

2018 Regular Session

HOUSE BILL NO. 372

BY REPRESENTATIVE CONNICK

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 47, 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 review of rules and regulations; to provide for certain
8 exceptions; 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 47, 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.

20 §43. Definitions

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

23 (1) "Active market participant" means an individual or entity that is any of
24 the following:

- 1 (a) Licensed by an occupational licensing board.
- 2 (b) A provider of any service subject to the regulatory authority of an
- 3 occupational licensing board.
- 4 (c) Subject to the jurisdiction of an occupational licensing board.
- 5 (2) "Active supervision" includes but is not limited to the Occupational
- 6 Licensing Review Commission's responsibilities to do all of the following:
- 7 (a) Review the substance of an occupational regulation proposed by any
- 8 occupational licensing board.
- 9 (b) Approve or disapprove with suggested amendments, or allow an
- 10 occupational licensing board to withdraw for revision an occupational regulation to
- 11 ensure compliance with state policy.
- 12 (3) "Commission" means the Occupational Licensing Review Commission
- 13 as provided for in R.S. 37:45.
- 14 (4) "Least restrictive regulation" means, from least to most restrictive, all of
- 15 the following:
- 16 (a) Market competition.
- 17 (b) Third-party or consumer-created ratings and reviews.
- 18 (c) Specific private civil cause of action to remedy consumer harm as
- 19 provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401
- 20 et seq.
- 21 (d) Regulation of the process of providing the specific goods or services to
- 22 consumers.
- 23 (e) Inspection.
- 24 (f) Bonding or insurance.
- 25 (g) Registration.
- 26 (h) Occupational license.
- 27 (5) "Occupational license" means a nontransferable authorization granted by
- 28 an occupational licensing board for an individual or entity meeting certain
- 29 qualifications or personal qualifications. In an occupation for which a license is

1 required, it is unlawful for an individual or entity that does not possess a valid
2 occupational license to perform the occupation for compensation.

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

5 (a) Regulates the entry of persons into, or regulating the conduct of persons
6 within, a particular profession or occupation.

7 (b) Authorized to issue and revoke occupational licenses or registrations.

8 (c) Controlled by active market participants.

9 (7) "Occupational regulation" means a rule, regulation, restraint, practice, or
10 policy allowing an individual to use an occupational title or work in a lawful
11 occupation, including but not limited to registrations and occupational licenses.
12 "Occupational regulation" excludes any license, permit, or regulation established by
13 a parish or municipality.

14 (8) "Personal qualifications" means the criteria related to an individual's
15 personal background and characteristics, including completion of an approved
16 educational program, satisfactory performance on an examination or other
17 assessment, work experience, other evidence of attainment of requisite skills or
18 knowledge, moral standing, criminal history, and completion of continuing
19 education.

20 (9) "Qualifications" means the criteria related to an entity's background and
21 characteristics, including but not limited to the personal qualifications of certain
22 persons associated with the entity, including but not limited to that or those of an
23 individual's personal background and characteristics, including completion of an
24 approved educational program, satisfactory performance on an examination or
25 assessment, work experience, other evidence of attainment of requisite skills or
26 knowledge, moral standing, criminal history, and completion of continuing
27 education.

28 (10) "Registration" means a requirement to give notice to the state that may
29 include the individual's or entity's name and address, the individual's or entity's agent
30 for service of process, the location of the activity to be performed, and a description

1 of the service the individual or entity provides. "Registration" does not include
2 qualifications or personal qualifications but may require a bond or insurance. Upon
3 the state's receipt of notice, the individual or entity may use "registered" as a
4 designated title. "Registration" is not transferable.

5 (11) "State policy" means the policy described in R.S. 37:44.

6 §44. State policy for promulgated occupational regulations

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

9 (1) The increase of economic opportunities for all of its citizens by
10 promoting competition and thereby encouraging innovation and job growth to the
11 extent those values can be achieved without harm or threat of significant harm to
12 public health, safety, or welfare.

13 (2) Use of the least restrictive regulation necessary to protect consumers
14 from present or potential harm that threatens public health, welfare, or safety.

15 (3) Nothing in this Chapter shall be construed to restrict an occupational
16 licensing board from requiring, as a condition of licensure or registration, that an
17 individual's personal qualifications or entity's qualifications include obtaining or
18 maintaining certification from an organization that credentials individuals in the
19 relevant occupation, field, or industry.

