

2019 Regular Session

SENATE BILL NO. 187

BY SENATOR MILKOVICH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

STATE AGENCIES. Provides relative to the conduct of adjudication hearings involving and the re-creation of certain state boards and commissions which issue licenses, permits, or certificates. (6/30/19)

1 AN ACT

2 To amend and reenact R.S. 37:21.1 and 23.2(B) and R.S. 49:992.2 and to enact R.S. 37:21.2

3 and R.S. 49:193(C), relative to state executive branch boards and commissions

4 authorized to issue licenses, permits, and certificates; to provide for hearings

5 involving such boards and commissions; to provide due process and other rights for

6 licensees, permittees, and certificate holders being investigated; to prohibited certain

7 actions by such boards and commissions; to provide for review of board and

8 commission decisions; to provide regarding the statutory re-creation of such boards

9 and commissions; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 37:21.1 and 23.2(B) are hereby amended and reenacted and R.S.
12 37:21.2 is hereby enacted to read as follows:

13 §21.1. ~~Louisiana State Board of Dentistry; Louisiana Auctioneers Licensing Board;~~
14 ~~licensing~~ **Licensing, permitting, or certifying** disciplinary
15 actions; administrative law judges

16 A. Notwithstanding any provision of law to the contrary, a person who has
17 a disciplinary action brought against him by ~~the Louisiana State Board of Dentistry~~

1 ~~or the Louisiana Auctioneers Licensing Board~~ **a board or commission authorized**
2 **to issue a license, permit, or certificate under this Title** may elect to have the
3 matter moved to the division of administrative law for a disciplinary adjudication by
4 an administrative law judge in accordance with the Administrative Procedure Act,
5 R.S. 49:950 et seq.

6 B. A notification to a person by a ~~licensing board listed~~ **board or**
7 **commission included** in Subsection A of this Section of pending disciplinary action
8 against him shall include language advising him that he may elect to have the matter
9 heard by an administrative law judge. A person who receives such a notification
10 shall have thirty days from receipt of the notification to advise the board **or**
11 **commission**, in writing, that he elects to have the matter heard by an administrative
12 law judge. The notification from the board **or commission** to the person shall also
13 advise the person that he has thirty days from receipt of the notification to advise the
14 board **or commission**, in writing, that he elects to have the matter heard by an
15 administrative law judge.

16 C. Each ~~licensing board listed~~ **board and commission included** in
17 Subsection A of this Section and the division of administrative law may promulgate
18 rules in accordance with the Administrative Procedure Act to implement the
19 provisions of this Section.

20 ~~D.(1) Each licensing board listed in Subsection A of this Section and the~~
21 ~~division of administrative law shall submit quarterly reports to the appropriate~~
22 ~~legislative oversight committees regarding the hearings conducted pursuant to this~~
23 ~~Section.~~

24 ~~(2) The appropriate legislative oversight committees shall conduct regular~~
25 ~~meetings concerning the reports received pursuant to Paragraph (1) of this~~
26 ~~Subsection and concerning the disciplinary actions and hearings by the Louisiana~~
27 ~~State Board of Dentistry and the Louisiana Auctioneers Licensing Board and shall~~
28 ~~submit a report of findings and recommendations to the legislature no later than~~
29 ~~January 1, 2021.~~

1 unfair to the licensee, he shall have the right to request that the executive
2 director remove and disqualify the investigator from further participation in
3 any investigation involving the licensee. If the executive director declines to
4 recuse the investigator, the licensee shall have a right to make a written motion
5 for recusal and an evidentiary hearing thereon.

6 (3) A board investigator shall have no communication regarding the
7 investigation with the executive director or any member of the board unless the
8 licensee that is subject to the complaint is present.

9 (4) When the investigator believes that there is a basis for prosecution or
10 disciplinary action against the licensee, his conclusion shall be issued in writing,
11 along with supporting evidence, as a recommendation to the executive director.
12 His recommendation shall not be provided to any member of the board.

13 (5) The decision to proceed with prosecution or disciplinary action shall
14 be that of the executive director.

15 (6) Board members shall take an oath to refrain from any and all
16 communication with the investigator, witnesses, prosecutors, or the executive
17 director regarding a complaint. It shall be cause for dismissal of a case against
18 a licensee if there is any ex parte communication by any board member
19 regarding the facts of an investigation prior to or during a hearing on the
20 matter.

