

## **BILL ANALYSIS**

S.B. 1995  
By: Birdwell  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

There are concerns that certain state agencies are engaging in anticompetitive conduct, particularly with regard to limiting who may practice a certain profession. Given that the U.S. Supreme Court has held that the actions of certain state entities may be subject to federal antitrust laws, there have been calls for the state to provide oversight and review of state agency rules regulating occupational licensing to ensure that those rules do not adversely affect market competition without clearly aligning with an applicable state policy. S.B. 1995 seeks to provide for this oversight and review.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the applicable division of the governor's office in SECTION 4 of this bill.

### **ANALYSIS**

S.B. 1995 amends the Occupations Code to require the governor to establish a division to review the rules of each state agency with a governing board that is controlled by persons who provide services that are regulated by the agency. The bill requires the governor to appoint a director for the division with the advice and consent of the senate and requires the director to be licensed to practice law in Texas and have experience in antitrust law. The bill sets out certain conflict of interest protections with respect to the appointment of a division director and establishes that the director serves a two-year term expiring February 1 of each odd-numbered year. The bill prohibits a person required to register as a lobbyist from acting as general counsel to the division.

S.B. 1995 requires an applicable state agency that issues a license to submit any proposed rule affecting market competition in Texas relating to the business, occupation, or profession for which a license is issued to the division for review before the rule is adopted or implemented. The bill requires the agency to also submit to the division for review any rule that the agency is considering for re adoption if the rule affects such market competition. The bill requires the agency to include with the submission a statement of the purpose for the proposed rule, copies of all administrative records regarding the proposed rule, and any other information required by the division. The bill establishes that for purposes of its provisions a rule affects market competition if the rule would, if implemented or readopted, create a barrier to market participation in Texas or result in higher prices or reduced competition for a product or service provided by a license holder in Texas.

S.B. 1995 requires the division to conduct a thorough, independent review of each proposed rule submitted to determine if the effect of the proposed rule on market competition is consistent with state policy as established by the applicable state agency's governing statute and whether the proposed rule promotes a clearly articulated and affirmatively expressed policy as established by the legislature to displace competition with government action. The bill sets out certain authorized division actions in conducting the review and requires the division to complete the review not later than the 90th day after the date the proposed rule is submitted. The bill requires the division, after review, to approve the proposed rule or reject the proposed rule and return the rule to the state agency with instructions for revising the rule to be consistent with applicable state policy. The bill prohibits a state agency from finally adopting or implementing such a proposed rule unless the division has approved the rule.

S.B. 1995 requires the division, for each proposed rule submitted, to provide to the submitting agency and make available to the public an explanation of the division's reasons for approving or rejecting the rule and authorizes the division to initiate a review of a proposed rule that was not submitted for review under the bill's provisions if the division has reason to believe that the proposed rule may have an anticompetitive market effect. The bill prohibits a state agency from finally adopting or implementing a proposed rule for which the division has initiated a review under this provision unless the division approves the rule. The bill limits the evidence or communications that the division may consider when conducting a review of a proposed rule or deciding whether to initiate a review to evidence or communications that are:

- submitted to the division in writing from an identified person or entity and made available to the public;
- submitted in a public hearing; or
- generally known to the public.

The bill authorizes the division to adopt rules to carry out the bill's provisions providing for a review of certain state agency rules.

S.B. 1995 establishes that the office of the governor is required to implement a provision of the bill only if the legislature appropriates money specifically for that purpose. If the legislature does not make such a specific appropriation, the office may, but is not required to, implement a provision of the bill using other appropriations available for that purpose.

#### **EFFECTIVE DATE**

September 1, 2019.