

## Chapter 23

### Occupational and Professional Licensure Review Committee Act

#### **36-23-101 Title.**

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

Enacted by Chapter 152, 1999 General Session

#### **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 63I-1-258.

Amended by Chapter 323, 2013 General Session

#### **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.

Amended by Chapter 323, 2013 General Session

**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.

Amended by Chapter 323, 2013 General Session

**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.

Amended by Chapter 387, 2014 General Session

**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.

Amended by Chapter 323, 2013 General Session

**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 63I-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.

Amended by Chapter 323, 2013 General Session

**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.

Amended by Chapter 323, 2013 General Session

**36-23-108 Staff support.**

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

Enacted by Chapter 152, 1999 General Session

**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.

Amended by Chapter 189, 2014 General Session