

**OCCUPATIONAL AND PROFESSIONAL LICENSURE**

**REVIEW COMMITTEE AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Occupational and Professional Licensure Review Committee Act.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ modifies the responsibilities of the Occupational and Professional Licensure Review Committee; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**36-23-101.5**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-102**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-105**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-106**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-107**, as last amended by Laws of Utah 2013, Chapter 323



28 **36-23-109**, as last amended by Laws of Utah 2014, Chapter 189



30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **36-23-101.5** is amended to read:

32 **36-23-101.5. Definitions.**

33 As used in this chapter:

34 (1) "Committee" means the Occupational and Professional Licensure Review  
35 Committee created in Section **36-23-102**.

36 (2) "Government requestor" means:

- 37 (a) the governor;
- 38 (b) an executive branch officer other than the governor;
- 39 (c) an executive branch agency;
- 40 (d) a legislator; or
- 41 (e) a legislative committee.

42 (3) "Newly regulate" means to regulate [~~under Title 58, Occupations and Professions,~~  
43 by state statute an occupation or profession not regulated [~~under Title 58, Occupations and~~  
44 Professions,] by state statute before the enactment of the new regulation.

45 (4) "Proposal" means:

- 46 (a) an application submitted under Section **36-23-105**, with or without specific  
47 proposed statutory language;
- 48 (b) a request for review by a legislator of the possibility of newly regulating an  
49 occupation or profession, with or without specific proposed statutory language; or
- 50 (c) proposed legislation to newly regulate an occupation or profession referred to the  
51 committee by another legislative committee.

52 (5) "Sunrise review" means a review under this chapter of a proposal to newly regulate  
53 an occupation or profession.

54 (6) "Sunset review" means a review under this chapter of a statute:

- 55 (a) regarding a [~~licensed~~] regulated occupation or profession [~~under Title 58,~~  
56 Occupations and Professions]; and
- 57 (b) that is scheduled for termination under [~~Section 63I-1-258~~] Title 63I, Chapter 1,  
58 Part 2, Repeal Dates Requiring Committee Review by Title.

59 Section 2. Section **36-23-102** is amended to read:

60 **36-23-102. Occupational and Professional Licensure Review Committee.**

61 (1) There is created the Occupational and Professional Licensure Review Committee.

62 (2) The committee consists of nine members appointed as follows:

63 (a) three members of the House of Representatives, appointed by the speaker of the  
64 House of Representatives, with no more than two appointees from the same political party;

65 (b) three members of the Senate, appointed by the president of the Senate, with no  
66 more than two appointees from the same political party; and

67 (c) three public members appointed jointly by the speaker of the House of  
68 Representatives and the president of the Senate from the following two groups:

69 (i) at least one member who has previously served, but is no longer serving, on [~~any~~]  
70 an advisory board created under Title 58, Occupations and Professions; and

71 (ii) at least one member from the general public who does not hold [~~any type of~~] a  
72 license issued by the Division of Occupational and Professional Licensing.

73 (3) (a) The speaker of the House of Representatives shall designate a member of the  
74 House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

75 (b) The president of the Senate shall designate a member of the Senate appointed under  
76 Subsection (2)(b) as a cochair of the committee.

77 Section 3. Section **36-23-105** is amended to read:

78 **36-23-105. Applications -- Fees.**

79 (1) If a government requestor or a representative of an occupation or profession that is  
80 not licensed by the state proposes that the state license or newly regulate an occupation or  
81 profession, the requestor or representative shall, prior to the introduction of any proposed  
82 legislation, submit an application for sunrise review to the Office of Legislative Research and  
83 General Counsel in a form approved by the committee.

84 (2) If an application is submitted by a representative of an occupation or profession, the  
85 application shall include a nonrefundable fee of \$500.

86 (3) All application fees shall be deposited in the General Fund.

87 Section 4. Section **36-23-106** is amended to read:

88 **36-23-106. Duties -- Reporting.**

89 (1) The committee shall:

90 (a) for each application submitted in accordance with Section 36-23-105, conduct a  
91 sunrise review in accordance with Section 36-23-107 before November 1:

92 (i) of the year in which the application is submitted, if the application is submitted on  
93 or before July 1; or

94 (ii) of the year following the year in which the application is submitted, if the  
95 application is submitted after July 1;

96 (b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a ~~[licensed]~~  
97 regulated occupation or profession [under Title 58, Occupations and Professions, that are] that  
98 is scheduled for termination under [Section 63I-1-258] Title 63I, Chapter 1, Part 2, Repeal  
99 Dates Requiring Committee Review by Title;

100 (ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year  
101 prior to the last general session of the Legislature that is scheduled to meet before the  
102 scheduled termination date; and

103 (iii) conduct a review or study regarding any other occupational or professional  
104 licensure matter referred to the committee by the Legislature, the Legislative Management  
105 Committee, or other legislative committee.

