

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

# A Bill

HOUSE BILL 1527

4  
5 By: Representatives Cozart, Womack, Burch, Lynch, Nicks  
6 By: Senator J. Cooper

## 7 8 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.

## 13 14 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.

19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21  
22 SECTION 1. DO NOT CODIFY. Title.  
23 This act shall be known and may be cited as the "Red Tape Reduction  
24 Sunrise and Sunset Act of 2019".

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

27 (a) The General Assembly finds that:

28 (1) Arkansas is taking a leading role in the nationwide pursuit  
29 of reforms to the system of occupational licensing;  
30 (2) Arkansas became one (1) of eleven (11) states chosen to  
31 participate in the Occupational Licensing Policy Learning Consortium, an  
32 initiative funded by a grant from the United States Department of Labor and  
33 supported in partnership with the National Conference of State Legislatures,  
34 the Council of State Governments, and the National Governors Association;



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

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

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

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

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

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

(E) Establish a systematic process for review of:

(i) New occupational authorization and occupational entities; and

(ii) Existing occupational authorization and occupational entities.

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

(1) New occupational authorization and occupational entities;  
and

(2) Existing occupational authorization and occupational entities.

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

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

(a) The General Assembly finds and determines that it is in the best interest of this state to conduct a periodic comprehensive review of all 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)(1) 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

occupational authorization;

(e) The modification or redefinition of the

scope of practice of an occupation or profession; or

(f) Any other relevant legislative reforms

deemed n

(ii) However, the Legislative Council is no

required to recommend any legislative reform for any particular occupational authorization or occupational entity.

(2) The Legislative Council may:

(A) Establish or utilize one (1) or more subcommittees to  
ies under this section;

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

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

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

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

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

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

(ii) A cause of action described in subdivision

(e)(2)(A)(i) of this section may provide for reimbursement of attorney's fees or court costs if a consumer claim is successful;

(B) Fraud, the Legislative Council may recommend

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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