

1 SB308  
2 174159-3  
3 By Senator Bussman  
4 RFD: Health and Human Services  
5 First Read: 01-MAR-16

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8 SYNOPSIS: Under existing law, the Board of Dental  
9 Examiners of Alabama is authorized to adopt rules  
10 necessary to carry into effect certain duties and  
11 powers related to the practice of dentistry, dental  
12 hygiene, and expanded duty dental assisting.

13 This bill would provide further for such  
14 authority in relation to state and federal  
15 anti-trust laws as well as establish that  
16 anti-competitive rules which prioritize the health,  
17 safety, and welfare of the public are permissible.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
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23 To add Section 34-9-43.2 to the Code of Alabama  
24 1975, relating to the powers and duties of the Board of Dental  
25 Examiners of Alabama; to clarify rulemaking authority of the  
26 board regarding state and federal anti-trust laws and to  
27 establish that rules which prioritize patient health, safety,

1 and welfare, but appear to be anti-competitive or have an  
2 anti-competitive effect, are permissible.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 34-9-43.2 is added to the Code of  
5 Alabama 1975, to read as follows:

6 §34-9-43.2.

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

9 (1) The power to make rules regulating the practice  
10 of dentistry, dental hygiene, and expanded duty dental  
11 assisting includes the power to prohibit unlicensed persons  
12 from practicing dentistry, dental hygiene, and expanded duty  
13 dental assisting and the power to regulate how licensed  
14 persons practice the same.

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

17 (3) The Board of Dental Examiners of Alabama is in  
18 the best position to determine the dental practices that  
19 affect and prioritize the health, safety, and welfare of the  
20 public.

21 (4) Prioritizing patient health, safety, and welfare  
22 may sometimes appear to conflict with the aims of state and  
23 federal anti-trust laws, to prioritize competition and  
24 efficiency.

25 (5) It is the intent of the Legislature in enacting  
26 this section to immunize the Board of Dental Examiners of  
27 Alabama, its members, employees, and agents from liability

1 under state and federal anti-trust laws for the adoption of a  
2 rule that prioritizes patient health, safety, and welfare but  
3 appears to have elements that appear anti-competitive or have  
4 an anti-competitive effect.

5 (b) Subject to subsection (c), rules adopted under  
6 this section or Sections 34-9-18 and 34-9-43 may define and  
7 regulate the practice of dentistry, dental hygiene, and  
8 expanded duty dental assisting in a manner that prioritizes  
9 patient health, safety, and welfare, even if the rule has  
10 elements that appear anti-competitive or have an  
11 anti-competitive effect.

12 (c) A rule adopted under this section or Sections  
13 34-9-18 and 34-9-43 may supplement or clarify any statutory  
14 definition but shall not conflict with any statute which  
15 defines the practice of dentistry, dental hygiene, and  
16 expanded duty dental assisting.

17 Section 2. This act shall become effective  
18 immediately following its passage and approval by the  
19 Governor, or its otherwise becoming law.