

Overview of the Occupational and Professional Licensure Review Committee

Presentation to the Business and Labor Interim Committee
July 13, 2016

<u>Enclosures</u>	<u>Page</u>
2016 General Session H.B. 44, Occupational and Professional Licensure Review Committee Amendments	1
Utah Code, Title 36, Chapter 23, Occupational and Professional Licensure Review Committee Act	9
Legislative Rules That Refer to the Occupational and Professional Licensure Review Committee	15
Occupational and Professional Licensure Review Application	19
2015 Annual Report -- Occupational and Professional Licensure Review Committee	25
Presentation slides	29

For further information, please contact Joseph Wade at 538-1032
Prepared by the Office of Legislative Research and General Counsel



1 OCCUPATIONAL AND PROFESSIONAL LICENSURE

2 REVIEW COMMITTEE AMENDMENTS

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Jon E. Stanard

6 Senate Sponsor: Wayne A. Harper

7

8 LONG TITLE

9 Committee Note:

10 The Business and Labor Interim Committee recommended this bill.

11 The Occupational and Professional Licensure Review Committee recommended this
12 bill.

13 General Description:

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

15 Highlighted Provisions:

16 This bill:

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

21 Money Appropriated in this Bill:

22 None

23 Other Special Clauses:

24 None

25 Utah Code Sections Affected:

26 AMENDS:

27 **36-23-101.5**, as last amended by Laws of Utah 2013, Chapter 323



- 28 36-23-102, as last amended by Laws of Utah 2013, Chapter 323
- 29 36-23-105, as last amended by Laws of Utah 2013, Chapter 323
- 30 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
- 31 36-23-107, as last amended by Laws of Utah 2013, Chapter 323
- 32 36-23-109, as last amended by Laws of Utah 2014, Chapter 189



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

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

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

37 As used in this chapter:

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

40 (2) "Government requestor" means:

- 41 (a) the governor;
- 42 (b) an executive branch officer other than the governor;
- 43 (c) an executive branch agency;
- 44 (d) a legislator; or
- 45 (e) a legislative committee.

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

49 (4) "Proposal" means:

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

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

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

59 (a) regarding a licensed or otherwise regulated profession under Title 58, Occupations
60 and Professions, or other state statute; and

61 (b) that is scheduled for termination under [~~Section 63I-1-258~~] Title 63I, Chapter 1,
62 Part 2, Repeal Dates Requiring Committee Review by Title.

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

64 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

82 **36-23-105. Applications -- Fees.**

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

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

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

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

92 **36-23-106. Duties -- Reporting.**

93 (1) The committee shall:

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

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

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

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

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

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

110 (2) The committee may conduct a review or study regarding any occupational or
111 professional licensure matter.

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) if the committee determines that state regulation of the occupation or profession is
138 not necessary to protect against present, recognizable, and significant harm to the health or
139 safety of the public, recommend to the Legislature that the state not regulate the profession;

140 (c) if the committee determines that state regulation of the occupation or profession is
141 necessary in protecting against present, recognizable, and significant harm to the health or
142 safety of the public, consider whether:

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

145 (ii) a potentially less restrictive alternative to licensing, including registration or
146 certification, would avoid unnecessary regulation and intrusion upon individual liberties by the
147 state, while still protecting the health and safety of the public; and

148 (d) recommend to the Legislature any necessary changes to the proposed or existing
149 statute to ensure it is narrowly tailored to protect against present, recognizable, and significant
150 harm to the health or safety of the public.

151 (3) In its performance of each sunrise review or sunset review, the committee may

152 apply the following criteria, to the extent that it is applicable:

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

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

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

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

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

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

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

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

166 (i) teachable; and

167 (ii) testable;

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

170 (g) whether the occupation or profession has:

171 (i) an established code of ethics;

172 (ii) a voluntary certification program; or

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

174 (h) whether:

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

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

179 (i) whether the public can be adequately protected by means other than regulation; and

180 (j) other appropriate criteria as determined by the committee.

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

182 **36-23-109. Review of state regulation of occupations and professions.**

183 ~~[Before the annual written report]~~ As part of the annual report described in Section
184 36-23-106 ~~[is submitted for 2013]~~, the committee ~~[shall]~~ may study and make
185 recommendations regarding potentially less restrictive alternatives to licensing for the
186 regulation of occupations and professions, including registration and certification if
187 appropriate, that would ~~[better]~~ avoid unnecessary regulation and intrusion upon individual
188 liberties by the state, while still protecting the health and safety of the public.

Legislative Review Note
Office of Legislative Research and General Counsel

Utah Code
Legislature
Title 36

Occupational and Professional Licensure Review Committee Act

Title 36, Chapter 23

(Text is current through the 2016 General Session)

- 36-23-101. Title.**
 - 36-23-101.5. Definitions.**
 - 36-23-102. Occupational and Professional Licensure Review Committee.**
 - 36-23-103. Committee terms -- Vacancies.**
 - 36-23-104. Committee meetings -- Compensation -- Quorum -- Legislative rules.**
 - 36-23-105. Applications -- Fees.**
 - 36-23-106. Duties -- Reporting.**
 - 36-23-107. Sunrise or sunset review -- Criteria.**
 - 36-23-108. Staff support.**
 - 36-23-109. Review of state regulation of occupations and professions.**
-

36-23-101. Title.

