

HOUSE BILL 1471

C2, J2, P3

7lr2864

By: **Delegate Krebs**

Introduced and read first time: February 10, 2017

Assigned to: Economic Matters and Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Business Occupations and Professions and Health Occupations – Regulation of**
3 **Occupational Boards**

4 FOR the purpose of requiring the Office of Policy Analysis in the Department of Legislative
5 Services to include in certain analyses of legislation that may lead to the adoption of
6 a regulation by an occupational board a certain review and information; specifying a
7 certain policy of the State; specifying a certain intent of the State; establishing an
8 Office of Supervision of Occupational Boards in the Executive Branch of State
9 government; specifying the purpose of the Office; prohibiting an attorney who
10 provides counsel to the Office from engaging in certain activities; requiring the Office
11 to review and approve or reject certain proposed occupational board regulations,
12 policies, enforcement actions, or other regulatory actions before their adoption or
13 implementation; authorizing a person to file a certain complaint with the Office;
14 requiring the Office to take certain actions regarding a certain complaint within a
15 certain time frame; authorizing a member of the General Assembly to request the
16 Attorney General to review a certain regulation, policy, or enforcement action of an
17 occupational board, the supervision of an occupational board by the Office, or the
18 response of the Office to a certain complaint; requiring the Department to review
19 each year a certain percentage of the occupations regulated under the Business
20 Occupations and Professions Article and the Health Occupations Article and make
21 certain recommendations on how to improve their regulation starting on a certain
22 date for a period of 5 years; requiring the Department to report annually certain
23 findings and recommendations to the Attorney General and the General Assembly
24 for a period of 5 years; defining certain terms; and generally relating to the
25 regulation of business occupations and health occupations occupational boards in the
26 State.

27 BY repealing and reenacting, with amendments,
28 Article – State Government
29 Section 2–1239
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2014 Replacement Volume and 2016 Supplement)

BY adding to

Article – State Government

Section 8–3B–01 through 8–3B–04 to be under the new subtitle “Subtitle 3B. Office of Supervision of Occupational Boards”

Annotated Code of Maryland

(2014 Replacement Volume and 2016 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – State Government

2–1239.

(A) In addition to any other duties set forth elsewhere, the Office shall:

(1) prepare analyses of the fiscal, legal, and policy impact of proposed legislation;

(2) research and prepare comprehensive assessments and evaluations of issues of concern to the General Assembly; and

(3) carry out any other function related to research services required by the Executive Director.

(B) (1) IN THIS SUBSECTION, “OCCUPATIONAL BOARD” MEANS:

(I) A BUSINESS OCCUPATION BOARD ESTABLISHED UNDER THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR

(II) A HEALTH OCCUPATION BOARD ESTABLISHED UNDER THE HEALTH OCCUPATIONS ARTICLE.

(2) FOR ANY PROPOSED LEGISLATION THAT MAY LEAD TO THE ADOPTION OF A REGULATION BY AN OCCUPATIONAL BOARD, THE OFFICE SHALL INCLUDE IN THE ANALYSIS OF THE LEGISLATION REQUIRED UNDER THIS SECTION A REVIEW:

(I) TO DETERMINE IF THE LEGISLATION MEETS THE STATE POLICY OF USING THE LEAST RESTRICTIVE REGULATION NECESSARY TO PROTECT CONSUMERS IN THE STATE FROM SIGNIFICANT AND SUBSTANTIATED HARM;

1 **(II) TO EVALUATE THE EFFECT OF THE LEGISLATION ON**
2 **EMPLOYMENT OPPORTUNITIES, CONSUMER CHOICE AND COST, UNEMPLOYMENT IN**
3 **THE STATE, MARKET COMPETITION, GOVERNMENTAL COSTS, AND ANY OTHER**
4 **POTENTIAL EFFECTS OF THE LEGISLATION; AND**

5 **(III) OF LAWS IN OTHER STATES THAT HAVE COMPARABLE**
6 **REGULATIONS.**

7 **(3) THE OFFICE MAY REQUIRE A PROPONENT OF THE LEGISLATION**
8 **TO SUBMIT TO THE OFFICE EVIDENCE OF ANY SIGNIFICANT AND SUBSTANTIATED**
9 **HARM TO CONSUMERS IN THE STATE THAT THE LEGISLATION SEEKS TO ADDRESS.**

