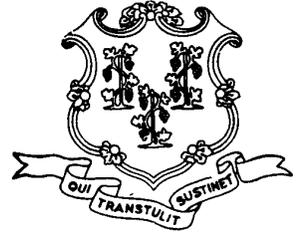


Department of Consumer Protection



Testimony of Jonathan A. Harris
Commissioner of Consumer Protection

Government Administration and Elections
Committee

February 22, 2016

**S.B. 15 “AN ACT ADOPTING THE REQUIREMENTS OF NORTH CAROLINA
STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION AND
MAKING MINOR REVISIONS TO THE BOARDS AND COMMISSIONS STATUTES”**

S.B. 16 “AN ACT INCREASING AGENCY EFFICIENCY IN THE REGULATION PROCESS”

Senator Cassano, Representative Jutila and Honorable Members of the
Government Administration and Elections Committee, good afternoon, I am Jonathan
Harris, Commissioner of the Department of Consumer Protection. Thank you for this
opportunity to testify on two bills on your committee’s agenda today.

**S.B. 15 “AN ACT ADOPTING THE REQUIREMENTS OF NORTH CAROLINA
STATE BOARD OF DENTAL EXAMINERS V. FEDERAL TRADE COMMISSION AND
MAKING MINOR REVISIONS TO THE BOARDS AND COMMISSIONS STATUTES”**

The Department currently has responsibility for the operation of 16 boards and commissions (“Boards”). For decades, the Boards have played an important role in the marketplace by incorporating the expertise of professionals into the process of licensing and regulating various occupations and professions. The role of the Boards has changed as times have changed. Until about 1979, most of the Boards were independent, self-sufficient bodies that were not tied to any department or agency for budgetary or administrative services. Pursuant to PA 77-614, they were incorporated into the Department. For the past 36 years, they’ve been administered and serviced by the Department. Their statutory role has also transformed over time. Originally they exercised all powers of licensing and enforcement and now, while they still exercise licensing power, they share enforcement responsibilities with the Department.

Today, two significant changes, one in law and the other dictated by the need for greater efficiency and cost-effectiveness, require that we re-examine the role and operation of the Boards. First, the decision of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, (cite) (“Supreme Court Decision”), which held that where a controlling number of a board’s decision-makers are active market participants in the occupation such board regulates, the board may be subject to anti-trust claims under federal law unless they are actively supervised by the state government. Since the Boards are controlled by “active market participants”, without “active supervision of the state”, the legal ability of the Boards to make licensing decisions has been called into question. Based on the Supreme Court Decision, the Boards now face a high risk of exposure to claims that they’re acting in violation of federal law.

Second, our continuing budget challenges have required the Department to do more, or at least the same, with less. This has made it more and more difficult for the Department to devote the necessary resources to effectively administer, let alone actively supervise, the Boards. To improve our oversight of the occupations and professions under our jurisdiction, one of our core functions, the Department is re-thinking and redesigning our enforcement process to make it stronger and give us a greater ability to bring to justice those that step over the line and violate Connecticut law and regulations.

We expect the Boards to play an important role in this process. The challenge we must address together is how, with dwindling resources, we accomplish this important goal of enhanced enforcement and still be able to efficiently and effectively meet our obligations to issue licenses in a way that protects the public health and safety and gets people the credentials they need as quickly as possible so they can earn a living and help us grow our economy.

I want to commend Governor Malloy for raising SB 15. The Department supports what the bill seeks to accomplish. SB 15 will help bring all stakeholders to the table to determine the best way to ensure the Boards are not violating federal law and that we are protecting the public health and safety and the ability of people to get good jobs that strengthen the marketplace. The Boards have played an important role. Our challenge now is how to preserve the knowledge and on-the-ground experience they have provided in a way that recognizes the significant changes in law, our budget and our economy.

S.B. 16 “AN ACT INCREASING AGENCY EFFICIENCY IN THE REGULATION PROCESS”

The Governor’s bill, S.B. 16, An Act Increasing Agency Efficiency in the Regulation Process, begins to streamline the process by which agencies create or amend regulations.

The Department strongly supports this bill.

This bill removes the requirement that commissioners, and other department heads appointed by the Governor, adopt regulations if the statute is sufficient to enforce the provisions of that section. It also exempts from the public comment requirements, amendments or repeals to regulations that transfer sections for conformity, make a specific change directed by a public act, or update or correct contact information contained within a regulation.

Ambiguities in the emergency regulation process are also clarified by removing the requirement that an agency propose an effective date for the emergency regulation. Instead, there will be a 10-day time period for the legislative regulations review committee to act on the proposed emergency regulation, and the emergency regulation will be effective upon publication on the eRegulations website, like other regulations.

Additionally, this bill exempts agencies with commissioners, and other department heads appointed by the Governor, from being required to participate in hearings regarding regulations that are outdated, overly burdensome, or the subject of complaints.

Finally, this proposal repeals the requirement that agencies annually submit a list to the regulations review committee of any mandatory regulations that were not adopted as of January 1st of that year.

The Department has been working on making the regulation process as efficient as possible throughout the last few years; this proposed legislation gives us additional tools to continue with that goal so that we can better focus on our core mission to ensure a fair and equitable marketplace and safe products and services for consumers.

Thank you again for the opportunity to appear before you. I am happy to answer any questions you may have.