

2021 Regular Session

HOUSE BILL NO. 398

BY REPRESENTATIVE BUTLER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEY GENERAL: Creates an occupational licensing board review program within the office of the attorney general

1 AN ACT

2 To enact R.S. 49:260, relative to the attorney general; to provide for a purpose; to provide
3 for regulatory review; to provide for participation in the occupational licensing
4 review program; to provide for submissions; to provide for decision-making by the
5 Department of Justice; to provide for discipline; to create a special fund in the state
6 treasury; to provide for monies in the special fund; to provide for appropriations; to
7 provide for investments; to provide for deposits; to provide for definitions; to
8 provide for promulgation of rules; to provide for certification; to provide for
9 exemptions; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 49:260 is hereby enacted to read as follows:

12 §260. Department of Justice Occupational Licensing Review Program

13 A. It is the policy of the state that where the state finds it necessary to
14 displace competition, occupational licensing boards shall use the least restrictive
15 regulation to protect the public from present, significant, and substantiated harms
16 that threaten public health, safety, or welfare. Active state supervision of
17 occupational regulatory actions is a method of ensuring adherence to this clearly
18 articulated state policy. By establishing this program, the state intends to ensure that
19 participating boards and board members will avoid liability under federal antitrust
20 laws.

1 B. In addition to any other powers, duties, or authority granted to the
2 attorney general and the Department of Justice by the constitution and laws of this
3 state, the attorney general shall have the authority to enter into an agreement to
4 provide active supervision of proposed occupational regulations and proposed anti-
5 competitive disciplinary actions of a state occupational licensing board. Such active
6 supervision shall be performed in accordance with this Section and the terms of the
7 written agreement between the occupational licensing board and the Department of
8 Justice. Participating licensing boards shall pay to the Department of Justice
9 annually the amount set forth in the agreement. The dollar amount set forth in the
10 agreement shall be equal to or less than the number of licensees multiplied by ten.

11 C. Participation in the Department of Justice Occupational Licensing Review
12 Program established in this Section is voluntary and optional. An occupational
13 licensing board that chooses to participate in the program established in this Section
14 is not required to comply with the requirements of the Occupational Board
15 Compliance Act, R.S. 37:41, et seq.

16 D.(1) Prior to submitting a notice of final regulation to the proper legislative
17 oversight committees, the occupational licensing board shall submit any
18 occupational regulation it seeks to promulgate, together with a report of any public
19 comments received, agency response to comments, and the statement of proposed
20 fiscal impact, to the Department of Justice.

21 (2) The Department of Justice shall review the substance of each proposed
22 occupational regulation submitted to ensure compliance with clearly articulated state
23 policy pursuant to this Section and may also consider any other applicable law.

24 (3) Following the review, the Department of Justice shall do one of the
25 following:

26 (a) Approve the proposed occupational regulation and authorize the
27 occupational licensing board to proceed with promulgation.

1 (b) Disapprove the proposed occupational regulation and require the
2 occupational licensing board to revise and resubmit the occupational regulation for
3 approval.

4 (4) The decision by the Department of Justice shall be communicated in
5 writing with an explanation of the basis for the decision.

6 (5) Compliance with this Subsection shall not be required for emergency
7 rules adopted pursuant to the Administrative Procedure Act, but emergency rules
8 shall not be used to circumvent active supervision of proposed occupational
9 regulations. Nothing in this Subsection shall prevent the occupational licensing
10 board from electing to submit an emergency rule that meets the definition of
11 occupational regulation for review.

12 E.(1) Prior to taking an anti-competitive disciplinary action, the occupational
13 licensing board shall submit the proposed action and supporting documentation to
14 the Department of Justice.

15 (2) The Department of Justice shall review the substance of the proposed
16 disciplinary action to ensure compliance with clearly articulated state policy pursuant
17 to this Section and may also consider any other applicable law.

18 (3) Following the review, the Department of Justice shall do any of the
19 following:

20 (a) Determine that the proposed disciplinary action does not implicate any
21 market competition interests.

22 (b) Approve the proposed disciplinary action as a proper exercise of state
23 regulatory action in accordance with clearly articulated state policy, notwithstanding
24 possible impact on market competition, and authorize the occupational licensing
25 board to proceed with imposing the disciplinary action.

26 (c) Disapprove of the proposed disciplinary action and decline to authorize
27 its imposition.

28 (4) The decision by the Department of Justice shall be communicated in
29 writing with an explanation of the basis of the decision. This written explanation

1 shall be considered confidential until the disciplinary action has become a final
2 determination of the board.

3 (5) All records, writings, accounts, letters, exhibits, data, pictures, drawings,
4 charts, reports, or photographs shall be considered to be in the custody and control
5 of the occupational licensing board, and all exemptions contained in R.S. 44:1, et
6 seq., or any other provision of law shall continue to apply.

7 F.(1) There is hereby established in the state treasury a special fund to be
8 known as the Department of Justice Occupational Licensing Review Program Fund,
9 hereafter referred to in this Section as "the fund".

