

INTERIM STUDY PROPOSAL 2017-069
As Engrossed: H3/14/17 H3/22/17

A Bill

State of Arkansas
91st General Assembly
Regular Session, 2017

HOUSE BILL 2159

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

*Filed with: House Committee on Public Health, Welfare, and Labor
pursuant to A.C.A. §10-3-217.*

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

1 (4) The United States Supreme Court addressed the use of
2 occupational licensing in North Carolina Board of Dental Examiners v. Federal
3 Trade Commission, 135 S. Ct. 1101 (2015), and held that licenses may violate
4 federal antitrust laws if they are imposed and enforced by active market
5 participants because there is a danger that self-interested participants will
6 impose occupational licensing restrictions to further their own interests
7 rather than the interests of the state.

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

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

15 Subchapter 32 – Occupational Regulation Oversight Subcommittee

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17 10-3-3201. Creation.

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

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

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

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

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

34 (ii) From among the members appointed under
35 subdivision (b)(1)(B)(i) of this section, the Chair of the House Committee on

1 Public Health, Welfare, and Labor shall appoint one (1) member to serve as
2 the House Cochair of the Occupational Regulation Oversight Subcommittee.

3 (2) Each congressional district of the state shall be
4 represented by membership on the Occupational Regulation Oversight
5 Subcommittee, as follows:

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

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

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

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

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

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

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

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25 10-3-3202. Duties.

26 The Occupational Regulation Oversight Subcommittee shall:

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

35 (A) Imposes a substantial burden on:

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

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

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

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

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

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

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

18 (c) Inspection;

19 (d) Bonding;

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

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

25 (g) Licensing based on meeting certain
26 personal qualifications;

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

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

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

33 (A) provide to the Governor, the President Pro Tempore of
34 the Senate, the Speaker of the House of Representatives, the Chair of the
35 Senate Committee on Public Health, Welfare, and Labor, and the Chair of the
36 House Committee on Public Health, Welfare, and Labor a report of any

1 recommendations, analysis, or findings resulting from the Occupational
2 Regulation Oversight Subcommittee's activities under this section that the
3 Occupational Regulation Oversight Subcommittee deems relevant to reducing or
4 eliminating the burden on Arkansas citizens' right to engage in a lawful
5 occupation, including without limitation:

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

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

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

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

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

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

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

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

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

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

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

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11 /s/Womack

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14 Referred by the Arkansas House of Representatives

15 Prepared by: VJF

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