

October 23, 2020

The Honorable Jamie Raskin
United States House of Representatives
Washington, DC 20515

The Honorable Michael Conaway
United States House of Representatives
Washington, DC 20515

The Honorable David Cicilline
Chairman, Judiciary Subcommittee on
Antitrust, Commercial, and Administrative
Law
United States House of Representatives
Washington, DC 20515

Dear Representatives Raskin, Conaway and Cicilline,

The undersigned organizations, which represent state licensing boards and those professionals who serve on them, write in support of the *Occupational Licensing Board Antitrust Damages Relief Act of 2020*.

We would like to thank Representatives Raskin, Conaway and Cicilline, for your leadership in introducing this legislation. In 2015, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, the U.S. Supreme Court ruled that the North Carolina Dental Board was not entitled to “state action” immunity from antitrust laws because its actions were not actively supervised by the state. Passage of this legislation will ensure that all volunteer members, including those representing the public, of state regulatory boards are not deterred from civic-minded service because of the potential for personal monetary damages.

The legislation seeks to protect state boards, board members, and staff from damage awards by private plaintiffs, while still allowing for enforcement of antitrust laws by federal and private actors seeking to enjoin anticompetitive behavior of licensing boards. It also conditions immunity from damages liability on licensing boards meeting certain standards. Specifically, under this legislation, licensing boards must:

- Operate under a state law that requires an occupational license for the occupation regulated by the board, specifies the qualifications for the license, and requires that professional and ethical standards be met;
- Have all members of the board appointed by the state’s chief executive officer, the legislature, or other designated elected state officer;
- Include members of the public who are not market participants in the regulated profession;
- Provide mechanisms allowing people aggrieved by the board to contest its actions including:
 - The opportunity to provide evidence, argument and analysis as to the contested action;
 - Review of all evidence gathered by the board relating to the action;
 - Receipt of a written decision from the board after any hearing; and,
 - The opportunity to appeal any decision to an independent adjudicator, including a court.

Our organizations believe that this legislation is a balanced approach to competition policy that retains enforcement mechanisms against anticompetitive activities while ensuring that current and prospective state licensing board members will continue to be willing to serve and are not dissuaded because of uncertainty over any potential personal liability arising from their public service.

Again, we thank you for your leadership on this issue and look forward to working with you as the bill progresses through the legislative process.

Sincerely,

American Institute of CPAs
American Physical Therapy Association
American Psychological Association
American Veterinary Medical Association
Association of State and Provincial Psychology Boards
Council of Landscape Architectural Registration Boards
Federation of Podiatric Medical Boards
Federation of State Boards of Physical Therapy
Federation of State Medical Boards
National Association of State Boards of Accountancy
National Athletic Trainers' Association Board of Certification, Inc.
National Board for Certification in Occupational Therapy, Inc.