21 (7) If the board utilizes an independent judge or adjudicator for any
22 hearing, he shall be independently selected and shall have no prior information
23 regarding the nature of the complaint or economic bias to rule for or against the
24 licensee or the board.

25 (8) Communication between the investigator, executive director, and
26 person prosecuting the case shall be on the record at a hearing or in written
27 form furnished to the licensee contemporaneously with any information
28 provided to the executive director.

29 (9) All files of the board regarding a complaint, investigation, and

1 disciplinary action shall be made available to the licensee through full discovery
2 and shall be disclosed to the licensee upon request. The licensee may issue
3 interrogatories or discovery requests to the investigator, executive director, or
4 any board member, who shall be compelled to respond as provided for in the
5 Code of Civil Procedure. The licensee shall have the right to depose the
6 investigator or investigators of the complaint against him as provided for in the
7 Code of Civil Procedure, subject to objections thereunder. Any potentially
8 exculpatory evidence shall be disclosed to the licensee whether or not requested
9 or whether or not reduced to recorded or documentary form.

10 (10) All relevant facts gathered in an investigation of a licensee shall be
11 noted in the record or file of the case and no separate file shall be maintained.
12 Any violation of this Paragraph by an investigator shall be grounds for
13 dismissal or reversal of any adverse findings made and may be grounds for the
14 termination of the investigator.

15 (11) No anonymous hearsay testimony shall be allowed in any hearing.
16 The licensee who is the subject of the action shall have the right to confront
17 witnesses. No hearsay evidence may be admitted by an identified witness except
18 that which is admissible pursuant to the Code of Civil Procedure and the Code
19 of Evidence regarding hearsay evidence. Admission of any previous statement
20 of an absent witness or witnesses who is not available under a hearsay exception
21 shall not occur unless advance notice is given to the licensee of the board's intent
22 to use the hearsay in order for the licensee to have an opportunity to rebut such
23 statement.

24 (12) No order of suspension or termination of license shall be entered by
25 the board without at least ten days written notice before the effective date of the
26 order and with an opportunity for the licensee to be heard by the board or an
27 administrative law judge. Ex parte communication with an administrative law
28 judge shall be prohibited.

29 (13) If the board believes that the ten-day notice requirement in

1 Paragraph (12) of this Subsection will endanger the public, the board may seek
2 an injunction pursuant to the Code of Civil Procedure for a temporary
3 restraining order with a post-restraining order hearing to be set immediately
4 thereafter.

5 (14) No inquiry or investigation of a licensee may continue for more than
6 thirty days without written notice issued to the licensee to advise him that he is
7 still under investigation.

8 (15) Once an investigation or inquiry, preliminary or not, is initiated,
9 unless the case is closed, the licensee shall have an absolute right to meet with
10 the investigator and the chief investigator who shall receive any rebuttal
11 information provided by the licensee. Any rebuttal evidence so received shall be
12 noted by investigators and made available to the executive director prior to any
13 further action being taken. Any meeting between the licensee and investigator
14 for the board shall be recorded. If the licensee objects to the outcome of the
15 meeting, he shall have the right to meet with the executive director and board
16 attorney.

17 (16) The licensee may be accompanied by an attorney at any meeting
18 with the investigator, chief investigator, executive director, or board member.
19 No board staff person or member shall refuse to meet with a licensee because
20 his attorney is present. The licensee may also be represented by an attorney at
21 any hearing before the board.

22 (17) A licensee shall have a right to a prompt hearing on all disciplinary
23 complaints.

24 (18) A board decision to revoke or suspend a license, permit, or
25 certificate shall be supported by clear and convincing evidence presented at the
26 hearing.

27 (19) A licensee shall have the right to a de novo review in district court
28 of any action taken by the board. If the district court reverses the decision of the
29 board on the basis that the board denied the licensee due process under the state

1 or federal constitution or law, including this Section, the board shall be required
2 to pay the legal fees and other costs incurred by the licensee and no
3 presumption in favor of the board shall be applicable.

4 (20) No board rule, regulation, stipulation, or contract shall require a
5 licensee to waive any legal or constitutional rights to have access to the courts,
6 due process, discovery, evidence, or any right established pursuant to this
7 Section.

