

1 SB132  
2 180965-1  
3 By Senator Dial  
4 RFD: Health and Human Services  
5 First Read: 09-FEB-17

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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.