This chapter is known as the "Occupational and Professional Licensure Review Committee Act."

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.
- (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:
- (a) regarding a licensed profession under Title 58, Occupations and Professions; and
 - (b) that is scheduled for termination under Section 631-1-258.

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

- (1) There is created the Occupational and Professional Licensure Review Committee.
- (2) The committee consists of nine members appointed as follows:
 - (a) three members of the House of Representatives, appointed by the speaker of the House of Representatives, no more than two from the same political party;
 - (b) three members of the Senate, appointed by the president of the Senate, no more than two from the same political party; and
 - (c) three public members appointed jointly by the speaker of the House of Representatives and the president of the Senate from the following two groups:
 - (i) at least one member who has previously served, but is no longer serving, on any advisory board created under Title 58, Occupations and Professions; and
 - (ii) at least one member from the general public who does not hold any type of license issued by the Division of Occupational and Professional Licensing.
- (3) (a) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.
- (b) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(b) as a cochair of the committee.

36-23-103. Committee terms -- Vacancies.

- (1) A legislator serving on the committee shall serve a two-year term or until the legislator's successor is appointed.
- (2) (a) Except as provided in Subsection (2)(b), a public member shall serve a three-year term or until the public member's successor is appointed.

- (b) The speaker of the House of Representatives and the president of the Senate shall, at the time of appointment or reappointment, adjust the length of terms of the public members to ensure that approximately one of the public members is appointed every year.
- (3) A legislative or public member of the committee may serve one or more terms.
- (4) (a) A vacancy occurs:
 - (i) when a legislative member ceases to be a member of the Legislature;
 - (ii) when a member of the committee resigns from the committee; or
 - (iii) when a member is removed by the appointing authority for cause.
- (b) A vacancy shall be filled by the appointing authority, and the replacement member shall serve for the remaining unexpired term.

36-23-104. Committee meetings -- Compensation -- Quorum -- Legislative rules.

- (1) The committee shall meet at least twice before November 1 of each year, at the call of the committee chairs, to carry out the duties described in this chapter.
- (2) (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (3) (a) Five members of the committee constitute a quorum.
- (b) If a quorum is present, the action of a majority of members present is the action of the committee.
- (4) Except as provided in Subsection (3), in conducting all its business, the committee shall comply with the rules of legislative interim committees regarding motions.

36-23-105. Applications -- Fees.

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

- (2) If an application is submitted by a representative of an occupation or profession, the application shall include a nonrefundable fee of \$500.
- (3) All application fees shall be deposited in the General Fund.

36-23-106. Duties -- Reporting.

- (1) The committee shall:
 - (a) for each application submitted in accordance with Section 36-23-105, conduct a sunrise review in accordance with Section 36-23-107 before November 1:
 - (i) of the year in which the application is submitted, if the application is submitted on or before July 1; or
 - (ii) of the year following the year in which the application is submitted, if the application is submitted after July 1;
 - (b)
 - (i) conduct a sunset review for all statutes regarding a licensed occupation or profession under Title 58, Occupations and Professions, that are scheduled for termination under Section 631-1-258;
 - (ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year prior to the last general session of the Legislature that is scheduled to meet before the scheduled termination date; and
 - (iii) conduct a review or study regarding any other occupational or professional licensure matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.
- (2) The committee shall submit an annual written report before November 1 to:
 - (a) the Legislative Management Committee; and
 - (b) the Business and Labor Interim Committee.
- (3) The written report required by Subsection (2) shall include:
 - (a) all findings and recommendations made by the committee in the calendar year; and
 - (b) a summary report of each review or study conducted by the committee stating:
 - (i) whether the review or study included a review of specific proposed or existing statutory language;
 - (ii) action taken by the committee as a result of the review or study; and
 - (iii) a record of the vote for each action taken by the committee.

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

- (1) In conducting a sunrise review or a sunset review under this chapter, the committee may:
 - (a) receive information from:

- (i) representatives of the occupation or profession proposed to be newly regulated or that is subject to a sunset review;
 - (ii) the Division of Occupational and Professional Licensing; or
 - (iii) any other person; and
 - (b) review a proposal with or without considering proposed statutory language.
- (2) When conducting a sunrise review or sunset review under this chapter, the committee shall:
- (a) consider whether state regulation of the occupation or profession is necessary to address a compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public;
 - (b) if the committee determines that state regulation of the occupation or profession is not necessary to protect against present, recognizable, and significant harm to the health or safety of the public, recommend to the Legislature that the state not regulate the profession;
 - (c) if the committee determines that state regulation of the occupation or profession is necessary in protecting against present, recognizable, and significant harm to the health or safety of the public, consider whether the proposed or existing statute is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public; and
 - (d) recommend to the Legislature any necessary changes to the proposed or existing statute to ensure it is narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.
- (3) In its performance of each sunrise review or sunset review, the committee may apply the following criteria, to the extent that it is applicable:
- (a) whether the unregulated practice of the occupation or profession has clearly harmed or may harm or endanger the health, safety, or welfare of the public;
 - (b) whether the potential for harm or endangerment described in Subsection (3)(a) is easily recognizable and not remote;
 - (c) whether regulation of the occupation or profession will significantly diminish an identified risk to the health, safety, or welfare of the public;
 - (d) whether regulation of the occupation or profession:
 - (i) imposes significant new economic hardship on the public;
 - (ii) significantly diminishes the supply of qualified practitioners; or
 - (iii) otherwise creates barriers to service that are not consistent with the public welfare or interest;
 - (e) whether the occupation or profession requires knowledge, skills, and abilities that are:

