

1 SB310
2 174689-2
3 By Senator Beasley
4 RFD: Health and Human Services
5 First Read: 01-MAR-16

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8 SYNOPSIS: Under existing law, the Alabama State Board
9 of Pharmacy is authorized to adopt rules necessary
10 to carry into effect certain duties and powers
11 related to the practice of pharmacy.

12 This bill would provide further for such
13 authority in relation to state and federal
14 anti-trust laws as well as establish that the
15 Legislature recognizes that anti-competitive rules
16 which prioritize patient safety and wellness are
17 permissible.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT
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23 To add Section 34-23-92.1 to the Code of Alabama
24 1975, relating to the powers and duties of the Alabama State
25 Board of Pharmacy; to clarify rulemaking authority of the
26 Alabama State Board of Pharmacy regarding state and federal

1 anti-trust 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 34-23-92.1 is added to the Code
5 of Alabama 1975, to read as follows:

6 §34-23-92.1.

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

9 (1) The power to make rules regulating the practice
10 of pharmacy includes the power to prohibit unlicensed persons
11 from practicing pharmacy and the power to regulate how
12 licensed persons practice pharmacy.

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

15 (3) The board is in the best position to determine
16 the practice of pharmacy that prioritizes patient safety and
17 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 Pharmacy 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 by the
2 board may define and regulate the practice of pharmacy in a
3 way that prioritizes patient safety and wellness, even if the
4 rule is anti-competitive.

5 (c) A rule adopted by the board may supplement or
6 clarify any statutory definition but may not conflict with any
7 statute that defines the practice of pharmacy.

8 Section 2. Nothing in this act shall be construed
9 to constrict or expand the current rights and privileges of
10 any individual governed by the Board of Pharmacy beyond that
11 which existed prior to the ruling in the United States Supreme
12 Court decision N.C. State Bd. of Dental Examiners v. FTC, 135
13 S.Ct 1101(2015).

14 Section 3. Nothing in this act shall be construed to
15 constrict or expand the current duties or responsibilities of
16 the members of the Board of Pharmacy in any context outside of
17 federal or state anti-trust immunity beyond that which existed
18 prior to the ruling in the United States Supreme Court
19 decision N.C. State Bd. of Dental Examiners v. FTC, 135 S.Ct
20 1101(2015).

21 Section 4. This act shall become effective
22 immediately following its passage and approval by the
23 Governor, or its otherwise becoming law.