

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

1 State of Arkansas As Engrossed: H3/14/17 H3/22/17

2 91st General Assembly

# A Bill

3 Regular Session, 2017

HOUSE BILL 2159

4

5 By: Representatives Womack, Ballinger, McCollum

6 By: Senator G. Stubblefield

7

8

## For An Act To Be Entitled

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

12

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14

## Subtitle

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TO PROVIDE FOR OVERSIGHT OF STATE

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OCCUPATIONAL REGULATIONS; AND TO CREATE

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THE OCCUPATIONAL REGULATION OVERSIGHT

18

SUBCOMMITTEE.

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

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

24 *(a) The General Assembly finds that:*

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

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

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

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



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

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

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

13 Subchapter 32 – Occupational Regulation Oversight Subcommittee

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15 10-3-3201. Creation.

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

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

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

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

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

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

36 (2) Each congressional district of the state shall be

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

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

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

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

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

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

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

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

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22 10-3-3202. Duties.

23 The Occupational Regulation Oversight Subcommittee shall:

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

32 (A) Imposes a substantial burden on:

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

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

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

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

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

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

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

14 (c) Inspection;

15 (d) Bonding;

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

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

21 (g) Licensing based on meeting certain  
22 personal qualifications;

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

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

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

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

1 occupation, including without limitation:

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

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

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

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

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

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

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

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

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

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

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

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