

1 **OCCUPATIONAL AND PROFESSIONAL LICENSURE**

2 **REVIEW COMMITTEE AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jon E. Stanard**

6 Senate Sponsor: Wayne A. Harper

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Business and Labor Interim Committee recommended this bill.

11 The Occupational and Professional Licensure Review Committee recommended this
12 bill.

13 **General Description:**

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

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ modifies the responsibilities of the Occupational and Professional Licensure Review
19 Committee; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **36-23-101.5**, as last amended by Laws of Utah 2013, Chapter 323



- 28 36-23-102, as last amended by Laws of Utah 2013, Chapter 323
- 29 36-23-105, as last amended by Laws of Utah 2013, Chapter 323
- 30 36-23-106, as last amended by Laws of Utah 2013, Chapter 323
- 31 36-23-107, as last amended by Laws of Utah 2013, Chapter 323
- 32 36-23-109, as last amended by Laws of Utah 2014, Chapter 189



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

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

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

37 As used in this chapter:

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

40 (2) "Government requestor" means:

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

46 (3) "Newly regulate" means to regulate [~~under Title 58, Occupations and Professions,~~
47 by state statute an occupation or profession not regulated [~~under Title 58, Occupations and~~
48 Professions,] by state statute before the enactment of the new regulation.

49 (4) "Proposal" means:

- 50 (a) an application submitted under Section 36-23-105, with or without specific
51 proposed statutory language;
- 52 (b) a request for review by a legislator of the possibility of newly regulating an
53 occupation or profession, with or without specific proposed statutory language; or
- 54 (c) proposed legislation to newly regulate an occupation or profession referred to the
55 committee by another legislative committee.

56 (5) "Sunrise review" means a review under this chapter of a proposal to newly regulate
57 an occupation or profession.

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

59 (a) regarding a licensed or otherwise regulated profession under Title 58, Occupations
60 and Professions, or other state statute; and

61 (b) that is scheduled for termination under [~~Section 63I-1-258~~] Title 63I, Chapter 1,
62 Part 2, Repeal Dates Requiring Committee Review by Title.

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

64 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

82 **36-23-105. Applications -- Fees.**

83 (1) If a government requestor or a representative of an occupation or profession that is
84 not licensed by the state proposes that the state license or newly regulate an occupation or
85 profession, the requestor or representative shall, prior to the introduction of any proposed
86 legislation, submit an application for sunrise review to the Office of Legislative Research and
87 General Counsel in a form approved by the committee.

88 (2) If an application is submitted by a representative of an occupation or profession, the
89 application shall include a nonrefundable fee of \$500.

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

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

92 **36-23-106. Duties -- Reporting.**

93 (1) The committee shall:

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

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

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

100 (b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a licensed
101 occupation or profession ~~[under Title 58, Occupations and Professions, that are]~~ that is
102 scheduled for termination under ~~[Section 63I-1-258]~~ Title 63I, Chapter 1, Part 2, Repeal Dates
103 Requiring Committee Review by Title;

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

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

110 (2) The committee may conduct a review or study regarding any occupational or
111 professional licensure matter.

112 ~~[(2)]~~ (3) The committee shall submit an annual written report before November 1 to:

113 (a) the Legislative Management Committee; and

114 (b) the Business and Labor Interim Committee.

115 ~~[(3)]~~ (4) The written report required by Subsection ~~[(2)]~~ (3) shall include:

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

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

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

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

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

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

123 **36-23-107. Sunrise or sunset review -- Criteria.**

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

126 (a) receive information from:

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

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

130 (iii) any other person; and

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

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

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

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

140 (c) if the committee determines that state regulation of the occupation or profession is
141 necessary in protecting against present, recognizable, and significant harm to the health or
142 safety of the public, consider whether:

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

145 (ii) a potentially less restrictive alternative to licensing, including registration or
146 certification, would avoid unnecessary regulation and intrusion upon individual liberties by the
147 state, while still protecting the health and safety of the public; and

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

151 (3) In its performance of each sunrise review or sunset review, the committee may

152 apply the following criteria, to the extent that it is applicable:

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

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

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

159 (d) whether regulation of the occupation or profession:

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

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

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

164 (e) whether the occupation or profession requires knowledge, skills, and abilities that
165 are:

166 (i) teachable; and

167 (ii) testable;

168 (f) whether the occupation or profession is clearly distinguishable from other
169 occupations or professions that are already regulated;

170 (g) whether the occupation or profession has:

171 (i) an established code of ethics;

172 (ii) a voluntary certification program; or

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

174 (h) whether:

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

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

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

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

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

182 **36-23-109. Review of state regulation of occupations and professions.**

183 ~~[Before the annual written report]~~ As part of the annual report described in Section
184 36-23-106 ~~[is submitted for 2013]~~, the committee ~~[shall]~~ may study and make
185 recommendations regarding potentially less restrictive alternatives to licensing for the
186 regulation of occupations and professions, including registration and certification if
187 appropriate, that would ~~[better]~~ avoid unnecessary regulation and intrusion upon individual
188 liberties by the state, while still protecting the health and safety of the public.

Legislative Review Note
Office of Legislative Research and General Counsel