

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
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As Engrossed: H3/14/17 H3/22/17
A Bill

HOUSE BILL 2159

By: Representatives Womack, Ballinger, McCollum
By: Senator G. Stubblefield

For An Act To Be Entitled

AN ACT TO PROVIDE FOR OVERSIGHT OF STATE OCCUPATIONAL REGULATIONS; TO CREATE THE OCCUPATIONAL REGULATION OVERSIGHT SUBCOMMITTEE; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR OVERSIGHT OF STATE OCCUPATIONAL REGULATIONS; AND TO CREATE THE OCCUPATIONAL REGULATION OVERSIGHT SUBCOMMITTEE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The justification for regulating occupations is the health and safety of consumers;

(2) Occupational regulations can raise costs, limit supply, and harm consumer welfare, and the health and safety of consumers can sometimes be protected at least as well using less restrictive forms of regulation, such as deceptive trade practices acts, inspections, bonding, insurance, registration, and voluntary certification;

(3) The prevalence of occupational licensing has increased dramatically in recent decades, in part because private interests have sought licensing to limit competition; and

(4) The United States Supreme Court addressed the use of occupational licensing in North Carolina Board of Dental Examiners v. Federal



Trade Commission, 135 S. Ct. 1101 (2015), and held that licenses may violate federal antitrust laws if they are imposed and enforced by active market participants because there is a danger that self-interested participants will impose occupational licensing restrictions to further their own interests rather than the interests of the state.

(b) The General Assembly intends for the Occupational Regulation Oversight Subcommittee created under this act to encourage legislative scrutiny and appropriate regulatory relief that is consistent with the protection of the health, safety, and welfare of consumers.

SECTION 2. Arkansas Code Title 10, Chapter 3, is amended to add an additional subchapter to read as follows:

Subchapter 32 – Occupational Regulation Oversight Subcommittee

10-3-3201. Creation.

(a) There is created a subcommittee of the Senate Committee on Public Health, Welfare, and Labor and the House Committee on Public Health, Welfare, and Labor to be known as the "Occupational Regulation Oversight Subcommittee".

(b)(1) The Occupational Regulation Oversight Subcommittee shall consist of the following members:

(A)(i) Four (4) members of the Senate Committee on Public Health, Welfare, and Labor appointed by the Chair of the Senate Committee on Public Health, Welfare, and Labor.

(ii) From among the members appointed under subdivision (b)(1)(A)(i) of this section, the Chair of the Senate Committee on Public Health, Welfare, and Labor shall appoint one (1) member to serve as the Senate Cochair of the Occupational Regulation Oversight Subcommittee; and

(B)(i) Ten (10) members of the House Committee on Public Health, Welfare, and Labor appointed by the Chair of the House Committee on Public Health, Welfare, and Labor.

(ii) From among the members appointed under subdivision (b)(1)(B)(i) of this section, the Chair of the House Committee on Public Health, Welfare, and Labor shall appoint one (1) member to serve as the House Cochair of the Occupational Regulation Oversight Subcommittee.

(2) Each congressional district of the state shall be

represented by membership on the Occupational Regulation Oversight Subcommittee, as follows:

(A) At least two (2) members shall be from the First Congressional District;

(B) At least two (2) members shall be from the Second Congressional District;

(C) At least two (2) members shall be from the Third Congressional District; and

(D) At least two (2) members shall be from the Fourth Congressional District.

(c) The Occupational Regulation Oversight Subcommittee may meet during the interim or while the General Assembly is in session, at the call of the cochairs of the Occupational Regulation Oversight Subcommittee.

(d) A quorum shall consist of a majority of the members of the Occupational Regulation Oversight Subcommittee.

(e) Members of the Occupational Regulation Oversight Subcommittee shall be entitled to per diem and mileage at the rate provided by law to be paid from funds appropriated for payment of per diem and mileage for attendance at meetings of interim committees of the House of Representatives and the Senate.

