

# One Hundred Fourth Legislature - Second Session - 2016

## Introducer's Statement of Intent

### LB946

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**Chairperson: Senator Jim Smith**

**Committee: Transportation and Telecommunications**

**Date of Hearing: January 26, 2016**

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

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On February 25, 2015 the United States Supreme Court released *North Carolina Board of Dental Examiners v. FTC*, 135 S. Ct 1101 (2015). The Court in this case outlined the boundaries of permissible state action-antitrust immunity as it applies to a state licensing board that is controlled by active members of a profession or trade subject to state oversight and regulation.

Federal antitrust laws do not prevent the states from imposing anti-competitive restraints upon an industry through a state regulatory body when the state acts as the sovereign.

The *Dental Examiners* decision held that when a state delegates its' authority to agencies that are controlled by active market participants a special issue is raised and state- action immunity will only attach when: the agency acting in a regulatory capacity is subject to state supervision; and an agency's challenged regulation or action is a clear expression of state policy.

LB 946 addresses the Nebraska Motor Vehicle Industry Licensing Board (Board). The Board is tasked with the statutory duty to oversee and regulate the business activity of motor vehicle and trailer dealers. The statutory composition of the Board includes vehicle dealers, manufacturers, and the general public. The director of the Nebraska Department of Motor Vehicles serves as the statutory chair of the Board. Under the holding of *Dental Examiners* the Board does contain as a part of its' membership, active market participants.

LB 946 address the holding in the *Dental Examiners* decision and the issues of state control and state action immunity by amending the Motor Vehicle Industry Licensing Act to provide, that with respect to any action taken by the Board, if a controlling number of members of the Board are active market participants in the vehicle market in which a action is taken, the

Director of Motor Vehicles shall review such action and shall review, modify, alter, approve, or reject the action of the Board.

**Principal Introducer:** \_\_\_\_\_

Senator Jim Smith