8 (21) Notwithstanding any provision of the law to the contrary, including
9 R.S. 49:992, a licensee subject to a hearing before the board shall have the right
10 to have his case transferred to the division of administrative law and have his
11 case tried before an independent administrative law judge.

12 * * *

13 §23.2. Legislative report requirements; notification requirements

14 * * *

15 B.(1) Each board or commission authorized to issue a license, permit, or
16 certificate under this Title shall give notice to each applicant and licensee in or with
17 each correspondence from the board or commission that the applicant or licensee
18 may submit complaints about actions or procedures of the board or commission to
19 the board or commission or ~~directly to the House Committee on House and~~
20 ~~Governmental Affairs and the Senate Committee on Senate and Governmental~~
21 ~~Affairs~~ the executive head and chief administrative officer of the department in
22 which the board or commission is placed.

23 (2) Each board or commission authorized to issue a license, permit, or
24 certificate under this Title shall post a notice of the ability to submit complaints
25 about the actions or procedures of the board or commission to the board or
26 commission or ~~to the House Committee on House and Governmental Affairs and the~~
27 ~~Senate Committee on Senate and Governmental Affairs in a conspicuous place on~~
28 ~~the website of the board or commission~~ the executive head and chief
29 administrative officer of the department in which the board or commission is

1 **placed.**

2 (3) Each notice required by this Subsection shall contain at a minimum the
3 mailing address, email address, and telephone number of the board or commission
4 and the mailing address, email address, and telephone number of ~~each legislative~~
5 ~~committee listed in Paragraph (2) of this Subsection~~ **the executive head and chief**
6 **administrative officer of the department in which the board or commission is**
7 **placed.**

8 Section 2. R.S. 49:992.2 is hereby amended and reenacted and R.S. 49:193(C) is
9 hereby enacted to read as follows:

10 §193. Re-creation of terminated entity; procedure

11 The procedure for re-creation of any statutory entity to be terminated under
12 the provisions of this Part shall be as follows:

13 * * *

14 **C. After receipt of the notice of termination and evaluation from the**
15 **appropriate standing committees as provided in Subsection B of this Section,**
16 **each board or commission authorized to issue a license, permit, or certificate**
17 **under Title 37 of the Louisiana Revised Statutes of 1950 shall provide the**
18 **standing committees with the following information by November fifteenth:**

19 **(1) All powers, functions, and duties currently performed by the board**
20 **or commission under evaluation.**

21 **(2) All constitutional, statutory, or other authority under which the**
22 **powers, functions, and duties of the board or commission under evaluation are**
23 **performed and carried out.**

24 **(3) Any powers, functions, or duties which, in the opinion of the board**
25 **or commission under evaluation, are being performed and duplicated by**
26 **another statutory entity or political subdivision within the state including the**
27 **manner in which, and the extent to which, this duplication of efforts is occurring**
28 **and any recommendations as to eliminating the duplication.**

29 **(4) Any powers, functions, or duties which, in the opinion of the board**

1 or commission under evaluation, are inconsistent with current and projected
2 public needs and which should be terminated or altered.

3 (5) The identity of any problems or any programs of the board or
4 commission to which, in the opinion of the board or commission, the committees
5 should give particular study.

6 (6) All strategic plans, master plans, operating plans, and other planning
7 documents including performance measures.

8 (7) All performance audits or studies performed by the legislative
9 auditor within the last five years and a description of board or commission
10 actions in response to the findings of such audits or studies.

11 (8) The identity, amount, and description of each professional, personal,
12 or consulting service contract entered into by the board or commission under
13 evaluation.

14 (9) Any other information which a standing committee in its discretion
15 feels is necessary and proper in performing its review and evaluation duties.

16 * * *

17 §992.2. Applicability; ~~Louisiana State Board of Dentistry; Louisiana Auctioneers~~
18 ~~Licensing Board~~

19 ~~A.~~ Pursuant to the provisions of R.S. 37:21.1, a matter referred to the
20 division of administrative law for an adjudication hearing shall be conducted under
21 the provisions of this Chapter and the Administrative Procedure Act.

22 ~~B.~~ The provisions of this Section shall terminate on August 1, 2021; however,
23 any matter which has been moved to the division of administrative law for
24 adjudication in accordance with R.S. 37:21.1 prior to August 1, 2021, shall remain
25 in the division of administrative law until the adjudication is final.

