

SENATE FILE NO. SF0055

Licensure board powers.

Sponsored by: Senator(s) Scott

A BILL

for

1 AN ACT relating to professions and occupations; providing
2 for active oversight of certain boards and commissions as
3 specified; providing additional duties for the state health
4 officer and the office of the attorney general; providing
5 for additional study of issues resulting from the United
6 States Supreme Court decision in North Carolina Board of
7 Dental Examiners v. Federal Trade Commission, 135 S. Ct.
8 1101 (2015) and related court decisions; and providing for
9 an effective date.

10

11 *Be It Enacted by the Legislature of the State of Wyoming:*

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13 **Section 1.** W.S. 33-1-304 is created to read:

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15 **33-1-304. Restrictions on regulation.**

16

1 (a) A board or commission is subject to this section
2 if a controlling number of the decision making members of
3 the board are active members of a profession or occupation
4 regulated, including any related profession or related
5 auxiliary or assistive profession, regulated by the board
6 or commission. If subject to this section, a board shall:

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8 (i) Not take any action to prohibit any other
9 person from performing, for compensation or otherwise, any
10 actions within the scope of practice of the profession
11 except as explicitly authorized to do so by statute. If
12 the action is not explicitly authorized by statute the
13 board shall contact the office of the attorney general
14 before taking the action and shall not act on the matter
15 without a written affirmative decision of that office
16 confirming the authority of the board to act;

17

18 (ii) Deny licenses, revoke or limit licenses, or
19 otherwise discipline members of the professions it
20 regulates as provided by statute except that if the board
21 is relying on a general provision, including but not
22 limited to protection of the public health or safety or
23 unprofessional conduct or good moral character, that is not

1 further specifically defined in statute, the board may take
2 formal action only after first obtaining a written opinion
3 from its supervising official that the professional
4 member's alleged actions, if proved, are a threat to the
5 public health or safety, or needed for the economic
6 protection of the consumer.

7

8 (b) The supervising officials for boards shall be:

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10 (i) For issues involving public health or
11 safety, the state health officer;

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13 (ii) For issues related to consumer economic
14 protection, and any other issue not covered in paragraph
15 (i) of this subsection, the assistant attorney general
16 within the office of the attorney general overseeing
17 consumer protection, or other assistant attorney general as
18 designated by the attorney general.

19

20 (c) The opinion of the supervising official is not
21 required for actions authorized pursuant to W.S.
22 33-1-303(a)(iii).

23

1 (d) No charge or required reimbursement to the
2 general fund shall be made to any account supporting a
3 board for seeking or obtaining an opinion from a
4 supervising official pursuant to this section or for
5 consulting, on issues relating to this section with the
6 staff of the attorney general's office assigned to advise
7 the board.

8
9 (e) The purpose of this section is to meet the active
10 supervision requirement necessary for a board to invoke
11 state anti-trust immunity under the decision in North
12 Carolina Board of Dental Examiners v. Federal Trade
13 Commission, 135 S. Ct. 1101 (2015) and related supreme
14 court decisions. The provisions of this section shall be
15 construed in a manner to meet that purpose, including, to
16 the extent necessary, construing this section to supersede
17 any conflicting statute governing the operation of a
18 specific board subject to this section.

19
20 (f) As used in this section:

21
22 (i) "Active member" means a board member who is:

23

1 (A) Licensed by the board; or

2

3 (B) Provides any service that is subject to
4 the regulatory authority of the board.

5

6 (ii) "Board" means a board or commission
7 regulating an occupation or profession under this title, or
8 created by W.S. 11-25-101, 21-2-801, 23-2-408 or 26-10-101.

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10 **Section 2.** W.S. 9-1-603(a) by creating a new
11 paragraph (ix), 33-1-301(b), 33-1-303(a)(iii) and
12 35-1-240(a) by creating a new paragraph (xxiii) are amended
13 to read:

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15 **9-1-603. Duties generally; retention of qualified**
16 **practicing attorneys; matters in which county or state is**
17 **party or has interest; assistance to county and district**
18 **attorneys in felony trials.**

19

20 (a) The attorney general shall:

21

22 (ix) Designate an attorney or attorneys in his
23 office to act as a supervising official and to carry out

1 the duties of the same, all in accordance with W.S.
2 33-1-304.

3

4 **33-1-301. Purpose and scope.**

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6 (b) The provisions of this article supplement the
7 statutes related to the specific board and profession
8 regulated. If the statutes governing a board or regulated
9 profession are silent or unclear the provisions of this
10 article shall be applied. Except as provided in W.S.
11 33-1-304, the statutes governing the operation or creation
12 of a specific board or commission are effective and
13 controlling to the extent they conflict with a provision of
14 this article.

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16 **33-1-303. Powers of licensure boards.**

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18 (a) Except as otherwise specifically provided by
19 statute, a board authorized to establish examination,
20 inspection, permit or license fees for any profession or
21 occupation regulated under this title or under W.S.
22 11-25-105, 21-2-802 or 23-2-414 may:

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1 (iii) Seek injunctive relief to prevent
2 individuals from practicing without a license while holding
3 themselves out to be a member of the profession.

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5 **35-1-240. Powers and duties.**

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7 (a) The department of health, through the state
8 health officer, or under his direction and supervision,
9 through the other employees of the department, shall have
10 and exercise the following powers and duties:

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12 (xxiii) Those assigned as a supervising official
13 under W.S. 33-1-304.

14
15 **Section 3.** The management council shall assign a
16 joint interim legislative committee the task of determining
17 what further changes, if any, should be made to modify
18 Wyoming laws governing the licensing of professions and
19 occupations in light of the United States Supreme Court
20 decision in North Carolina Board of Dental Examiners v.
21 Federal Trade Commission, 135 S. Ct. 1101 (2015) and other
22 supreme court decisions relevant to this act. The council
23 shall have flexibility concerning when it assigns this task

1 and when the committee is requested to complete its task.
2 The committee shall pay particular attention to whether the
3 relevant court decisions change which professions and which
4 individuals can prescribe prescription drugs or modify
5 which drugs may be prescribed by certain professions or
6 individuals. To the extent the committee determines
7 changes to laws governing the authority of a profession or
8 individual to prescribe drugs or the extent of that
9 authority, should be made, the committee shall recommend
10 those changes in a bill or bills separate from any
11 committee sponsored bill making other changes to Wyoming
12 law pursuant to this section.

13

14 **Section 4.** This act is effective immediately upon
15 completion of all acts necessary for a bill to become law
16 as provided by Article 4, Section 8 of the Wyoming
17 Constitution.

18

19 (END)