

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

A Bill

HOUSE BILL 1527

5 By: Representatives Cozart, Womack, Burch, Lynch, Nicks
6 By: Senator J. Cooper
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

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16 TO CREATE THE RED TAPE REDUCTION SUNRISE
17 AND SUNSET ACT OF 2019; AND TO REQUIRE
18 LEGISLATIVE REVIEW OF OCCUPATIONAL
19 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.

29
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;

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; and

13 (3) "Specialty occupational authorization for medical
14 reimbursement" means an authorization in law for an individual to qualify for
15 payment or reimbursement from a state agency for the nonexclusive provision
16 of medical services based on the qualifications of the individual as
17 established by legislation.

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

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

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

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

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

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

35 (B)(i) Analyze whether consumers are sufficiently
36 protected by competition, public knowledge of the reputations of occupational

1 practitioners, private ratings and reviews, private certification, voluntary
2 bonding, and voluntary insurance.

3 (ii) If the Legislative Council finds substantiated
4 evidence showing that the competition and private actions described in
5 subdivision (d)(1)(B)(i) of this section provides for insufficient protection
6 from significant harm, the Legislative Council shall use the following
7 guidelines in the Legislative Council's review:

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

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

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

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

22 (2) The qualifications for the
23 occupational authorization; and

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

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

29 (a) The repeal of an occupational
30 authorization;

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

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

36 (d) The modification of qualifications for an

1 occupational authorization;

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

4 (f) Any other relevant legislative reforms
5 deemed necessary.

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

9 (2) The Legislative Council may:

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

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

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

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

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

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

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

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

35 (B) Fraud, the Legislative Council may recommend
36 legislation strengthening powers under the deceptive trade practices laws or

1 requiring disclosures to reduce misleading attributes of the specific good or
2 service;

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

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

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

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

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

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

23 (I) Inability to qualify occupational licensees of new or
24 highly specialized medical services for reimbursement by the state, the
25 Legislative Council may recommend legislation enacting a specialty license
26 for medical reimbursement;

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

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

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

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

5 (B) The report shall include:

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

9 (ii) The amount of any fee or penalty associated
10 with each occupation;

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

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

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

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

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

21 (g) This section does not apply to occupational authorizations or
22 occupational entities that are not subject to the oversight or purview of the
23 General Assembly through the Arkansas Administrative Procedure Act, § 25-15-
24 201 et seq.

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26 SECTION 4. Arkansas Code Title 17, Chapter 1, Subchapter 1, is amended
27 to add an additional section to read as follows:

28 17-1-108. Specialty occupational authorization for medical
29 reimbursement.

30 (a) As used in this section:

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

35 (2) "Specialty occupational authorization for medical
36 reimbursement" means an authorization in law for an individual to qualify for

1 payment or reimbursement from a state agency for the nonexclusive provision
2 of medical services based on the qualifications of the individual as
3 established by legislation.

4 (b) A private company may recognize a specialty occupational
5 authorization for medical reimbursement.

6 (c) It is not unlawful for an individual who:

7 (1) Is regulated under another occupational authorization to
8 provide similar services as defined in the statute regarding that
9 occupational authorization for compensation and reimbursement; or

10 (2) Does not possess a specialty occupational authorization for
11 medical reimbursement to provide medical services for compensation, but an
12 individual without a specialty occupational authorization for medical
13 reimbursement shall not qualify for payment or reimbursement from a state
14 agency.

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