

**Representative Brian M. Greene** proposes the following substitute bill:

**OCCUPATIONAL AND PROFESSIONAL LICENSING**

**AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: Howard A. Stephenson

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**LONG TITLE**

**General Description:**

This bill modifies the Occupational and Professional Licensure Review Committee Act and Title 58, Occupations and Professions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires a person who proposes that the state license an occupation or profession that is not currently licensed by the state to submit an application for a sunrise review by the Occupational and Professional Licensure Review Committee;
- ▶ requires that the committee conduct sunrise and sunset reviews for all occupations and professions:
  - proposed to be newly regulated; and
  - that are subject to their related statutes being terminated under Section 63I-1-258;
- ▶ requires that when conducting a sunrise or sunset review, the committee shall:
  - consider whether state licensing of the profession is necessary to address a compelling state interest in protecting against present, recognizable, and



- 26 significant harm to the health ~~it~~ , [or] ~~it~~ safety ~~it~~ , or welfare ~~it~~ of the public;
- 27       • if the committee determines that state licensing of the profession is not
- 28 necessary to protect the health ~~it~~ [or] , ~~it~~ safety ~~it~~ , or welfare ~~it~~ of the public,
- 28a recommend to the
- 29 Legislature that the state refrain from licensing the profession;
- 30       • if the committee determines that state licensing of the profession is necessary to
- 31 protect the health ~~it~~ , [or] ~~it~~ safety ~~it~~ , or welfare ~~it~~ of the public, consider whether
- 31a the proposed or
- 32 existing statute is narrowly tailored to protect the health ~~it~~ , [or] ~~it~~ safety
- 32a ~~it~~ , or welfare ~~it~~ of the public;
- 33 and
- 34       • recommend to the Legislature any changes to the proposed or existing statute to
- 35 ensure it is narrowly tailored to protect the health ~~it~~ , [or] ~~it~~ safety ~~it~~ , or welfare ~~it~~
- 35a of the public;
- 36       ▸ requires the committee to study alternatives to professional licensing in 2013,
- 37 including registration and certification;
- 38       ▸ requires that legislation proposing the licensing or regulation of an occupation or
- 39 profession under Title 58, Occupations and Professions:
- 40       • may not be enacted by the Legislature ~~it~~ [until] unless ~~it~~ the proposal has been
- 40a reviewed by
- 41 the committee ~~it~~ or the proposed legislation contains a provision that expressly exempts the
- 41a legislation from requiring review by the committee ~~it~~ ; and
- 42       • shall include a repeal date in Section 63I-1-258 that is no later than 10 years
- 43 after the effective date of the legislation; and
- 44       ▸ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

## AMENDS:

- 51 **36-23-101.5**, as enacted by Laws of Utah 2007, Chapter 137
- 52 **36-23-102**, as last amended by Laws of Utah 2008, Chapter 218
- 53 **36-23-103**, as last amended by Laws of Utah 2008, Chapter 218
- 54 **36-23-104**, as last amended by Laws of Utah 2010, Chapter 286
- 55 **36-23-105**, as enacted by Laws of Utah 1999, Chapter 152
- 56 **36-23-106**, as last amended by Laws of Utah 2012, Chapter 242

57 **36-23-107**, as last amended by Laws of Utah 2007, Chapter 137

58 ENACTS:

59 **36-23-109**, Utah Code Annotated 1953

60 **58-1-110**, Utah Code Annotated 1953

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

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

64 **36-23-101.5. Definitions.**

65 As used in this chapter:

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

68 (2) "Government requestor" means:

69 (a) the governor;

70 (b) an executive branch officer other than the governor;

71 (c) an executive branch agency;

72 (d) a legislator; or

73 (e) a legislative committee.

74 ~~(2)~~ (3) "Newly regulate" means to regulate under Title 58, Occupations and  
75 Professions, an occupation or profession not regulated under Title 58 before the enactment of  
76 the new regulation.

77 ~~(3)~~ (4) "Proposal" means:

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

80 (b) a request for review by a legislator of the possibility of newly regulating an  
81 occupation or profession, with or without specific proposed statutory language; or

82 (c) proposed ~~or introduced~~ legislation to newly regulate an occupation or profession  
83 referred to the committee by another legislative committee.

