

1 SB104  
2 172351-4  
3 By Senators Dial and McClendon  
4 RFD: Health and Human Services  
5 First Read: 02-FEB-16

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

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11 To add Section 34-24-53.1 to the Code of Alabama  
12 1975, relating to the powers and duties of the Board of  
13 Medical Examiners and the Medical Licensure Commission; to  
14 clarify rulemaking authority of the Board of Medical Examiners  
15 and the Medical Licensure Commission regarding state and  
16 federal anti-trust laws and to establish that anti-competitive  
17 rules which prioritize patient safety and wellness are  
18 permissible.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 34-24-53.1 is added to the Code  
21 of Alabama 1975, to read as follows:

22 §34-24-53.1.

23 (a) The Legislature finds and declares all of the  
24 following:

25 (1) The power to make rules regulating the practice  
26 of medicine or osteopathy includes the power to prohibit  
27 unlicensed persons from practicing medicine or osteopathy and

1 the power to regulate how licensed persons practice medicine  
2 or osteopathy.

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

5 (3) The State Board of Medical Examiners and the  
6 Medical Licensure Commission are in the best position to  
7 determine the medical practices that prioritize patient safety  
8 and wellness.

9 (4) Prioritizing patient safety and wellness may  
10 sometimes be at odds with the goals of state and federal  
11 anti-trust 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 Medical Examiners and  
15 its members and the Medical Licensure Commission and its  
16 members from liability under state and federal anti-trust laws  
17 for the adoption of a rule that prioritize patient safety and  
18 wellness but may be anti-competitive.

19 (b) Subject to subsection (c), rules adopted under  
20 Sections 34-24-53 and 34-24-311 may define and regulate the  
21 practice of medicine or osteopathy in a way that prioritizes  
22 patient safety and wellness, even if the rule is  
23 anti-competitive.

24 (c) A rule adopted under Section 34-24-53 or  
25 34-24-311 may supplement or clarify any statutory definition  
26 but may not conflict with any statute that defines the

1 practice of medicine or osteopathy, including, but not limited  
2 to, Section 34-21-81(4)c.

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 Medical Examiners or the  
6 Medical Licensure Commission beyond that which existed prior  
7 to the ruling in the United States Supreme Court decision N.C.  
8 State Bd. of Dental Examiners v. FTC, 135 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 Medical Examiners or the Medical  
12 Licensure Commission in any context outside of federal or  
13 state anti-trust immunity beyond that which existed prior to  
14 the ruling in the United States Supreme Court decision N.C.  
15 State Bd. of Dental Examiners v. FTC, 135 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..... 02-FEB-16

Read for the second time and placed on the calen-  
dar 2 amendments..... 11-FEB-16

Read for the third time and passed as amended .... 17-FEB-16

Yeas 30  
Nays 0

Patrick Harris  
Secretary