

HOUSE BILL 288

J2

8lr2260

By: **Delegate Morhaim**

Introduced and read first time: January 22, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Health Occupations – Power of Secretary of Health – Boards and Commissions**

3 FOR the purpose of authorizing the Secretary of Health to vacate or modify for a certain
4 purpose decisions or determinations made by a health occupations board or
5 commission regarding disciplinary action taken against an individual licensed or
6 certified by the board or commission; making conforming changes; and generally
7 relating to the power of the Secretary of Health over health occupations boards and
8 commissions.

9 BY repealing and reenacting, with amendments,
10 Article – Health Occupations
11 Section 1–203
12 Annotated Code of Maryland
13 (2014 Replacement Volume and 2017 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article – State Government
16 Section 8–205(b)(5) and 8–205.1(a)
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2017 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
20 That the Laws of Maryland read as follows:

21 **Article – Health Occupations**

22 1–203.

23 (a) Except as provided in [subsection (c)] **SUBSECTIONS (B) AND (D)** of this
24 section, the power of the Secretary over plans, proposals, and projects of units in the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Department does not include the power to disapprove or modify any decision or
2 determination that a board or commission established under this article makes under
3 authority specifically delegated by law to the board or commission.

4 **(B) THE SECRETARY MAY VACATE OR MODIFY TO REDUCE THE SEVERITY OF**
5 **ANY DECISION OR DETERMINATION MADE BY A BOARD OR COMMISSION**
6 **ESTABLISHED UNDER THIS ARTICLE REGARDING DISCIPLINARY ACTION TAKEN**
7 **AGAINST AN INDIVIDUAL LICENSED OR CERTIFIED BY THE BOARD OR COMMISSION.**

8 **[(b)] (C)** The power of the Secretary to transfer staff or functions of units in the
9 Department does not apply to any staff of a board or commission, established under this
10 article, or to any functions that pertain to licensing, disciplinary, or enforcement authority,
11 or to any other authority specifically delegated by law to a board or commission.

12 **[(c)] (D)** (1) Notwithstanding §§ 8–205(b)(5) and 8–205.1 of the State
13 Government Article and except as provided in subsection **[(d)] (E)** of this section, the
14 Secretary and the Office of Administrative Hearings, in consultation with stakeholders and
15 other interested parties, shall adopt regulations for the supervision of each board or
16 commission that is composed in whole or in part of individuals participating in the
17 occupation or profession regulated by the board or commission, including the review by the
18 Office of Administrative Hearings described under this subsection, in order to:

19 (i) Prevent unreasonable anticompetitive actions by the board or
20 commission; and

21 (ii) Determine whether the actions of the board or commission
22 further a clearly articulated State policy to displace competition in the regulated market.

23 (2) In accordance with regulations adopted under this subsection, the
24 Office of Administrative Hearings:

25 (i) Shall review a decision or action of a board or commission that is
26 referred to the Office in order to determine whether the decision or action furthers a clearly
27 articulated State policy to displace competition in the regulated market;

28 (ii) May not approve a decision or action of a board or commission
29 that does not further a clearly articulated State policy to displace competition in the
30 regulated market; and

31 (iii) In conjunction with the Office of the Attorney General, shall
32 establish a process:

33 1. By which the Office of Administrative Hearings reviews
34 decisions or actions of a board or commission;

35 2. That is independent of the process by which the Office of

1 Administrative Hearings hears adjudicated, contested cases; and

2 3. That includes:

3 A. The types of decisions or actions of a board or commission
4 that may be referred to the Office of Administrative Hearings for review;

5 B. Qualifications and specialized training requirements for
6 administrative law judges conducting reviews as required under this subsection;

7 C. Checks for identification and management of potential
8 conflicts when the Office of Administrative Hearings conducts a contested case hearing in
9 accordance with Title 10, Subtitle 2 of the State Government Article; and

10 D. Appropriate standards and guidelines for conducting
11 reviews as required under this subsection.

12 (3) A board or commission may not implement a decision or a final action
13 of the board or commission until after the Office of Administrative Hearings has conducted
14 the review required under this subsection.

15 (4) The process specified under paragraph (2)(iii) of this subsection shall
16 require the Office of Administrative Hearings to:

17 (i) Review the merits of the decision or action of a board or
18 commission;

19 (ii) Assess whether the decision or action furthers a clearly
20 articulated State policy to displace competition in the regulated market; and

21 (iii) Issue expeditiously a written decision approving, disapproving,
22 or modifying the decision or action or remanding the decision or action back to the board or
23 commission for further review.

24 (5) The decision or action implemented by a board or commission shall
25 comply with the written decision of the Office of Administrative Hearings.

26 (6) The Office of Administrative Hearings may not authorize an
27 administrative law judge to review the decision or action if the judge is appointed by, under
28 the oversight of, or a member of a board or commission whose action is the subject of review.

29 (7) Each board or commission shall be responsible for the costs associated
30 with the review by the Office of Administrative Hearings of decisions or actions of the
31 respective board or commission.

32 [(d)] (E) Subsection [(c)] (D) of this section does not apply to:

- 1 (1) A decision or determination of a board or commission concerning
2 ministerial acts;
- 3 (2) The internal operations of a board or commission;
- 4 (3) Investigations;
- 5 (4) Charges; and
- 6 (5) As it relates to an individual regulated by a board or commission:
- 7 (i) Consent orders; and
- 8 (ii) Letters of surrender.

9 **Article – State Government**

10 8–205.

11 (b) A secretary shall:

12 (5) notwithstanding any other provision of law, and except as provided in
13 ~~§ 1–203(c)~~ **§ 1–203(D)** of the Health Occupations Article, be responsible for the
14 supervision of the units of State government within the secretary’s jurisdiction that are
15 composed in whole or in part of individuals participating in the occupation or profession
16 regulated by the units;

17 8–205.1.

18 (a) Except as provided in ~~§ 1–203(c)~~ **§ 1–203(D)** of the Health Occupations
19 Article, the secretary of each principal department shall supervise each unit of State
20 government within the secretary’s jurisdiction that is composed in whole or in part of
21 individuals participating in the occupation or profession regulated by the unit in order to:

22 (1) prevent unreasonable anticompetitive actions by the unit; and

23 (2) determine whether the decisions and actions of the unit further a
24 clearly articulated State policy to displace competition in the regulated market.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2018.