84 ~~(4)~~ (5) "Sunrise review" means a review under this chapter of a proposal to newly  
85 regulate an occupation or profession.

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

87 (a) regarding a licensed profession under Title 58, Occupations and Professions; and

88 (b) that is scheduled for termination under Section 63I-1-258.

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

90 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

93 (a) three members of the House of Representatives, appointed by the speaker of the  
94 House of Representatives, no more than two from the same political party;

95 (b) three members of the Senate, appointed by the president of the Senate, no more  
96 than two from the same political party; and

97 (c) three public members appointed jointly by the speaker of the House of  
98 Representatives and the president of the Senate ~~[as follows]~~ from the following two groups:

99 (i) ~~[two members who have]~~ at least one member who has previously served, but ~~[are]~~  
100 is no longer serving, on any ~~[of the]~~ advisory ~~[boards]~~ board created under Title 58,  
101 Occupations and Professions; and

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

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

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

108 Section 3. Section **36-23-103** is amended to read:

109 **36-23-103. Committee terms -- Vacancies.**

110 (1) A legislator serving on the committee shall serve a two-year term or until the  
111 legislator's successor is appointed.

112 (2) (a) Except as provided in Subsection (2)(b), a public member shall serve a  
113 three-year term or until the public member's successor is appointed.

114 (b) The speaker of the House of Representatives and the president of the Senate shall,  
115 at the time of appointment or reappointment, adjust the length of terms of the public members  
116 to ensure that approximately one of the public members is appointed every year.

117 (3) A legislative or public member of the committee may serve one or more terms.

118 (4) (a) A vacancy occurs:

119 (i) when a legislative member ceases to be a member of the Legislature; ~~[or]~~

120 (ii) when a member of the committee resigns from the committee~~[-]; or~~

121 (iii) when a member is removed by the appointing authority for cause.

122 (b) A vacancy shall be filled by the appointing authority, and the replacement member

123 shall serve for the remaining unexpired term.

124 Section 4. Section **36-23-104** is amended to read:

125 **36-23-104. Committee meetings -- Compensation -- Quorum -- Legislative rules.**

126 (1) The committee ~~[may]~~ shall meet ~~H→~~ ~~[as needed]~~ at least twice before November 1 of  
126a each year ←H , at the call of the committee chairs, to

127 carry out the duties ~~[set forth]~~ described in ~~[Section 36-23-106]~~ this chapter.

128 (2) A public member may not receive compensation or benefits for the member's  
129 service, but may receive per diem and travel expenses in accordance with:

130 (a) Section 63A-3-106;

131 (b) Section 63A-3-107; and

132 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and  
133 63A-3-107.

134 (3) (a) Five members of the committee constitute a quorum.

135 (b) If a quorum is present, the action of a majority of members present is the action of  
136 the committee.

137 (4) Except as provided in Subsection (3), in conducting all its business, the committee  
138 shall comply with the rules of legislative interim committees regarding motions.

139 Section 5. Section **36-23-105** is amended to read:

140 **36-23-105. Applications -- Fees.**

141 (1) ~~[Representatives of occupations or professions who desire to have their occupation~~  
142 ~~or profession licensed or regulated by the state may]~~ If a government requestor or a  
143 representative of an occupation or profession that is not licensed by the state proposes that the  
144 state license or regulate an occupation or profession, the requestor or representative shall, prior  
145 to the introduction of any proposed legislation, submit an application for sunrise review to the  
146 Office of Legislative Research and General Counsel in a form approved by the committee.

147 (2) ~~[Applicants shall submit]~~ If an application is submitted by a representative of an  
148 occupation or profession, the application shall include a nonrefundable fee of \$500 ~~[with each~~  
149 ~~application].~~

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

151 Section 6. Section 36-23-106 is amended to read:

152 **36-23-106. Duties -- Reporting.**

153 (1) The committee shall:

154 (a) ~~H~~→ for each application submitted in accordance with Section 36-23-105, ←~~H~~

154a conduct a sunrise review in accordance with Section 36-23-107 [~~for all~~

155 applications] ~~H~~→ [~~within 12 months, for each application submitted in accordance with Section~~

156 ~~36-23-105;~~ before November 1:

