prohibits sale or distribution of products containing asbestos.

A4500 (Verrelli, Mejia, Speight/Ruiz, Greenstein) - Directs NJ State Council on Arts to create and disseminate best practices guide for at-risk youth arts programs; requires council to assist government entities creating programs that adopt best practices.

A4578 (Land, Andrzejczak, McKeon/Smith, Greenstein) - Makes supplemental appropriation of \$50 million from General Fund to DEP and adds language provisions concerning use of certain environmental settlement monies for natural resource restoration projects.

A4612 (Jimenez, Mejia, Giblin/Cryan) - Codifies State-specific exam requirement for land surveyor license.

A4799 (Lopez, Coughlin, Benson/Vitale, Ruiz) - Permits self-administration of hydrocortisone sodium succinate by students for adrenal insufficiency and requires that school districts and nonpublic schools establish policy for emergency administration of medication.

A5034 (Pinkin/Smith) - Authorizes sale and conveyance of certain State-owned real property in Stafford Township, Ocean County to US Fish and Wildlife Service.

S52 (Singleton, Gill/Caputo, Webber, Murphy) - Requires disclosure of breach of security of online account.

S455 (Addiego, Singleton/Murphy, Dancer, Rooney) - Requires disclosure of identifying information prior to sale of horse at auction.

S515 (Kean, Sarlo/Munoz, Johnson, Bucco) - Exempts sales of certain materials used in industrial sand casting processes from sales and use tax.

S542 (Oroho, Singleton/Tucker, Wirths, Space) - Designates High Point State Park as High Point State Park and New Jersey Veterans Memorial.

S604 (Smith/Pinkin) - Provides that electric power supplier license issued by BPU may be renewed without expiring if certain conditions are met.

S605 (Smith/Pinkin, McKeon) - Provides that natural gas supplier license issued by BPU may be renewed without expiring if certain conditions are met.

S875 (Sweeney, Greenstein/Vainieri Huttle, Munoz, Murphy) - Establishes the "Sexual Assault Victim's Bill of Rights."

S1729 (Thompson, Quijano/Jones, Barclay) - Designates Streptomyces griseus as New Jersey State Microbe.

S2676 (Bucco, Lagana/Schaer, Calabrese, Tully) - Requires boards of education and nonpublic schools to provide law enforcement authorities with copies of blueprints and maps of schools and school grounds.

S2707 (Ruiz, Madden/Lampitt, Vainieri Huttle, Armato) - Establishes task force within DOE on prevention of sexual abuse of children.

S2709 (Ruiz, Madden/Mukherji, Lampitt, Chiaravalloti, Vainieri Huttle, Armato) - Provides that certain persons who commit act of sexual penetration or sexual contact with students who are at least 18 but less than 22 years old are guilty of sexual assault or criminal sexual assault.

S2711 (Ruiz, Madden/Lampitt, Vainieri Huttle, Jones) - Mandates child abuse and sexual abuse training for all candidates for teaching certification.

S2720 (Diegnan, Scutari/Johnson, Quijano, Murphy) - Requires autocycles to be insured by PIP coverage to pedestrians.

SJR101 (Gopal/Pintor Marin, Houghtaling, Downey) - Designates March 15 of each year as Peter Francisco Day in New Jersey.

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Governor Phil Murphy

Statewide

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Key Initiatives

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