

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

State of Arkansas
92nd General Assembly
Regular Session, 2019

As Engrossed: H2/28/19
A Bill

HOUSE BILL 1527

By: Representatives Cozart, Womack, Burch, Lynch, Nicks

By: Senators J. Cooper, T. Garner

For An Act To Be Entitled

AN ACT TO CREATE THE RED TAPE REDUCTION SUNRISE AND SUNSET ACT OF 2019; TO REQUIRE LEGISLATIVE REVIEW OF OCCUPATIONAL AUTHORIZATIONS AND OCCUPATIONAL ENTITIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE RED TAPE REDUCTION SUNRISE AND SUNSET ACT OF 2019; AND TO REQUIRE LEGISLATIVE REVIEW OF OCCUPATIONAL AUTHORIZATIONS AND OCCUPATIONAL ENTITIES.

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known and may be cited as the "Red Tape Reduction Sunrise and Sunset Act of 2019".

SECTION 2. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansas is taking a leading role in the nationwide pursuit of reforms to the system of occupational licensing;

(2) Arkansas became one (1) of eleven (11) states chosen to participate in the Occupational Licensing Policy Learning Consortium, an initiative funded by a grant from the United States Department of Labor and supported in partnership with the National Conference of State Legislatures, the Council of State Governments, and the National Governors Association;



(3) Governor Asa Hutchinson appointed seventeen (17) individuals to the Red Tape Reduction Working Group to review and address occupational licensing regulations that create unnecessary barriers to labor market entry; and

(4) The Red Tape Reduction Working Group issued a final report to the Governor in the fall of 2018 with five (5) recommendations for substantive legislative reform, which are to:

(A) Establish an expedited procedure for occupational entities to collectively submit administrative rules that are responsive to new legislation;

(B) Extend Acts 2017, No. 781, to allow repeal of subsections of rules;

(C) Establish provisions to allow certain agencies to consider occupational relevance with regard to criminal background issues;

(D) Authorize occupational entities to identify types of individuals or entities that may be issued temporary or provisional licenses; and

(E) Establish a systematic process for review of:

(i) New occupational authorization and occupational entities; and

(ii) Existing occupational authorization and occupational entities.

(b) It is the intent of the General Assembly to establish a systematic process for review of:

(1) New occupational authorization and occupational entities; and

(2) Existing occupational authorization and occupational entities.

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

10-3-318. Review of occupational authorizations and occupational entities – Findings and intent.

(a) The General Assembly finds and determines that it is in the best interest of this state to conduct a periodic comprehensive review of all occupational authorizations and the occupational entities that issue them.

(b) It is the intent of the General Assembly to determine and implement the least restrictive form of occupational authorization to protect consumers from significant and substantiated harms to public health and safety.

(c) As used in this section:

(1) "Occupational authorization" means a license, government-required certificate, registration, permit, or other form of authorization required by law or rule that is required for an individual to engage in a particular occupation or profession; and

(2) "Occupational entity" means an office, board, commission, department, council, bureau, or other agency of state government having authority to establish or issue an occupational authorization.

(d)(1) The Legislative Council shall:

(A)(i) Review each occupational authorization and each occupational entity on an annual rotating basis to determine if the existing occupational authorization or occupational entity, or both, is consistent with the intent described in subsection (b) of this section.

(ii)(a) The occupational authorizations and the occupational entities shall be divided into six (6) groups to be determined by the Legislative Council.

(b) The Legislative Council shall review one (1) group each year.

(iii) However, an occupational authorization or occupational entity may be reviewed out of the rotating basis if a member of the General Assembly makes a formal request to the Legislative Council and the cochaIRS of the Legislative Council approve the request.

(iv) After all groups have been reviewed one (1) time, the Legislative Council shall continue to review the groups as described in this section;

(B)(i) Analyze whether consumers are sufficiently protected by competition, public knowledge of the reputations of occupational practitioners, private ratings and reviews, private certification, voluntary bonding, and voluntary insurance.

