

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: H2/28/19

A Bill

HOUSE BILL 1527

5 By: Representatives Cozart, Womack, Burch, Lynch, Nicks
6 By: Senators J. Cooper, T. Garner
7

For An Act To Be Entitled

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

15 TO CREATE THE RED TAPE REDUCTION SUNRISE
16 AND SUNSET ACT OF 2019; AND TO REQUIRE
17 LEGISLATIVE REVIEW OF OCCUPATIONAL
18 AUTHORIZATIONS AND OCCUPATIONAL ENTITIES.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. DO NOT CODIFY. Title.

25 This act shall be known and may be cited as the "Red Tape Reduction
26 Sunrise and Sunset Act of 2019".
27

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

29 (a) The General Assembly finds that:

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

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



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

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

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

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

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

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

18 (E) Establish a systematic process for review of:

19 (i) New occupational authorization and occupational
20 entities; and

21 (ii) Existing occupational authorization and
22 occupational entities.

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

25 (1) New occupational authorization and occupational entities;
26 and

27 (2) Existing occupational authorization and occupational
28 entities.

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

32 10-3-318. Review of occupational authorizations and occupational
33 entities – Findings and intent.

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

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

5 (c) As used in this section:

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

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

13 (d)(1) The Legislative Council shall:

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) The qualifications for the
18 occupational authorization; and

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

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

24 (a) The repeal of an occupational
25 authorization;

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

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

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

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

35 (f) Any other relevant legislative reforms
36 deemed necessary.

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

4 (2) The Legislative Council may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (B) The report shall include:

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

36 (ii) The amount of any fee or penalty associated

1 with each occupation;

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

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

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

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

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

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

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17 */s/Cozart*

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20 **APPROVED: 3/29/19**