

1 State of Arkansas  
2 91st General Assembly  
3 Regular Session, 2017  
4

As Engrossed: H3/14/17

# A Bill

HOUSE BILL 2159

5 By: Representative Womack  
6

## For An Act To Be Entitled

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

## Subtitle

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14 TO PROVIDE FOR OVERSIGHT OF STATE  
15 OCCUPATIONAL REGULATIONS; AND TO CREATE  
16 THE OCCUPATIONAL REGULATION OVERSIGHT  
17 SUBCOMMITTEE.  
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 *SECTION 1. DO NOT CODIFY. Legislative findings and intent.*

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

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

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

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

34 *(4) The United States Supreme Court addressed the use of*  
35 *occupational licensing in North Carolina Board of Dental Examiners v. Federal*  
36 *Trade Commission, 135 S. Ct. 1101 (2015), and held that licenses may violate*



1 federal antitrust laws if they are imposed and enforced by active market  
2 participants because there is a danger that self-interested participants will  
3 impose occupational licensing restrictions to further their own interests  
4 rather than the interests of the state.

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

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

12 Subchapter 32 – Occupational Regulation Oversight Subcommittee

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14 10-3-3201. Creation.

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

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

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

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

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

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

35 (2) Each congressional district of the state shall be  
36 represented by membership on the Occupational Regulation Oversight

1 Subcommittee, as follows:

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

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

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

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

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

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

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

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21 10-3-3202. Duties.

22 The Occupational Regulation Oversight Subcommittee shall:

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

31 (A) Imposes a substantial burden on:

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

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

36 (B) Is not substantially related to the state's important

1 interest in protecting against present and recognizable harm to the public  
2 health or safety;

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

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

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

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

13 (c) Inspection;

14 (d) Bonding;

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

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

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

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

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

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

28 (A) provide to the Governor, the President Pro Tempore of  
29 the Senate, the Speaker of the House of Representatives, the Chair of the  
30 Senate Committee on Public Health, Welfare, and Labor, and the Chair of the  
31 House Committee on Public Health, Welfare, and Labor a report of any  
32 recommendations, analysis, or findings resulting from the Occupational  
33 Regulation Oversight Subcommittee's activities under this section that the  
34 Occupational Regulation Oversight Subcommittee deems relevant to reducing or  
35 eliminating the burden on Arkansas citizens' right to engage in a lawful  
36 occupation, including without limitation:

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

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

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

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

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

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

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

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

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

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

36 (C) That, if necessary to displace competition in the

1 future, the General Assembly shall use the least restrictive occupational  
2 regulation possible to protect consumers from present, significant, and  
3 substantiated harms that threaten public health, safety, and welfare.

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/s/Womack