

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: _____

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 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 each licensing
32 provision is narrowly tailored to protect the health or safety of the public; and

33 • recommend to the Legislature any changes to the proposed or existing licensure
34 provisions to ensure each provision is narrowly tailored to protect the health or
35 safety of the public;

36 ▶ over the next five years, requires the committee to review each profession licensed
37 by Title 58, Occupations and Professions, that does not have a sunset date, using the
38 same criteria as a sunrise or sunset review;

39 ▶ requires the committee to study alternatives to professional licensing in 2013,
40 including registration and certification;

41 ▶ requires that legislation proposing the licensing or regulation of an occupation or
42 profession under Title 58, Occupations and Professions:

43 • may not be enacted by the Legislature until the proposal has been reviewed by
44 the committee; and

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

47 ▶ makes technical changes.

48 **Money Appropriated in this Bill:**

49 None

50 **Other Special Clauses:**

51 None

52 **Utah Code Sections Affected:**

53 AMENDS:

54 **36-23-101.5**, as enacted by Laws of Utah 2007, Chapter 137

55 **36-23-102**, as last amended by Laws of Utah 2008, Chapter 218

56 **36-23-103**, as last amended by Laws of Utah 2008, Chapter 218

57 36-23-104, as last amended by Laws of Utah 2010, Chapter 286

58 36-23-105, as enacted by Laws of Utah 1999, Chapter 152

59 36-23-106, as last amended by Laws of Utah 2012, Chapter 242

60 36-23-107, as last amended by Laws of Utah 2007, Chapter 137

61 ENACTS:

62 36-23-109, Utah Code Annotated 1953

63 58-1-110, Utah Code Annotated 1953



64
65 *Be it enacted by the Legislature of the state of Utah:*

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

67 **36-23-101.5. Definitions.**

68 As used in this chapter:

69 (1) "Committee" means the Occupational and Professional Licensure Review

70 Committee created in Section 36-23-102.

71 (2) "Government requestor" means:

72 (a) the governor;

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

74 (c) an executive branch agency;

75 (d) a legislator; or

76 (e) a legislative committee.

77 [~~(2)~~] (3) "Newly regulate" means to regulate under Title 58, Occupations and
78 Professions, an occupation or profession not regulated under Title 58 before the enactment of
79 the new regulation.

80 [~~(3)~~] (4) "Proposal" means:

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

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

85 (c) proposed [~~or introduced~~] legislation to newly regulate an occupation or profession
86 referred to the committee by another legislative committee.

87 [~~(4)~~] (5) "Sunrise review" means a review under this chapter of a proposal to newly

88 regulate an occupation or profession.

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

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

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

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

93 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

112 **36-23-103. Committee terms -- Vacancies.**

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

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

117 (b) The speaker of the House of Representatives and the president of the Senate shall,
118 at the time of appointment or reappointment, adjust the length of terms of the public members

119 to ensure that approximately one of the public members is appointed every year.

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

121 (4) (a) A vacancy occurs:

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

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

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

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

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

128 **36-23-104. Committee meetings -- Compensation -- Quorum -- Legislative rules.**

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

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

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

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

135 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
136 63A-3-107.

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

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

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

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

143 **36-23-105. Applications -- Fees.**

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

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

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

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

155 **36-23-106. Duties -- Reporting.**

156 (1) The committee shall:

157 (a) conduct a sunrise review in accordance with Section 36-23-107 ~~[for all~~
158 ~~applications]~~, within 12 months, for each application submitted in accordance with Section
159 36-23-105;

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

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

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

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

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

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

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

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

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

172 ~~[(v) the chairs of the Business, Economic Development, and Labor Appropriations~~
173 ~~Subcommittee;]~~