- (i) teachable; and
- (ii) testable;
- (f) whether the occupation or profession is clearly distinguishable from other occupations or professions that are already regulated;
- (g) whether the occupation or profession has:
 - (i) an established code of ethics;
 - (ii) a voluntary certification program; or
 - (iii) other measures to ensure a minimum quality of service;
- (h) whether:
 - (i) the occupation or profession involves the treatment of an illness, injury, or health care condition; and
 - (ii) practitioners of the occupation or profession will request payment of benefits for the treatment under an insurance contract subject to Section 31A-22-618;
- (i) whether the public can be adequately protected by means other than regulation; and
- (j) other appropriate criteria as determined by the committee.

36-23-108. Staff support.

The Office of Legislative Research and General Counsel shall provide staff services to the committee.

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

Before the annual written report described in Section 36-23-106 is submitted for 2013, the committee shall study potentially less restrictive alternatives to licensing for the regulation of occupations and professions, including registration and certification if appropriate, that would better avoid unnecessary regulation and intrusion upon individual liberties by the state, while still protecting the health and safety of the public.

Legislative Rules That Refer to the Occupational and Professional Licensure Review Committee

- HR3-1-102. House Rules Committee -- Assignment duties.
 - HR3-2-405. Consent calendar.
 - SR3-1-102. Senate Rules Committee -- Assignment duties.
 - SR3-2-405. Consent calendar.
-

HR3-1-102. House Rules Committee -- Assignment duties.

- (1) The presiding officer shall submit all legislation introduced in the House of Representatives to the House Rules Committee.
- (2) For all legislation not specified in HR3-1-103 that is referred to the House Rules Committee, the committee shall:
 - (a) examine the legislation for proper form, including fiscal note and interim committee note, if any; and
 - (b) either:
 - (i) refer legislation to the House with a recommendation:
 - (A) that the legislation be referred to a standing committee for consideration; or
 - (B) that the legislation be read the second time and placed on the third reading calendar; or
 - (ii) hold the legislation.
 - (c) **If the chair of the House Rules Committee receives a summary report from the Occupational and Professional Licensure Review Committee related to newly regulating an occupation or profession within the two calendar years immediately preceding the session in which a piece of legislation is introduced related to the regulation by the Division of Occupational and Professional Licensing of that occupation or profession:**
 - (i) **the chair of the House Rules Committee shall ensure that the House Rules Committee is informed of the summary report before the House Rules Committee takes action on the legislation; and**
 - (ii) **if the House Rules Committee refers the legislation to the House as provided for in Subsection (2)(b)(i):**
 - (A) **the Office of Legislative Research and General Counsel shall make the summary report reasonably available to the**

public and to legislators; and

(B) if the legislation is referred to a standing committee, the House Rules Committee shall forward the summary report to the standing committee.

- (3) In carrying out its functions and responsibilities under this rule, the House Rules Committee may not:
 - (a) table legislation without the written consent of the sponsor;
 - (b) report out any legislation that has been tabled by a standing committee;
 - (c) amend legislation without the written consent of the sponsor; or
 - (d) substitute legislation without the written consent of the sponsor.
- (4) The House Rules Committee may recommend a time certain for floor consideration of any legislation when it is reported out of the House Rules Committee, or at any other time.
- (5) When the committee is carrying out its functions and responsibilities under this rule, the committee shall:
 - (a) during a legislative session, give notice of its meetings by either:
 - (i) providing oral notice from the House floor of the time and place of its next meeting; or
 - (ii) when oral notice is impractical, post written notice of its next meeting;
 - (b) when the Legislature is not in session, post a notice of meeting at least 24 hours before the meeting convenes;
 - (c) have as its agenda all legislation in its possession for assignment to committee or to the House calendars; and
 - (d) prepare minutes that include a record, by individual representative, of votes taken.
- (6) Anyone may attend a meeting of the rules committee, but comments and discussion are limited to members of the committee and the committee's staff.

HR3-2-405. Consent calendar.

- (1) A standing committee may recommend that legislation in its possession be placed on the consent calendar if:
 - (a) the committee approves a motion, by a unanimous vote, that the legislation be read a second time and placed on the third reading calendar;
 - (b) immediately subsequent to that action, the chief sponsor requests that the legislation be placed on the consent calendar;
 - (c) in a separate motion and vote, the committee unanimously approves the sponsor's request to place the legislation on the consent calendar instead of the second or third reading calendar; and
 - (d) the legislation does not have a fiscal note of \$10,000 or more.

