AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

CHAPTER 1-D. OCCUPATIONAL BOARD COMPLIANCE ACT

§41. Short title

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

§42. Legislative policy

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

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

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

(a) Licensed by an occupational licensing board.

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

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

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

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

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

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

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

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

(a) Market competition.

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

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

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

(f) Inspection.

(g) Bonding or insurance.

(h) Registration.

(i) Government certification.

(j) Occupational license.

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

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

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

(b) Authorized to issue and revoke occupational licenses.

(c) Controlled by active market participants.

(8) "Occupational regulation" means a rule, regulation, restraint, practice, or policy allowing an individual to use an occupational title or work in a lawful occupation, including but not limited to registrations, certifications, and occupational licenses. "Occupational regulation" excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent related state laws regulate an individual's personal qualifications to perform a lawful occupation.
(9) "Personal qualifications" mean the criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

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

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

§44. State policy for promulgated occupational regulations

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

(1) The increase of economic opportunities for all of its 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.

§45. Occupational Licensing Review Commission

A.(1) There is hereby created the Occupational Licensing Review Commission to be composed of the governor, the secretary of state, and the attorney general or his respective designee. The governor shall be the chairman of the commission and the secretary of state shall be the secretary. The commission shall meet quarterly and at such other times as meetings may be called by the chair. A
majority of the members constitutes a quorum at any meeting. Any final action taken by the commission requires the affirmative vote of a majority of the members. Any department, division, board, bureau, commission, or agency of the state shall provide, at the request of the chair of the commission, such assistance and data as will enable the commission to carry out its duties.

B. The commission is responsible for the 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. The required active supervision described in this Chapter 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.

C. An occupational licensing board shall submit any proposed occupational regulation to the commission before the occupational licensing board may file 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, or before the occupational regulation becomes effective, if filing is not required.

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

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

§46. Exceptions

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