

RÉSUMÉ DIGEST

ACT 399 (HB 398)

2021 Regular Session

Butler

New law provides that occupational licensing boards shall use the least restrictive regulation to protect the public from present, significant, and substantiated harms that threaten public health, safety, or welfare when the state finds it necessary to displace competition.

New law provides that boards and board members participating in the Occupational Licensing Review Program will avoid liability under federal antitrust laws.

New law provides that the attorney general shall have the authority to enter into an agreement to provide active supervision of proposed occupational regulations and proposed anti-competitive disciplinary actions of a state occupational licensing board.

New law provides that participating licensing boards shall pay to the Dept. of Justice (the department) annually the amount set forth in the agreement. Provides that the dollar amount in the agreement shall be equal to or less than the number of licensees multiplied by 10.

New law provides that participation in the Occupational Licensing Review Program is voluntary and optional.

New law provides that the occupational licensing board shall submit any occupational regulation it seeks to promulgate, together with a report of any public comments received, agency response to comments, and the statement of proposed fiscal impact to the department before submitting notice of final regulation to the proper legislative oversight committees.

New law provides that the department shall review the substance of each occupational regulation to ensure compliance with clearly articulated state policy and may also consider any other applicable law.

New law provides that following the review, the department shall do one of the following:

- (1) Approve the proposed occupational regulation and authorize the occupational licensing board to proceed with promulgation.
- (2) Disapprove the proposed occupational regulation and require the occupational licensing board to revise and resubmit the occupational regulation for approval.

New law provides that emergency rules adopted pursuant to the Administrative Procedure Act are not required to comply with new law. Provides that emergency rules shall not be used to circumvent active supervision of proposed occupational regulations.

New law provides that the occupational licensing board shall submit the proposed action and supporting documentation to the department before taking any anti-competitive disciplinary action.

New law provides that the department shall review the substance of the proposed disciplinary action to ensure compliance with clearly articulated state policy and may also consider any applicable law.

New law provides that following the review, the department shall do any of the following:

- (1) Determine that the proposed disciplinary action does not implicate any market competition interests.
- (2) Approve the proposed disciplinary action as a proper exercise of state regulatory action in accordance with clearly articulated state policy, notwithstanding possible impact on market competition, and authorize the occupational licensing board to proceed with imposing it.
- (3) Disapprove of the proposed disciplinary action and decline to authorize its imposition.

New law provides that all forms of records, writings, accounts, letters, exhibits, data, pictures, drawings, charts, reports, or photographs shall be considered to be in the custody and control of the occupational licensing board. Provides for public records exemptions.

New law establishes a special fund in the state treasury known as the Department of Justice Occupational Licensing Review Program Fund. Provides for compliance with existing constitution relative to the Bond Security and Redemption Fund.

New law provides that the fund shall be comprised of monies received by the attorney general from participating occupational licensing boards as compensation for regulatory review activities.

New law provides that monies in the fund shall be subject to annual appropriation to the department solely for the support of occupational licensing board regulatory review activities and general operating expenses.

New law provides that appropriated monies shall be used to supplement the department's budget and shall not be used to displace, replace, or supplant appropriations from the state general fund for operations of the department below the level of state general fund appropriation for the foregoing year.

New law provides that all unencumbered and unexpended monies in the fund at the end of the fiscal year shall remain in the fund. Provides that the treasurer shall invest monies into the fund in the same manner as those in the state general fund, and any interest earned on such investment shall be deposited in and credited to the fund.

New law provides for definitions.

New law authorizes the department to promulgate rules and procedures as necessary to implement the Occupational Licensing Review Program.

New law provides that an occupational licensing board may require, as a condition of licensure or renewal of licensure, that an individual obtain or maintain certification from a private organization that credentials individuals in the relevant occupation.

New law provides that the Occupational Licensing Review Program shall not regulate the practice of law.

Effective August 1, 2021.

(Adds R.S. 49:260)