- (2) **If, in accordance with HR3-1-102, the House Rules Committee forwards a summary report from the Occupational and Professional Licensure Review Committee in conjunction with legislation referred to a standing committee, the chair shall ensure that the summary report is read orally to the committee before action is taken by the committee on the legislation that is related to the summary report.**

SR3-1-102. Senate Rules Committee -- Assignment duties.

- (1) (a) Subject to Subsection (1)(b), the presiding officer shall submit all legislation introduced in the Senate to the Senate Rules Committee.
- (b) The president may direct legislation to be sent directly to a standing committee or to one of the Senate floor calendars.
- (2) For all legislation not specified in SR3-1-103 that is referred to the Senate Rules Committee, the committee shall:
- (a) examine the legislation for proper form, including fiscal note and committee note, if any; and
- (b) either:
- (i) hold the legislation; or
- (ii) refer legislation to the Senate with a recommendation that:
- (A) the legislation be referred to a standing committee for consideration;
- (B) the legislation be placed directly onto the second reading calendar;
- (C) the legislation be read the second time and placed onto the consent calendar; or
- (D) during the last week of the legislative session, the legislation be read the second time and placed on the third reading calendar.
- (3) In carrying out its functions and responsibilities under this rule, the Senate Rules Committee may not amend, substitute, or table legislation without the written consent of the sponsor.
- (4) **If the chair of the Senate Rules Committee receives a summary report from the Occupational and Professional Licensure Review Committee related to newly regulating an occupation or profession within the two calendar years immediately preceding the session in which a piece of legislation is introduced related to the regulation by the Division of Occupational and Professional Licensing of that occupation or profession:**
- (a) **the chair of the Senate Rules Committee shall ensure that the Senate Rules Committee is informed of the summary report before the Senate Rules Committee takes action on the legislation; and**

- (b) if the Senate Rules Committee refers the legislation to the Senate as provided in Subsection (2)(b):**
 - (i) the Office of Legislative Research and General Counsel shall make the summary report reasonably available to the public and to legislators; and**
 - (ii) if the legislation is referred to a standing committee, the Senate Rules Committee shall forward the summary report to the standing committee.**

SR3-2-405. Consent calendar.

- (1) A standing committee may recommend that legislation in its possession be placed on the consent calendar if:**
 - (a) the committee approves a motion, by a unanimous vote, to send the legislation to the second reading calendar;**
 - (b) immediately subsequent to that action, the chief sponsor requests that the legislation be placed on the consent calendar; and**
 - (c) in a separate motion and vote, the committee unanimously approves the sponsor's request to place the legislation on the consent calendar instead of the second reading calendar.**
- (2) If, in accordance with SR3-1-102, the Senate Rules Committee forwards a summary report from the Occupational and Professional Licensure Review Committee in conjunction with legislation referred to a standing committee, the chair shall ensure that the summary report is read orally to the committee before action is taken by the committee on the legislation that is related to the summary report.**



Michael E. Christensen
Director

John L. Fellows
General Counsel

OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW APPLICATION

In accordance with Title 36, Chapter 23, "Occupational and Professional Licensure Review Committee Act" (*Utah Code Annotated*, 1953), individuals or groups seeking new licensure or similar regulation for an occupation or profession must first complete an application if they wish to have a public hearing before the Occupational and Professional Licensure Review Committee (Committee). Please complete the attached application after reading the instructions on this page.

Instructions for completing this application:

- Please clearly identify a contact name(s) and phone numbers where the individual(s) may be reached.
- Please read the entire application before answering any questions so that you will understand what information is being requested and how questions relate to each other.
- Responses to this application should be typed and dated within a single document of no more than **30 pages** (excluding appendices). Supporting evidence for your responses may be included as appendices, but all essential information should be included within the main document.
- Each part of every question must be addressed. If there is no information available to answer the question, state this as your response and describe what you did to attempt to find information that would answer that question. If you think the question is not applicable, state this and explain your response.
- When you have completed the application, please return it with the statutorily-required nonrefundable fee of \$500 to the attention of the Occupational and Professional Licensure Review Committee at the **Office of Legislative Research and General Counsel**.
- After you have completed and submitted your application, you will be notified as to the date and time the Committee will hold a public hearing to review your profession or occupation. Hearings will generally be scheduled in the order applications are received.

If you have any questions, please contact **Joseph Wade** or **Peter Asplund** at the Office of Legislative Research and General Counsel (801-538-1032).

Thank you.

Utah State Capitol Complex
House Building, Suite W210
PO Box 145210
Salt Lake City, Utah
84114-5210
Phone (801) 538-1032
Fax (801) 538-1712
www.le.utah.gov

STATE OF UTAH
OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW
APPLICATION

Occupational or professional group seeking regulation: _____

Contact person

Name: _____

Mailing address: _____

Phone number: _____

Email address: _____

Position or authority: _____

I certify that the information in this application is complete and accurate.

