

By: Paddie

H.B. No. 4112

A BILL TO BE ENTITLED

AN ACT

relating to the review of certain occupational licensing rules by the office of the governor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 57, Occupations Code, is amended by designating Section 57.001 as Subchapter A and adding a subchapter heading to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS

SECTION 2. Chapter 57, Occupations Code, is amended by adding Subchapter B, and a heading is added to that subchapter to read as follows:

SUBCHAPTER B. GOVERNING BOARD MEMBERSHIP

SECTION 3. Section 57.002, Occupations Code, is transferred to Subchapter B, Chapter 57, Occupations Code, as added by this Act, and redesignated as Section 57.051, Occupations Code, to read as follows:

Sec. 57.051 [~~57.002~~]. REQUIREMENTS FOR GOVERNING BOARD MEMBERSHIP. A person may not be required to be a member of a private trade association as a precondition to serving as a member of the governing board of a state agency that issues a license or otherwise regulates a business, occupation, or profession.

SECTION 4. Chapter 57, Occupations Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. REVIEW OF STATE AGENCY RULES

1       Sec. 57.101. DEFINITION. In this subchapter, "division"  
2 means the division of the governor's office established under this  
3 subchapter.

4       Sec. 57.102. APPLICABILITY. This subchapter applies only  
5 to a state agency with a governing board that is controlled by  
6 persons who provide services that are regulated by the agency.

7       Sec. 57.103. ESTABLISHMENT OF DIVISION. (a) The governor  
8 shall:

9               (1) establish a division to review state agency rules  
10 in accordance with this subchapter; and

11               (2) appoint a director for the division to serve at the  
12 pleasure of the governor.

13               (b) The director must be licensed to practice law in this  
14 state and have experience in antitrust law.

15       Sec. 57.104. SUBMISSION OF CERTAIN STATE AGENCY RULES. (a)  
16 A state agency that issues a license must submit any proposed rule  
17 affecting market competition in this state relating to the  
18 business, occupation, or profession for which a license is issued  
19 to the division for review before the rule is adopted or  
20 implemented. A state agency that issues a license must also submit  
21 to the division for review any rule that the agency is considering  
22 for readoption under Section 2001.039, Government Code, if the rule  
23 affects market competition as described by this section.

24               (b) The state agency must include with the submission a  
25 statement of the purpose for the proposed rule, copies of all  
26 administrative records regarding the proposed rule, including any  
27 information or comments the agency received from the public, and

1 any other information required by the division.

2 (c) For purposes of this section, a rule affects market  
3 competition if the rule would, if implemented or readopted:

4 (1) create a barrier to market participation in this  
5 state; or

6 (2) result in higher prices or reduced competition for  
7 a product or service provided by a license holder in this state.

8 Sec. 57.105. REVIEW BY DIVISION. (a) The division shall  
9 conduct a thorough, independent review of each proposed rule  
10 submitted under Section 57.104 to determine:

11 (1) if the effect of the proposed rule on market  
12 competition is consistent with applicable state policy; and

13 (2) whether the proposed rule promotes a clearly  
14 articulated and affirmatively expressed policy as established by  
15 the legislature to displace competition with government action.

16 (b) In conducting the review, the division may:

17 (1) request information from the state agency;

18 (2) require the state agency to conduct an analysis of  
19 possible implications of the rule;

20 (3) solicit public comments; or

21 (4) hold public hearings.

22 (c) After review, the division shall:

23 (1) approve the proposed rule; or

24 (2) reject the proposed rule and return the rule to the  
25 state agency with instructions for revising the rule to be  
26 consistent with applicable state policy.

27 (d) A state agency may not finally adopt or implement a

1 proposed rule required to be submitted for review under this  
2 subchapter unless the division has approved the rule under this  
3 section.

4 (e) The division shall, for each proposed rule submitted  
5 under this subchapter, provide to the state agency and make  
6 available to the public an explanation of the division's reasons  
7 for approving or rejecting the rule, including a discussion of the  
8 division's determination regarding the consistency of the rule with  
9 applicable state policy.

10 (f) The division may initiate a review of a proposed rule  
11 that was not submitted for review under this subchapter if the  
12 division has reason to believe that the proposed rule may have an  
13 anticompetitive market effect. A state agency may not finally  
14 adopt or implement a proposed rule for which the division has  
15 initiated a review under this subsection unless the division  
16 approves the rule in accordance with this section.

17 Sec. 57.106. RULEMAKING AUTHORITY. The division may adopt  
18 rules to carry out this subchapter.

19 SECTION 5. This Act takes effect September 1, 2019.