

**HOUSE . . . . . No. 4188**

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**The Commonwealth of Massachusetts**

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CHARLES D. BAKER  
GOVERNOR

OFFICE OF THE GOVERNOR  
**COMMONWEALTH OF MASSACHUSETTS**  
· , MA

KARYN POLITO  
LIEUTENANT GOVERNOR

*April 8, 2016*

To the Honorable Senate and House of Representatives,

I am filing for your consideration a bill entitled “An Act Relative to State Oversight of Professional Licensing Boards.” This legislation is required to bring the Commonwealth’s oversight of State-sponsored professional licensing boards into compliance with a recent decision of the United States Supreme Court.

Within the Department of Professional Licensure, the Department of Public Health, the Department of Public Safety, and elsewhere, there are more than 40 State licensing boards that rely on the expertise of board members currently practicing in the fields they oversee to regulate professional licensure and practice. Each time a State licensing board sets qualifications for licensing or places limits on scope of practice, those actions may have the effect of restraining trade and commerce. Board actions that produce this effect are free from legal challenge only if they are protected by the State’s general immunity from antitrust claims.

Under the Supreme Court’s decision, where a substantial percentage of board decision-makers are active market participants in an occupation the board regulates, board actions will be entitled to State antitrust immunity only when those actions are the product of active supervision by the State itself. To meet the “active supervision” requirement, the State must have authority to review any board action that may limit competition and to veto the action when a State supervisor concludes that the board’s action does not serve some other, clearly articulated State policy goal, notwithstanding its potential anti-competitive effect.

The current statutory scheme governing the Commonwealth's many independent licensing boards does not provide for the degree of supervision required by the Supreme Court. A loss of immunity from antitrust claims would place a significant burden on the Commonwealth's ability to regulate the practice of medicine, dentistry, accounting, and other professions in the public interest. It would also leave individual practitioners who serve as unpaid members on these boards subject to personal legal liability under the antitrust laws.

The attached legislation seeks to continue the Commonwealth's long-standing reliance on independent, practicing professionals as the best source of expert knowledge for State regulation of the professions. Accordingly, where feasible, the legislation builds on the existing statutory structure to ensure the Commonwealth can provide active supervision of State licensing boards. In those few instances where the General Laws now leave certain licensing boards without clear State oversight, the legislation introduces new provisions that will satisfy the active supervision requirement.

I urge your prompt enactment of this legislation.

Sincerely,

Charles D. Baker,  
*Governor*

# HOUSE . . . . . No. 4188

Message from His Excellency the Governor recommending legislation relative to relative to state oversight of professional licensing boards.

## The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court  
(2015-2016)

An Act relative to state oversight of professional licensing boards.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to ensure proper oversight of the Commonwealth’s professional licensing boards, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 13 of the General Laws is hereby amended by striking out section  
2   10A, as appearing in the 2014 Official Edition, and inserting in place thereof the following  
3   section:-

4           Section 10A. The commissioner of public health may review and approve or disapprove  
5   rules and regulations proposed by the board of medicine; provided, however, that following  
6   review, the commissioner shall provide the board with written notice of approval or disapproval  
7   and shall set forth in writing the reasons for any such disapproval.

8           SECTION 2. Section 79 of said chapter 13, as so appearing, is hereby amended by  
9   striking out, in lines 17 and 18, the words “director of consumer affairs and business regulations”

10 and inserting in place thereof the following words: -director of professional licensure and subject  
11 to the provisions of section 1 of chapter 112.

12 SECTION 3. Said chapter 13 of the General Laws, as appearing in 2014 Official Edition,  
13 is hereby further amended by striking out section 90 and inserting in place thereof the following  
14 section:-

15 Section 90. The board shall hold at least 2 regular meetings each year, but additional  
16 meetings may be held upon the call of the chairperson, or the secretary, or upon the written  
17 request of any two board members. A majority of the appointed members of the board shall  
18 constitute a quorum. The principal office of the board shall be in the city of Boston but the board  
19 may act and exercise all of its powers in such other jurisdictions as it deems necessary.

20 The board shall administer and enforce the provisions of sections 163 to 172, inclusive,  
21 of chapter 112. The board shall promulgate regulations which set forth education requirements  
22 necessary for a person to be licensed under the provisions of section 165 of said chapter 112; and  
23 the board may, from time to time, adopt such rules and regulations as it deems necessary to carry  
24 out the performance of its duties.