Signature: _____

Date: _____

Section A: Applicant Group Information

1. List all titles currently used by Utah practitioners of this occupation. Estimate the total number of practitioners now in Utah and the number using each title.
2. Identify each occupational association representing current practitioners in Utah and estimate its membership. For each, list the name of any associated national group.
3. Estimate the percentage of practitioners who support this request for regulation. Document the source of this estimate.
4. Name the applicant group representing the practitioners in this effort to seek regulation. How was this group selected to represent practitioners?
5. Are all practitioner groups listed in response to question #2 represented in the organization seeking regulation? If not, why not?

Section B: Consumer Group Information

6. Do practitioners typically deal with a specific consumer population? Are clients generally individuals or organizations? Please provide documentation.
7. Identify any advocacy groups representing Utah consumers of this service. List also the name of applicable national advocacy groups.
8. Identify any consumer populations not now using practitioner services who are likely to do so if regulation is approved.
9. Does the applicant group include consumer advocate representation? If so, please provide documentation. If not, describe the efforts, if any, made to include such representation.

10. Name any non-applicant groups opposed to or with an interest in the proposed regulation. If none, indicate efforts made to identify them.

Section C: Sunrise Criteria

I. State regulation of the occupation or profession is necessary to address a compelling state interest in protecting against:

- a) present harm to the health or safety of the public;*
- b) recognizable harm to the health or safety of the public; AND*
- c) significant harm to the health or safety of the public?*

11. Is there present harm to the health or safety of the public? If so, what is the nature and severity of the harm to the public? Please provide documentation for any physical or mental health harm, or safety harm currently resulting as a consequence to consumers resulting from incompetent practice.

12. Is the harm recognizable? If so, how is the harm recognizable? Please provide documentation on how the harm is recognizable.

13. Is the harm significant? If so, how significant is the harm? Please provide documentation on the extent of the harm.

14. How likely is it that harm will occur? Cite cases or instances of consumer injury. How could harm be avoided?

15. What provisions of the proposed regulation would preclude consumer injury?

16. Is there or has there been significant public demand for a regulatory standard? Please provide documentation.

17. How might the proposed regulation be narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public?

II. The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence.

18. What specific benefits will the public realize if this occupation is regulated? Indicate clearly how the proposed regulation will correct or preclude consumer injury. Do these benefits go beyond freedom from harm? If so, in what way?

19. Which consumers of practitioner services are most in need of protection? Which require least protection? Which consumers will benefit most and least from regulation?

20. Provide evidence of "net" benefit when the following possible effects of regulation are considered:

- a. Restriction of opportunity to practice
- b. Restricted supply of practitioners
- c. Increased costs of service to consumer
- d. Increased governmental intervention in the marketplace

III. Regulation of the profession or occupation does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners or otherwise create barriers to service that are not consistent with the public welfare or interest.

21. How many people seek services annually from this occupation? Will regulation of the occupation affect this figure? If so, in what way?

22. What is the current cost of the service provided (per episode or visit)? Estimate the total amount of money spent annually in Utah for the services of this group. How will regulation affect these costs? Provide documentation for your answers.

23. Provide a cost analysis supporting regulation of this occupation. Include costs to provide adequate regulatory functions during the first three years following implementation of this regulation. Assure that at least the following have been included:

- a. costs of program administration, including staffing
- b. costs of developing and/or administering examinations
- c. costs of effective enforcement programs

24. Does adoption of the requested regulation represent the most cost-effective form of regulation? Indicate alternatives considered and costs associated with each.

IV. The occupation requires possession of knowledge, skills, and abilities that are both teachable and testable.

25. Is there a generally accepted core set of knowledge, skills, and abilities without which a practitioner may cause public harm? Please describe and document.

26. What methods are currently used to define the requisite knowledge, skills, and abilities? Who is responsible for defining these knowledge, skills, and abilities?

27. Are the knowledge, skills, and abilities testable? Is the work of the group sufficiently defined that competence could be evaluated by some standard (such as ratings of education, experience, or exam performance)?

28. List institutions and program titles offering accredited and nonaccredited preparatory programs in Utah. Estimate the annual number of graduates from each. If no such preparatory programs exist within Utah, where are the most accessible locations offering such programs?

29. Apart from the programs listed in question #28, indicate other methods of acquiring requisite knowledge, skill, and ability. Examples may include apprenticeships, internships, on-the-job training, individual study, etc.

30. Estimate the percentage of current practitioners trained by each of the methods described in questions #28 and #29.

31. Does any examination or other measure currently exist to test for functional competence? If so, indicate how and by whom each was constructed and by whom it is currently administered. If not, indicate search efforts to locate such measures.

32. If more than one examination is listed above, which standard do you intend to support? Why? If none of the above, why not, and what do you propose as an alternative?

V. The occupation is clearly distinguishable from other occupations that are already regulated.

33. What similar occupations are or have been regulated in Utah?

34. Describe functions performed by practitioners that differ from those performed by occupations listed in question #33.

35. Indicate the relationships among the groups listed in response to question #33 and practitioners. Can practitioners be considered a branch of currently regulated occupations?

