

**PROFESSIONAL LICENSING AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Brian M. Greene

---

---

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



28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58

---

---

*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) "Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not illegal to sell, irrespective of whether the individual selling the goods or services is subject to an occupational regulation.
- (4) "License" or "licensing" means a state-granted authorization for a person to engage in a specified lawful occupation:
- (a) based on the person meeting personal qualifications established under state law;
- and
- (b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.
- ~~[(3)]~~ (5) "Newly regulate" means to regulate [~~under Title 58, Occupations and Professions, an occupation or profession not regulated under Title 58, Occupations and Professions;~~] by state statute a lawful occupation not regulated by state statute before the enactment of the new regulation.
- (6) "Personal qualifications" are criteria established in state law related to a person's background and may include:
- (a) completion of an approved education program;
  - (b) satisfactory performance on an examination;
  - (c) work experience; and

59 (d) completion of continuing education.

60 [~~(4)~~] (7) "Proposal" means:

61 (a) an application submitted under Section [36-23-105](#), with or without specific  
62 proposed statutory language;

63 (b) a request for review by a legislator of the possibility of newly regulating [~~an~~  
64 ~~occupation or profession~~] a lawful occupation, with or without specific proposed statutory  
65 language; or

66 (c) proposed legislation to newly regulate [~~an occupation or profession~~] a lawful  
67 occupation referred to the committee by another legislative committee.

68 (8) "State certification" means a state-granted authorization given to a person to use the  
69 term "state certified" as part of a designated title related to engaging in a specified lawful  
70 occupation:

71 (a) based on the person meeting personal qualifications established under state law;  
72 and

73 (b) where state law prohibits a noncertified person from using the term "state certified"  
74 as part of a designated title, but does not otherwise prohibit a noncertified person from  
75 engaging in the lawful occupation for compensation.

76 (9) "State registration" means a state-granted authorization given to a person to use the  
77 term "state registered" as part of a designated title related to engaging in a specified lawful  
78 occupation:

79 (a) based on the person meeting requirements established under state law, which may  
80 include the person's name and address, the person's agent for service of process, the location of  
81 the activity to be performed, and bond or insurance requirements;

82 (b) where state law does not require the person to meet any personal qualifications; and

83 (c) where state law prohibits a nonregistered person from using the term "state  
84 registered" as part of a designated title.

85 [~~(5)~~] (10) "Sunrise review" means a review under this chapter of a proposal to newly  
86 regulate [~~an occupation or profession~~] a lawful occupation.

87 [~~(6)~~] (11) "Sunset review" means a review under this chapter of a statute [~~:(a) regarding~~  
88 ~~a licensed profession under Title 58, Occupations and Professions; and (b)] regarding a  
89 regulated lawful occupation that is scheduled for termination under [~~Section 63I-1-258~~] Title~~

90 63I, Chapter 1, Part 2, Repeal Dates by Title.

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

92 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

110 **36-23-105. Applications -- Fees.**

111 (1) If a government requestor or a representative of [~~an occupation or profession~~] a  
112 lawful occupation that is not licensed by the state proposes that the state license or newly  
113 regulate [~~an occupation or profession~~] a lawful occupation, the requestor or representative  
114 shall, prior to the introduction of any proposed legislation, submit an application for sunrise  
115 review to the Office of Legislative Research and General Counsel in a form approved by the  
116 committee.

117 (2) Along with any other information requested by the committee, the application shall  
118 include a description of:

119 (a) why licensing or other regulation of the lawful occupation is required to protect  
120 against present, recognizable, and significant harm to the health or safety of the public; and

121 (b) what is the least restrictive regulation of the lawful occupation that would protect  
122 against recognizable and significant harm to the health or safety of the public.

123 ~~[(2)]~~ (3) If an application is submitted by a representative of ~~[an occupation or~~  
124 ~~profession]~~ a lawful occupation, the application shall include a nonrefundable fee of \$500.

125 ~~[(3)]~~ (4) All application fees shall be deposited ~~[in]~~ into the General Fund.

