

Representative Jon E. Stanard proposes the following substitute bill:

OCCUPATIONAL AND PROFESSIONAL LICENSURE

REVIEW COMMITTEE AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon E. Stanard

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

36-23-102, as last amended by Laws of Utah 2013, Chapter 323

36-23-105, as last amended by Laws of Utah 2013, Chapter 323



26 [36-23-106](#), as last amended by Laws of Utah 2013, Chapter 323

27 [36-23-107](#), as last amended by Laws of Utah 2013, Chapter 323

28 [36-23-109](#), as last amended by Laws of Utah 2014, Chapter 189

29

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

31 Section 1. Section [36-23-101.5](#) is amended to read:

32 **[36-23-101.5. Definitions.](#)**

33 As used in this chapter:

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

35 Committee created in Section [36-23-102](#).

36 (2) "Government requestor" means:

37 (a) the governor;

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

39 (c) an executive branch agency;

40 (d) a legislator; or

41 (e) a legislative committee.

42 (3) "Newly regulate" means to regulate [~~under Title 58, Occupations and Professions,~~

43 by state statute an occupation or profession not regulated [~~under Title 58, Occupations and~~

44 ~~Professions,~~] by state statute before the enactment of the new regulation.

45 (4) "Proposal" means:

46 (a) an application submitted under Section [36-23-105](#), with or without specific

47 proposed statutory language;

48 (b) a request for review by a legislator of the possibility of newly regulating an

49 occupation or profession, with or without specific proposed statutory language; or

50 (c) proposed legislation to newly regulate an occupation or profession referred to the

51 committee by another legislative committee.

52 (5) "Sunrise review" means a review under this chapter of a proposal to newly regulate

53 an occupation or profession.

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

55 (a) regarding a [~~icensed~~] regulated occupation or profession [~~under Title 58,~~

56 ~~Occupations and Professions~~]; and

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

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

60 **36-23-102. Occupational and Professional Licensure Review Committee.**

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

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

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

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

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

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

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

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

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

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

78 **36-23-105. Applications -- Fees.**

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

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

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

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

88 **36-23-106. Duties -- Reporting.**

89 (1) The committee shall:

90 (a) for each application submitted in accordance with Section 36-23-105, conduct a
91 sunrise review in accordance with Section 36-23-107 before November 1:92 (i) of the year in which the application is submitted, if the application is submitted on
93 or before July 1; or94 (ii) of the year following the year in which the application is submitted, if the
95 application is submitted after July 1;96 (b) (i) conduct a sunset review for ~~[all statutes]~~ each statute regarding a ~~[licensed]~~
97 regulated occupation or profession ~~[under Title 58, Occupations and Professions, that are]~~ that
98 is scheduled for termination under [Section 63I-1-258] Title 63I, Chapter 1, Part 2, Repeal
99 Dates Requiring Committee Review by Title;100 (ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year
101 prior to the last general session of the Legislature that is scheduled to meet before the
102 scheduled termination date; and103 (iii) conduct a review or study regarding any other occupational or professional
104 licensure matter referred to the committee by the Legislature, the Legislative Management
105 Committee, or other legislative committee.106 (2) (a) The committee may conduct a review or study regarding any occupational or
107 professional regulation matter.108 (b) In conducting a review or study under this Subsection (2), the committee shall
109 consider if the committee's recommendations would negatively affect the interest of members
110 of the regulated occupation or profession, including the effect on matters of reciprocity with
111 other states.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) consider if the committee's recommendations to the Legislature would negatively
138 affect the interests of members of the regulated occupation or profession, including the effect
139 on matters of reciprocity with other states;

140 [~~(b)~~] (c) if the committee determines that state regulation of the occupation or
141 profession is not necessary to protect against present, recognizable, and significant harm to the
142 health or safety of the public, recommend to the Legislature that the state not regulate the
143 profession;

144 [~~(c)~~] (d) if the committee determines that state regulation of the occupation or
145 profession is necessary in protecting against present, recognizable, and significant harm to the
146 health or safety of the public, consider whether:

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

149 (ii) a potentially less restrictive alternative to licensing, including registration,

150 certification, or exemption, would avoid unnecessary regulation while still protecting the health
151 and safety of the public; and

152 [~~(d)~~] (e) recommend to the Legislature any necessary changes to the proposed or
153 existing statute to ensure it is narrowly tailored to protect against present, recognizable, and
154 significant harm to the health or safety of the public.

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

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

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

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

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

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

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

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

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

170 (i) teachable; and

171 (ii) testable;

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

174 (g) whether the occupation or profession has:

175 (i) an established code of ethics;

176 (ii) a voluntary certification program; or

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

178 (h) whether:

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

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

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

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

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

186 **36-23-109. Review of state regulation of occupations and professions.**

187 [~~Before the annual written report~~] As part of the annual report described in Section

188 36-23-106 [~~is submitted for 2013~~], the committee [~~shall~~] may study and make

189 recommendations regarding potentially less restrictive alternatives to licensing for the

190 regulation of occupations and professions, including registration [~~and~~], certification, or

191 exemption, if appropriate, that would [~~better~~] avoid unnecessary regulation [~~and intrusion upon~~

192 individual liberties by the state;] while still protecting the health and safety of the public.