25 The director of professional licensure shall have authority to review and approve or  
26 disapprove rules and regulations proposed by the board; provided, however that following  
27 review, the director shall provide the board with written notice of approval or disapproval and  
28 shall set forth in writing the reasons for any such disapproval. Any rule or regulation that may  
29 restrain competition or potential competition in trade or commerce must be reviewed pursuant to  
30 section 1 of said chapter 112.

31           The board shall examine and pass on the qualifications of all applicants for licenses under  
32 sections 163 to 172, inclusive, of chapter 112, and shall issue a license to each successful  
33 applicant therefor, attesting to their professional qualifications to be a licensed allied mental  
34 health and human services professional. After a person has applied for licensure, no member of  
35 the board may supervise such applicant for a fee nor shall any member vote on any applicant  
36 previously supervised by such member.

37           The board may recommend to the governor and the general court, after a public hearing  
38 which shall be advertised by publication of notices to the appropriate mental health and human  
39 service professional organizations and in major media outlets throughout the commonwealth,  
40 modifications and amendments to sections 88, 89 and this section and sections 163 to 172,  
41 inclusive, of chapter one hundred and twelve.

42           The board shall cause examinations to be held not less than twice annually and shall  
43 evaluate examinations to keep them free from cultural bias.

44           The board shall maintain on a publicly available website a list of names and addresses of  
45 persons who are licensed under sections 163 to 172, inclusive, of chapter one hundred and  
46 twelve.

47           Fees for examinations and for initial and renewal applications shall be determined  
48 annually by the commissioner of administration under the provisions of section 3B of chapter 7.

49           The board shall establish regulations for continuing educational requirements for  
50 licensees. Such regulations shall not require more than 30 contact hours per year, on average  
51 through the term of the license, of approved continuing education programs as a condition for  
52 continuing registration, nor more than 15 contact hours per year on average for any licensed

53 individual during the term of their employment by the commonwealth or any political  
54 subdivisions thereof.

55 The board shall cause public hearings to be held prior to setting specifications for any  
56 continuing educational requirements.

57 The board shall establish procedures to permit consumers to file written complaints  
58 against licensed individuals and investigate and take appropriate action on such complaints.

59 SECTION 4. Section 3 of chapter 22 of the General Laws, as so appearing, is hereby  
60 amended by inserting at the end thereof the following paragraph: --

61 The commissioner shall supervise the work of the several boards, commissions and  
62 bureaus within the department. He shall recommend changes in the methods of conducting  
63 examinations and transacting business. Without limiting any power conferred upon the  
64 commissioner by this section or by any other general or special law, the commissioner shall have  
65 authority to approve or to disapprove or to rescind in part or in full any act, rule, regulation, or  
66 policy proposed or implemented by any board, commission or bureau within the department on  
67 determining that the act, rule, regulation, or policy may restrain competition or potential  
68 competition in trade or commerce. Any approval or disapproval or rescission under this section  
69 shall be made in writing and shall set forth the particular reasons supporting the commissioner's  
70 determination. The commissioner may, when necessary, assign his duties under this section to a  
71 designee approved by the secretary of public safety and security.

72 SECTION 5. Section 4A of said chapter 22, as so appearing, is hereby amended by  
73 inserting, in line 29, after the word "board" the following words:-

74 unless taken following the review authorized under section three of this chapter.

75 SECTION 6. Section 11A of said chapter 22, as so appearing, is hereby amended by  
76 striking out, in lines 1 through 2, inclusive, the words “, but not under the control of the  
77 commissioner.”.

78 SECTION 7. Section 8G of chapter 26, as so appearing, is hereby amended by striking  
79 out the first and second paragraphs and inserting in place thereof the following two paragraphs:-

80 There shall be in the division of professional licensure an auto damage appraiser  
81 licensing board, hereinafter called the board, consisting of 4 persons to be appointed by the  
82 governor, 2 of whom shall be affiliated with the auto body repair industry, and 2 of whom shall  
83 be affiliated with insurance companies writing casualty insurance within the commonwealth, and  
84 1 person to be appointed by the division of professional licensure who shall not be affiliated with  
85 either the auto body industry or the insurance industry and who shall be the chairman of the  
86 board. Board members shall be appointed for terms of 3 years.

87 The division of professional licensure may expend for expenses and for such legal,  
88 investigative, clerical and other assistance such sums as may be appropriated therefor, provided,  
89 however, that all costs of administration and operation of said board shall be borne from  
90 licensing fees from motor vehicle damage appraisers.