10-3-3202. Duties.

The Occupational Regulation Oversight Subcommittee shall:

(1) For at least ten (10) regulated occupations each year, review the proposed and existing statutes, ordinances, rules, practices, policies, and other requirements prescribed by the state for a private individual to work in the lawful occupation, regardless of whether the statute, ordinance, rule, practice, policy, or other government-prescribed requirement existed before the effective date of this act, to determine if the statute, ordinance, rule, practice, policy, or other government-prescribed requirement:

(A) Imposes a substantial burden on:

(i) A private individual in terms of time, financial obligations, or the expenditure of other resources; or

(ii) Consumer choices and costs, general employment, market competition, and governmental costs;

(B) Is not substantially related to the state's important interest in protecting against present and recognizable harm to the public health or safety;

(C)(i) Is either unreasonable or more restrictive than is necessary to further the state's important interest in protecting against present and recognizable harm to the public health or safety.

(ii) The means of restricting a private individual's right to engage in a lawful occupation are as follows, from least restrictive to most restrictive:

(a) A provision for private civil action to remedy consumer harm;

(b) Deceptive trade practice acts and other laws that protect consumers from harm;

(c) Inspection;

(d) Bonding;

(e) Registration without the requirement that the private individual meet certain personal qualifications;

(f) Certification based on meeting certain personal qualifications that are required in order to use the title "certified"; and

(g) Licensing based on meeting certain personal qualifications;

(D) Compares favorably to how other states regulate the same occupations; and

(E) Creates a substantial likelihood of state antitrust liability under North Carolina Board of Dental Examiners v. Federal Trade Commission, 135 S. Ct. 1101 (2015); and

(2) By December 31 of each even-numbered year:

(A) provide to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Senate Committee on Public Health, Welfare, and Labor, and the Chair of the House Committee on Public Health, Welfare, and Labor a report of any recommendations, analysis, or findings resulting from the Occupational Regulation Oversight Subcommittee's activities under this section that the Occupational Regulation Oversight Subcommittee deems relevant to reducing or eliminating the burden on Arkansas citizens' right to engage in a lawful

occupation, including without limitation:

(i) Whether the current level of occupational regulation required by each regulated occupation is necessary to protect public health, safety, and welfare;

(ii) Whether public health, safety, and welfare could be appropriately protected using a less restrictive means of restricting a private individual's right to engage in a lawful occupation; and

(ii) The changes the Occupational Regulation Oversight Subcommittee recommends to the occupational regulations reviewed during the year; and

(B) Request and encourage that the Senate Committee on Public Health, Welfare, and Labor or the House Committee on Public Health, Welfare, and Labor, or both, consider, at a meeting the following January, the separate and independent issues and recommendations stated in the report provided under subdivision (2)(A) of this section.

SECTION 3. DO NOT CODIFY. Initial report and recommendations of the Occupational Regulation Oversight Subcommittee.

By September 1, 2017, the Occupational Regulation Oversight Subcommittee shall submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Senate Committee on Public Health, Welfare, and Labor, and the Chair of the House Committee on Public Health, Welfare, and Labor a report containing recommendations regarding whether:

(1) A constitutional officer should be authorized to provide active supervision of rules, policies, and enforcement actions to ensure that members of the regulatory boards and commissions are immune from antitrust litigation, as required under North Carolina Board of Dental Examiners v. Federal Trade Commission, 135 S. Ct. 1101 (2015); and

(2) The General Assembly should enact laws to establish:

(A) The right of an individual to pursue an occupation as a fundamental right;

(B) That occupational regulations shall be construed and applied by regulatory agencies, boards, and commissions to increase economic opportunities, promote competition, and encourage innovation; and

(C) That, if necessary to displace competition in the future, the General Assembly shall use the least restrictive occupational regulation possible to protect consumers from present, significant, and substantiated harms that threaten public health, safety, and welfare.

/s/Womack