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## OFFICE OF THE GOVERNOR

### Antitrust review by CSI Office

- Beginning January 21, 2018, requires the Common Sense Initiative Office to review and approve or disapprove certain board or commission actions or proposed actions concerning occupation or industry regulation that may have antitrust implications.
- Voids an action or proposed action disapproved by the Office.
- Allows a board or commission that has taken or proposes to take an action, person who is affected or is likely to be affected by an action taken or proposed by a board or commission, or a person granted a stay in court to refer an action for review by the Office.
- Requires a person to obtain a determination from the Office before pursuing a court action for a violation of antitrust laws, and grants the state, a board or commission, or a member of a board or commission the right to request a stay of antitrust proceedings that lasts until the Office approves or disapproves the action.
- Exempts the following persons from the exhaustion requirement and the stay of court proceedings: the Attorney General, a county prosecutor, or any assistant prosecutor designated to assist a county prosecutor.
- Exempts from the Office's review any action in which members of the board or commission who are members of the profession affected by the action are statutorily prohibited from participating in the action.
- Requires the Office to adopt rules under the Administrative Procedure Act to implement and administer the act's review provisions.

### Health Services Price Disclosure Study Committee

- Eliminates the Health Services Price Disclosure Study Committee in the Governor's Office of Health Transformation.

### Antitrust review by CSI Office

(R.C. 107.56)

Beginning January 21, 2018, the act requires the Common Sense Initiative Office to review and approve or disapprove certain board or commission actions with



antitrust implications that have been referred to the Office. Only certain entities may refer an action to the Office for review. The Office must adopt rules under the Administrative Procedure Act to implement and administer the act's antitrust review provisions.

### Covered entities

Under the act, "board or commission" generally means any multi-member body created by state law that licenses or otherwise regulates an occupation or industry to which at least one of the body's members belongs. The act expressly includes all of the following boards and commissions in the definition:

<b>Boards expressly subject to antitrust review</b>				
Accountancy Board	Architects Board	Board of Embalmers and Funeral Directors	Board of Executives of Long-Term Services and Supports	Crematory Review Board
Motor Vehicle Dealers Board	Motor Vehicle Repair Board	Motor Vehicle Salvage Dealer's Licensing Board	Ohio Athletic Commission	Ohio Construction Industry Licensing Board
Ohio Landscape Architects Board	Ohio Real Estate Commission	Real Estate Appraiser Board	State Auctioneers Commission	State Speech and Hearing Professionals Board
State Cosmetology and Barber Board	Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board	State Board of Education	State Board of Emergency Medical, Fire, and Transportation Services	Board of Nursing
State Board of Pharmacy	State Board of Registration for Professional Engineers and Surveyors	Chemical Dependency Professionals Board	State Board of Psychology	State Dental Board
State Medical Board	State Veterinary Medical Licensing Board	State Vision Professionals Board	State Chiropractic Board	Counselor, Social Worker, and Marriage and Family Therapist Board



## Reviewable actions

The Office must review board or commission actions referred to it that could be subject to state or federal antitrust law if undertaken by a private person or combination of private persons, including actions that directly or indirectly have the following effects:

- Fixing prices, limiting price competition, or increasing prices of goods or services provided by the occupation or industry that the board or commission regulates;
- Dividing, allocating, or assigning customers or markets in Ohio among the members of the occupation or industry that the board or commission regulates;
- Excluding present or potential competitors from the occupation or industry that the board or commission regulates;
- Limiting in Ohio the output or supply of goods or services provided by members of the occupation or industry that the board or commission regulates.

The act exempts the following actions from review by the Office, unless the action is referred to it by a party granted a stay in a pending antitrust suit (see "**Exhaustion and stay**," below):

- Denying an application for a license because the applicant has violated or has not complied with Ohio law or administrative rules.
- Taking disciplinary action against an individual or corporation that is licensed by a board or commission for violations of Ohio law or administrative rules.

An action is not subject to review by the Office if members of the board or commission who are members of the profession affected by the action are statutorily prohibited from participating in the action.

## Parties

The act allows the following parties to refer an action to the Office for review:

- A board or commission that has taken or is proposing to take an action;



- A person who is affected or is likely to be affected by an action taken or proposed to be taken by a board or commission;
- A person who has been granted a stay by a court (see "**Exhaustion and stay**," below).

Referral of an action or proposed action to the Office for review does not constitute an admission that the action violates state or federal law.

## **Procedure**

A board or commission or person who refers an action to the Office for review must prepare a brief statement, explaining the action and describing its consistency or inconsistency with state or federal antitrust law, and file it with the Office. If the action or proposed action is in writing, the party referring the action must attach it to the statement.

The Office must determine whether a referred action is supported by, and consistent with, a clearly articulated state policy expressed in the statutes creating the board or commission or the statutes and rules setting forth the board's or commission's powers, authority, and duties. If the Office finds the action to be consistent with a clearly articulated state policy, the Office must determine whether the clearly articulated state policy is merely a pretext by which the board or commission enables members of the occupation or industry it regulates to engage in anticompetitive conduct that could be subject to antitrust law if undertaken by private persons.

The Office must approve an action if it determines that the action is consistent with a clearly articulated state policy, and the state policy is not a pretext for members of the regulated profession to engage in anticompetitive conduct. The Office must disapprove an action if it determines that the action is not consistent with a clearly articulated state policy, or that the state policy is a pretext.

A board or commission may proceed with or continue an action approved by the Office. If the Office disapproves an action, the action is void.

The Office must prepare a written memorandum that explains its approval or disapproval. The Office must transmit a copy of the memorandum to all parties involved in the review and post it to the Office's website.

A person affected by a board's or commission's action, or who is likely to be affected by a proposed action, must refer the action to the Office for review within 30 days after receiving notice of the action. If a person refers an ongoing or proposed action to the Office for review, the board or commission must cease the action or refrain



from taking the action until the Office prepares and transmits a memorandum approving the action.

### **Exhaustion and stay**

Generally, the act requires any person who has standing to commence and prosecute a state or federal antitrust action against a board or commission to seek review by the Office before pursuing the antitrust claim. The requirement does not apply to the Attorney General, a county prosecutor, or any assistant prosecutor designated to assist a county prosecutor.

If an antitrust suit is pending in court, but the action that forms the basis for the suit has not been reviewed by the Office, the state, a board or commission, or a board or commission member may request a stay of the suit. A court must grant the stay unless the lawsuit was initiated by the Attorney General, a county prosecutor, or an assistant prosecutor designated to assist a county prosecutor. Any stay granted under the act continues until the Office has completed and transmitted the memorandum described under "**Procedure**," above.

### **Health Services Price Disclosure Study Committee**

(Section 620.10 (repealing Section 7 of H.B. 52 of the 131st G.A.))

The act eliminates the Health Services Price Disclosure Study Committee in the Governor's Office of Health Transformation. The Committee was created in 2015 to study the impact and feasibility of carrying out a statute that requires a medical services provider to present to a patient a written cost estimate before performing any nonemergency service or procedure.<sup>77</sup>

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<sup>77</sup> R.C. 5162.80, not in the act. (R.C. 5162.80 is the subject of litigation and is currently enjoined by the Williams County Court of Common Pleas. Litigation on this matter is still underway. *Community Hospitals and Wellness Centers, et al. v. State of Ohio*, 16CI000128 (Williams County CP, Agreed Temporary Injunction, December 22, 2016).)

