

1 **OCCUPATIONAL AND PROFESSIONAL LICENSING**

2 **AMENDMENTS**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brian M. Greene**

6 Senate Sponsor: Howard A. Stephenson

7

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ requires a person who proposes that the state license an occupation or profession
16 that is not currently licensed by the state to submit an application for a sunrise
17 review by the Occupational and Professional Licensure Review Committee;
- 18 ▶ requires that the committee conduct sunrise and sunset reviews for all occupations
19 and professions:
 - 20 • proposed to be newly regulated; and
 - 21 • that are subject to their related statutes being terminated under Section
22 63I-1-258;
- 23 ▶ requires that when conducting a sunrise or sunset review, the committee shall:
 - 24 • consider whether state licensing of the profession is necessary to address a
25 compelling state interest in protecting against present, recognizable, and
26 significant harm to the health or safety of the public;
 - 27 • if the committee determines that state licensing of the profession is not
28 necessary to protect the health or safety of the public, 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 or safety of the public, consider whether the proposed or
32 existing statute is narrowly tailored to protect the health or safety 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 or safety 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 unless the proposal has been reviewed by
41 the committee or the proposed legislation contains a provision that expressly
42 exempts the legislation from requiring review by the committee; and

43 • shall include a repeal date in Section 63I-1-258 that is no later than 10 years
44 after the effective date of the legislation; and

45 ▶ makes technical changes.

46 **Money Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **36-23-101.5**, as enacted by Laws of Utah 2007, Chapter 137

53 **36-23-102**, as last amended by Laws of Utah 2008, Chapter 218

54 **36-23-103**, as last amended by Laws of Utah 2008, Chapter 218

55 **36-23-104**, as last amended by Laws of Utah 2010, Chapter 286

56 **36-23-105**, as enacted by Laws of Utah 1999, Chapter 152

57 **36-23-106**, as last amended by Laws of Utah 2012, Chapter 242

58 **36-23-107**, as last amended by Laws of Utah 2007, Chapter 137

59 ENACTS:

60 **36-23-109**, Utah Code Annotated 1953

61 **58-1-110**, Utah Code Annotated 1953



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

86 regulate an occupation or profession.

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

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

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

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

91 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

103 (ii) at least one member from the general public who does not hold any type of license
104 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 **36-23-103** is amended to read:

110 **36-23-103. Committee terms -- Vacancies.**

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

113 (2) (a) Except as provided in Subsection (2)(b), a public member shall serve a

114 three-year term or until the public member's successor is appointed.

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

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

119 (4) (a) A vacancy occurs:

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

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

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

123 (b) A vacancy shall be filled by the appointing authority, and the replacement member
124 shall serve for the remaining unexpired term.

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

126 **36-23-104. Committee meetings -- Compensation -- Quorum -- Legislative rules.**

127 (1) The committee ~~[may]~~ shall meet ~~[as needed]~~ at least twice before November 1 of
128 each year, at the call of the committee chairs, to carry out the duties ~~[set forth]~~ described in
129 ~~[Section 36-23-106]~~ this chapter.

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

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

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

134 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
135 63A-3-107.

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

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

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

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

142 **36-23-105. Applications -- Fees.**

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

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

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

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

154 **36-23-106. Duties -- Reporting.**

155 (1) The committee shall:

156 (a) for each application submitted in accordance with Section 36-23-105, conduct a
 157 sunrise review in accordance with Section 36-23-107 ~~[for all applications submitted in~~
 158 ~~accordance with Section 36-23-105;]~~ before November 1:

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

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

163 (b) (i) conduct a sunset review for ~~[an occupational or professional license~~
 164 ~~classification that is referred to the committee by any other legislative committee by applying:]~~
 165 all statutes regarding a licensed occupation or profession under Title 58, Occupations and
 166 Professions, that are scheduled for termination under Section 63I-1-258;

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

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

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

170 ~~[(c) submit a written report by no later than December 31 of each calendar year to:]~~
171 ~~[(i) the speaker of the House of Representatives;]~~
172 ~~[(ii) the president of the Senate;]~~
173 ~~[(iii) the chair of the House Rules Committee;]~~
174 ~~[(iv) the chair of the Senate Rules Committee; and]~~
175 ~~[(v) the chairs of the Business, Economic Development, and Labor Appropriations~~
176 ~~Subcommittee.]~~

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

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

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

184 (a) the Legislative Management Committee; and

185 (b) the Business and Labor Interim Committee.

186 ~~[(2)] (3) The written report required by Subsection ~~[(1)(c)] (2)~~ shall include:~~

187 ~~(a) all findings and recommendations made by the committee ~~[under Subsection (1) or~~~~
188 ~~(3) in that] in the~~ calendar year; and

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

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

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

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

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

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

199 [~~(3) The committee may:~~]

200 [~~(a) conduct a sunrise review of any proposal to newly regulate an occupation or~~
201 ~~profession;]~~

202 [~~(b) conduct any other review referred to it by the Legislature, the Legislative~~
203 ~~Management Committee, or other legislative committee; or (c) conduct any other study related~~
204 ~~to regulation of an occupation or profession under Title 58, Occupations and Professions.]~~

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

206 **36-23-107. Sunrise or sunset review -- Criteria.**

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

209 (a) receive information from:

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

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

213 (iii) any other person; and

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

215 [~~(c) evaluate the criteria in Subsection (2) to determine whether or not the occupation~~
216 ~~or profession should be regulated by the state; and]~~

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

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

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

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

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

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

224 (a) consider whether state regulation of the occupation or profession is necessary to
225 address a compelling state interest in protecting against present, recognizable, and significant

226 harm to the health or safety of the public;

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

230 (c) if the committee determines that state regulation of the occupation or profession is
231 necessary in protecting against present, recognizable, and significant harm to the health or
232 safety of the public, consider whether the proposed or existing statute is narrowly tailored to
233 protect against present, recognizable, and significant harm to the health or safety of the public;

234 and

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

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

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

242 (b) whether [~~or not~~] the potential for harm or endangerment described in Subsection
243 [~~(2)~~] (3)(a) is easily recognizable and not remote;

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

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

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

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

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

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

253 (e) whether [~~or not~~] the occupation or profession requires knowledge, skills, and

254 abilities that are:

255 (i) teachable; and

256 (ii) testable;

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

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

260 (i) an established code of ethics;

261 (ii) a voluntary certification program; or

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

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

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

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

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

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

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

272 **36-23-109. Review of state regulation of occupations and professions.**

273 Before the annual written report described in Section 36-23-107 is submitted for 2013,
274 the committee shall study potentially less restrictive alternatives to licensing for the regulation
275 of occupations and professions, including registration and certification if appropriate, that
276 would better avoid unnecessary regulation and intrusion upon individual liberties by the state,
277 while still protecting the health and safety of the public.

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

279 **58-1-110. Legislative review in Title 58, Occupations and Professions.**

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

282 under Title 58, Occupations and Professions:

283 (1) may not be enacted by the Legislature unless:

284 (a) a proposal to license or regulate the occupation or profession has been reviewed by

285 the Occupational and Professional Licensure Review Committee as described in Title 36,

286 Chapter 23, Occupational and Professional Licensure Review Committee Act; or

287 (b) the proposed legislation contains a provision that expressly exempts the legislation

288 from the review requirement of Subsection (1)(a);

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

290 Legislative Oversight and Sunset Act; and

291 (3) shall include a repeal date in Section 63I-1-258 that is no later than 10 years after

292 the effective date of the legislation.