91 SECTION 8. Said section 8G of said chapter 26, as so appearing, is hereby further  
92 amended by striking out the fifteenth paragraph and inserting in place thereof the following  
93 paragraph:-

94           A roster showing the names and last known places of business of all licensed appraisers  
95 shall be maintained by the board. Copies of such roster shall be furnished to the public on  
96 request.

97           SECTION 9. Section 3 of chapter 103 of the General Laws, as appearing in the 2014  
98 Official Edition, is hereby amended by inserting at the end thereof the following paragraph:-

99           The director of professional licensure shall have authority to supervise all work of the  
100 commissioners affecting commissioned pilots and the public. The director shall have final  
101 authority to approve or to disapprove or to rescind in part or in full any act, rule, regulation, or  
102 policy proposed or implemented by the commissioners, notwithstanding approval by the trustees,  
103 on determining that the act, rule, regulation, or policy may restrain competition or potential  
104 competition in trade or commerce. The director shall issue any approval or disapproval or  
105 rescission provided for under this section in a writing that shall set forth the particular reasons  
106 supporting the director's determination. The director may when necessary assign his duties  
107 under this section to a designee approved by the secretary of housing and economic  
108 development.

109           SECTION 10. Chapter 112 of the General Laws is hereby amended by striking out  
110 section 1, as appearing in the 2014 Official Edition, and inserting in place thereof the following  
111 section:-

112           Section 1. The director of professional licensure shall supervise the work of the several  
113 boards of registration and examination included in the division of professional licensure. The  
114 director shall recommend changes in the methods of conducting examinations and transacting  
115 business. Without limiting any power conferred upon the director by this section or by any other



116 general or special law, the director shall have authority to approve or to disapprove or to rescind  
117 in part or in full any act, rule, regulation, or policy proposed or implemented by any board under  
118 his supervision on determining that the act, rule, regulation, or policy may restrain competition  
119 or potential competition in trade or commerce. Any approval or disapproval or rescission under  
120 this section shall be made in writing and shall set forth the particular reasons supporting the  
121 director's determination. The director shall make such reports to the governor as the governor  
122 may require or as the director may deem expedient. The director may, when necessary, delegate  
123 his duties under this section to a designee approved by the secretary of housing and economic  
124 development.

125         The commissioner of public health shall supervise the work of the board of registration in  
126 medicine, the board of registration in nursing, the board of registration in pharmacy, the board of  
127 registration of physician assistants, the board of registration of perfusionists, the board of  
128 registration of nursing home administrators, the board of registration in dentistry, the board of  
129 registration of respiratory therapists, the board of genetic counselors, and the board of  
130 certification of community health workers. The commissioner shall recommend changes in the  
131 methods of conducting examinations and transacting business. Without limiting any power  
132 conferred upon the commissioner by this section or by any other general or special law, the  
133 commissioner shall have authority to approve or to disapprove or to rescind in part or in full any  
134 act, rule, regulation, or policy proposed or implemented by any board under her supervision on  
135 determining that the act, rule, regulation, or policy may restrain competition or potential  
136 competition in trade or commerce. Any approval or disapproval or rescission under this section  
137 shall be made in writing and shall set forth the particular reasons supporting the commissioner's  
138 determination. The commissioner shall make such reports to the governor as the governor may

139 require or the commissioner may deem expedient. The commissioner may, when necessary,  
140 delegate her duties under this section to a designee approved by the secretary of health and  
141 human services.

142 SECTION 11. Section 175 of said chapter 112 is hereby amended by striking out  
143 subsection C as so appearing, and inserting in place thereof the following subsection:-

144 C. The director of professional licensure shall have the authority to review and approve  
145 or disapprove rules and regulations proposed by the board consistent with his duties pursuant to  
146 section 1 and to verify that such rules and regulations are consistent with Title XI and other  
147 provisions of state law. Following review, the director shall provide the board with written  
148 notice of approval or disapproval and shall set forth in writing the reasons for any such  
149 disapproval. Any rule or regulation that may restrain competition or potential competition in  
150 trade or commerce must be reviewed pursuant to section 1.

151 SECTION 12. Section 71H of chapter 143 of the General Laws, as so appearing, is  
152 hereby amended by striking out in lines 1 and 2 the words “, but not under the control of the  
153 commissioner,”.