

1 SB3
2 170871-1
3 By Senator Dial
4 RFD: Finance and Taxation General Fund
5 First Read: 13-JUL-15

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8 SYNOPSIS: The United States Supreme Court recently
9 ruled in the case of North Carolina State Board of
10 Dental Examiners v. FTC that any state board whose
11 membership was dominated by active market
12 participants was not entitled to state action
13 immunity for actions of the board which were deemed
14 a restraint of trade absent a clearly articulated
15 and affirmatively expressed state policy which was
16 actively supervised by the state.

17 This bill establishes a commission to
18 provide such oversight in order to maintain
19 previously granted state action immunity.
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21 A BILL
22 TO BE ENTITLED
23 AN ACT
24

25 To establish the Office for Regulatory Oversight of
26 Boards and Commission to provide regulatory oversight for

1 actions undertaken by state boards composed of a majority of
2 active market participants.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. In order for members of regulatory boards
5 and commissions, when the controlling number of the board or
6 commission decision-makers are also active market participants
7 in the occupation or profession the board or commission
8 regulates, to invoke state action immunity from antitrust
9 claims, the actions taken and rules and regulations adopted by
10 regulatory boards and commissions that result in a restraint
11 of trade subject to antitrust challenge must be clearly
12 articulated and affirmatively expressed as state policy, and
13 the policy must be actively supervised by the state pursuant
14 to the United State Supreme Court's decision in North Carolina
15 State Board of Dental Examiners v. FTC. The state oversight
16 must be specific, and must comprise actual substantive review
17 with the ability to veto or modify particular decisions to
18 ensure they accord with state policy. Therefore, the
19 legislature finds it necessary to provide active state
20 supervision of boards and commission to ensure that their
21 rulemaking or board actions do not result in anti-competitive
22 conduct without a clearly articulated and affirmatively
23 expressed state interest.

24 Section 2. As used in this chapter, the following
25 terms shall have the following meanings, respectively, unless
26 the context clearly indicates otherwise:

1 (1) AFFECTED BOARDS AND COMMISSIONS. Those state
2 regulatory boards and commissions having a controlling number
3 of the board or commission members, or otherwise denominated
4 decision-makers, who are also active market participants in
5 the occupation the board or commission regulates.

6 (2) BOARD OR COMMISSION MEMBERS. Those persons
7 servings as a member or otherwise denominated decision-maker
8 for a state regulatory board or commission when the
9 controlling number of the board or commission members or
10 decision makers are also active market participants in the
11 occupation the board or commission regulates.

12 (3) OFFICE. The Office for Regulatory Oversight of
13 Boards and Commissions.

14 (4) SUBMITTED ACTIONS. Actions taken and rules and
15 regulations adopted or proposed to be adopted by the affected
16 boards and commissions that have been submitted to the Office.

17 Section 3. There is established the Office for
18 Regulatory Oversight of Boards and Commissions. The Office
19 shall be directed by a Secretary appointed by the Governor for
20 a term of six years. After the Secretary has served a six-year
21 term, the Governor may reappoint that Secretary to serve
22 another term or appoint a new Secretary. The Secretary shall
23 be an exempt employee and subject to termination or removal
24 only for the reasons set forth in Section 36-11-1, Code of
25 Alabama 1975.

1 Section 4. In order to carry out its
2 responsibilities under this Chapter, the Secretary is hereby
3 granted the following powers and authority:

4 (1) To review submitted actions to ensure the
5 submitted actions are based upon clear state policy or
6 interest as provided for in Section 1.

7 (2) To veto or modify submitted actions as the
8 Secretary deems necessary as provided for in Section 1.

9 (3) To receive and to expend, for the purposes
10 stated in this Chapter, funds designated for the operation of
11 the Office. The funds received pursuant to this Chapter shall
12 be deposited into a new fund that is hereby established as a
13 separate fund in the State Treasury to be known as the Alabama
14 Office for Regulatory Oversight of Boards and Commissions
15 Fund. No funds shall be expended with the provisions of
16 Article 4 of Chapter 4 of Title 41, and only in amounts and
17 for the purposes provided by the Legislature in the general
18 appropriations bill or as otherwise provided by statute.

19 (4) To promulgate rules and regulations necessary to
20 effectuate the provisions of this chapter and accomplish its
21 work. The rule-making powers of the Office are subject to the
22 Alabama Administrative Procedure Act as codified in Chapter 22
23 of Title 41.

24 Section 5. It is the duty of the Secretary to:

25 (1) Develop and adopt a procedure for affected
26 boards and commissions to submit rules, regulations, and board
27 actions to the Secretary for review, and shall make such

1 procedure readily available to all affected boards and
2 commissions.

3 (2) Review submitted actions in compliance with its
4 authority as stated in this chapter, and to issue a veto order
5 or recommendation of modification within a reasonable time of
6 submission of the submitted actions.

7 (3) The duties imposed by this section upon the
8 Secretary shall be performed by the Secretary personally or by
9 his or her assistants under his or her supervision, direction
10 and control.

11 Section 6. (1) Beginning on October 1, 2015, each
12 affected Board of Commission shall at the beginning of each
13 quarter of the fiscal year submit to the Commission a payment
14 which shall equal an amount of up to \$5 for each licensee
15 registered by such board or commission on October 1 of the
16 previous fiscal year. No later than December 1 of each fiscal
17 year each affected board or commission shall certify to the
18 Finance Director the total number of licensees regulated by
19 such entity. Such certification shall be the basis for the
20 payments for the ensuing fiscal year. The certification to be
21 used as the basis for the fiscal year 2016 quarterly payments
22 shall be made by September 15, 2015.

23 (2) Any affected board or commission is authorized
24 to increase any license fee by up to \$5 per license in order
25 to provide funds for the quarterly payments. Such increase may
26 be in addition to the authority granted in Act 2015-441 and
27 shall not be subject to the administrative procedures act.

1 (3) The Office shall be subject to review by the
2 Department of Examiners of Public Accounts.

3 Section 7. This act shall become effective October
4 1, 2015, following its passage and approval by the Governor,
5 or its otherwise becoming law.