

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER SIXTY**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: CREATING AN EXECUTIVE COMMITTEE TO IDENTIFY WAYS TO PREVENT
THE PROLIFERATION OF BARRIERS TO ENTRY AND INCREASE
OPPORTUNITIES FOR ALL DELAWAREANS

WHEREAS, as Governor, I have made it a priority of my administration to ensure that all Delawareans have a chance to build a better life;

WHEREAS, well-founded regulations setting forth reasonable licensing and certification requirements for certain professions are an important protection for Delaware citizens;

WHEREAS, unnecessary licensing and certification requirements can lead to higher prices for goods and services without improving quality or protecting the public;

WHEREAS, onerous regulatory burdens can dissuade individuals from entering into professions, and can represent a barrier to entry that prevents the disadvantaged and underemployed from improving their lot in life;

WHEREAS, all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the state to protect the interests of the public by restricting entry into the profession or occupation;

WHEREAS, in a recent decision, *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, the United States Supreme Court determined that state professional licensing boards may be subject to antitrust enforcement actions if the majority of board members are "active participants" in the market that the board is regulating and there is not sufficient supervision of the board by the state;

WHEREAS, input from the public, executive branch agencies and the legislature will help identify regulatory burdens that may be inefficient or otherwise create an unnecessary barrier to entry into certain professions; and

WHEREAS, in an effort to ensure that any Delawarean that wishes to improve his or her employment opportunities can do so without being burdened by unnecessary regulation, while still maintaining the important protections that are the goal of our professional licensing statutes and regulations, and to ensure that the State's professional boards are not at risk of liability for anti-competitive actions, it is necessary for the State to review the existing regulatory regime in an effort to identify areas where improvements can be made.

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Professional Licensing Review Committee (hereinafter, the "Committee") is hereby established. The Committee is responsible for recommending standards and best practices that will assist the State in meeting its twin goals of encouraging public safety and ensuring that all Delaware residents are able to enter the profession or occupation of their choice free from unnecessary regulatory or administrative burdens. The Committee shall consist of:
 - a. The Secretary of the Delaware Department of State, who shall serve as chair;
 - b. The Secretary of the Department of Health and Social Services;
 - c. The Secretary of the Department of Labor;
 - d. The Commissioner of the Department of Correction;
 - e. The Director of the Delaware Economic Development Office;
 - f. One member appointed by the President *pro tempore* of the Senate;
 - g. One member appointed by the Senate Minority Leader;
 - h. One member appointed by the Speaker of the House of Representatives;
 - i. One member appointed by the House Minority Leader; and
 - j. Such other person(s) as the Governor may appoint or as are appointed by individuals identified by the Governor.

2. Members serving by virtue of position may appoint, in writing and in advance of a particular scheduled meeting or on a permanent basis, a designee to serve in their stead and at their pleasure. Members appointed by the Governor shall serve at the pleasure of the Governor. Members appointed by any other official shall serve at the pleasure of that official.
3. The Division of Professional Regulation shall provide all staffing and support as required by the Committee.
4. The Committee is hereby responsible to conduct a comprehensive analysis of the composition, State oversight, and licensing requirements of all commissions, boards and agencies within the regulatory purview of the Delaware Division of Professional Regulation, as set forth in 29 *Del. C.* § 8735. As part of this comprehensive analysis, the Committee shall request input from the public, members of regulated professions, and the General Assembly.
5. Upon completion of the analysis, and in any event no later than October 14, 2016, the Committee shall deliver a report to the Governor's Office and the General Assembly that, at a minimum:
 - a. Makes recommendations for legislative and/or regulatory action that will remove any unnecessary or overly burdensome licensing or certification requirements;
 - b. Makes recommendations for legislative and/or regulatory action that will alleviate the risk of antitrust liability identified by the United States Supreme Court in *North Carolina Board of Dental Examiners*;
 - c. Addresses the relative burdens of the licensing and certification requirements of certain regulated professions in Delaware as compared to those requirements in neighboring states (Maryland, Pennsylvania, New Jersey);
 - d. Makes a recommendation as to the practicality and economic feasibility of transferring some or all of the currently regulated professions to a statutory licensing regime with a number of administrative law judges available to hear appeals; and

- e. Recommends best practices with respect to the process by which the State considers proposed regulatory or legislative changes that would either (i) add a new profession to the list of professions currently regulated by the State; or (ii) with respect to existing regulated professions, would increase the requirements for licensure or certification.
- 6. Each Member of my Cabinet is hereby directed to cooperate with the Committee as needed to fulfill the requirements of this Executive Order.
- 7. Nothing in this Order is to be construed to create a private right of action to enforce its provisions.

This Executive Order shall take effect immediately, and the Committee shall cease to exist upon delivery of the report described in paragraph 5 hereof.



APPROVED this 30th day of April, 2016.

Jack A. Markell
Governor

ATTEST:

Secretary of State