

2018 Regular Session

HOUSE BILL NO. 372

BY REPRESENTATIVE CONNICK

BOARDS/COMMISSIONS: Establishes the Occupational Board Compliance Act

1 AN ACT

2 To enact Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 37:41 through 46, relative to creating the "Occupational Board Compliance
4 Act"; to provide definitions; to provide policy concerning occupational regulations
5 and respective boards; to create the Occupational Licensing Review Commission;
6 to require the commission to provide active supervision of occupational licensing
7 boards; to provide for inapplicability to occupational licensing boards not controlled
8 by active market participants; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 37:41 through 46, is hereby enacted to read as follows:

12 CHAPTER 1-D. OCCUPATIONAL BOARD COMPLIANCE ACT

13 §41. Short title

14 This Chapter shall be known and may be cited as the "Occupational Board
15 Compliance Act".

16 §42. Legislative policy

17 By establishing and executing the policies provided in this Chapter, the state
18 intends to ensure that occupational licensing boards and board members will avoid
19 liability under federal antitrust laws.

1 §43. Definitions

2 For purposes of this Chapter, the following words have the meaning herein
3 ascribed to them, unless the context clearly indicates otherwise:

4 (1) "Active market participant" means an individual who is any of the
5 following:

6 (a) Licensed by an occupational licensing board.

7 (b) A provider of any service subject to the regulatory authority of an
8 occupational licensing board.

9 (c) Subject to the jurisdiction of an occupational licensing board.

10 (2) "Active supervision" includes but is not limited to the Occupational
11 Licensing Review Commission's responsibilities to do all of the following:

12 (a) Review the substance of an occupational regulation proposed by any
13 occupational licensing board.

14 (b) Approve, disapprove, disapprove with suggested amendments, or allow
15 the occupational licensing board to withdraw for revision such occupational
16 regulation to ensure compliance with state policy.

17 (3) "Certification" means a voluntary program in which a private
18 organization or the state grants nontransferable recognition to an individual who
19 meets personal qualifications established by the private organization or the state.
20 Upon approval, the individual may use "certified" as a designated title. A
21 noncertified individual may also perform the occupation for compensation but may
22 not use the title "certified".

23 (4) "Commission" means the Occupational Licensing Review Commission
24 as provided for in R.S. 37:45.

25 (5) "Least restrictive regulation" means, from least to most restrictive, all of
26 the following:

27 (a) Market competition.

28 (b) Third-party or consumer-created ratings and reviews.

29 (c) Private certification.

1 (d) Specific private civil cause of action to remedy consumer harm as
2 provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401
3 et seq.

4 (e) Regulation of the process of providing the specific goods or services to
5 consumers.

6 (f) Inspection.

7 (g) Bonding or insurance.

8 (h) Registration.

9 (i) Government certification.

10 (j) Occupational license.

11 (6) "Occupational license" means a nontransferable authorization for an
12 individual to exclusively perform a lawful occupation for compensation based on
13 meeting certain personal qualifications. In an occupation for which a license is
14 required, it is illegal for an individual who does not possess a valid occupational
15 license to perform the occupation for compensation.

16 (7) "Occupational licensing board" means any state executive branch board,
17 commission, department, or other agency that is all of the following:

18 (a) Established for the primary purpose of regulating the entry of persons
19 into, or regulating the conduct of persons within, a particular profession or
20 occupation.

21 (b) Authorized to issue and revoke occupational licenses.

22 (c) Controlled by active market participants.

23 (8) "Occupational regulation" means a rule, regulation, restraint, practice, or
24 policy allowing an individual to use an occupational title or work in a lawful
25 occupation, including but not limited to registrations, certifications, and
26 occupational licenses. "Occupational regulation" excludes a business license, facility
27 license, building permit, or zoning and land use regulation except to the extent
28 related state laws regulate an individual's personal qualifications to perform a lawful
29 occupation.

1 (9) "Personal qualifications" mean the criteria related to an individual's
2 personal background and characteristics, including completion of an approved
3 educational program, satisfactory performance on an examination, work experience,
4 other evidence of attainment of requisite skills or knowledge, moral standing,
5 criminal history, and completion of continuing education.

6 (10) "Registration" means a requirement to give notice to the state that may
7 include the individual's name and address, the individual's agent for service of
8 process, the location of the activity to be performed, and a description of the service
9 the individual provides. "Registration" does not include personal qualifications but
10 may require a bond or insurance. Upon the state's receipt of notice, the individual
11 may use "registered" as a designated title. A nonregistered individual may not
12 perform the occupation for compensation or use "registered" as a designated title.
13 "Registration" is not transferable.

14 (11) "State policy" means the policy described in R.S. 31:44.

15 §44. State policy for promulgated occupational regulations

16 For occupational regulations promulgated by occupational licensing boards,
17 each of the following apply as policy of this state:

18 (1) The increase of economic opportunities for all of its citizens by
19 promoting competition and thereby encouraging innovation and job growth.