26 Section 3. This Act shall not be deemed to amend, repeal, or otherwise affect Section
27 3 of Act 655 of the 2018 Regular Session of the Legislature.

28 Section 4. The provisions of this Act shall apply to any investigation that is
29 commenced on and after July 1, 2019.

1 Section 5. This Act shall become effective on June 30, 2019.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jerry J. Guillot.

DIGEST

SB 187 Original 2019 Regular Session Milkovich

Present law provides that a person who has a disciplinary action brought against him by the La. State Board of Dentistry or the La. Auctioneers Licensing Board may elect to have the matter moved to the division of administrative law for a disciplinary adjudication by an administrative law judge in accordance with the APA.

Provides that a notification to a person by a licensing board, referred to above, of pending disciplinary action against him shall include language advising him that he may elect to have the matter heard by an administrative law judge. A person who receives such a notification shall have 30 days from receipt of the notification to advise the board in writing that he elects to have the matter heard by an administrative law judge. Provides that the notification from the board to the person shall also advise the person that he has 30 days from receipt of the notification to advise the board in writing that he elects to have the matter heard by an administrative law judge.

Authorizes each board referred to above and the division of administrative law (DAL) to promulgate rules in accordance with the APA to implement the provisions of present law.

Proposed law extends application to each board or commission authorized to issue a license, permit, or certificate under Title 37 of the La. Revised Statutes of 1950 (LRS). Otherwise retains present law.

Present law requires that each referenced board and the DAL submit quarterly reports to the appropriate legislative oversight committees regarding hearings conducted pursuant to present law. Requires that the appropriate legislative oversight committees conduct regular meetings concerning the reports received, as referenced above, concerning the disciplinary actions and hearings by the La. State Board of Dentistry and the La. Auctioneers Licensing Board and submit a report of its findings and recommendations to the legislature no later than January 1, 2021. Proposed law deletes present law.

Present law terminates on August 1, 2021; however, any matter which has been moved to the DAL for adjudication in accordance with present law prior to August 1, 2021, shall remain in the DAL until the adjudication is final. Proposed law deletes present law.

Proposed law enacts the Licensee's Bill of Rights.

Defines the following:

- (1) "Board" means a board or commission in the executive branch of state government authorized to issue a license, permit, or certificate.
- (2) "Executive director" means the chief executive staff member of a board.
- (3) "Licensee" means a person holding a license, permit, or certificate issued by a board.

Provides for notice of complaints within 10 days of receipt by the board, including the name of the person making the complaint and identification of the board staff member making the complaint if it originated with the board staff member. Proposed law requires the notice to the licensee to include a detailed description of the complaint.

Proposed law provides an opportunity for the executive director to remove any investigator alleged to be biased, hostile, or unfair to the licensee from an investigation upon request of the licensee.

Proposed law prohibits the board investigator from having communications with the board or executive director unless the licensee subject to the complaint is present.

Proposed law requires the board investigator to make a written recommendation to the executive director regarding the outcome of the investigation. Requires the recommendation to be presented only to the executive director and not to any member of the board.

Proposed law provides that a case against a licensee shall be dismissed if the investigator, witness, prosecutor, or executive director discusses the case with any board member regarding the facts of the case prior to or during a hearing.

Proposed law provides that all files of the board regarding the complaint and investigation shall be available to the licensee that is subject to the complaint through full discovery and that all relevant facts of the case shall be included in the record.

Proposed law prevents the use of anonymous hearsay testimony during a hearing and grants the licensee the right to confront witnesses.

Proposed law requires the board to give 10 days notice to any licensee before suspending or terminating his license. Allows the board to seek a temporary restraining order to terminate the licensee's license, permit, or certificate sooner than the 10 days if the board believes the 10 days will be a threat to the public.

Proposed law requires the board to conclude all investigations within 30 days or give notice to the licensee that the investigation is ongoing.

Proposed law requires that a board decision to revoke or suspend a license, permit, or certificate shall be supported by clear and convincing evidence presented at the hearing.

Proposed law grants a licensee the right to an attorney, right to a prompt hearing on the matter, and right to a de novo review in district court of any action taken by the board. If the district court reverses the decision of the board on the basis that the board denied the licensee due process provided by the federal or state constitution or proposed law, the board shall pay the licensee, legal fees and other costs incurred by the licensee and no presumption in favor of the board shall be applicable.