156a (i) of the year in which the application is submitted, if the application is submitted on or

156b before July 1; or

156c (ii) of the year following the year in which the application is submitted, if the

156d application is submitted after July 1; ←~~H~~

157 (b) (i) conduct a sunset review for [~~an occupational or professional license~~

158 ~~classification that is referred to the committee by any other legislative committee by applying;~~

159 all statutes regarding a licensed occupation or profession under Title 58, Occupations and

160 Professions, that are scheduled for termination under Section 63I-1-258;

161 [~~(i) the criteria in Section 36-23-107;~~]

162 [~~(ii) the criteria in Title 63I, Chapter 1, Legislative Oversight and Sunset Act; and]~~

163 [~~(iii) any other appropriate criteria; and]~~

164 [~~(c) submit a written report by no later than December 31 of each calendar year to:~~

165 [~~(i) the speaker of the House of Representatives;~~]

166 [~~(ii) the president of the Senate;~~]

167 [~~(iii) the chair of the House Rules Committee;~~]

168 [~~(iv) the chair of the Senate Rules Committee; and]~~

169 [~~(v) the chairs of the Business, Economic Development, and Labor Appropriations~~

170 ~~Subcommittee.~~]

171 (ii) conduct a sunset review under this Subsection (1)(b) ~~H~~→ before November 1 of

171a the year ←~~H~~ prior to the last general

172 session of the Legislature that is scheduled to meet before the scheduled termination date; and

173 (iii) conduct a review or study regarding any other occupational or professional

174 licensure matter referred to the committee by the Legislature, the Legislative Management

175 Committee, or other legislative committee.

176 (2) The committee shall submit an annual written report before November 1 to:

177 (a) the Legislative Management Committee; and

178 (b) the Business and Labor Interim Committee.

179 [~~(2)~~] (3) The written report required by Subsection [~~(1)(c)~~] (2) shall include:

180 (a) all findings and recommendations made by the committee [~~under Subsection (1) or~~

181 ~~(3) in that~~ in the calendar year; and

182 (b) a summary report ~~for~~ of each ~~[sunrise]~~ review or study conducted by the  
183 committee stating:

184 ~~[(i) whether the sunrise review was conducted under Subsection (1) or (3);]~~

185 ~~[(ii) (i) whether ~~or not~~ the [sunrise] review or study included a review of specific~~  
186 proposed or existing statutory language;

187 ~~[(iii) (ii) [any] action taken by the committee as a result of the [sunrise] review or~~  
188 study; and

189 ~~[(iv) the number of legislative members that voted in favor of the action described in~~  
190 Subsection (2) (b)(iii).]

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

192 ~~Ĥ→ [(3)] (4) The committee may: (a) conduct a sunrise review of any proposal to newly~~  
193 ~~regulate an occupation or profession; (b) conduct any other review referred to it by the~~  
194 ~~Legislature, the Legislative Management Committee, or other legislative committee; or (c)~~  
195 ~~conduct any other review or study related to regulation of an occupation or profession under~~  
196 ~~Title 58, Occupations and Professions[.], including:~~

197 ~~— (a) using the criteria described for a sunrise or sunset review described in Section~~  
198 ~~36-23-107, the review of an occupation or profession that is not scheduled for future~~  
199 ~~termination under Section 63I-1-258; and~~

200 ~~— (b) a study or review of administrative rules related to an occupation or profession.] ←Ĥ~~

201 Section 7. Section **36-23-107** is amended to read:

202 **36-23-107. Sunrise or sunset review -- Criteria.**

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

205 (a) receive information from:

206 (i) representatives of the occupation or profession proposed to be newly regulated or  
207 that is subject to a sunset review;

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

209 (iii) any other person; and

210 (b) review ~~the~~ a proposal with or without considering proposed statutory language[.];

211 ~~[(c) evaluate the criteria in Subsection (2) to determine whether or not the occupation~~

212 or profession should be regulated by the state; and]

213 [~~(d) as to the proposal, recommend:~~]

214 [~~(i) that the proposal be adopted by the Legislature;~~]

215 [~~(ii) that the proposal be adopted by the Legislature with recommended changes;~~]

216 [~~(iii) that the proposal not be adopted by the Legislature; or]~~

217 [~~(iv) any other action.~~]

