

By the Committees on Judiciary; and Regulated Industries; and  
Senator Latvala

590-02995-17

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1                                   A bill to be entitled  
2       An act relating to regulatory boards; amending ss.  
3       455.203, 456.004, and 497.103, F.S.; requiring the  
4       Department of Business and Professional Regulation,  
5       the Department of Health, and the Department of  
6       Financial Services, respectively, to determine whether  
7       final board decisions constitute certain  
8       anticompetitive conduct; requiring the departments to  
9       review final board decisions for anticompetitive  
10      conduct and issue orders approving, modifying, or  
11      voiding each decision; specifying that the  
12      departments' anticompetitive review constitutes a  
13      limited legal review and its resulting determination  
14      is not subject to legal challenge; specifying actions  
15      that are considered final board decisions; requiring  
16      that legal costs for defense of antitrust actions and  
17      financial damages be paid from specified accounts;  
18      providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

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22       Section 1. Subsection (11) is added to section 455.203,  
23 Florida Statutes, to read:

24       455.203 Department; powers and duties.—The department, for  
25 the boards under its jurisdiction, shall:

26       (11) (a) Determine whether final board decisions constitute  
27 anticompetitive conduct that does not promote state policy, does  
28 not comport with the standards established by the Legislature,  
29 or does not comport with the authority delegated to a board by

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30 the Legislature. The department, by way of departmental  
31 officials who are not active market participants, shall review  
32 each final board decision for anticompetitive conduct and, based  
33 on its findings, shall issue an order constituting state action  
34 approving, modifying, or voiding the decision. The department's  
35 anticompetitive review constitutes a limited legal review and  
36 its resulting determination is not subject to legal challenge.  
37 For purposes of this paragraph, the term "final board decisions"  
38 includes final orders for disciplinary actions, declaratory  
39 statements, actions concerning unlicensed activity, licensure  
40 application denials, and rulemaking.

41 (b) Legal costs for defense of antitrust actions brought  
42 against boards or board members shall be paid out of the  
43 Professional Regulation Trust Fund.

44 Section 2. Subsection (12) is added to section 456.004,  
45 Florida Statutes, to read:

46 456.004 Department; powers and duties.—The department, for  
47 the professions under its jurisdiction, shall:

48 (12) (a) Determine whether final board decisions constitute  
49 anticompetitive conduct that does not promote state policy, does  
50 not comport with the standards established by the Legislature,  
51 or does not comport with the authority delegated to a board by  
52 the Legislature. The department, by way of departmental  
53 officials who are not active market participants, shall review  
54 each final board decision for anticompetitive conduct and, based  
55 on its findings, shall issue an order constituting state action  
56 approving, modifying, or voiding the decision. The department's  
57 anticompetitive review constitutes a limited legal review and  
58 its resulting determination is not subject to legal challenge.

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59 For purposes of this paragraph, the term "final board decisions"  
60 includes final orders for disciplinary actions, declaratory  
61 statements, actions concerning unlicensed activity, licensure  
62 application denials, and rulemaking.

63 (b) Legal costs for defense of antitrust actions brought  
64 against boards or board members shall be paid out of the Medical  
65 Quality Assurance Trust Fund.

66 Section 3. Paragraph (e) is added to subsection (7) of  
67 section 497.103, Florida Statutes, to read:

68 497.103 Authority of board and department; Chief Financial  
69 Officer recommendations.—

70 (7) ACTIONS BY BOARD AND DEPARTMENT.—

71 (e)1. The department shall determine whether final board  
72 decisions constitute anticompetitive conduct that does not  
73 promote state policy, does not comport with the standards  
74 established by the Legislature, or does not comport with the  
75 authority delegated to a board by the Legislature. The  
76 department, by way of departmental officials who are not active  
77 market participants, shall review each final board decision for  
78 anticompetitive conduct and, based on its findings, shall issue  
79 an order constituting state action approving, modifying, or  
80 voiding the decision. The department's anticompetitive review  
81 constitutes a limited legal review and its resulting  
82 determination is not subject to legal challenge. For purposes of  
83 this paragraph, the term "final board decisions" includes final  
84 orders for disciplinary actions, declaratory statements, actions  
85 concerning unlicensed activity, licensure application denials,  
86 and rulemaking.

87 2. Legal costs for defense of antitrust actions brought

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88 against boards or board members shall be paid out of the  
89 Regulatory Trust Fund.

90 Section 4. This act shall take effect upon becoming a law.