

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 180
HOUSE BILL 71

AN ACT TO ESTABLISH THE LEGISLATIVE COMMITTEE ON NEW
LICENSING BOARDS AND A REVIEW PROCESS FOR THE CREATION OF
OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 18A.

Review of Proposals to License
New Occupations and Professions.

"§ 120-149.1. **Findings and purpose.** – The General Assembly finds that the number of licensed occupations and professions has substantially increased and that licensing boards have occasionally been established without a determination that the police power of the State is reasonably exercised by the establishment of such licensing boards.

The General Assembly further finds that by establishing criteria and procedures for reviewing proposed licensing boards, it will be better able to evaluate the need for new licensing boards. To this end, it is the purpose of this Article to assure that no new licensing board shall be established unless the following criteria are met:

- (1) The unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety or welfare, and the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) The profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Practice of the profession or occupation requires specialized skill or training;
- (4) A substantial majority of the public does not have the knowledge or experience to evaluate whether the practitioner is competent; and
- (5) The public is not effectively protected by other means; and
- (6) Licensure will not have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

"§ 120-149.2. **Definitions.** – As used in this Article:

- (1) 'Assessment report' means a report that initially describes the need for and the fiscal impact of a new licensing board.
- (2) 'Committee' means the Legislative Committee on New Licensing Boards.
- (3) 'Licensing' means a regulatory system that requires persons to meet certain qualifications before they are eligible to engage in a particular occupation or profession, but does not include a regulatory system that imposes certain qualifications as a

condition for using or advertising specified titles or descriptions in connection with a particular occupation or profession, unless the restrictions on the use and advertisement of said titles is so broad as to effectively prohibit the practitioner from engaging in the profession or occupation without meeting the qualifications.

(4) 'New licensing board' includes each of the following:

- (i) a proposed new board with licensing authority over an occupation or profession; and
- (ii) an existing board with proposed licensing authority over an occupation or profession not previously licensed by the board; provided, however, that the Committee, in reviewing a proposal to license a profession or occupation under an existing board, shall not assess the need for the continued licensing of professions and occupations already within the board's jurisdiction.

(5) 'Supplementary report' means a report that assesses the changes proposed by an amendment or committee substitute which would substantially alter a legislative proposal to create a new licensing board and for which an assessment report has already been prepared.

"§ 120-149.3. Assessment of new licensing boards. – (a) Any legislative proposal introduced in the General Assembly after the effective date of this act proposing (1) the establishment of a new licensing board, or (2) a study of the need to establish a new licensing board, shall not be eligible for consideration on the floor of either house (other than first reading) or before any committee of either house of the General Assembly until a final assessment report has been issued pursuant to G.S. 120-149.4(e), with a copy of the report accompanying the proposal in accordance with the rules of the appropriate house.

(b) If the proposal to establish a new licensing board is first contained in a legislative proposal, the sponsor shall present a copy of the legislative proposal to the Legislative Committee on New Licensing Boards which shall prepare an assessment report. If the proposal is not in the form of a legislative proposal, the person or organization seeking to establish a new licensing board may obtain an assessment report from the Committee only if a legislator requests such a report.

(c) If a legislative proposal receives a favorable report but is not ratified during the biennial session in which it is introduced, a new assessment report shall be required before the same or a substantially similar legislative proposal may be considered after first reading or by any committee during a subsequent biennial session of the General Assembly. If a proposal receives a favorable report but is not introduced as a legislative proposal, the favorable report shall expire at the adjournment of the biennial session coinciding with or following issuance of the final report.

(d) A preliminary assessment report shall be prepared and returned to the sponsor or requesting legislator as soon as possible and not later than 60 days after the Committee receives the request, provided that if the volume of requests makes preparation of all such reports impossible within that time, the Committee may extend the time for preparation of any report to a maximum of 90 days from the time the

request is received. The Committee shall not consider any request until it has received the information required by G.S. 120-149.4(a).

(e) If an amendment or committee substitute to a legislative proposal is introduced, the appropriate committee chairman, the presiding officer of the appropriate house, or the sponsor of the proposal may request a supplementary report when, in the opinion of any of them, the amendment or committee substitute substantially alters the legislative proposal. The supplementary report shall be prepared and returned to the requesting individual, and to the sponsor, within 30 days after the Committee receives the request.

(f) Each assessment report shall be designated as either preliminary, final, or supplementary and shall not constitute any part of the expression of legislative intent proposed by the formation of a new licensing board. An unfavorable final report shall not bar further consideration of the proposal on the floor or by any committee of either house.

(g) The Committee shall make all reports, including supplementary reports, available to all members of the General Assembly. At least one copy of all preliminary, final, and supplementary reports shall be maintained in the Legislative Library for public inspection.