10 (2) Notwithstanding any provision of law to the contrary, after compliance
11 with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana,
12 relative to the Bond Security and Redemption Fund, and after a sufficient amount is
13 allocated from that fund to pay all of the obligations secured by the full faith and
14 credit of the state which become due and payable within any fiscal year, the treasurer
15 shall pay an amount into the fund equal to the amount of monies received by the
16 attorney general from participating occupational licensing boards as compensation
17 for the regulatory review activities undertaken pursuant to this Subsection.

18 (3) Monies in the fund shall be subject to annual appropriation to the
19 Department of Justice solely for the support of occupational licensing board
20 regulatory review activities and general operating expenses. Monies so appropriated
21 shall be used to supplement the department's budget and shall not be used to
22 displace, replace, or supplant appropriations from the state general fund for
23 operations of the department below the level of state general fund appropriation for
24 the foregoing year.

25 (4) All unencumbered and unexpended monies in the fund at the end of the
26 fiscal year shall remain in the fund. Monies in the fund shall be invested by the
27 treasurer in the same manner as those in the state general fund, and any interest
28 earned on such investment shall be deposited in and credited to the fund.

1 G. For the purposes of this Section:

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

4 (a) Licensed by the occupational licensing board to which they are
5 appointed, including subspecialties licensed by that board.

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

8 (2) "Active supervision" shall include all of the following duties and powers:

9 (a) Independent review and evaluation of the substance of the proposed
10 occupational regulation or the proposed anti-competitive disciplinary action, not
11 merely the procedures followed to produce it.

12 (b) The ability to approve, reverse, veto, or modify a proposed occupational
13 regulation or proposed anti-competitive disciplinary action to ensure it complies with
14 state policy rather than merely a party's individual interests.

15 (c) The ability to obtain the information necessary to perform a proper
16 evaluation of the occupational board's proposed occupational regulation or the
17 proposed anti-competitive disciplinary action.

18 (d) A written decision outlining the reasons and rationale for approving,
19 reversing, vetoing, or modifying the recommended action.

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

22 (a) Regulating the entry of persons into, or regulating the conduct of persons
23 within, a particular profession or occupation.

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

25 (c) Controlled by active market participants.

26 (4) "Occupational regulation" means a rule as defined in the Administrative
27 Procedure Act that has reasonably foreseeable anti-competitive effects. Any license,
28 permit, or regulation established by a parish, municipality, or a board not composed
29 of a controlling number of active market participants is excluded.

1 H. The Department of Justice is authorized to promulgate rules and
2 procedures as necessary to implement the program established by this Section.

3 I. Nothing in this Section is intended to restrict an occupational licensing
4 board from requiring, as a condition of licensure or renewal of licensure, that an
5 individual's personal qualifications include obtaining or maintaining certification
6 from a private organization that credentials individuals in the relevant occupation.

7 J. The provisions of this Section shall not apply to the regulation of the
8 practice of law.

DIGEST

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 398 Reengrossed

2021 Regular Session

Butler

Abstract: Creates the Occupational Licensing Review Program in the office of the attorney general.

Proposed 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.

Proposed law provides that boards and board members participating in the Occupational Licensing Review Program will not be held liable under federal antitrust laws.

Proposed 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.

Proposed law provides that participating licensing boards shall pay to the Department of Justice 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.

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

Proposed 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 of Justice before submitting notice of final regulation to the proper legislative oversight committees.

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

Proposed law provides that following the review, the Department of Justice 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.

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

Proposed law provides that the occupational licensing board shall submit the proposed action and supporting documentation to the Department of Justice before taking any anti-competitive disciplinary action.

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

Proposed law provides that following the review, the Department of Justice 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.

Proposed 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.

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

Proposed 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.

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

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

Proposed 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.

Proposed law provides for definitions.

Proposed law authorizes the Department of Justice to promulgate rules and procedures as necessary to implement the Occupational Licensing Review Program.

Proposed 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.

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

(Adds R.S. 49:260)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Specify the purpose of the Occupational Licensing Review Program.
3. Ensure participating boards and members will avoid liability under federal antitrust laws.
4. Establish the monetary amount to be paid to the Department of Justice from participating licensing boards.
5. Incorporate public comments, agency responses to public comments, and proposed fiscal impact statements within the report that an occupational licensing board submits to the Department of Justice.
6. Expand bodies of law that the Department of Justice may consider during its review from Federal Trade Commission guidelines to any other applicable law.
7. Add an exemption for emergency rules.
8. Specify that disciplinary actions will be taken against anti-competitive actions.
9. Change the term "discipline" to "action".
10. Specify that certain documents and data shall be considered to be in the custody and control of an occupational licensing board.
11. Provide for public records exemptions.
12. Refine the licensing requirement in the definition of "active market participant".
13. Delete language from the definition of "active market participant" referring to jurisdiction of the occupational licensing board.
14. Add a definition for "active supervision".
15. Refine the definition for "occupational regulation".

16. Add an exemption relative to regulating the practice of law.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Require the Department of Justice Occupational Licensing Review Program Fund to comply with constitutional provisions pertaining to the Bond Security and Redemption Fund.