

By: Birdwell

S.B. No. 1995

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:

1 SUBCHAPTER C. REVIEW OF STATE AGENCY RULES

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

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

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

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

12 (2) appoint a director for the division with the
13 advice and consent of the senate.

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

16 (c) The director serves a two-year term expiring February 1
17 of each odd-numbered year.

18 Sec. 57.104. CONFLICT OF INTEREST. (a) In this section,
19 "Texas trade association" means a cooperative and voluntarily
20 joined statewide association of business or professional
21 competitors in this state designed to assist its members and its
22 industry or profession in dealing with mutual business or
23 professional problems and in promoting their common interest.

24 (b) A person may not be appointed as director or employed by
25 the division in a "bona fide executive, administrative, or
26 professional capacity," as that phrase is used for purposes of
27 establishing an exemption to the overtime provisions of the federal

1 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),
2 and its subsequent amendments, if:

3 (1) the person is an officer, employee, or paid
4 consultant of a Texas trade association; or

5 (2) the person's spouse is an officer, manager, or paid
6 consultant of a Texas trade association.

7 (c) A person may not be appointed as director or act as the
8 general counsel to the division if the person is required to
9 register as a lobbyist under Chapter 305, Government Code.

10 Sec. 57.105. SUBMISSION OF CERTAIN STATE AGENCY RULES.

11 (a) A state agency that issues a license must submit any proposed
12 rule affecting market competition in this state relating to the
13 business, occupation, or profession for which a license is issued
14 to the division for review before the rule is adopted or
15 implemented. A state agency that issues a license must also submit
16 to the division for review any rule that the agency is considering
17 for readoption under Section 2001.039, Government Code, if the rule
18 affects market competition as described by this section.

19 (b) The state agency must include with the submission a
20 statement of the purpose for the proposed rule, copies of all
21 administrative records regarding the proposed rule, including any
22 information or comments the agency received from the public, and
23 any other information required by the division.

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

26 (1) create a barrier to market participation in this
27 state; or

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

3 Sec. 57.106. REVIEW BY DIVISION. (a) The division shall
4 conduct a thorough, independent review of each proposed rule
5 submitted under Section 57.105 to determine:

6 (1) if the effect of the proposed rule on market
7 competition is consistent with state policy as established by the
8 applicable state agency's governing statute; and

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

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

13 (1) request information from the state agency;

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

16 (3) solicit public comments; or

17 (4) hold public hearings.

18 (c) The division shall complete the review not later than
19 the 90th day after the date the proposed rule is submitted under
20 Section 57.105.

21 (d) After review, the division shall:

22 (1) approve the proposed rule; or

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

26 (e) A state agency may not finally adopt or implement a
27 proposed rule required to be submitted for review under this

1 subchapter unless the division has approved the rule under this
2 section.

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

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

16 (h) When conducting a review of a proposed rule or deciding
17 whether to initiate a review, the division shall only consider
18 evidence or communications that are:

19 (1) submitted to the division in writing from an
20 identified person or entity and made available to the public;

21 (2) submitted in a public hearing; or

22 (3) generally known to the public.

23 Sec. 57.107. RULEMAKING AUTHORITY. The division may adopt
24 rules to carry out this subchapter.

25 SECTION 5. The office of the governor is required to
26 implement a provision of this Act only if the legislature
27 appropriates money specifically for that purpose. If the

1 legislature does not appropriate money specifically for that
2 purpose, the office of the governor may, but is not required to,
3 implement a provision of this Act using other appropriations
4 available for that purpose.

5 SECTION 6. This Act takes effect September 1, 2019.