106 (2) (a) The committee may conduct a review or study regarding any occupational or  
107 professional regulation matter.

108 (b) In conducting a review or study under this Subsection (2), the committee shall  
109 consider if the committee's recommendations would negatively affect the interest of members  
110 of the regulated occupation or profession, including the effect on matters of reciprocity with  
111 other states.

112 ~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

113 (a) the Legislative Management Committee; and

114 (b) the Business and Labor Interim Committee.

115 ~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

116 (a) all findings and recommendations made by the committee in the calendar year; and

117 (b) a summary report of each review or study conducted by the committee stating:

118 (i) whether the review or study included a review of specific proposed or existing  
119 statutory language;

120 (ii) action taken by the committee as a result of the review or study; and

121 (iii) a record of the vote for each action taken by the committee.

122 Section 5. Section **36-23-107** is amended to read:

123 **36-23-107. Sunrise or sunset review -- Criteria.**

124 (1) In conducting a sunrise review or a sunset review under this chapter, the committee  
125 may:

126 (a) receive information from:

127 (i) representatives of the occupation or profession proposed to be newly regulated or  
128 that is subject to a sunset review;

129 (ii) the Division of Occupational and Professional Licensing; or

130 (iii) any other person; and

131 (b) review a proposal with or without considering proposed statutory language.

132 (2) When conducting a sunrise review or sunset review under this chapter, the  
133 committee shall:

134 (a) consider whether state regulation of the occupation or profession is necessary to  
135 address a compelling state interest in protecting against present, recognizable, and significant  
136 harm to the health or safety of the public;

137 (b) consider if the committee's recommendations to the Legislature would negatively  
138 affect the interests of members of the regulated occupation or profession, including the effect  
139 on matters of reciprocity with other states;

140 ~~[(b)]~~ (c) if the committee determines that state regulation of the occupation or  
141 profession is not necessary to protect against present, recognizable, and significant harm to the  
142 health or safety of the public, recommend to the Legislature that the state not regulate the  
143 profession;

144 ~~[(c)]~~ (d) if the committee determines that state regulation of the occupation or  
145 profession is necessary in protecting against present, recognizable, and significant harm to the  
146 health or safety of the public, consider whether:

147 (i) the proposed or existing statute is narrowly tailored to protect against present,  
148 recognizable, and significant harm to the health or safety of the public; and

149 (ii) a potentially less restrictive alternative to licensing, including registration,  
150 certification, or exemption, would avoid unnecessary regulation while still protecting the health  
151 and safety of the public; and

152            [~~(d)~~] (e) recommend to the Legislature any necessary changes to the proposed or  
153 existing statute to ensure it is narrowly tailored to protect against present, recognizable, and  
154 significant harm to the health or safety of the public.

155            (3) In its performance of each sunrise review or sunset review, the committee may  
156 apply the following criteria, to the extent that it is applicable:

157            (a) whether the unregulated practice of the occupation or profession has clearly harmed  
158 or may harm or endanger the health, safety, or welfare of the public;

159            (b) whether the potential for harm or endangerment described in Subsection (3)(a) is  
160 easily recognizable and not remote;

161            (c) whether regulation of the occupation or profession will significantly diminish an  
162 identified risk to the health, safety, or welfare of the public;

163            (d) whether regulation of the occupation or profession:

164            (i) imposes significant new economic hardship on the public;

165            (ii) significantly diminishes the supply of qualified practitioners; or

166            (iii) otherwise creates barriers to service that are not consistent with the public welfare  
167 or interest;

168            (e) whether the occupation or profession requires knowledge, skills, and abilities that  
169 are:

170            (i) teachable; and

171            (ii) testable;

172            (f) whether the occupation or profession is clearly distinguishable from other  
173 occupations or professions that are already regulated;

174            (g) whether the occupation or profession has:

175            (i) an established code of ethics;

176            (ii) a voluntary certification program; or

177            (iii) other measures to ensure a minimum quality of service;

178            (h) whether:

179            (i) the occupation or profession involves the treatment of an illness, injury, or health  
180 care condition; and

181            (ii) practitioners of the occupation or profession will request payment of benefits for  
182 the treatment under an insurance contract subject to Section [31A-22-618](#);

183 (i) whether the public can be adequately protected by means other than regulation; and  
184 (j) other appropriate criteria as determined by the committee.

185 Section 6. Section **36-23-109** is amended to read:

186 **36-23-109. Review of state regulation of occupations and professions.**

187 [~~Before the annual written report~~] As part of the annual report described in Section  
188 **36-23-106** [~~is submitted for 2013~~], the committee [~~shall~~] may study and make  
189 recommendations regarding potentially less restrictive alternatives to licensing for the  
190 regulation of occupations and professions, including registration [~~and~~], certification, or  
191 exemption, if appropriate, that would [~~better~~] avoid unnecessary regulation [~~and intrusion upon~~  
192 ~~individual liberties by the state,~~] while still protecting the health and safety of the public.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**