36. What impact will the required regulation have upon the authority and scopes of practice of currently regulated groups?

37. Are there unregulated occupations performing services similar to those of the group to be regulated? If so, identify.

VI. The occupational or professional group has an established code of ethics, a voluntary certification program, or other measures to ensure a minimum quality of service.

38. Does the occupation or professional group have an established code of ethics or a voluntary certification program? Please provide documentation of codes or certification programs.

39. Are there measures that ensure a minimum quality of service? Why are these measures insufficient?

VII. The public cannot be adequately protected by any means other than regulation.

40. Explain why marketplace factors are not sufficient to ensure public welfare. Document specific instances in which market controls have proven ineffective in assuring consumer protection.

41. Are there other states in which this occupation is regulated? If so, identify the states and indicate the manner in which consumer protection is ensured in those states. Provide, as an appendix, copies of the regulatory provisions from these states.

42. What means other than governmental regulation have been employed in Utah to protect consumer health and safety. Show why the following would be inadequate:

- a. code of ethics
- b. codes of practice enforced by professional associations
- c. dispute-resolution mechanisms such as mediation or arbitration
- d. recourse to current applicable law
- e. regulation of those who employ or supervise practitioners
- f. other measures attempted or contemplated

Section D: Proposal for Regulation

43. Do you propose licensure, certification, registration, or another type of regulation? What is the justification for the level of regulation sought?

44. Describe the regulatory process that would administer this proposal focusing on the following areas:

- a. Regulatory board, proposed make-up of the board, qualifications for membership on the board.
- b. Examinations
- c. Inspections
- d. Renewal, revocation, or suspension of the right to practice this occupation or profession.
- e. Handling of complaints and disciplinary actions to be taken against practitioners.
- f. Types, numbers and amounts of fees to be collected. (Include fees for applications, examinations, original licenses, and renewals.)

45. What do you propose as minimum standards (education, training, and experience) for entry into this occupation or profession? How accessible is the training and what is the anticipated cost?

46. Do you propose alternate routes of entry into the occupation or profession, or alternate methods of meeting

the training, education, and experience requirements? If so, describe.

47. Do you propose a “grandfather” clause in which current practitioners are exempted from compliance with proposed entry standards? If so, how is that clause justified? What safeguards will be provided for consumers? Will those who are grandfathered be required to meet the prerequisite qualifications at a later date?

48. Do you propose that renewal be based only upon payment of a fee, or do you propose it require re-examination, continuing education credits, peer review or other enforcement? Be specific. State whether you propose that renewals be annual, biennial, or otherwise.

49. If a continuing education requirement is proposed, describe opportunities and costs of continuing education in Utah (or elsewhere if not available in the state).

50. What requirements do you propose for applicants from other states who have met the requirements for licensure or regulation in their former state?

51. Estimate the cost to the state to implement and administer the proposed regulatory program. Include board member travel and per-diem expenses, personnel costs to administer day-to-day functions, costs of materials, testing costs, inspection costs, enforcement costs, and other related costs.

52. How many practitioners are likely to apply to apply initially if the proposed regulation is adopted? How many in each of the next three years?

53. Will all costs of implementation and administration be covered by projected revenues? If not, what other sources of revenue could be used to cover the costs of regulation?

54. How will start-up costs be generated?

END OF APPLICATION

PLEASE REVIEW COVER LETTER FOR INSTRUCTIONS ON SUBMITTING YOUR COMPLETED APPLICATION.



<http://le.utah.gov>

Utah State Legislature

Senate • Utah State Capitol Complex • 320 State Capitol
PO BOX 145115 • Salt Lake City, Utah 84114-5115
(801) 538-1035 • fax (801) 538-1414

House of Representatives • Utah State Capitol Complex • 350 State Capitol
PO BOX 145030 • Salt Lake City, Utah 84114-5030
(801) 538-1029 • fax (801) 538-1908

Memorandum

To: Legislative Management Committee
Business and Labor Interim Committee

From: Occupational and Professional Licensure Review Committee

Date: November 1, 2015

Re: Annual Report

Introduction

The Occupational and Professional Licensure Review Committee is composed of three members each from the Senate and House of Representatives, appointed by their respective presiding officers, and three members of the public, appointed by the President of the Senate and Speaker of the House, at least one of whom is a former member of an advisory board to the Division of Occupational and Professional Licensing (DOPL).

