

1 **OCCUPATIONAL AND PROFESSIONAL LICENSURE**

2 **REVIEW COMMITTEE AMENDMENTS**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brian M. Greene**

6 Senate Sponsor: Wayne A. Harper

8 **LONG TITLE**

9 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

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

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

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

24 **36-23-102**, as last amended by Laws of Utah 2013, Chapter 323

25 **36-23-105**, as last amended by Laws of Utah 2013, Chapter 323

26 **36-23-106**, as last amended by Laws of Utah 2013, Chapter 323

27 **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

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

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

36-23-101.5. Definitions.

As used in this chapter:

- (1) "Committee" means the Occupational and Professional Licensure Review Committee created in Section **36-23-102**.
- (2) "Government requestor" means:
 - (a) the governor;
 - (b) an executive branch officer other than the governor;
 - (c) an executive branch agency;
 - (d) a legislator; or
 - (e) a legislative committee.
- (3) "Newly regulate" means to [~~regulate under Title 58, Occupations and Professions, an occupation or profession not regulated under Title 58, Occupations and Professions, before the enactment of the new regulation~~] create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation or profession.
- (4) "Proposal" means:
 - (a) an application submitted under Section **36-23-105**, with or without specific proposed statutory language;
 - (b) a request for review by a legislator of the possibility of newly regulating an occupation or profession, with or without specific proposed statutory language; or
 - (c) proposed legislation to newly regulate an occupation or profession referred to the committee by another legislative committee.
- (5) "Sunrise review" means a review under this chapter of a proposal to newly regulate an occupation or profession.
- (6) "Sunset review" means a review under this chapter of a statute:

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

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

61 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

79 **36-23-105. Applications -- Fees.**

80 (1) If a government requestor or a representative of an occupation or profession that is
81 not licensed by the state proposes that the state license or newly regulate an occupation or
82 profession, the requestor or representative shall, prior to the introduction of any proposed

83 legislation, submit an application for sunrise review to the Office of Legislative Research and
84 General Counsel in a form approved by the committee.

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

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

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

89 **36-23-106. Duties -- Reporting.**

90 (1) The committee shall:

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

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

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

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

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

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

107 (2) (a) For the purpose of making recommendations to the Legislature, the committee
108 may conduct a review or study of the existing regulations for any occupation or profession.

109 (b) In conducting a review or study under this Subsection (2), the committee shall:

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

113 (ii) consider if the committee's recommendations would negatively affect the interests
114 of members of the regulated occupation or profession, including the effect on matters of
115 reciprocity with other states; and

116 (iii) recommend to the Legislature any necessary changes to existing regulations of the
117 occupation or profession to ensure the regulations are narrowly tailored to protect against
118 present, recognizable, and significant harm to the health or safety of the public.

119 ~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

120 (a) the Legislative Management Committee; and

121 (b) the Business and Labor Interim Committee.

122 ~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

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

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

125 (i) whether the review or study included a review of specific proposed or existing

126 statutory language;

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

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

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

130 **36-23-107. Sunrise or sunset review -- Criteria.**

131 (1) In conducting a sunrise review or a sunset review under this chapter, the committee

132 may:

133 (a) receive information from:

134 (i) representatives of the occupation or profession proposed to be newly regulated or

135 that is subject to a sunset review;

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

137 (iii) any other person; and
138 (b) review a proposal with or without considering proposed statutory language.
139 (2) When conducting a sunrise review or sunset review under this chapter, the
140 committee shall:
141 (a) consider whether state regulation of the occupation or profession is necessary to
142 address a compelling state interest in protecting against present, recognizable, and significant
143 harm to the health or safety of the public;
144 (b) consider if the committee's recommendations to the Legislature would negatively
145 affect the interests of members of the regulated occupation or profession, including the effect
146 on matters of reciprocity with other states;
147 [~~(b)~~] (c) if the committee determines that state regulation of the occupation or
148 profession is not necessary to protect against present, recognizable, and significant harm to the
149 health or safety of the public, recommend to the Legislature that the state not regulate the
150 profession;
151 [~~(c)~~] (d) if the committee determines that state regulation of the occupation or
152 profession is necessary in protecting against present, recognizable, and significant harm to the
153 health or safety of the public, consider whether:
154 (i) the proposed or existing statute is narrowly tailored to protect against present,
155 recognizable, and significant harm to the health or safety of the public; and
156 (ii) a potentially less restrictive alternative to licensing, including registration,
157 certification, or exemption, would avoid unnecessary regulation while still protecting the health
158 and safety of the public; and
159 [~~(d)~~] (e) recommend to the Legislature any necessary changes to the proposed or
160 existing statute to ensure it is narrowly tailored to protect against present, recognizable, and
161 significant harm to the health or safety of the public.
162 (3) In its performance of each sunrise review or sunset review, the committee may
163 apply the following criteria, to the extent that it is applicable:

- 164 (a) whether the unregulated practice of the occupation or profession has clearly harmed
165 or may harm or endanger the health, safety, or welfare of the public;
- 166 (b) whether the potential for harm or endangerment described in Subsection (3)(a) is
167 easily recognizable and not remote;
- 168 (c) whether regulation of the occupation or profession will significantly diminish an
169 identified risk to the health, safety, or welfare of the public;
- 170 (d) whether regulation of the occupation or profession:
- 171 (i) imposes significant new economic hardship on the public;
- 172 (ii) significantly diminishes the supply of qualified practitioners; or
- 173 (iii) otherwise creates barriers to service that are not consistent with the public welfare
174 or interest;
- 175 (e) whether the occupation or profession requires knowledge, skills, and abilities that
176 are:
- 177 (i) teachable; and
- 178 (ii) testable;
- 179 (f) whether the occupation or profession is clearly distinguishable from other
180 occupations or professions that are already regulated;
- 181 (g) whether the occupation or profession has:
- 182 (i) an established code of ethics;
- 183 (ii) a voluntary certification program; or
- 184 (iii) other measures to ensure a minimum quality of service;
- 185 (h) whether:
- 186 (i) the occupation or profession involves the treatment of an illness, injury, or health
187 care condition; and
- 188 (ii) practitioners of the occupation or profession will request payment of benefits for
189 the treatment under an insurance contract subject to Section [31A-22-618](#);
- 190 (i) whether the public can be adequately protected by means other than regulation; and

191 (j) other appropriate criteria as determined by the committee.
192 Section 6. Section **36-23-109** is amended to read:
193 **36-23-109. Review of state regulation of occupations and professions.**
194 [~~Before the annual written report~~] As part of the annual report described in Section
195 36-23-106 [~~is submitted for 2013~~], the committee [~~shall~~] may study and make
196 recommendations regarding potentially less restrictive alternatives to licensing for the
197 regulation of occupations and professions, including registration [~~and~~], certification, or
198 exemption, if appropriate, that would [~~better~~] avoid unnecessary regulation [~~and intrusion upon~~
199 ~~individual liberties by the state,~~] while still protecting the health and safety of the public.