20 (2) Use of the least restrictive regulation necessary to protect consumers
21 from present, significant, and substantiated harms that threaten public health and
22 safety.

23 §45. Occupational Licensing Review Commission

24 A.(1) There is hereby created the Occupational Licensing Review
25 Commission to be composed of the governor, the secretary of state, and the attorney
26 general or his respective designee. The governor shall be the chairman of the
27 commission and the secretary of state shall be the secretary. The commission shall
28 meet quarterly and at such other times as meetings may be called by the chair. A

1 majority of the members constitutes a quorum at any meeting. Any final action
2 taken by the commission requires the affirmative vote of a majority of the members.

3 (2) The office of the governor shall provide such support of the commission
4 necessary to accomplish the purposes of this Chapter, including but not limited to
5 research and clerical assistance. Any department, division, board, bureau,
6 commission, or agency of the state shall provide, at the request of the chair of the
7 commission, such assistance and data as will enable the commission to carry out its
8 duties.

9 B. The commission is responsible for the active supervision of state
10 executive branch occupational licensing boards controlled by active market
11 participants to ensure compliance with state policy in the adoption of occupational
12 regulations promulgated by an occupational licensing board. The required active
13 supervision described in this Chapter does not extend to individual disciplinary
14 actions taken or imposed by an occupational licensing board as to any active market
15 participant subject to the jurisdiction of the occupational licensing board.

16 C. An occupational licensing board shall submit any proposed occupational
17 regulation to the commission before the occupational licensing board may file the
18 occupational regulation in the office of the secretary of state, if the occupational
19 regulation is required to be filed in accordance with the Administrative Procedure
20 Act, or before the occupational regulation becomes effective, if filing is not required.

21 D. The commission shall issue resolutions necessary to effectuate the
22 provisions of this Chapter, including the process, procedures, and timelines that will
23 govern any submission filed in accordance with this Chapter.

24 E. Nothing in this Chapter shall be interpreted to subject the commission to
25 any of the administrative procedures of the Administrative Procedure Act.

26 §46. Exceptions

27 The provisions of this Chapter are not applicable to occupational licensing
28 boards that are not controlled by active market participants.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 372 Original

2018 Regular Session

Connick

Abstract: Creates the Occupational Board Compliance Act.

Occupational Board Compliance Act

Proposed law creates the Occupational Board Compliance Act.

By establishing and executing the policies provided in proposed law, the state intends to ensure that occupational licensing boards and board members will avoid liability under federal antitrust laws.

Proposed law defines the following terms: "active market participant", "active supervision", "certification", "commission", "least restrictive regulation", "occupational license", "occupational licensing board", "occupational regulation", "personal qualifications", "registration", and "state policy".

For occupational regulations promulgated by occupational licensing boards, proposed law provides each of the following as policy of this state:

- (1) The increase of economic opportunities for all of La. citizens by promoting competition and thereby encouraging innovation and job growth.
- (2) Use of the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety.

Occupational Licensing Review Commission

Proposed law creates the Occupational Licensing Review Commission to be composed of the governor, the secretary of state, and the attorney general or his respective designee. Establishes the governor as the chairman of the commission and the secretary of state as the secretary.

Proposed law requires the commission to meet quarterly and at such other times as meetings may be called by the chair. Provides a majority of the members constitutes a quorum at any meeting. Further provides any final action taken by the commission requires the affirmative vote of a majority of the members.

Proposed law requires the office of the governor to provide such support of the commission necessary to accomplish the purposes of proposed law, including but not limited to research and clerical assistance. Requires any department, division, board, bureau, commission, or agency of the state to provide, at the request of the chair of the commission, such assistance and data as will enable the commission to carry out its duties.

Proposed law establishes the commission's responsibility for active supervision of state executive branch occupational licensing boards controlled by active market participants to ensure compliance with state policy in the adoption of occupational regulations promulgated by an occupational licensing board. Active supervision described in proposed law does not extend to individual disciplinary actions taken or imposed by an

occupational licensing board as to any active market participant subject to the jurisdiction of the occupational licensing board.

Proposed law requires an occupational licensing board to submit any proposed occupational regulation to the commission before the occupational licensing board files the occupational regulation in the office of the secretary of state, if the occupational regulation is required to be filed in accordance with the Administrative Procedure Act (hereinafter, "APA"), or before the occupational regulation becomes effective, if filing is not required.

Proposed law requires the commission to issue resolutions necessary to effectuate the provisions of proposed law, including the process, procedures, and timelines that will govern any submission filed in accordance with proposed law.

The provisions of proposed law are not be interpreted to subject the commission to any of the administrative procedures of the APA.

The provisions of proposed law are inapplicable to occupational licensing boards that are not controlled by active market participants.

(Adds R.S. 37:41-46)