

1 HB256
2 180965-1
3 By Representative Weaver
4 RFD: Boards, Agencies and Commissions
5 First Read: 16-FEB-17

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, the Board of Nursing is
9 authorized to adopt rules necessary to carry into
10 effect certain duties and powers related to the
11 practice of nursing.

12 This bill would provide further for such
13 authority in relation to state and federal
14 antitrust laws as well as establish that the
15 Legislature recognizes that anti-competitive rules
16 which prioritize patient safety and wellness are
17 permissible.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to the Board of Nursing; to add Section
24 34-21-2.1 to the Code of Alabama 1975, relating to the powers
25 and duties of the Board of Nursing; to clarify rulemaking
26 authority of the Board of Nursing regarding state and federal

1 antitrust laws and to establish that anti-competitive rules
2 which prioritize patient safety and wellness are permissible.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 34-21-2.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §34-21-2.1.

7 (a) The Legislature finds and declares all of the
8 following:

9 (1) The power to make rules regulating the practice
10 of nursing and advanced practice nursing includes the power to
11 prohibit unlicensed persons from practicing nursing and
12 advanced practice nursing and the power to regulate how
13 licensed persons practice nursing and advanced practice
14 nursing.

15 (2) A primary goal of the provision of health care
16 is to prioritize patient safety and wellness.

17 (3) The Board of Nursing is in the best position to
18 determine the nursing and advanced practice nursing practices
19 that prioritize patient safety and wellness.

20 (4) Prioritizing patient safety and wellness may
21 sometimes be at odds with the goals of state and federal
22 antitrust laws, which include prioritizing competition and
23 efficiency.

24 (5) It is the intent of the Legislature in enacting
25 this section to immunize the Board of Nursing and its members
26 from liability under state and federal antitrust laws for the

1 adoption of a rule that prioritizes patient safety and
2 wellness but may be anti-competitive.

3 (b) Subject to subsection (c), rules adopted under
4 Section 34-21-2, 34-21-85, or 34-21-87 may define and regulate
5 the practice of nursing and advanced practice nursing in a way
6 that prioritizes patient safety and wellness, even if the rule
7 is anti-competitive.

8 (c) A rule adopted under Section 34-21-2, 34-21-85,
9 or 34-21-87 may supplement or clarify any statutory definition
10 but may not conflict with any statute that defines the
11 practice of nursing and advanced practice nursing, including,
12 but not limited to, the definitions set forth in Sections
13 34-21-1 and 34-21-81.

14 Section 2. Nothing in this act shall be construed to
15 constrict or expand the current rights and privileges of any
16 individual governed by the Board of Nursing beyond that which
17 existed prior to the ruling in the United States Supreme Court
18 decision *N.C. State Board of Dental Examiners v. FTC*, 135
19 S.Ct. 1101 (2015).

20 Section 3. Nothing in this act shall be construed to
21 constrict or expand the current duties or responsibilities of
22 the members of the Board of Nursing in any context outside of
23 federal or state antitrust immunity beyond that which existed
24 prior to the ruling in the United States Supreme Court
25 decision *N.C. State Board of Dental Examiners v. FTC*, 135
26 S.Ct. 1101 (2015).

1 Section 4. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.