The committee is responsible for conducting three types of reviews regarding the licensing of occupations and professions: (1) a “sunrise” review of an application for a new occupational or professional license under Utah Code Title 58, Occupations and Professions; (2) a “sunset” review for all statutes that are scheduled for termination under Utah Code Section 63I-1-258; and (3) a review referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

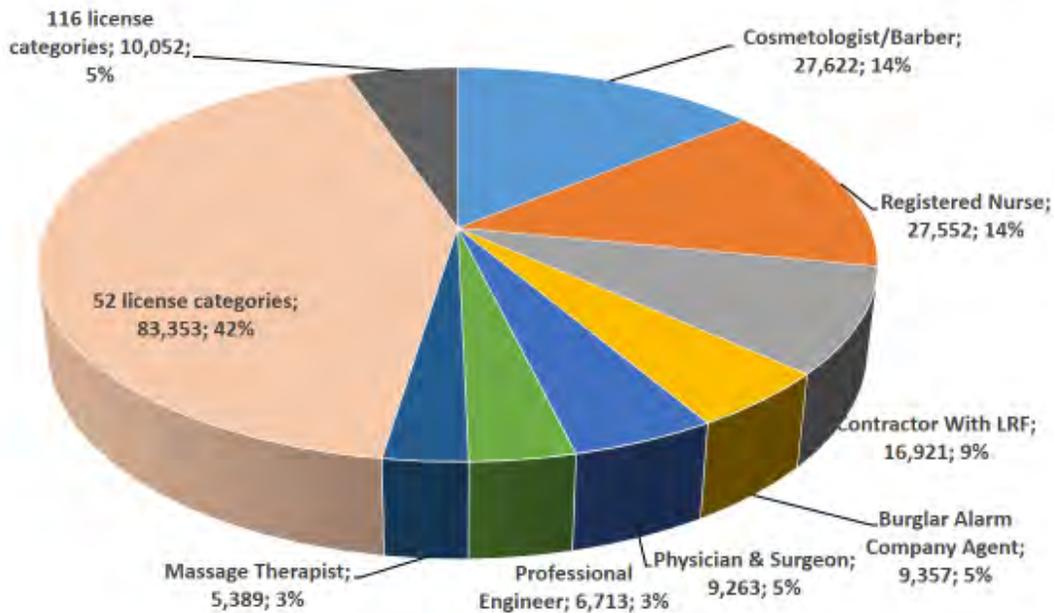
Occupational and Professional Licensing

The state licenses a wide variety of occupations and professions through several executive branch agencies, the State Board of Education, and the Utah Supreme Court. Together, these organizations, as of 2013, licensed nearly 487,000 persons or approximately 38 percent of Utah’s total labor force of 1.2 million.

The committee is charged with reviewing issues regarding licenses issued by DOPL, the largest licensing agency in the state. As of 2013, DOPL issued 174 distinct licenses

within 57 separate professions and occupations. As shown in the chart below, of the 196,222 persons licensed by DOPL in October 2013, about 53 percent of the persons were in just seven license categories, 42 percent of the persons were in 52 license categories, and five percent of the persons licensed were spread across 116 license categories.

State of Utah
Division of Occupational and Professional Licensing
Percent and Number of all Licenses Issued by Selected License Categories



Committee Reviews and Actions

Sunrise Reviews

In 2015, the committee did not conduct a sunrise review.

Interior Designers – In 2014, the committee received an application from Interior Design Education and Legislation for Utah for a new license for the practice of interior design. The committee reviewed the application and received public comment. The committee voted unanimously to direct staff to open a committee bill file to grant a limited exemption from the Architects Licensing Act for commercial spaces over 3,000 square feet for certain interior design professionals. At the next committee meeting, the requested draft legislation “Interior Designer Amendments” (2015FL-0406/004) was distributed. The committee discussed the draft legislation and received public comment. The committee did not take action on the draft legislation. In 2015, the committee voted (8 yes; 1 no; 0 absent) to reaffirm the committee’s actions taken in 2014.

Common Interest Community Manager – In 2014, the committee heard a presentation (but did not receive an application) from the Community Associations Institute proposing a new license for common interest community managers. The committee discussed the proposal and received public comment. The committee did not take action on this proposal.

Sunset Reviews

In 2015, the committee did not conduct a sunset review.

In 2014, the committee conducted the following three sunset reviews.

Health Facility Administrator Act – In 2014, the committee voted unanimously to reauthorize the Health Facility Administrator Act for an additional ten years. The committee voted unanimously to recommend draft legislation “Health Facility Administrator Act Reauthorization” (2015FL-0608/002) as a committee bill. 2015 General Session S.B. 27, “Health Facility Administrator Act Reauthorization,” passed extending the sunset date by ten years.

Occupational Therapy Practice Act – In 2014, the committee voted unanimously to reauthorize the Occupational Therapy Practice Act for an additional ten years. The committee voted unanimously to recommend draft legislation “Occupational Therapy Practice Act Reauthorization” (2015FL-0607/002) as a committee bill. 2015 General Session S.B. 26, “Occupational Therapy Practice Act Reauthorization,” passed extending the sunset date by ten years.

Dentist Educators – In 2014, the committee voted (7 yes; 1 no; 1 absent) to extend the sunset date of the licensing of dentist educators by two years. Accordingly, 2015 General Session S.B. 28, “Dentist Educator License Reauthorization,” was introduced but did not pass. However, 2015 General Session S.B. 92, “Dental Practice Act Amendments,” passed creating an exemption to licensure for dentist educators under certain circumstances, and repealing the section that provided for the licensure of dentist educators.

Less Restrictive Alternatives to Licensing

In 2013 General Session H.B. 75, “Occupational and Professional Licensing Amendments,” the committee was directed to study potentially less restrictive alternatives to licensing, including registration and certification.

