

1 HB281
2 182657-1
3 By Representative McMillan
4 RFD: Boards, Agencies and Commissions
5 First Read: 21-FEB-17

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8 SYNOPSIS: Under existing law, the Alabama Real Estate
9 Commission may adopt rules necessary to carry into
10 effect certain duties and powers related to
11 licensing persons as real estate brokers and
12 salespersons.

13 This bill would further provide for this
14 authority in relation to state and federal
15 antitrust laws, authorizing the board to adopt
16 rules that prioritize consumer protection in real
17 estate transactions, even if those rules are
18 anti-competitive.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to the Alabama Real Estate Commission; to
25 add Section 34-27-8.1 to the Code of Alabama 1975, to clarify
26 rulemaking authority of the commission regarding state and
27 federal antitrust laws; and to authorize the adoption of rules

1 that prioritize consumer protection, even if the rules are
2 anti-competitive.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 34-27-8.1 is added to the Code of
5 Alabama 1975, to read as follows:

6 §34-27-8.1.

7 (a) The Legislature finds and declares all of the
8 following:

9 (1) The power to make rules regulating the licensing
10 of real estate brokers and salespersons includes the power to
11 prohibit unqualified persons from being licensed as a real
12 estate broker or salesperson.

13 (2) A primary goal of the provision of real estate
14 regulation is to prioritize consumer protection in real estate
15 transactions.

16 (3) The Alabama Real Estate Commission is in the
17 best position to determine the real estate practices that
18 prioritize consumer protection in real estate transactions.

19 (4) Prioritizing consumer protection may sometimes
20 be at odds with the goals of state and federal antitrust laws,
21 which include the prioritization of competition.

22 (5) It is the intent of the Legislature to immunize
23 the Alabama Real Estate Commission and its members from
24 liability under state and federal antitrust laws for the
25 adoption of a rule that prioritizes consumer protection but
26 may be anti-competitive.

1 (b) Subject to subsection (c), rules adopted under
2 Section 34-27-8 may define and regulate the licensing of real
3 estate brokers and salespersons in a way that prioritizes
4 consumer protection, even if the rule is anti-competitive.

5 (c) A rule adopted under Section 34-27-8 may
6 supplement or clarify any statutory definition, but may not
7 conflict with any statute that defines an activity that
8 requires licensing under this chapter.

9 Section 2. Nothing in this act shall be construed to
10 constrict or expand the current rights and privileges of any
11 individual governed by the Alabama Real Estate Commission
12 beyond that which existed prior to the ruling in the United
13 States Supreme Court decision in North Carolina State Board of
14 Dental Examiners v. FTC, 135 S. Ct. 1101 (2015).

15 Section 3. Nothing in this act shall be construed to
16 constrict or expand the current duties or responsibilities of
17 the members of the Alabama Real Estate Commission in any
18 context outside of state or federal antitrust immunity beyond
19 that which existed prior to the ruling in the United States
20 Supreme Court decision in North Carolina State Board of Dental
21 Examiners v. FTC, 135 S. Ct. 1101 (2015).

22 Section 4. This act shall become effective
23 immediately following its passage and approval by the
24 Governor, or its otherwise becoming law.