10 **SUBTITLE 3B. OFFICE OF SUPERVISION OF OCCUPATIONAL BOARDS.**

11 **8-3B-01.**

12 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
13 **INDICATED.**

14 **(B) (1) "ACTIVE SUPERVISION" MEANS THE OFFICE INDEPENDENTLY:**

15 **(I) ENGAGES IN A SUBSTANTIVE ROLE IN THE DEVELOPMENT**
16 **OF THE REGULATIONS AND POLICIES OF AN OCCUPATIONAL BOARD TO ENSURE**
17 **THAT THE REGULATIONS AND POLICIES:**

18 **1. BENEFIT CONSUMERS; AND**

19 **2. DO NOT SERVE THE PRIVATE INTERESTS OF THE**
20 **PROVIDERS OF GOODS AND SERVICES THAT THE OCCUPATIONAL BOARD**
21 **REGULATES;**

22 **(II) 1. DISAPPROVES THE USE OF ANY REGULATION OR**
23 **POLICY OF AN OCCUPATIONAL BOARD THAT DOES NOT COMPLY WITH § 8-3B-02 OF**
24 **THIS SUBTITLE; AND**

25 **2. TERMINATES ANY ENFORCEMENT ACTION AGAINST**
26 **AN OCCUPATIONAL BOARD IN EFFECT ON OCTOBER 1, 2017, THAT DOES NOT**
27 **COMPLY WITH § 8-3B-02 OF THIS SUBTITLE;**

28 **(III) EXERCISES CONTROL OVER EACH OCCUPATIONAL BOARD**
29 **BY REVIEWING AND AFFIRMATIVELY APPROVING ONLY THE REGULATIONS,**
30 **POLICIES, AND ENFORCEMENT ACTIONS THAT COMPLY WITH § 8-3B-02 OF THIS**
31 **SUBTITLE; AND**

1 (IV) TO REDUCE THE POSSIBILITY OF ANTITRUST LITIGATION:

2 1. UTILIZES THE ANALYSES PREPARED UNDER § 2-1239
3 OF THIS ARTICLE; AND

4 2. CONDUCTS REASONABLE INVESTIGATIONS TO
5 ACQUIRE ADDITIONAL INFORMATION, INCLUDING OPTIONS TO MAKE REGULATIONS
6 LESS RESTRICTIVE.

7 (2) "ACTIVE SUPERVISION" DOES NOT INCLUDE GENERAL COUNSEL
8 TO AN OCCUPATIONAL BOARD PROVIDED BY AN ATTORNEY EMPLOYED BY THE
9 STATE OR AN ATTORNEY IN PRIVATE PRACTICE.

10 (C) "OCCUPATIONAL BOARD" MEANS:

11 (1) A BUSINESS OCCUPATION BOARD ESTABLISHED UNDER THE
12 BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE; OR

13 (2) A HEALTH OCCUPATION BOARD ESTABLISHED UNDER THE
14 HEALTH OCCUPATIONS ARTICLE.

15 (D) "OFFICE" MEANS THE OFFICE OF SUPERVISION OF OCCUPATIONAL
16 BOARDS.

17 8-3B-02.

18 FOR A REGULATION ADOPTED BY AN OCCUPATIONAL BOARD, IT IS THE POLICY
19 OF THE STATE THAT:

20 (1) THE REGULATION SHALL BE CONSTRUED AND APPLIED TO
21 INCREASE ECONOMIC OPPORTUNITIES, PROMOTE COMPETITION, AND ENCOURAGE
22 INNOVATION;

23 (2) IF THE STATE FINDS IT IS NECESSARY TO DISPLACE
24 COMPETITION, IT SHALL USE THE LEAST RESTRICTIVE REGULATION TO PROTECT
25 CONSUMERS FROM SIGNIFICANT AND SUBSTANTIATED HARM THAT THREATENS
26 PUBLIC HEALTH AND SAFETY; AND

27 (3) THE REGULATION MAY BE ENFORCED AGAINST AN INDIVIDUAL
28 ONLY TO THE EXTENT THE INDIVIDUAL PROVIDES GOODS AND SERVICES THAT ARE
29 INCLUDED EXPRESSLY IN THE LAW THAT DEFINES THE OCCUPATION'S SCOPE OF
30 PRACTICE.

