



# SB 97

## REMOVE ACTIVE SUPERVISION SUNSET FOR PROFESSIONAL BOARDS

BY REQUEST OF THE MONTANA DEPARTMENT OF LABOR & INDUSTRY

Sponsor - Sen. Steve Fitzpatrick – SD 10

Contact:

Todd Younkin  
BSD Administrator  
(406) 841-2243  
tyounkin@mt.gov

### SUMMARY OF CHANGES

- Removes a sunset provision of legislation originally prompted by a U.S. Supreme Court decision involving professional and occupational licensing boards and board members.
- Nothing unexpected or unreasonable has occurred in implementing the law and the original reason for the bill still stands, which is to afford the state action defense in anti-trust litigation against board members.

### EXPLANATION OF CHANGES

- The bill repeals the termination section of HB 141 (2017), effective upon passage.
- The removal of the sunset provision will maintain the procedure established by the 2017 Legislature to review board decisions that may illegally restrain trade.

### OVERVIEW OF DEPARTMENT'S POSITION

The 2017 Legislature, in response to the 2015 decision by the U.S. Supreme Court, *North Carolina State Board of Dental Examiners v. the Federal Trade Commission* enacted HB 141.

The U.S. Supreme Court decision held that a controlling number of active market participants on licensing boards are immune from federal antitrust liability for decisions that restrain trade only if the restraint is clearly articulated and expressed as state policy and the state exercises active supervision over those types of board actions.

The bill authorized the Commissioner of Labor and Industry to exercise active supervision of licensing board actions that are anticompetitive or potentially anticompetitive and provided for a termination date to measure the consequences of enacting the legislation.

The original reason for the legislation is still present: Montana's professional and occupational licensing board members include members of the profession who are active market participants and whose expertise is necessary to regulate the profession. As required by the U.S. Supreme Court decision for purposes of state action antitrust immunity and to avoid personal legal liability for board members, it is necessary for the Legislature to provide for the active supervision of boards.

