

## HB0094S01 compared with HB0094

~~text~~ shows text that was in HB0094 but was deleted in HB0094S01.

Inserted text shows text that was not in HB0094 but was inserted into HB0094S01.

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Representative Brian M. Greene proposes the following substitute bill:

### OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW COMMITTEE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: \_\_\_\_\_

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#### 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

## HB0094S01 compared with HB0094

### 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

**36-23-106**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-107**, as last amended by Laws of Utah 2013, Chapter 323

**36-23-109**, as last amended by Laws of Utah 2014, Chapter 189

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

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

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

As used in this chapter:

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

Committee created in Section 36-23-102.

(2) "Government requestor" means:

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

(3) "Newly regulate" means to regulate ~~{}~~ under Title 58, Occupations and Professions, ~~{}~~ by state statute an occupation or profession not regulated ~~{}~~ under Title 58, Occupations and Professions, ~~{}~~ by state statute before the enactment of the new regulation create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation or profession.

(4) "Proposal" means:

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

## HB0094S01 compared with HB0094

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

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

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

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

(a) regarding a [~~licensed~~] regulated occupation or profession [~~under Title 58, Occupations and Professions~~]; and

(b) that is scheduled for termination under [~~Section 631-1-258~~] Title 63L, Chapter 1, Part 2, Repeal Dates Requiring Committee Review by Title.

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

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

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

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

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

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

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

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

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

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

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

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

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

## HB0094S01 compared with HB0094

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

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

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

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

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

(1) The committee shall:

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

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

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

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

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

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

(2) (a) ~~{The}~~ For the purpose of making recommendations to the Legislature, the committee may conduct a review or study ~~{regarding}~~ of the existing regulations for any ~~{occupational}~~ occupation or ~~{professional regulation matter}~~ profession.

(b) In conducting a review or study under this Subsection (2), the committee shall:

## HB0094S01 compared with HB0094

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

(ii) consider if the committee's recommendations would negatively affect the ~~interest~~ interests of members of the regulated occupation or profession, including the effect on matters of reciprocity with other states; and

(iii) recommend to the Legislature any necessary changes to existing regulations of the occupation or profession to ensure the regulations are narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.

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

- (a) the Legislative Management Committee; and
- (b) the Business and Labor Interim Committee.

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

- (a) all findings and recommendations made by the committee in the calendar year; and
- (b) a summary report of each review or study conducted by the committee stating:
  - (i) whether the review or study included a review of specific proposed or existing

statutory language;

- (ii) action taken by the committee as a result of the review or study; and
- (iii) a record of the vote for each action taken by the committee.

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

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

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

- (a) receive information from:
  - (i) representatives of the occupation or profession proposed to be newly regulated or

that is subject to a sunset review;

- (ii) the Division of Occupational and Professional Licensing; or
- (iii) any other person; and

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

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

## HB0094S01 compared with HB0094

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

(b) consider if the committee's recommendations to the Legislature would negatively affect the interests of members of the regulated occupation or profession, including the effect on matters of reciprocity with other states;

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

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

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

(ii) a potentially less restrictive alternative to licensing, including registration, certification, or exemption, would avoid unnecessary regulation while still protecting the health and safety of the public; and

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

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

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

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

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

(d) whether regulation of the occupation or profession:

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

## HB0094S01 compared with HB0094

- (ii) significantly diminishes the supply of qualified practitioners; or
- (iii) otherwise creates barriers to service that are not consistent with the public welfare or interest;
- (e) whether the occupation or profession requires knowledge, skills, and abilities that are:
  - (i) teachable; and
  - (ii) testable;
  - (f) whether the occupation or profession is clearly distinguishable from other occupations or professions that are already regulated;
  - (g) whether the occupation or profession has:
    - (i) an established code of ethics;
    - (ii) a voluntary certification program; or
    - (iii) other measures to ensure a minimum quality of service;
  - (h) whether:
    - (i) the occupation or profession involves the treatment of an illness, injury, or health care condition; and
    - (ii) practitioners of the occupation or profession will request payment of benefits for the treatment under an insurance contract subject to Section 31A-22-618;
  - (i) whether the public can be adequately protected by means other than regulation; and
  - (j) other appropriate criteria as determined by the committee.

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

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

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

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**HB0094S01 compared with HB0094**

**Legislative Review Note**

**Office of Legislative Research and General Counsel**