(ii) If the Legislative Council finds substantiated evidence showing that the competition and private actions described in subdivision (d)(1)(B)(i) of this section provides for insufficient protection

from significant harm, the Legislative Council shall use the following guidelines in the Legislative Council's review:

(a) The effects of the existing occupational authorization and any proposed occupational reform on opportunities for workers, consumer choices, consumer costs, general unemployment, market competition, government costs, and any other effects deemed relevant;

(b) Whether the occupational authorization and any proposed occupational reform employs the least restrictive form of occupational authorization to protect consumers from significant and substantiated harm to public health and safety;

(c) If and to what degree existing occupational regulation and any proposed occupational reform delegate administrative rules promulgation to an occupational entity concerning the establishment of the following:

(1) The scope of practice for the occupation or profession; or

(2) The qualifications for the occupational authorization; and

(d) Whether a significant and substantiated exposure to antitrust litigation under any existing occupational regulation and under any proposed occupational reform exists; and

(C)(i) Make recommendations to the Speaker of the House of Representatives and the President Pro Tempore of the Senate regarding:

(a) The repeal of an occupational authorization;

(b) The conversion of an occupational authorization to a less restrictive occupational authorization;

(c) The promulgation of revised rules reflecting the use of less restrictive occupational authorization consistent with subsection (e) of this section;

(d) The modification of qualifications for an occupational authorization;

(e) The modification or redefinition of the scope of practice of an occupation or profession; or

(f) Any other relevant legislative reforms deemed necessary.

(ii) However, the Legislative Council is not required to recommend any legislative reform for any particular occupational authorization or occupational entity.

(2) The Legislative Council may:

(A) Establish or utilize one (1) or more subcommittees to assist in its duties under this section;

(B) Assign information filed with the Legislative Council under this section to one (1) or more subcommittees of the Legislative Council, including without limitation a subcommittee created under subdivision (d)(2)(A) of this section; and

(C) Delegate its duties under this section to one (1) or more subcommittees of the Legislative Council, subject to final review and approval of the Legislative Council.

(3) If the Legislative Council determines that it is necessary, the Legislative Council may contract with consultants to assist in the duties assigned under this section or request the staff of Arkansas Legislative Audit assist in the duties assigned under this section.

(e)(1) The Legislative Council shall analyze whether consumers can be sufficiently protected by competition, the reputations of occupational practitioners, private ratings and reviews, private certification, voluntary bonding, and voluntary insurance.

(2) If the Legislative Council finds substantiated evidence of significant harm arising from:

(A)(i) Contractual disputes, including pricing disputes, the Legislative Council may recommend enacting legislation allowing lawsuits in small claims court or district court to remedy a specific consumer harm.

(ii) A cause of action described in subdivision (e)(2)(A)(i) of this section may provide for reimbursement of attorney's fees or court costs if a consumer claim is successful;

(B) Fraud, the Legislative Council may recommend legislation strengthening powers under the deceptive trade practices laws or requiring disclosures to reduce misleading attributes of the specific good or service;

(C) General health and safety, the Legislative Council may recommend legislation enacting a law or rule that regulates the related process or requiring a business license;

(D) Unclean facilities, the Legislative Council may recommend legislation requiring periodic facility inspections;

(E) Failure of an occupational licensee to complete a contract fully or comply with standards, the Legislative Council may recommend legislation requiring the occupational licensee to be bonded;

(F) Lack of protection for a person who is not a party to a contract between an occupational licensee and a consumer, the Legislative Council may recommend legislation requiring the occupational licensee to have insurance;

(G) Transactions with transient, out-of-state, or fly-by-night occupational licensees, the Legislative Council may recommend legislation requiring the occupational licensee to register the business with the Secretary of State;

(H) Shortfalls or lack of knowledge about the good or service among consumers relative to the occupational practitioner's knowledge, the Legislative Council may recommend legislation enacting government-required certification or other occupational authorization;

(I) Systematic information shortfall in which a reasonable consumer of a service is permanently unable to distinguish between the quality of occupational licensees and an absence of guidance to the consumers exists, the Legislative Council may recommend legislation enacting or maintaining an occupational authorization; or

(J) Multiple areas listed in subdivisions (e)(2)(A) through (I) of this section, the Legislative Council may recommend legislation with a combination of occupational authorization, including regulation with a private remedy, third-party or consumer-created ratings and reviews, or private certification.

(f) Under a timeline as determined by the Legislative Council, an occupational entity shall:

(1)(A) File a report with the Governor and the Legislative Council.

(B) The report shall include:

(i) The name of the occupation, the type of regulation, and the scope of practice for each occupation that the occupational entity regulates;

(ii) The amount of any fee or penalty associated

with each occupation;

(iii) The number of individuals regulated by the occupational entity, grouped by occupational authorization;

(iv) A statement describing in what respects, if any, each occupational authorization is required by state or federal law; and

(v) Any other relevant information as determined by the Legislative Council;

(2) Appear at a public hearing before the Legislative Council to discuss the report prepared by the occupational entity; and

(3) Provide any assistance requested to the Legislative Council regarding the review of each occupational authorization.

(g) This section does not apply to occupational authorizations or occupational entities that are not subject to the oversight or purview of the General Assembly through the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

/s/Cozart