1 **8-3B-03.**

2 **IT IS THE INTENT OF THE STATE THAT UNDER THE POLICIES ESTABLISHED IN**
3 **§ 8-3B-02 OF THIS SUBTITLE, THE OCCUPATIONAL BOARDS IN THE STATE AND THE**
4 **MEMBERS OF THE OCCUPATIONAL BOARDS SHALL AVOID LIABILITY UNDER**
5 **FEDERAL ANTITRUST LAWS.**

6 **8-3B-04.**

7 **(A) THERE IS AN OFFICE OF SUPERVISION OF OCCUPATIONAL BOARDS IN**
8 **THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT.**

9 **(B) THE PURPOSE OF THE OFFICE IS TO ACTIVELY SUPERVISE**
10 **OCCUPATIONAL BOARDS IN THE STATE TO ENSURE COMPLIANCE WITH § 8-3B-02**
11 **OF THIS SUBTITLE.**

12 **(C) AN ATTORNEY WHO PROVIDES COUNSEL TO THE OFFICE MAY NOT:**

13 **(1) PROVIDE GENERAL COUNSEL TO ANY OCCUPATIONAL BOARD; OR**

14 **(2) EXERCISE ANY CONTROL RELATING TO THE PROCESS AND**
15 **SUBSTANTIVE ACTIONS OF AN OCCUPATIONAL BOARD.**

16 **(D) THE OFFICE SHALL REVIEW AND APPROVE OR REJECT ANY PROPOSED**
17 **OCCUPATIONAL BOARD REGULATION, POLICY, ENFORCEMENT ACTION, OR OTHER**
18 **REGULATORY ACTION BEFORE ITS ADOPTION OR IMPLEMENTATION.**

19 **(E) (1) A PERSON MAY FILE A COMPLAINT WITH THE OFFICE RELATING**
20 **TO A REGULATION, A POLICY, OR AN ENFORCEMENT ACTION OF AN OCCUPATIONAL**
21 **BOARD THAT THE PERSON ALLEGES IS INCONSISTENT WITH § 8-3B-02 OF THIS**
22 **SUBTITLE.**

23 **(2) WITHIN 90 DAYS AFTER THE DATE OF RECEIPT OF THE**
24 **COMPLAINT, THE OFFICE SHALL:**

25 **(I) INVESTIGATE THE COMPLAINT;**

26 **(II) IDENTIFY ANY REMEDIES;**

27 **(III) IF APPROPRIATE, INSTRUCT THE OCCUPATIONAL BOARD TO**
28 **RESPOND TO THE COMPLAINT IN A SPECIFIED MANNER; AND**

1 (IV) ISSUE A WRITTEN RESPONSE TO THE PERSON FILING THE
2 COMPLAINT.

3 (3) A PERSON WHO IS AGGRIEVED BY THE FINAL DECISION OF THE
4 OFFICE UNDER THIS SUBSECTION IS ENTITLED TO JUDICIAL REVIEW AS ALLOWED
5 BY THE ADMINISTRATIVE PROCEDURE ACT.

6 (F) A MEMBER OF THE GENERAL ASSEMBLY MAY ASK THE ATTORNEY
7 GENERAL TO REVIEW:

8 (1) A REGULATION, A POLICY, OR AN ENFORCEMENT ACTION OF AN
9 OCCUPATIONAL BOARD THAT THE MEMBER BELIEVES IS INCONSISTENT WITH §
10 8-3B-02 OF THIS SUBTITLE;

11 (2) THE ACTIVE SUPERVISION OF AN OCCUPATIONAL BOARD BY THE
12 OFFICE; OR

13 (3) THE RESPONSE OF THE OFFICE TO A COMPLAINT FILED UNDER
14 SUBSECTION (E) OF THIS SECTION.

15 SECTION 2. AND BE IT FURTHER ENACTED, That beginning on January 1, 2018,
16 for a period of 5 years, the Department of Legislative Services shall review each year
17 approximately 20 percent of the occupations regulated under the Business Occupations and
18 Professions Article and the Health Occupations Article and make recommendations on how
19 to improve the regulation of the occupations in accordance with the provisions of
20 § 8-3B-02 of the State Government Article, as enacted by Section 1 of this Act. On or before
21 December 30 each year that the Department conducts a review under this section, the
22 Department shall report to the Attorney General and, in accordance with § 2-1246 of the
23 State Government Article, the General Assembly on the findings of its review and any
24 recommendations to improve the regulation of the occupations in the State that are
25 regulated under the Business Occupations and Professions Article and the Health
26 Occupations Article.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2017.