

1 SB97
2 187974-1
3 By Senator Dial
4 RFD: Health and Human Services
5 First Read: 09-JAN-18

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8 SYNOPSIS: Under existing law, the Board of Nursing is
9 responsible for regulating the practice of nursing
10 in the state.

11 This bill would provide legislative intent.

12 This bill would clarify the rule making
13 authority of the board regarding state and federal
14 antitrust laws.

15 This bill would also provide that
16 anti-competitive rules that prioritize patient
17 safety and wellness are permissible.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to the powers and duties of the Board of
24 Nursing; to add Section 34-21-2.1 to the Code of Alabama 1975;
25 to clarify the rule making authority of the board regarding
26 state and federal antitrust laws; and to provide that

1 anti-competitive rules that prioritize patient safety and
2 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 includes the power to prohibit unlicensed persons
11 from practicing nursing and the power to regulate how licensed
12 persons practice nursing.

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

15 (3) The State Board of Nursing is in the best
16 position to determine the nursing practices that prioritize
17 patient safety and wellness.

18 (4) Prioritizing patient safety and wellness may
19 sometimes be at odds with the goals of state and federal
20 anti-trust laws, which include prioritizing competition and
21 efficiency.

22 (5) It is the intent of the Legislature in enacting
23 this section to immunize the Board of Nursing and its members
24 from liability under state and federal anti-trust laws for the
25 adoption of a rule that prioritizes patient safety and
26 wellness but may be anti-competitive.

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

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

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

17 (e) Nothing in this section shall be construed to
18 constrict or expand the current duties or responsibilities of
19 the members of the Board of Nursing in any context outside of
20 federal or state anti-trust immunity beyond that which existed
21 prior to the ruling in the United States Supreme Court
22 decision N.C. State Bd. of Dental Examiners v. FTC, 135 S.Ct.
23 1101(2015).

24 Section 2. This act shall become effective on the
25 first day of the third month following its passage and
26 approval by the Governor, or its otherwise becoming law.