



State of Tennessee

PUBLIC CHAPTER NO. 230

SENATE BILL NO. 1217

By Norris, Stevens

Substituted for: House Bill No. 326

By Hawk, Casada

AN ACT to amend Tennessee Code Annotated, Title 4, relative to the doctrine of state action antitrust immunity.

WHEREAS, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015), the Supreme Court of the United States held that members of state regulatory boards comprised of a controlling number of active market participants may be subject to liability under federal antitrust law unless they are acting pursuant to clearly articulated state policy or law and are actively supervised by the state; and

WHEREAS, in accordance with this Supreme Court decision, this bill gives a designated state official authority to review regulatory board actions that may constitute a potentially unreasonable restraint of trade for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the General Assembly with respect to the board; and

WHEREAS, this bill provides for legislative notification and oversight in the event that a state official vetoes a board action; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 4, is amended by adding the following language as a new section:

4-4-126.

(a) As used in this section:

(1) "Regulatory board" means any state board, commission, council, committee, or similar entity or body established by statute or rule that issues any license, certificate, registration, certification, permit, or other similar document for an occupation, profession, business, or trade in this state or otherwise regulates or controls any occupation, profession, business, or trade in this state. "Regulatory board" does not mean any board created by § 23-1-101, § 17-5-201, or the rules of the supreme court; and

(2) "Supervising official" means the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or the commissioner's or officer's designee.

(b) Each supervising official shall ensure that the actions of regulatory boards that displace competition are consistent with a clearly articulated state policy. With respect to any action, other than rulemaking, taken by a regulatory board the supervising official shall:

(1) Evaluate whether the action may constitute a potentially unreasonable restraint of trade that requires further review; and

(2) If it is determined that an action requires further review pursuant to subdivision (b)(1):

(A) Provide notice to the regulatory board within ten (10) business days of the date the action was taken that the action is subject to further review;

(B) Review the full evidentiary record regarding the action and, if necessary, supplement the evidentiary record or direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(C) Conduct a review of the substance of the action, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(D) In writing:

(i) Approve the action if the supervising official determines that it is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board;

(ii) Remand the action to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(iii) Veto the action if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

(c) The supervising official may not:

(1) Be licensed by, or participate in or have a financial interest in an occupation, profession, business, or trade regulated by or otherwise affected or potentially affected by, the regulatory board whose action is subject to review under this section; or

(2) Be a voting or ex officio member of the regulatory board whose action is subject to review under this section.

(d) The supervising official's duties established pursuant to this section shall be carried out in a reasonably prompt manner and in accordance with any time limitations set forth in this section.

(e) If, within ten (10) business days of the date an action is taken, the supervising official provides notice to the chair of the regulatory board that the action is subject to further review pursuant to subdivision (b)(2), the action shall take effect upon the supervising official's approval but shall not take effect if the supervising official vetoes or remands the action.

(f) The supervising official's approval, remand, or veto of a regulatory board's action pursuant to subdivision (b)(2)(D) must include written justification for the decision and shall constitute the regulatory board's action with respect to that matter.

(g) A regulatory board shall provide to the supervising official adequate notice of its meetings.

(h) The supervising official must provide written notice to the chairs of the government operations committees of the senate and house of representatives of any veto of an action pursuant to this section within three (3) business days of the date of the veto. The government operations committees of the senate and house of representatives are authorized to conduct a hearing regarding the vetoed action at a subsequent, regularly scheduled meeting and may request the supervising official and a regulatory board representative to appear at the hearing. The government

operations committees may meet jointly or separately. Nothing contained in this section shall be construed to authorize the government operations committees to delay or overturn the supervising official's veto, nor shall it limit the authority of the government operations committees to recommend legislation to the general assembly regarding the subject matter of a hearing conducted pursuant to this subsection.

SECTION 2. Tennessee Code Annotated, Title 4, Chapter 5, Part 2, is amended by adding the following language as a new, appropriately designated section:


4-5-230.

Prior to a rule being filed by a regulatory board, as defined in § 4-4-126(a), with the secretary of state pursuant to § 4-5-207 or § 4-5-208, the commissioner or chief executive officer of the administrative department under which a regulatory board operates or to which a regulatory board is administratively attached, or a designee to the extent a conflict of interest may exist with respect to the commissioner or chief executive officer, will remand a rule that may constitute a potentially unreasonable restraint of trade to the regulatory board for additional information, further proceedings, or modification, if the rule is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL NO. 1217

PASSED: April 10, 2017



RANDY McNALLY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 24th day of April 2017



BILL HASLAM, GOVERNOR