Introduction to the Office of the Governor's Regulatory Compliance Division

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Federal Antitrust Background

- 1890: Congress passes the Sherman Act, the first antitrust law, as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade"
- 1943: SCOTUS decides Parker, conferring immunity from antitrust laws on the anticompetitive conduct of States acting in their sovereign capacity
- 1980: SCOTUS decides Midcal, establishing two standards for antitrust immunity under Parker: (1) the challenged restraint must be clearly articulated as state policy and (2) the policy must be actively supervised by the state

Federal Antitrust Background

- 2015: SCOTUS decides North Carolina Dental Board, holding that a state board controlled by active market participants may invoke state-action antitrust immunity only if it satisfies Midcal's active supervision requirement
- Requirements for Active Supervision:
  - The substance of the anticompetitive decision must be reviewed
  - The supervisor must have the power to veto or modify the decision to ensure consistency with state policy
  - The mere potential for state supervision is inadequate
  - The supervisor may not be an active market participant

Division Background and Purpose

- Authorized by SB 1995 during the 86th Regular Legislative Session
- Established within the Office of the Governor in November 2019
- Provides active supervision over rulemaking by active market participant-controlled state boards
- Protects Texas consumers, license holders and those who may become licensed, and state boards and their volunteer members

Division Rule Review Process

- The division performs an independent review of proposed rules that affect market competition to assess their consistency with state policy as "clearly articulated" by the Legislature in state statute.
- The division's rule review process is limited to certain state agencies and certain proposed rules.

State Agencies Subject to Review

- The division only reviews rules proposed by state licensing agencies with active market participant-controlled boards.
- There are 23 state agencies that submit proposed rules to the division.

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