

CHAPTER 112

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

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

C.45:1-17.1 Supervision of certain professional, occupational licensing boards; definitions.

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

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

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

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

If it is determined as a result of that review that the 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 shall 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.

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

b. A person serving as a member of a board shall 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 subsection a. of this section, unless the person acted in bad faith or with malice. The Attorney General shall defend the person in any civil suit and the State shall provide indemnification for any damages awarded in any resulting civil action, unless the person acted in bad faith or with malice.

c. A person may file a complaint relating to any proposed regulation, action, or decision of a board that the person alleges is potentially anticompetitive. The regulatory officer who is responsible for establishing or implementing the protocol to review any potentially anticompetitive regulation, action, or decision proposed by the board shall review the complaint to determine whether the proposed regulation, action, or decision was reviewed

pursuant to subsection a. of this section. The regulatory officer shall review the proposed regulation, action, or decision, pursuant to the protocol established in subsection a. of this section, if:

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

(2) the complaint provides new information that was not previously considered during the regulatory officer's review of the proposed regulation, action, or decision. In this case, the regulatory officer shall take the new information into account and may continue to rely on the outcome of the prior review or may take action to 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 regulatory officer shall issue a written response to the person who filed the complaint advising that person accordingly.

d. As used in this section:

“Active market participant” means a member of a board who:

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

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

“Board” means 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:

(1) 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

(2) 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.

2. This act shall take effect immediately.

Approved May 10, 2019.