

HOUSE BILL 326

By Hawk

AN ACT to amend Tennessee Code Annotated, Title 4,
relative to the doctrine of state action antitrust
immunity.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 4, is amended by adding the
following language as a new, appropriately designated section:

(a) As used in this section:

(1) "Regulatory board" means any state board, commission, council,
committee, or similar entity or body established by statute or rule that issues any
license, certificate, registration, certification, permit, or other similar document for
an occupation, profession, business, or trade in this state or otherwise regulates
or controls any occupation, profession, business, or trade in this state.

"Regulatory board" does not mean:

(A) The state board of law examiners, created by § 23-1-101;

(B) The board of professional responsibility, created by rule 9,
section 4 of the rules of the supreme court; or

(C) The board of judicial conduct, created by § 17-5-201; and

(2) "Supervising official" means the commissioner or chief executive
officer of the administrative department under which a regulatory board operates
or to which a regulatory board is administratively attached, or the commissioner's
or officer's designee.

(b) Each supervising official shall ensure that the actions of regulatory boards
that displace competition are consistent with a clearly articulated state policy, as follows:

(1) With respect to any rule promulgated by a regulatory board that may constitute a potentially unreasonable restraint of trade so as to require further review, the supervising official shall:

(A) Review any available evidentiary record, such as meeting minutes, public comment, or other justification for rulemaking and, if necessary, direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(B) Conduct a review of the substance of the rule, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(C) In writing:

(i) Approve the rule if the supervising official determines that it is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board;

(ii) Veto the rule if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(iii) Remand the rule to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

(2) With respect to any action, other than rulemaking, taken by a regulatory board the supervising official shall:

(A) Evaluate whether the action may constitute a potentially unreasonable restraint of trade that requires further review; and

(B) Upon determining that an action requires further review pursuant to subdivision (b)(2)(A):

(i) Provide notice to the regulatory board within ten (10) business days of the date the action was taken that the action is subject to further review;

(ii) Review the full evidentiary record regarding the action and, if necessary, supplement the evidentiary record or direct the regulatory board or other involved persons or entities to supplement the evidentiary record;

(iii) Conduct a review of the substance of the action, de novo and on the merits, for the sole purpose of determining whether the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; and

(iv) In writing:

(a) Approve the action if the supervising official determines that it is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board;

(b) Veto the action if the supervising official determines that it is not consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board; or

(c) Remand the action to the regulatory board for additional information, further proceedings, or modification, as is necessary to ensure that the action is consistent with a clearly articulated state policy or law established by the general assembly with respect to the regulatory board.

(c) The supervising official may not:

(1) Be licensed by, participate in, or have a financial interest in the occupation, profession, business, or trade regulated by the regulatory board whose action is subject to review under this section; or

(2) Be a voting or ex officio member of the regulatory board whose action is subject to review under this section.

(d) The supervising official's duties established pursuant to this section shall be carried out in a reasonably prompt manner and in accordance with any time limitations set forth in this section.

(e) Any approval, veto, or remand pursuant to subdivision (b)(1)(C) must be accompanied by written justification for such action. No rule subject to this section may be filed by a regulatory board with the secretary of state pursuant to § 4-5-207 or § 4-5-208, without being approved pursuant to this section.

(f) If, within ten (10) business days of the date an action is taken, the supervising official provides notice to the chair of the regulatory board that the action is subject to further review pursuant to subdivision (b)(2)(B), the action shall take effect upon the supervising official's approval but shall not take effect if the supervising official vetoes or remands the action.

(g) The supervising official's approval, veto, or remand of a regulatory board's action pursuant to subdivision (b)(2)(B)(iv) must include written justification for the decision and shall constitute the regulatory board's action with respect to that matter.

(h) A regulatory board must provide to the supervising official adequate notice of its meetings.

(i) The supervising official must provide written notice to the chairs of the government operations committees of the senate and house of representatives of any veto of a rule or action pursuant to this section.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.