

Unofficial Draft Copy

As of: June 7, 2016 (2:59pm)

LC3902

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act establishing an antitrust scope of practice panel for licensing boards; providing for a fee assessed against licensing boards, proponent groups, and opponent groups to fund the panel; establishing sovereign immunity for licensing boards subject to commissioner approval of board actions with potential anticompetitive implications."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Antitrust scope-of-practice panel.** [Sections 1 through ??] may be cited as the "Antitrust Scope-of-Practice Panel Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through ??] is to provide authority for a supervisory panel to be called at the discretion of the commissioner of labor and industry to determine if actions by a licensing board appear more likely than not to:

- (1) trigger an antitrust complaint; or
- (2) overlap with the scope of practice of another licensing board.

NEW SECTION. **Section 3. Definitions.** As used in sections

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[1 through ??], the following definitions apply:

(1) "Anticompetitive" means a practice in violation of the federal Sherman Antitrust Act, 15 U.S.C. 1 et seq., or 30-14-103 or 30-14-205 by a majority of individuals acting in concert as members of an occupational or professional licensing board regulated under Title 37.

(2) "Antitrust scope-of-practice panel" or "panel" means members appointed by the commissioner to hear antitrust or scope-of-practice cases brought by a proponent group or an opponent group.

(3) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Opponent group" means a licensing board, an organization, an individual, or any interested party that opposes a new or revised administrative rule because of potential impact to the scope of practice of another licensing board.

(4) "Proponent group" means a licensing board, an organization, an individual, or any interested party that seeks to establish a scope of practice over which an existing licensing board claims authority regardless of the terms by which the practice is labeled.

(5) "Scope of practice" means those activities that a person licensed to practice a profession or occupation is allowed to perform if prescribed by appropriate statutes or rules adopted by a licensing board or the department on behalf of a program.

NEW SECTION. **Section 4. Process for initiating panel review of proposals considered to be anticompetitive expansion of scope of practice -- timeframes -- reports.** (1) A proponent group seeking a change in the scope of practice of a profession or occupation licensed under Title 37 may request the commissioner to appoint a panel to review the scope of practice or proposed scope of practice to determine anticompetitiveness.

(2) An opponent group may request the commissioner to appoint a panel to review for anticompetitiveness an administrative rule related to scope or practice or a proposed scope of practice expansion under an administrative rule proposed by a licensing board.

(3) Upon a request filed under subsections (1) or (2), the commissioner shall:

(a) consult with licensing board members that have proposed the rule or adopted the rule being questioned and with representatives of the proponent or opponent groups;

(b) appoint a panel of at least three people but no more than nine people of which at least one person must represent each profession or occupation with an interest in the proposed or adopted rule. A majority of the appointees may not be a representative of the proponent or opponent group.

(c) provide criteria to the panel for determining anticompetitiveness; and

(d) provide staff services, including legal counsel. Staff appointed under this subsection may not be directly associated

with a licensing group affiliated with either the proponent or opponent group.

(4) The commissioner shall act upon a request filed under this section within 30 days.

(5) The appointed panel shall serve as a factfinding body and may request prior to, at, or within 3 days after the meeting any additional information or testimony from technical experts that the panel members consider necessary to make an informed recommendation. Panel members shall consider available scientific and anticompetitive evidence and state law in determining if legislative intent to protect public safety outweighs anticompetitive terms in a rule or proposed rule.

(6) The appointed panel shall report its findings to the commissioner within one week of its meeting.

NEW SECTION. **Section 5. Panel member reimbursement -- fees -- account.** (1) All members of the panel are entitled to per diem and travel expenses incurred for participating on the panel, subject to the approval of the commissioner and as provided in 2-18-501 through 2-18-503. The state special revenue account provided for in subsection (3) is responsible for paying panel members' per diem and travel expenses.

(2) Each licensing board whose decisions are the basis for an opponent group to file a request under [section 4] and the opponent group filing the request shall pay in advance of the panel's deliberations a proportional amount of the expenses as projected by the commissioner for the panel, excluding the cost

of department staff. Costs for department staff must be apportioned among all licensing boards equally as indirect costs.

(3) There is a state special revenue account to the credit of the department to accept funds as determined by the commissioner under subsection (2) plus any donations to fund expenses of the panels appointed under [section 4].

NEW SECTION. **Section 6. Active supervision -- state immunity.** (1) Upon receiving a report from the panel, the commissioner shall determine whether legislative intent to protect public safety outweighs anticompetitive terms in a proposed rule or an existing rule.

(2) If the commissioner decides that public policy outweighs anticompetitive terms in a proposed rule or existing rule, the commissioner shall:

(a) allow the proposed rule to proceed under Title 2, chapter 4, and report findings of public safety outweighing anticompetitive terms in the comments on the rule; or

(b) propose modifications in the proposed rule to meet recommendations by the panel.

(3) If the commissioner decides that public policy does not outweigh anticompetitive terms in a proposed rule or existing rule, the commissioner may require a licensing board to address the panel's recommendations to prevent anticompetitive behavior if the panel determines that a proposed rule or existing rule is more likely than not to lead to anticompetitive behavior.

(4) If the commissioner exercises active supervision as

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provided in this section, a licensing board's members are covered by the state immunity doctrine if the members implement the commissioner's recommendations.

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