20 §45. Occupational Licensing Review Commission

21 A.(1) There is hereby created the Occupational Licensing Review
22 Commission to be composed of the governor or his designee, the secretary of state
23 or his designee, the commissioner of agriculture or his designee, the commissioner
24 of insurance or his designee, and the state treasurer or his designee. The governor
25 shall be the chairman of the commission and the secretary of state shall be the
26 secretary. The commission shall meet as needed or as called by the chair and such
27 meetings shall be subject to the Open Meetings Law. A majority of the members
28 constitutes a quorum at any meeting. Any final action taken by the commission
29 requires the affirmative vote of a majority of the members.

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

7 B. Beginning January 1, 2019, the commission is responsible for the active
8 supervision of state executive branch occupational licensing boards controlled by
9 active market participants to ensure compliance with state policy in the adoption of
10 occupational regulations promulgated by an occupational licensing board. The
11 required active supervision described in this Chapter does not extend to individual
12 disciplinary actions taken or imposed by an occupational licensing board as to any
13 active market participant subject to the jurisdiction of the occupational licensing
14 board.

15 C.(1) An occupational licensing board shall submit any occupational
16 regulation it seeks to promulgate to the commission prior to the board submitting a
17 notice of intent to the office of the state register if the occupational regulation is
18 subject to the Administrative Procedure Act.

19 (2) The commission shall review each occupational regulation submitted to
20 ensure compliance with the state policy as provided in R.S. 37:44. This review may
21 include any Federal Trade Commission Guideline adopted by the commission.

22 (3) Following the review, the commission shall do either of the following:

23 (a) Approve the occupational regulation and authorize the occupational
24 licensing board to initiate promulgation of the regulation in accordance with the
25 Administrative Procedure Act. This approval shall be in writing and explain the
26 rationale for the action.

27 (b)(i) Disapprove the occupational regulation with any recommended
28 amendments and require the occupational licensing board to resubmit the
29 occupational regulation for approval prior to promulgating the regulation in
30 accordance with the Administrative Procedure Act.

1 (ii) Any recommended amendments shall be provided to the occupational
2 licensing board for its further consideration within thirty days of the date the
3 occupational licensing board provides the proposed regulation to the commission for
4 review.

5 (iii) The disapproval shall be in writing and explain the rationale for the
6 action.

7 (iv) In the event the commission elects to disapprove the regulation with
8 suggested amendments, the occupational licensing board shall not go forward with
9 promulgation of the proposed regulation until such time as the occupational
10 regulation is approved by the commission.

11 D. Prior to submitting the notice of final regulation to the proper legislative
12 oversight committees, the occupational licensing board shall submit such notice to
13 the commission with a summary of any changes made to the proposed regulation or
14 indicate that no changes were made to the proposed regulation. The submission shall
15 include any comments received during the comment period or a recording or the
16 minutes of any proceeding.

17 (1) If there are changes to the proposed regulation, the commission shall
18 review the changes to the proposed regulation and take any action provided in
19 Subsection C of this Section.

20 (2) If there are no changes to the proposed regulation or the commission
21 approves the proposed regulation with submitted changes, the occupational licensing
22 board shall submit the notice of final regulation to the proper legislative oversight
23 committees.

24 E. If the proposed occupational regulation is not subject to promulgation and
25 adoption in accordance with the Administrative Procedure Act, an occupational
26 licensing board shall submit such proposed regulation to the commission for
27 approval prior to enforcement.

28 F.(1) Emergency rules adopted by a occupational licensing board shall not
29 be subject to the active supervision of the commission as provided in this Section.

1 (2) However, the occupational licensing board shall submit such emergency
2 rule to the commission on the same day the rule is submitted to the office of the state
3 register.

4 G. The commission shall issue resolutions necessary to effectuate the
5 provisions of this Chapter, including the process, procedures, and timelines that will
6 govern any submission filed in accordance with this Chapter.

7 H. Nothing in this Chapter shall be interpreted to subject the commission to
8 any of the administrative procedures of the Administrative Procedure Act.

9 §46. Nonapplicability

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

12 §47. Interpretation

13 Nothing in this Chapter shall be construed to prevent or limit any
14 occupational licensing board from granting or recognizing reciprocity or mobility in
15 the licensing, registration, or certification of occupations or professions where an
16 occupational licensing board has established or seeks to establish occupational
17 regulations providing for reciprocity or mobility of licensed, registered, or certified
18 occupations or professions as authorized by state law.

19 Section 2. The Act shall become effective upon signature by the governor or, if not
20 signed by the governor, upon expiration of the time for bills to become law without signature
21 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
22 vetoed by the governor and subsequently approved by the legislature, this Act shall become
23 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____