

1 SB80
2 172722-4
3 By Senators Dial and McClendon
4 RFD: Governmental Affairs
5 First Read: 02-FEB-16

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8 SYNOPSIS: Under existing law, the members of a board
9 or commission that regulates a profession and is
10 controlled by active market participants in the
11 profession do not have state action immunity from
12 federal antitrust laws for actions of the board or
13 commission except when the action was taken
14 pursuant to a clearly articulated state policy to
15 displace competition and the board or commission
16 was subject to active state supervision.

17 Also under existing law, administrative
18 rules of a board or commission that regulates a
19 profession are subject to review by the Joint
20 Committee on Administrative Regulation Review prior
21 to becoming effective. The committee may approve,
22 disapprove, disapprove with a suggested amendment,
23 or allow the agency to withdraw the rule for
24 revision. Under existing law, a rule on which the
25 committee takes no action is deemed approved.

26 This bill requires rules of a board or
27 commission that regulates a profession to be

1 reviewed by the Legislative Reference Service to
2 determine whether the rule may significantly lessen
3 competition and, if so, whether the rule was made
4 pursuant to a clearly articulated state policy to
5 displace competition.

6 If the Legislative Reference Service makes
7 those determinations, the committee would be
8 required to meet to review the rule and determine
9 whether the rule should be approved, disapproved,
10 disapproved with a suggested amendment, or allowed
11 to be withdrawn. The bill would also authorize
12 those boards and commissions to submit previously
13 adopted rules for a similar review.

14 The bill would allow the Legislative
15 Reference Service to impose a fee for providing the
16 review.

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18 A BILL
19 TO BE ENTITLED
20 AN ACT
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22 To add Section 41-22-22.1 to the Code of Alabama
23 1975; to provide for further review of rules of certain state
24 boards and commissions by the Legislative Reference Service
25 and by the Joint Committee on Administrative Regulation Review
26 under certain conditions and to provide for certain fees to
27 cover the costs of the review.

1 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

2 Section 1. Section 41-22-22.1 is added to the Code
3 of Alabama 1975, to read as follows:

4 §41-22-22.1.

5 (a) The Legislative Reference Service shall review
6 each rule certified to it by a state board or commission that
7 regulates a profession, a controlling number of the members of
8 which are active market participants in the profession, to
9 determine whether the rule may significantly lessen
10 competition and, if so, whether the rule was made pursuant to
11 a clearly articulated state policy to displace competition.

12 (b) If the Legislative Reference Service determines
13 that a rule subject to subsection (a) may significantly lessen
14 competition, it shall determine whether the rule was made
15 pursuant to a clearly articulated state policy to displace
16 competition, and shall certify those determinations to the
17 committee. The board or commission shall submit a position
18 paper, a transcript of any public hearings regarding the rule,
19 and any other material collected during the consideration of
20 the rule by the board or commission to accompany the rule as
21 it is submitted to the committee. Upon receipt of a
22 certification under this subsection, the chair of the
23 committee shall call a meeting of the committee to review the
24 substance of the rule, determine whether the rule may
25 significantly lessen competition, and if so, whether it was
26 made pursuant to a clearly articulated state policy to
27 displace competition. The committee shall approve, disapprove,

1 disapprove with a suggested amendment, or allow the agency to
2 withdraw the rule for revision. The committee may conduct
3 public hearings and solicit public comment during its
4 consideration of the rule. If the committee approves the rule,
5 it shall issue a written statement explaining its rationale
6 for approving the rule. If the committee fails to act on a
7 rule certified to it pursuant to this subsection, the rule
8 shall not become effective and shall be placed on the agenda
9 of the committee at each subsequent meeting until the
10 committee disposes of the rule.

11 (c) A state board or commission that regulates a
12 profession, a controlling number of the members of which are
13 active market participants in the profession, may submit a
14 previously adopted rule, along with a position paper, a
15 transcript of any public hearings regarding the rule, and any
16 other material collected during the consideration of the rule,
17 to the Legislative Reference Service for a determination of
18 whether the previously adopted rule may significantly lessen
19 competition and whether the rule was made pursuant to a
20 clearly articulated state policy to displace competition. If
21 the Legislative Reference Service makes those determinations,
22 it shall notify the board or commission and certify the
23 determinations to the committee. Upon receipt of a
24 certification under this subsection, the chair of the
25 committee shall call a meeting of the committee to review the
26 substance of the rule and either approve the rule or notify
27 the board or commission that it agrees with the determination

1 of the Legislative Reference Service. If the committee
2 approves the rule, it shall issue a written statement
3 explaining its rationale for approving the rule. The committee
4 shall take action on a rule submitted under this subsection
5 within 45 days of receipt of certification from the
6 Legislative Reference Service.

7 (d) In addition to the fee levied under Section
8 41-22-7(i), the Legislative Reference Service shall charge a
9 board or commission that is subject to subsection (a) or which
10 submits a previously adopted rule to the Legislative Reference
11 Service under subsection (c), a fee in the amount necessary to
12 recover the costs of the Legislative Reference Service in
13 complying with this section.

14 Section 2. This act shall become effective
15 immediately following its passage and approval by the
16 Governor, or its otherwise becoming law.