Proposed law prohibits the board from having a rule, regulation, or any contract that requires the licensee to waive any legal or constitutional rights to have access to the courts, due process, discovery, evidence, or any other right established pursuant to proposed law.

Proposed law allows a licensee to have his case transferred to the division of administrative law or an independent administrative law judge.

Proposed law is applicable to any investigation that has commenced after June 30, 2019.

Present law requires that each board or commission authorized to issue a license, permit, or certificate under Title 37 of the LRS submit quarterly reports to the appropriate legislative oversight committees and to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs containing the number of complaints received regarding board actions or procedures and a summary of each such complaint and the disposition of each complaint.

Provides that if any of the information required to be submitted contains confidential, personally identifiable, or otherwise sensitive information, the board or commission shall

clearly mark such information as confidential, personally identifiable, or sensitive information and the legislative committees, members, and employees having access to the identified information shall not publicly disclose the information and shall protect the information from unauthorized use and disclosure.

Proposed law retains present law.

Present law requires that each board or commission authorized to issue a license, permit, or certificate under Title 37 of the LRS give notice to each applicant and licensee in or with each correspondence from the board or commission that the applicant or licensee may submit complaints about actions or procedures of the board or commission to the board or commission or directly to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

Present law requires that each board or commission authorized to issue a license, permit, or certificate under this Title shall post a notice of the ability to submit complaints about the actions or procedures of the board or commission to the board or commission or to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs in a conspicuous place on the website of the board or commission. Requires that the notice contain at a minimum the mailing address, email address, and telephone number of the board or commission and the mailing address, email address, and telephone number of each listed legislative committee.

Proposed law removes reference to and involvement of the legislative committees and adds the executive head and chief administrative officer of the department in which the board or commission is placed. Otherwise retains present law.

Present law provides that pursuant to R.S. 37:21.1, a matter referred to the DAL for an adjudication hearing shall be conducted under the APA. Present law is to terminate on August 1, 2021; however, any matter which has been moved to the DAL prior to August 1, 2021, shall remain in the DAL until the adjudication is final. Proposed law removes the termination of present law; otherwise retains present law.

Proposed law, relative to the statutory re-creation of a board or commission authorized to issue a license, permit, or certificate under Title 37 of the Louisiana Revised Statutes of 1950, requires that after receipt of the notice of termination and evaluation from the appropriate standing committees as provided in present law (R.S. 49:193(B)), the board or commission provide the committees with the following information by November 15th:

- (1) All powers, functions, and duties currently performed by the board or commission under evaluation.
- (2) All constitutional, statutory, or other authority under which said powers, functions, and duties of the board or commission under evaluation are performed and carried out.
- (3) Any powers, functions, or duties which, in the opinion of the board or commission under evaluation, are being performed and duplicated by another statutory entity or political subdivision within the state including the manner in which, and the extent to which, this duplication of efforts is occurring and any recommendations as to eliminating the duplication.
- (4) Any powers, functions, or duties which, in the opinion of the board or commission under evaluation, are inconsistent with current and projected public needs and which should be terminated or altered.
- (5) The identity of any problems or any programs of the board or commission to which, in the opinion of the board or commission, the committees should give particular

- study.
- (6) All strategic plans, master plans, operating plans, and other planning documents including performance measures.
 - (7) All performance audits or studies performed by the legislative auditor within the last five years and a description of board or commission actions in response to the findings of such audits or studies.
 - (8) The identity, amount, and description of each professional, personal, or consulting service contract entered into by the board or commission under evaluation.
 - (9) Any other information which a standing committee in its discretion feels is necessary and proper in performing its review and evaluation duties.

Proposed law provides that Section 3 of Act 655 of the 2018 RS provides that Act 655 shall not apply to the La. State Bar Association, its members, or any matter initiated by the La. Attorney Disciplinary Board. Provides that this Act shall not be deemed to amend, repeal, or otherwise affect Section 3 of Act 655.

Proposed law applies to an investigation that is commenced on and after July 1, 2019.

Effective June 30, 2019.

(Amends R.S. 37:21.1 and 23.2(B) and R.S. 49:992.2; adds R.S. 37:21.2 and R.S. 49:193(C))