

1 SB97  
2 189665-3  
3 By Senator Dial  
4 RFD: Health and Human Services  
5 First Read: 09-JAN-18

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 Relating to the Board of Nursing; to add Section  
12 34-21-2.1 to the Code of Alabama 1975, relating to the powers  
13 and duties of the Board of Nursing; to clarify rulemaking  
14 authority of the Board of Nursing regarding state and federal  
15 antitrust laws and to establish that anti-competitive rules  
16 which prioritize patient safety and wellness are permissible.  
17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

20 §34-21-2.1.

21 (a) The Legislature finds and declares all of the  
22 following:

23 (1) The power to make rules regulating the practice  
24 of nursing and advanced practice nursing includes the power to  
25 prohibit unlicensed persons from practicing nursing and  
26 advanced practice nursing and the power to regulate how

1 licensed persons practice nursing and advanced practice  
2 nursing.

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

5 (3) The Board of Nursing is in the best position to  
6 determine nursing practices and, in conjunction with the Board  
7 of Medical Examiners, the practices of nurses in collaborative  
8 practice, that prioritize patient safety and wellness.

9 (4) Prioritizing patient safety and wellness may  
10 sometimes be at odds with the goals of state and federal  
11 antitrust laws, which include prioritizing competition and  
12 efficiency.

13 (5) It is the intent of the Legislature in enacting  
14 this section to immunize the Board of Nursing and its members  
15 from liability under state and federal antitrust laws for the  
16 adoption of a rule that prioritizes patient safety and  
17 wellness but may be anti-competitive.

18 (b) Subject to subsection (c), rules adopted under  
19 Section 34-21-2, 34-21-85, or 34-21-87 may define and regulate  
20 the practice of nursing and advanced practice nurses in  
21 collaborative practice in a way that prioritizes patient  
22 safety and wellness, even if the rule is anti-competitive.

23 (c) A rule adopted under Section 34-21-2, 34-21-85,  
24 or 34-21-87 may supplement or clarify any statutory definition  
25 but may not conflict with any statute that defines the  
26 practice of nursing and advanced practice nursing, including,

1 but not limited to, the definitions set forth in Sections  
2 34-21-1 and 34-21-81.

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

9 Section 3. Nothing in this act shall be construed to  
10 constrict or expand the current duties or responsibilities of  
11 the members of the Board of Nursing in any context outside of  
12 federal or state antitrust immunity beyond that which existed  
13 prior to the ruling in the United States Supreme Court  
14 decision N.C. State Board of Dental Examiners v. FTC, 135  
15 S.Ct. 1101 (2015).

16 Section 4. This act shall become effective  
17 immediately following its passage and approval by the  
18 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Health and Human Services..... 09-JAN-18

Read for the second time and placed on the calen-  
dar with 1 substitute and..... 01-FEB-18

Read for the third time and passed as amended .... 15-MAR-18

Yeas 29  
Nays 0

Patrick Harris,  
Secretary.