SENATE CONCURRENT RESOLUTION NO. 65

BY SENATOR MILLS

HEALTH/HOSPITALS DEPT. Creates a task force to study meaningful oversight of the professional healthcare licensing boards statutorily created within the Department of Health and Hospitals.

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

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.
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Christine Arbo Peck.

DIGEST
SCR 65 Original 2016 Regular Session Mills

Creates 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), and to provide a report with findings and recommendations by January 1, 2017.