218 (2) When conducting a sunrise review or sunset review under this chapter, the  
219 committee shall [~~use the following criteria~~]:

220 (a) consider whether state regulation of the occupation or profession is necessary to  
221 address a compelling state interest in protecting against present, recognizable, and significant  
222 harm to the health ~~H→~~ [~~or~~], ~~←H~~ safety ~~H→~~, or welfare ~~←H~~ of the public;

223 (b) if the committee determines that state regulation of the occupation or profession is  
224 not necessary to protect against present, recognizable, and significant harm to the health ~~H→~~,  
224a [~~or~~] ~~←H~~  
225 safety ~~H→~~, or welfare ~~←H~~ of the public, recommend to the Legislature that the state not  
225a regulate the profession;

226 (c) if the committee determines that state regulation of the occupation or profession is  
227 necessary in protecting against present, recognizable, and significant harm to the health ~~H→~~,  
227a [~~or~~] ~~←H~~  
228 safety ~~H→~~, or welfare ~~←H~~ of the public, consider whether the proposed or existing  
228a statute is narrowly tailored to  
229 protect against present, recognizable, and significant harm to the health ~~H→~~, [~~or~~] ~~←H~~ safety  
229a ~~H→~~, or welfare ~~←H~~ of the public;

230 and

231 (d) recommend to the Legislature any necessary changes to the proposed or existing  
232 statute to ensure it is narrowly tailored to protect against present, recognizable, and significant  
233 harm to the health ~~H→~~, [~~or~~] ~~←H~~ safety ~~H→~~, or welfare ~~←H~~ of the public.

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

236 (a) whether [~~or not~~] the unregulated practice of the occupation or profession has clearly  
237 harmed or may harm or endanger the health, safety, or welfare of the public;

238 (b) whether [~~or not~~] the potential for harm or endangerment described in Subsection  
239 [~~(2)~~] (3)(a) is easily recognizable and not remote;

240 [~~(c) whether or not the public needs, and can reasonably be expected to benefit from,~~  
241 ~~an assurance of initial and continuing occupational or professional competence;~~]

242 (c) whether regulation of the occupation or profession will significantly diminish an



243 identified risk to the health, safety, or welfare of the public;

244 (d) whether [~~or not~~] regulation of the occupation or profession:

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

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

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

249 (e) whether [~~or not~~] the occupation or profession requires knowledge, skills, and  
250 abilities that are:

251 (i) teachable; and

252 (ii) testable;

253 (f) whether [~~or not~~] the occupation or profession is clearly distinguishable from other  
254 occupations or professions that are already regulated;

255 (g) whether [~~or not~~] the occupation or profession has:

256 (i) an established code of ethics;

257 (ii) a voluntary certification program; or

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

259 (h) whether [~~or not~~]:

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

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

264 (i) whether [~~or not~~] the public can be adequately protected by means other than  
265 regulation; and

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

267 Section 8. Section **36-23-109** is enacted to read:

268 **36-23-109. Review of state regulation of occupations and professions.**

269 Before the annual written report described in Section 36-23-107 is submitted for 2013,

270 the committee shall study potentially less restrictive alternatives to licensing for the regulation

271 of occupations and professions, including registration and certification if appropriate, that

272 would better avoid unnecessary regulation and intrusion upon individual liberties by the state,

273 while still protecting the health ~~and~~ [and] , ~~and~~ safety ~~and~~ , [or] and welfare ~~and~~ of the public.

274 Section 9. Section **58-1-110** is enacted to read:

275 **58-1-110. Legislative review in Title 58, Occupations and Professions.**

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

279 (1) may not be enacted by the Legislature unless ~~H~~→ :

279a (a) ~~←H~~ a proposal to license or regulate the

280 occupation or profession has been reviewed by the Occupational and Professional Licensure

281 Review Committee as described in Title 36, Chapter 23, Occupational and Professional

282 Licensure Review Committee Act; ~~H~~→ or

282a **(b) the proposed legislation contains a provision that expressly exempts the legislation**  
282b **from the review requirement of Subsection 1(a); ~~←H~~**

283 (2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1,

284 Legislative Oversight and Sunset Act; and

285 (3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after  
286 the effective date of the legislation.