

SENATE CONCURRENT RESOLUTION NO. 65

BY SENATOR MILLS AND REPRESENTATIVE HOFFMANN

A CONCURRENT RESOLUTION

To create and provide for the Task Force on Meaningful Oversight which shall review current law on professional healthcare licensing board oversight by the Department of Health and Hospitals and make recommendations to the legislature on laws required to ensure compliance with *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101(2015).

WHEREAS, there are twenty-five professional healthcare licensing boards statutorily created within the Department of Health and Hospitals; and

WHEREAS, the boards operate autonomously from the department with virtually no detectable oversight; and

WHEREAS, when individuals are aggrieved by actions or inactions by the boards, there is virtually no interest or opportunity for intervention by the department; and

WHEREAS, the boards are almost all comprised of members who are active market participants in the occupation that the board regulates, and are appearing before the legislature in an ever growing frequency to debate scope of practice matters that create an atmosphere of anticompetitive conduct; and

WHEREAS, the United States Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S.Ct. 1101(2015), *North Carolina v. F.T.C.* held that state professional licensing boards that are made up of the members in which they regulate cannot invoke state-action antitrust immunity if they are not subject to active supervision by the state; and

WHEREAS, the court further held that the need for supervision turns not on formal creation by the legislature of the board, but rather on the risk that active market participants will pursue private interests in restraining trade; and

WHEREAS, the court further held that when a state empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is paramount; and

WHEREAS, the key issue addressed by the court was whether there existed a state review mechanism that provided a realistic assurance that a non-sovereign actor's anticompetitive conduct promotes state policy, rather than merely that party's individual interests; and

WHEREAS, the court held that active supervision does not mean daily involvement in an agency's operation or micromanagement of every decision, but rather identified several constant requirements of active supervision: the supervisor must review the substance of an anticompetitive decision; the supervisor must have the power to veto or modify particular decisions to ensure they are in accordance with state policy and the mere potential for state supervision is not an adequate substitute for a decision by the state; and

WHEREAS, a task force is needed to review existing laws in order to ensure compliance with the court's decision in *North Carolina v. F.T.C.* to minimize exposure to antitrust claims, to review board composition to diversify membership, and to develop a structure for meaningful oversight of the boards by the department.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby establish the Task Force on Meaningful Oversight to review existing laws in order to ensure compliance with *North Carolina v. F.T.C.* to minimize exposure to antitrust claims, to review board composition to diversify membership, to develop a structure for meaningful oversight of the boards by the department and to present findings and recommendations to the legislature.

BE IT FURTHER RESOLVED that the membership of the task force shall consist of the following:

(1) The secretary of the Department of Health and Hospitals, or her designee who shall serve as chair.

(2) One representative from the Department of Justice, designated by the attorney general, who shall serve as vice chair.

(3) One representative from the Louisiana State Board of Nursing, designated by the board.

(4) One representative from the Louisiana State Board of Dentistry, designated by the board.

(5) One representative from the Louisiana State Board of Social Work Examiners, designated by the board.

(6) One representative from the Louisiana State Board of Optometry Examiners, designated by the board.

(7) One representative from the Louisiana State Board of Examiners for Sanitarians, designated by the board.

(8) One representative from the Louisiana State Board of Practical Nurse Examiners, designated by the board.

(9) One representative from the Louisiana Board of Chiropractic Examiners, designated by the board.

(10) One representative from the Louisiana State Board of Medical Examiners, designated by the board.

(11) One representative from the Louisiana State Board of Embalmers and Funeral Directors, designated by the board.

(12) One representative from the Louisiana State Board of Examiners of Psychologists, designated by the board.

(13) One representative from the Louisiana Board of Examiners for Speech-Language Pathology and Audiology, designated by the board.

(14) One representative from the Louisiana Board of Veterinary Medicine, designated by the board.

(15) One representative from the Louisiana Board of Examiners for Nursing Facility Administrators, designated by the board.

(16) One representative from the Louisiana Board of Pharmacy, designated by the board.

(17) One representative from the Louisiana Board for Hearing Aid Dealers, designated by the board.

(18) One representative from the Louisiana Radiologic Technology Board of Examiners, designated by the board.

(19) One representative from the Louisiana Physical Therapy Board, designated by the board.

(20) One representative from the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, designated by the board.

(21) One representative from the Louisiana Addictive Disorder Regulatory Authority, designated by the board.

(22) One representative from the Louisiana Behavior Analyst Board, designated by the board.

(23) One representative from the Louisiana Board of Drug and Device Distributors, designated by the board.

(24) One representative from the Louisiana Board of Examiners in Dietetics and Nutrition, designated by the board.

(25) One representative from the Louisiana Board of Massage Therapy, designated by the board.

(26) One representative from the Louisiana Licensed Professional Counselors Board of Examiners, designated by the board.

(27) One representative from the Louisiana State Board of Electrolysis Examiners, designated by the board.

BE IT FURTHER RESOLVED that the secretary of the Department of Health and Hospitals shall call the first meeting on or before September 1, 2016, and shall host and staff the meetings using department employees at the department's central office in Baton Rouge.

BE IT FURTHER RESOLVED that the members of the task force shall serve without pay or per diem.

BE IT FURTHER RESOLVED that the task force shall meet once a month or as often as is necessary to complete their work and submit a written report with their findings and recommendations to the Senate and House committees on health and welfare on or before January 1, 2017.

BE IT FURTHER RESOLVED that the task force must consider the findings and consequences in *North Carolina v. F.T.C.* and specifically address the matter of ensuring compliance with the court's meaningful oversight holdings, must review each board's composition to make recommendations on diversifying membership, including less control by associations and more involvement by consumers and other professionals, and develop

and make a recommendation on a structure or process for meaningful oversight of the boards by the department.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the secretary of the Department of Health and Hospitals, the attorney general, and the executive directors of the Louisiana State Board of Nursing, Louisiana State Board of Dentistry, Louisiana State Board of Social Work Examiners, Louisiana State Board of Optometry Examiners, Louisiana State Board of Examiners for Sanitarians, Louisiana State Board of Practical Nurse Examiners, Louisiana Board of Chiropractic Examiners, Louisiana State Board of Medical Examiners, Louisiana State Board of Embalmers and Funeral Directors, Louisiana State Board of Examiners of Psychologists, Louisiana Board of Examiners for Speech-Language Pathology and Audiology, Louisiana Board of Veterinary Medicine, Louisiana Board of Examiners for Nursing Facility Administrators, Louisiana Board of Pharmacy, Louisiana Board for Hearing Aid Dealers, Louisiana Radiologic Technology Board of Examiners, Louisiana Physical Therapy Board, Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, Louisiana Addictive Disorder Regulatory Authority, Louisiana Behavior Analyst Board, Louisiana Board of Drug and Device Distributors, Louisiana Board of Examiners in Dietetics and Nutrition, Louisiana Board of Massage Therapy, Louisiana Licensed Professional Counselors Board of Examiners and the Louisiana State Board of Electrolysis Examiners.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES