



Ohio Revised Code

Section 107.56 Actions reviewed by common sense initiative office.

Effective: January 21, 2018

Legislation: House Bill 49 - 132nd General Assembly

(A) As used in this section, "board or commission" means any of the following:

- (1) The accountancy board;
- (2) The architects board;
- (3) The state cosmetology and barber board;
- (4) The board of embalmers and funeral directors;
- (5) The board of executives of long-term services and supports;
- (6) The crematory review board;
- (7) The motor vehicle dealers board;
- (8) The motor vehicle repair board;
- (9) The motor vehicle salvage dealer's licensing board;
- (10) The Ohio athletic commission;
- (11) The Ohio construction industry licensing board;
- (12) The Ohio landscape architects board;
- (13) The Ohio real estate commission;



- (14) The real estate appraiser board;
- (15) The state auctioneers commission;
- (16) The state speech and hearing professionals board;
- (17) The state board of education;
- (18) The state board of emergency medical, fire, and transportation services;
- (19) The board of nursing;
- (20) The state board of pharmacy;
- (21) The state board of registration for professional engineers and surveyors;
- (22) The state board of psychology;
- (23) The state chiropractic board;
- (24) The state dental board;
- (25) The state medical board;
- (26) The state veterinary medical licensing board;
- (27) The state vision professionals board;
- (28) The counselor, social worker, and marriage and family therapist board;
- (29) The chemical dependency professionals board;
- (30) The Ohio occupational therapy, physical therapy, and athletic trainers board;



(31) Any other multi-member body created under state law that licenses or otherwise regulates an occupation or industry to which one or more members of the body belongs.

(B) The common sense initiative office shall review an action taken or proposed by a board or commission that is subject to review under this section and that is referred to the office pursuant to division (C) of this section.

(1) The following actions are subject to review under this section:

(a) Any action that directly or indirectly has an effect of any of the following:

(i) Fixing prices, limiting price competition, or increasing prices in this state for the goods or services that are provided by the occupation or industry regulated by the board or commission;

(ii) Dividing, allocating, or assigning customers, potential customers, or geographic markets in this state among members of the occupation or industry regulated by the board or commission;

(iii) Excluding present or potential competitors from the occupation or industry regulated by the board or commission;

(iv) Limiting the output or supply in this state of any good or service provided by the members of the occupation or industry regulated by the board or commission.

(b) Any other activity that could be subject to state or federal antitrust law if the action were undertaken by a private person or combination of private persons.

(2) Except as provided in division (H) of this section, the following actions are not subject to review under this section:

(a) Denying an application to obtain a license because the applicant has violated or has not complied with the Ohio Revised Code or the Ohio Administrative Code;



(b) Taking disciplinary action against an individual or corporation that is licensed by a board or commission for violations of the Ohio Revised Code or the Ohio Administrative Code.

(C)(1) The following persons or entities may refer an action to the office for review under this section:

(a) A board or commission that has taken or is proposing to take an action;

(b) A person who is affected by an action taken by a board or commission or is likely to be affected by an action proposed by a board or commission;

(c) A person who has been granted a stay pursuant to division (G) of this section.

(2) A board or commission or person who refers an action to the office shall prepare a brief statement explaining the action and its consistency or inconsistency with state or federal antitrust law and file the statement with the office. If the action is in writing, the board or commission or person shall attach a copy of it to the statement. The person shall transmit a copy of the statement to the board or commission.

(3) The referral of an action by a board or commission for review by the office does not constitute an admission that the action violates any state or federal law.

(4) A person who is affected by an action taken by a board or commission or is likely to be affected by an action proposed by a board or commission shall refer the action to the office for review within thirty days after receiving notice of the action or proposed action.

(5) If an ongoing action or an action proposed by a board or commission is referred to the office for review under this section, the board or commission shall cease the ongoing action or not take the proposed action until the office has approved of the action pursuant to division (E) of this section and prepared and transmitted the memorandum required under division (F) of this section.

(D) The office shall determine whether an action referred to the office under this section is supported by, and consistent with, a clearly articulated state policy as 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 this to be the case, the office shall determine whether the clearly articulated state policy is merely a pretext by which the board or commission enables the members of an occupation or industry the board or commission regulates to engage in anticompetitive conduct that could be subject to state or federal antitrust law if the action were taken by a private person or combination of private persons.

(E) After making the determinations required under division (D) of this section, the office shall take one of the following actions:

(1) Approve the board or commission action if the office determines that the action is pursuant to a clearly articulated state policy and that the policy is not a pretext as described in division (D) of this section. If the office approves the board's or commission's action, the board or commission may proceed to take or may continue the action.

(2) Disapprove the board or commission action if the office determines that the action is not pursuant to a clearly articulated state policy or that if it is pursuant to a clearly articulated state policy, that policy is a pretext as described in division (D) of this section. If the office disapproves the board's or commission's action, the action is void.

(F) The office shall prepare a memorandum that explains the office's approval or disapproval. The office shall transmit a copy of the memorandum to the person and the board or commission or to the board or commission if only the board or commission is involved. The office shall post the memorandum on the web site maintained by the office.

(G)(1) A person having standing to commence and prosecute a state or federal antitrust action against a board or commission shall exhaust the remedies provided by this section before commencing such an action. This division shall not apply to the attorney general, a county prosecuting attorney, or any assistant prosecutor designated to assist a county prosecuting attorney.

(2) The state, a board or commission, or a member of a board or commission in the member's official capacity, may request a stay of any lawsuit alleging that a board or commission engaged in anticompetitive conduct by taking an action described in division (B)(1) or (2) of this section that has



not been previously reviewed by the office under this section. If the lawsuit was initiated by a person other than the attorney general, a county prosecuting attorney, or any assistant prosecutor designated to assist a county prosecuting attorney, the court shall grant the request. If the lawsuit was initiated by the attorney general, a county prosecuting attorney, or any assistant prosecutor designated to assist a county prosecuting attorney, the court shall deny the request. Any stay granted under this division will continue in effect until the office has prepared and transmitted the memorandum required under division (F) of this section.

(H) The office shall review any action referred to the office by a party who has been granted a stay pursuant to division (G) of this section.

(I) Notwithstanding any provision of this section to the contrary, an action taken by a board or commission is not subject to review under this section if the members of the board or commission who are members of the occupation or industry affected by the action are prohibited by statute from hearing, considering, deciding, or otherwise participating in the action.

(J) The office shall adopt rules under Chapter 119. of the Revised Code that are necessary for the implementation and administration of this section.