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

127 **36-23-106. Duties -- Reporting.**

128 (1) The committee shall:

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

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

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

135 (b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a ~~[licensed~~  
136 ~~occupation or profession under Title 58, Occupations and Professions, that are]~~ regulated  
137 lawful occupation that is scheduled for termination under ~~[Section 63I-1-258]~~ Title 63I,  
138 Chapter 1, Part 2, Repeal Dates by Title;

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

142 (iii) conduct a review or study regarding any other occupational or professional  
143 licensure or other regulation matter referred to the committee by the Legislature, the Legislative  
144 Management Committee, or other legislative committee.

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

147 (b) In conducting a review or study under this Subsection (2), the committee shall  
148 consider if the committee's recommendations would negatively affect the interest of members  
149 of the regulated lawful occupation, including the effect on matters of reciprocity with other  
150 states.

151 ~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

- 152 (a) the Legislative Management Committee; and
- 153 (b) the Business and Labor Interim Committee.

154 ~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

- 155 (a) all findings and recommendations made by the committee in the calendar year; and
- 156 (b) a summary report of each review or study conducted by the committee stating:
  - 157 (i) whether the review or study included a review of specific proposed or existing
  - 158 statutory language;
  - 159 (ii) action taken by the committee as a result of the review or study; and
  - 160 (iii) a record of the vote for each action taken by the committee.

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

162 **36-23-107. Sunrise or sunset review -- Criteria.**

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

- 165 (a) receive information from:
  - 166 (i) representatives of the ~~[occupation or profession]~~ lawful occupation proposed to be
  - 167 newly regulated or that is subject to a sunset review;
  - 168 (ii) the Division of Occupational and Professional Licensing; or
  - 169 (iii) any other person; and

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

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

173 (a) consider whether state regulation of the ~~[occupation or profession]~~ lawful  
174 occupation is necessary to address a compelling state interest in protecting against present,  
175 recognizable, and significant harm to the health or safety of the public;

176 (b) consider if the committee's recommendations to the Legislature would negatively  
177 affect the interests of members of the regulated lawful occupation, including the effect on  
178 matters of reciprocity with other states;

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

183           ~~[(e)]~~ (d) if the committee determines that state regulation of the ~~[occupation or~~  
184 ~~profession]~~ lawful occupation is necessary in protecting against present, recognizable, and  
185 significant harm to the health or safety of the public, consider whether:

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

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

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

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

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

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

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

202           (d) whether regulation of the ~~[occupation or profession]~~ lawful occupation:

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

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

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

207           (e) whether the ~~[occupation or profession]~~ lawful occupation requires knowledge,  
208 skills, and abilities that are:

209           (i) teachable; and

210           (ii) testable;

211           (f) whether the ~~[occupation or profession]~~ lawful occupation is clearly distinguishable  
212 from other ~~[occupations or professions]~~ lawful occupations that are already regulated;

213           (g) whether the ~~[occupation or profession]~~ lawful occupation has:

- 214 (i) an established code of ethics;
- 215 (ii) a voluntary certification program; or
- 216 (iii) other measures to ensure a minimum quality of service;
- 217 (h) whether:
- 218 (i) the ~~[occupation or profession]~~ lawful occupation involves the treatment of an
- 219 illness, injury, or health care condition; and
- 220 (ii) practitioners of the ~~[occupation or profession]~~ lawful occupation will request
- 221 payment of benefits for the treatment under an insurance contract subject to Section
- 222 [31A-22-618](#);
- 223 (i) whether the public can be adequately protected by means other than regulation; and
- 224 (j) other appropriate criteria as determined by the committee.
- 225 Section 6. Section **36-23-109** is amended to read:
- 226 **36-23-109. Review of state regulation of occupations and professions.**
- 227 (1) ~~[Before the annual written report]~~ As part of the annual report described in Section
- 228 [36-23-106](#) ~~[is submitted for 2013]~~, the committee shall study and make recommendations
- 229 regarding potentially less restrictive alternatives to licensing for the regulation of ~~[occupations~~
- 230 ~~and professions]~~ lawful occupations, including registration ~~[and]~~, certification, or exemption, if
- 231 appropriate, that would ~~[better]~~ avoid unnecessary regulation ~~[and intrusion upon individual~~
- 232 ~~liberties by the state;]~~ while still protecting the health and safety of the public.
- 233 (2) The committee shall study and make recommendations regarding ~~§~~ **→ [approximately**
- 234 **20% of]** ~~←§~~ lawful occupations that require a license in the state so that each licensed lawful
- 235 occupation is reviewed every five years.

---

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