In 2014 and 2015, the committee continued the discussion of potentially less restrictive alternatives.

In 2014, the committee voted unanimously to:

- Adopt a three-tier level of regulation for newly regulated occupations and professions with the designations of licensure, certification, and registration, in that order, from most to least restrictive;
- Begin considering ways to apply the named designations to the professions currently regulated; and
- Make recommendations about whether statutory changes should be made to adopt a three-tiered regulatory system in place of licensing.

In 2015, the committee voted (8 yes; 1 no; 0 absent) to reaffirm the action noted above.

Scope and Responsibilities of the Committee

In 2015, the committee voted unanimously to recommend draft legislation “Occupational and Professional Licensure Review Committee Amendments (2016FL-0548/004),” which modifies the responsibilities of the committee. More specifically, the legislation:

- expands the scope of the committee to include all occupations and professions, not just the occupations and professions under Title 58, which is administered by the Division of Occupational and Professional Licensure, Department of Commerce;
- authorizes the committee to conduct a review or study regarding any occupational or professional licensure matter;
- requires the committee, when conducting a sunrise or sunset review, to consider a potentially less restrictive alternative to licensing, including registration or certification, that would avoid unnecessary regulation and intrusion upon individual liberties by the state, while still protecting the health and safety of the public; and
- allows the committee to continue its study regarding less restrictive alternatives to licensure.

Overview of the Occupational and Professional Licensure Review Committee (OPLR)

Business and Labor Interim Committee

July 13, 2016

Prepared by the Office of Legislative Research and General Counsel



Presentation Outline

- Why on agenda?
- Statutory history
- Current OPLR membership
- Duties
- Sunrise review requirement
- Adherence to sunrise review requirement
- Activities of OPLR

Why on Agenda?

- 2016 General Session H.B. 44, Occupational and Professional Licensure Review Committee Amendments
 - Expand scope
 - Expand duties

Statutory History

- 1998
 - Created the Occupational and Professional Licensure Sunrise Task Force
- 1999
 - Enacted chapter; created OPLR; 13 members; sunrise application requirement; review criteria; report
- 2003
 - Added one item to the review criteria
- 2007
 - Added definitions; added report requirements and recipients; modified sunrise review process
 - Added to House and Senate Rules requirement to inform rules committees

Statutory History

- 2008
 - Reduced membership from 13 to nine members
- 2013
 - Exempted government requestors from sunrise application fee; requires committee to meet at least twice each year; made other changes

OPLR Membership

- Sen. Todd Weiler, Cochair
- Rep. Brian M. Greene, Cochair
- Sen. Wayne A. Harper
- Sen. Karen Mayne
- Rep. Susan Duckworth
- Rep. Jon E. Stanard
- Mr. Duane Gardner
- Ms. Heather Johnston
- Mr. Merlin Taylor

Duties of OPLR

- Approve sunrise application form
- For each sunrise application conduct a sunrise review
- Conduct a sunset review for each Title 58 occupation or profession scheduled for termination
- Conduct a study or review of matters referred to the committee by another legislative committee
- Meet at least twice each year before November 1
- Submit an annual written report by November 1

Duties of OPLR

- Before November 1, 2013, the committee shall study potentially less restrictive alternatives to licensing for the regulation of occupations and professions, including registration and certification if appropriate, that would better avoid unnecessary regulation and intrusion upon individual liberties by the state, while still protecting the health and safety of the public.

Sunrise Review Requirement

“ ... the requestor [for licensure] ... shall, prior to the introduction of any proposed legislation, submit an application for sunrise review [for review by the OPLR committee]...”

Section 36-23-105

Sunrise Review Requirement

Legislation proposing the licensing or regulation of an occupation or profession under Title 58, Occupations and Professions, that is not currently subject to licensing or regulation under Title 58:

- (1) may not be enacted by the Legislature unless:
 - (a) a proposal to license or regulate the occupation or profession has been reviewed by the Occupational and Professional Licensure Review Committee; or
 - (b) the proposed legislation contains a provision that expressly exempts the legislation from the review requirement of Subsection (1)(a).

Section 58-1-110

Adherence to Sunrise Review Requirement

- 2016 General Session – Title 58 (DOPL)
 - Received required review:
 - S.B. 117, Commercial Interior Design Certification Modifications
 - Did not receive required review:
 - H.B. 185, Deception Detection Examiners Licensing Amendments
- 2016 General Session – not Title 58
 - Three proposed but did not pass

Activities of OPLR

Year	# Meetings	# Sunrise Reviews	# Sunset Reviews	Other
2000	3	3	0	
2001	2	2	0	
2002	1	1	0	
2003	3	0	0	S.B. 67 study
2004	1	0	0	study
2005	3	2	2	
2006	0	-	-	
2007	1	0	1	
2008	0	-	-	
2009	0	-	-	
2010	0	-	-	
2011	0	-	-	
2012	0	-	-	
2013	3	1	1	H.B. 75 study
2014	3	2	3	studies
2015	2	0	0	studies