

1-1 By: Birdwell S.B. No. 1995  
1-2 (In the Senate - Filed March 7, 2019; March 19, 2019, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 8, 2019, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hughes	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Fallon	X		
1-14	Hall	X		
1-15	Lucio	X		
1-16	Nelson	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1995 By: Birdwell

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the review of certain occupational licensing rules by  
1-22 the office of the governor.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Chapter 57, Occupations Code, is amended by  
1-25 designating Section 57.001 as Subchapter A and adding a subchapter  
1-26 heading to read as follows:

1-27 SUBCHAPTER A. GENERAL PROVISIONS

1-28 SECTION 2. Chapter 57, Occupations Code, is amended by  
1-29 adding Subchapter B, and a heading is added to that subchapter to  
1-30 read as follows:

1-31 SUBCHAPTER B. GOVERNING BOARD MEMBERSHIP

1-32 SECTION 3. Section 57.002, Occupations Code, is transferred  
1-33 to Subchapter B, Chapter 57, Occupations Code, as added by this Act,  
1-34 and redesignated as Section 57.051, Occupations Code, to read as  
1-35 follows:

1-36 Sec. 57.051 [57.002]. REQUIREMENTS FOR GOVERNING BOARD  
1-37 MEMBERSHIP. A person may not be required to be a member of a private  
1-38 trade association as a precondition to serving as a member of the  
1-39 governing board of a state agency that issues a license or otherwise  
1-40 regulates a business, occupation, or profession.

1-41 SECTION 4. Chapter 57, Occupations Code, is amended by  
1-42 adding Subchapter C to read as follows:

1-43 SUBCHAPTER C. REVIEW OF STATE AGENCY RULES

1-44 Sec. 57.101. DEFINITION. In this subchapter, "division"  
1-45 means the division of the governor's office established under this  
1-46 subchapter.

1-47 Sec. 57.102. APPLICABILITY. This subchapter applies only  
1-48 to a state agency with a governing board that is controlled by  
1-49 persons who provide services that are regulated by the agency.

1-50 Sec. 57.103. ESTABLISHMENT OF DIVISION. (a) The governor  
1-51 shall:

1-52 (1) establish a division to review state agency rules  
1-53 in accordance with this subchapter; and

1-54 (2) appoint a director for the division to serve at the  
1-55 pleasure of the governor.

1-56 (b) The director must be licensed to practice law in this  
1-57 state and have experience in antitrust law.

1-58 Sec. 57.104. SUBMISSION OF CERTAIN STATE AGENCY RULES.

1-59 (a) A state agency that issues a license must submit any proposed  
1-60 rule affecting market competition in this state relating to the

2-1 business, occupation, or profession for which a license is issued  
2-2 to the division for review before the rule is adopted or  
2-3 implemented. A state agency that issues a license must also submit  
2-4 to the division for review any rule that the agency is considering  
2-5 for readoption under Section 2001.039, Government Code, if the rule  
2-6 affects market competition as described by this section.

2-7 (b) The state agency must include with the submission a  
2-8 statement of the purpose for the proposed rule, copies of all  
2-9 administrative records regarding the proposed rule, including any  
2-10 information or comments the agency received from the public, and  
2-11 any other information required by the division.

2-12 (c) For purposes of this section, a rule affects market  
2-13 competition if the rule would, if implemented or readopted:

2-14 (1) create a barrier to market participation in this  
2-15 state; or

2-16 (2) result in higher prices or reduced competition for  
2-17 a product or service provided by a license holder in this state.

2-18 Sec. 57.105. REVIEW BY DIVISION. (a) The division shall  
2-19 conduct a thorough, independent review of each proposed rule  
2-20 submitted under Section 57.104 to determine:

2-21 (1) if the effect of the proposed rule on market  
2-22 competition is consistent with applicable state policy; and

2-23 (2) whether the proposed rule promotes a clearly  
2-24 articulated and affirmatively expressed policy as established by  
2-25 the legislature to displace competition with government action.

2-26 (b) In conducting the review, the division may:

2-27 (1) request information from the state agency;

2-28 (2) require the state agency to conduct an analysis of  
2-29 possible implications of the rule;

2-30 (3) solicit public comments; or

2-31 (4) hold public hearings.

2-32 (c) After review, the division shall:

2-33 (1) approve the proposed rule; or

2-34 (2) reject the proposed rule and return the rule to the  
2-35 state agency with instructions for revising the rule to be  
2-36 consistent with applicable state policy.

2-37 (d) A state agency may not finally adopt or implement a  
2-38 proposed rule required to be submitted for review under this  
2-39 subchapter unless the division has approved the rule under this  
2-40 section.

2-41 (e) The division shall, for each proposed rule submitted  
2-42 under this subchapter, provide to the state agency and make  
2-43 available to the public an explanation of the division's reasons  
2-44 for approving or rejecting the rule, including a discussion of the  
2-45 division's determination regarding the consistency of the rule with  
2-46 applicable state policy.

2-47 (f) The division may initiate a review of a proposed rule  
2-48 that was not submitted for review under this subchapter if the  
2-49 division has reason to believe that the proposed rule may have an  
2-50 anticompetitive market effect. A state agency may not finally  
2-51 adopt or implement a proposed rule for which the division has  
2-52 initiated a review under this subsection unless the division  
2-53 approves the rule in accordance with this section.

2-54 Sec. 57.106. RULEMAKING AUTHORITY. The division may adopt  
2-55 rules to carry out this subchapter.

2-56 SECTION 5. The office of the governor is required to  
2-57 implement a provision of this Act only if the legislature  
2-58 appropriates money specifically for that purpose. If the  
2-59 legislature does not appropriate money specifically for that  
2-60 purpose, the office of the governor may, but is not required to,  
2-61 implement a provision of this Act using other appropriations  
2-62 available for that purpose.

2-63 SECTION 6. This Act takes effect September 1, 2019.

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