"§ 120-149.4. Procedure and criteria to be used in preparation of assessment reports. – (a) The Legislative Committee on New Licensing Boards shall conduct an evaluation of the need for each new licensing board.

If a legislator or other person or organization is seeking to establish a new licensing board, that legislator or other person or organization shall have the burden of demonstrating to the Committee that the criteria listed in G.S. 120-149.1 are met, and furnish the Committee additional information to show:

- (1) That the unregulated practice of the occupation or profession may be hazardous to the public health, safety, or welfare;
- (2) The approximate number of people who would be regulated and the number of persons who are likely to utilize the services of the occupation or profession;
- (3) That the occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service;
- (4) That other states have regulatory provisions similar to the one proposed;
- (5) How the public will benefit from regulation of the occupation or profession;
- (6) How the occupation or profession will be regulated, including the qualifications and disciplinary proceedings to be applied to practitioners;
- (7) The purpose of the proposed regulation and whether there has been any public support for licensure of the profession or occupation;
- (8) That no other licensing board regulates similar or parallel activities;

- (9) That the educational requirements for licensure, if any, are fully justified; and
- (10) Any other information the Committee considers relevant to the proposed regulatory plan. The Committee shall adopt an appropriate form for use by applicants. The form shall contain a list of questions to be completed by the person or organization requesting the assessment report and a copy of this Article.

(b) In preparing an assessment report with respect to a legislative proposal to establish a new licensing board, the Committee shall consider, but shall not be limited to considering, the factors listed in subsection (a). The report shall analyze the effects of the new licensing board and shall include the Committee's recommendation on whether the General Assembly should approve the new licensing board. The Committee shall make specific findings in its report on each of the following:

- (1) Whether the unregulated practice of the profession or occupation can substantially harm or endanger the public health, safety, or welfare, and whether the potential for such harm is recognizable and not remote or dependent upon tenuous argument;
- (2) Whether the profession or occupation possesses qualities that distinguish it from ordinary labor;
- (3) Whether practice of the profession or occupation requires specialized skill or training;
- (4) Whether a substantial majority of the public has the knowledge or experience to evaluate the practitioner's competence;
- (5) Whether the public can be effectively protected by other means; and
- (6) Whether licensure would have a substantial adverse economic impact upon consumers of the practitioner's goods or services.

(c) The Committee may also evaluate the legislative proposal itself in terms of its clarity, conciseness, conformity with existing statutes and general principles of administrative law, and specificity of the delegation of authority to promulgate rules and set fees.

(d) The Committee shall furnish a copy of the preliminary assessment report to the requesting legislator or sponsor at least seven days prior to the Committee's final meeting on the proposal, unless the sponsor or requesting legislator waives this requirement. The requesting legislator or sponsor shall have an opportunity at the final meeting to respond to the preliminary report.

(e) The Committee shall adopt a final assessment report on the proposal at the final meeting and shall issue the report within 14 days of the issuance of the preliminary report; provided that if the Committee wishes to further review or consider the sponsor's or requesting legislator's responses to the preliminary assessment report, the final report shall be issued within 21 days of the issuance of the preliminary report. If the Committee recommends against licensure, it may suggest alternative measures for regulation of the occupation or profession.

"§ 120-149.5. **Hearings.** – (a) Before submitting a preliminary or final assessment report, the Committee may, in its discretion, hold one or more public hearings in the Legislative Building or Legislative Office Building.

(b) When assessment reports involving the same or similar occupations or professions are pending before the Committee, the Committee may consider any or all of the matters to be addressed by the reports.

"§ 120-149.6. **Legislative Committee on New Licensing Boards.** – (a) The Legislative Committee on New Licensing Boards is created to consist of a Chairman and eight members, four Senators appointed by the President of the Senate, four members of the House of Representatives appointed by the Speaker of the House and the Chairman to be appointed as provided herein.

(b) The President of the Senate shall appoint a member of the Senate as Chairman upon the effective date of this Article who shall serve a term beginning with the effective date of this Article and expiring upon the organization of the General Assembly in 1989. Thereafter, the Speaker of the House and the President of the Senate shall alternate the appointment of the Chairman to serve during each biennial session of the General Assembly. The Chairman may vote only in the event of a tie vote. The members of the Committee shall likewise serve biennial terms. If the office of Chairman or any member shall become vacant, the vacancy shall be filled for the unexpired term by the authority making the initial appointment. Five members shall constitute a quorum of the Committee.

(c) The Committee may meet on days when the members of the General Assembly are entitled to subsistence pursuant to G.S. 120-3.1. The Committee is authorized to use the facilities of the State Legislative Building and Legislative Office Building. Clerical and professional staff shall be provided by the Legislative Services Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1987.