

1 **PROFESSIONAL LICENSING AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Wayne A. Harper**

5 House Sponsor: Brian M. Greene

7 **LONG TITLE**

8 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides a coordination clause.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **36-23-101.5**, as last amended by Laws of Utah 2013, Chapter 323

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

24 **36-23-105**, as last amended by Laws of Utah 2013, Chapter 323

25 **36-23-106**, as last amended by Laws of Utah 2013, Chapter 323

26 **36-23-107**, as last amended by Laws of Utah 2013, Chapter 323

27 **36-23-109**, as last amended by Laws of Utah 2014, Chapter 189

28 **Utah Code Sections Affected by Coordination Clause:**

29 **36-23-101.5**, as last amended by Laws of Utah 2013, Chapter 323

- 30 **36-23-102**, as last amended by Laws of Utah 2013, Chapter 323
- 31 **36-23-105**, as last amended by Laws of Utah 2013, Chapter 323
- 32 **36-23-106**, as last amended by Laws of Utah 2013, Chapter 323
- 33 **36-23-107**, as last amended by Laws of Utah 2013, Chapter 323
- 34 **36-23-109**, as last amended by Laws of Utah 2014, Chapter 189

35

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

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

38 **36-23-101.5. Definitions.**

39 As used in this chapter:

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

42 (2) "Government requestor" means:

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

48 (3) "Lawful occupation" means a course of conduct, pursuit, or profession that includes
49 the sale of goods or services that are not illegal to sell, irrespective of whether the individual
50 selling the goods or services is subject to an occupational regulation.

51 (4) "License" or "licensing" means a state-granted authorization for a person to engage
52 in a specified lawful occupation:

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

55 (b) where state law requires the authorization before the person may lawfully engage in
56 the occupation for compensation.

57 [~~3~~] (5) "Newly regulate" means to [~~regulate under Title 58, Occupations and~~

58 ~~Professions, an occupation or profession not regulated under Title 58, Occupations and~~
59 ~~Professions, before the enactment of the new regulation]~~ create by statute or administrative rule
60 a new license, certification, registration, or exemption classification regarding a lawful
61 occupation.

62 (6) "Personal qualifications" are criteria established in state law related to a person's
63 background and may include:

64 (a) completion of an approved education program;

65 (b) satisfactory performance on an examination;

66 (c) work experience; and

67 (d) completion of continuing education.

68 ~~[(4)]~~ (7) "Proposal" means:

69 (a) an application submitted under Section 36-23-105, with or without specific
70 proposed statutory language;

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

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

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

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

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

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

86 occupation:

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

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

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

93 ~~[(5)]~~ (10) "Sunrise review" means a review under this chapter of a proposal to newly
94 regulate ~~[an occupation or profession]~~ a lawful occupation.

95 ~~[(6)]~~ (11) "Sunset review" means a review under this chapter of a statute ~~[(a) regarding~~
96 ~~a licensed profession under Title 58, Occupations and Professions; and (b)]~~ regarding a
97 regulated lawful occupation that is scheduled for termination under ~~[Section 63I-1-258]~~ Title
98 63I, Chapter 1, Part 2, Repeal Dates by Title.

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

100 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

113 (3) (a) The speaker of the House of Representatives shall designate a member of the

114 House of Representatives appointed under Subsection (2)(a) as a cochair of the committee.

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

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

118 **36-23-105. Applications -- Fees.**

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

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

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

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

131 ~~[(2)]~~ (3) If an application is submitted by a representative of ~~[an occupation or~~
132 ~~profession]~~ a lawful occupation, the application shall include a nonrefundable fee of \$500.

133 ~~[(3)]~~ (4) All application fees shall be deposited ~~[in]~~ into the General Fund.

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

135 **36-23-106. Duties -- Reporting.**

136 (1) The committee shall:

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

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

141 (ii) of the year following the year in which the application is submitted, if the

142 application is submitted after July 1;

143 (b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a ~~[licensed~~
144 ~~occupation or profession under Title 58, Occupations and Professions, that are]~~ regulated
145 lawful occupation that is scheduled for termination under ~~[Section 631-1-258]~~ Title 63I,
146 Chapter 1, Part 2, Repeal Dates by Title;

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

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

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

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

159 ~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

160 (a) the Legislative Management Committee; and

161 (b) the Business and Labor Interim Committee.

162 ~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

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

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

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

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

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

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

170 **36-23-107. Sunrise or sunset review -- Criteria.**

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

173 (a) receive information from:

174 (i) representatives of the [~~occupation or profession~~] lawful occupation proposed to be
175 newly regulated or that is subject to a sunset review;

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

177 (iii) any other person; and

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

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

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

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

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

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

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

196 (ii) a potentially less restrictive alternative to licensing, including state certification,
197 state registration, or exemption, would avoid unnecessary regulation while still protecting the

198 health and safety of the public; and

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

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

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

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

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

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

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

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

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

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

217 (i) teachable; and

218 (ii) testable;

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

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

222 (i) an established code of ethics;

223 (ii) a voluntary certification program; or

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

225 (h) whether:

226 (i) the ~~[occupation or profession]~~ lawful occupation involves the treatment of an
227 illness, injury, or health care condition; and

228 (ii) practitioners of the ~~[occupation or profession]~~ lawful occupation will request
229 payment of benefits for the treatment under an insurance contract subject to Section
230 [31A-22-618](#);

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

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

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

234 **36-23-109. Review of state regulation of occupations.**

235 (1) ~~[Before the annual written report]~~ As part of the annual report described in Section
236 [36-23-106](#) ~~[is submitted for 2013]~~, the committee shall study and make recommendations
237 regarding potentially less restrictive alternatives to licensing for the regulation of ~~[occupations~~
238 ~~and professions]~~ lawful occupations, including registration ~~[and]~~, certification, or exemption, if
239 appropriate, that would ~~[better]~~ avoid unnecessary regulation ~~[and intrusion upon individual~~
240 ~~liberties by the state;]~~ while still protecting the health and safety of the public.

241 (2) The committee shall study and make recommendations regarding lawful
242 occupations that require a license in the state so that each licensed lawful occupation is
243 reviewed every 10 years.

244 Section 7. **Coordinating S.B. 212 with H.B. 94 -- Superceding amendments.**

245 If this S.B. 212 and H.B. 94, Occupational and Professional Licensure Review
246 Committee Amendments, both pass and become law, it is the intent of the Legislature that the
247 amendments to Sections [36-23-101.5](#), [36-23-102](#), [36-23-105](#), [36-23-106](#), [36-23-107](#), and
248 [36-23-109](#) in this bill supersede the amendments to the same sections in H.B. 94, Occupational
249 and Professional Licensure Review Committee Amendments, when the Office of Legislative
250 Research and General Counsel prepares the Utah Code database for publication.