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

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

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

180 (a) the Legislative Management Committee; and

181 (b) the Business and Labor Interim Committee.
 182 ~~[(2)]~~ (3) The written report required by Subsection ~~[(1)(c)]~~ (2) shall include:
 183 (a) all findings and recommendations made by the committee ~~[under Subsection (1) or~~
 184 ~~(3) in that]~~ in the calendar year; and
 185 (b) a summary report ~~[for]~~ of each ~~[sunrise]~~ review or study conducted by the
 186 committee stating:
 187 ~~[(i) whether the sunrise review was conducted under Subsection (1) or (3);]~~
 188 ~~[(ii) (i) whether [or not] the [sunrise] review or study included a review of specific~~
 189 ~~proposed or existing statutory language;~~
 190 ~~[(iii) (ii) [any] action taken by the committee as a result of the [sunrise] review or~~
 191 ~~study; and~~
 192 ~~[(iv) the number of legislative members that voted in favor of the action described in~~
 193 ~~Subsection (2) (b)(iii).]~~
 194 (iii) a record of the vote for each action taken by the committee.
 195 ~~[(3)]~~ (4) The committee may~~[(a) conduct a sunrise review of any proposal to newly~~
 196 ~~regulate an occupation or profession; (b) conduct any other review referred to it by the~~
 197 ~~Legislature, the Legislative Management Committee, or other legislative committee; or (c)]~~
 198 ~~conduct any other review or study related to regulation of an occupation or profession under~~
 199 ~~Title 58, Occupations and Professions.~~
 200 Section 7. Section **36-23-107** is amended to read:
 201 **36-23-107. Sunrise or sunset review -- Criteria.**
 202 (1) In conducting a sunrise review or a sunset review under this chapter, the committee
 203 may:
 204 (a) receive information from:
 205 (i) representatives of the occupation or profession proposed to be newly regulated or
 206 that is subject to a sunset review;
 207 (ii) the Division of Occupational and Professional Licensing; or
 208 (iii) any other person; and
 209 (b) review ~~[the]~~ a proposal with or without considering proposed statutory language~~[;]~~.
 210 ~~[(c) evaluate the criteria in Subsection (2) to determine whether or not the occupation~~
 211 ~~or profession should be regulated by the state; and]~~

212 ~~[(d) as to the proposal, recommend:]~~
213 ~~[(i) that the proposal be adopted by the Legislature;]~~
214 ~~[(ii) that the proposal be adopted by the Legislature with recommended changes;]~~
215 ~~[(iii) that the proposal not be adopted by the Legislature; or]~~
216 ~~[(iv) any other action.]~~

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

219 (a) consider whether state regulation of the profession is necessary to address a
220 compelling state interest in protecting against present, recognizable, and significant harm to the
221 health or safety of the public;

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

225 (c) if the committee determines that state regulation of the profession is necessary in
226 protecting against present, recognizable, and significant harm to the health or safety of the
227 public, consider whether each provision in the proposed or existing statute is narrowly tailored
228 to protect against present, recognizable, and significant harm to the health or safety of the
229 public; and

230 (d) recommend to the Legislature any necessary changes to the proposed or existing
231 provisions to ensure each provision is narrowly tailored to protect against present,
232 recognizable, and significant harm to the health or safety of the public.

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

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

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

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

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

243 (d) whether [~~or not~~] regulation of the occupation or profession:
 244 (i) imposes significant new economic hardship on the public;
 245 (ii) significantly diminishes the supply of qualified practitioners; or
 246 (iii) otherwise creates barriers to service that are not consistent with the public welfare

247 or interest;

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

250 (i) teachable; and

251 (ii) testable;

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

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

255 (i) an established code of ethics;

256 (ii) a voluntary certification program; or

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

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

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

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

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

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

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

267 **36-23-109. Review of occupations and professions.**

268 (1) Before November 1, 2017, using the criteria described for a sunrise or sunset
 269 review described in Section 36-23-107, the committee shall review all occupations and
 270 professions subject to licensure under Title 58, Occupations and Professions, that are not
 271 scheduled for future termination under Section 63I-1-258.

272 (2) To ensure that before November 1, 2017, the occupations and professions described
 273 in Subsection (1) are reviewed, the annual written report described in Section 36-23-107

274 submitted before November 1, 2013, and each annual written report submitted for the three
275 years following that report, shall contain the findings and recommendations of the committee
276 regarding approximately 20% of the occupations and professions subject to licensure under
277 Title 58, Occupations and Professions, that are not scheduled for future termination under
278 Section 63I-1-258.

279 (3) Before the annual written report described in Section 36-23-107 is submitted for
280 2013, the committee shall study potentially less restrictive alternatives to licensing for the
281 regulation of occupations and professions, including registration and certification if
282 appropriate, that would better avoid unnecessary regulation and intrusion upon individual
283 liberties by the state, while still protecting the health or safety of the public.

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

285 **58-1-110. Legislative review in Title 58, Occupations and Professions.**

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

289 (1) may not be enacted by the Legislature unless a proposal to license or regulate the
290 occupation or profession has been reviewed by the Occupational and Professional Licensure
291 Review Committee as described in Title 36, Chapter 23, Occupational and Professional
292 Licensure Review Committee Act;

293 (2) is subject to a reauthorization schedule as described in Title 63I, Chapter 1,
294 Legislative Oversight and Sunset Act; and

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