

SB0212S01 compared with SB0212

~~{deleted text}~~ shows text that was in SB0212 but was deleted in SB0212S01.

Inserted text shows text that was not in SB0212 but was inserted into SB0212S01.

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Senator Wayne A. Harper proposes the following substitute bill:

PROFESSIONAL LICENSING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: ~~{~~ Brian M. Greene

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}~~ This bill provides a coordination clause.

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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

Utah Code Sections Affected by Coordination Clause:

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

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) "Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not illegal to sell, irrespective of whether the individual selling the goods or services is subject to an occupational regulation.

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(4) "License" or "licensing" means a state-granted authorization for a person to engage in a specified lawful occupation:

(a) based on the person meeting personal qualifications established under state law;
and

(b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.

~~[(3)] (5) "Newly regulate" means to [regulate {}] under Title 58, Occupations and Professions, an occupation or profession not regulated under Title 58, Occupations and Professions, {} by state statute a lawful occupation not regulated 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 a lawful occupation.

(6) "Personal qualifications" are criteria established in state law related to a person's background and may include:

(a) completion of an approved education program;

(b) satisfactory performance on an examination;

(c) work experience; and

(d) completion of continuing education.

~~[(4)] (7) "Proposal" means:~~

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

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

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

(8) "State certification" means a state-granted authorization given to a person to use the term "state certified" as part of a designated title related to engaging in a specified lawful occupation:

(a) based on the person meeting personal qualifications established under state law;
and

(b) where state law prohibits a noncertified person from using the term "state certified"

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as part of a designated title, but does not otherwise prohibit a noncertified person from engaging in the lawful occupation for compensation.

(9) "State registration" means a state-granted authorization given to a person to use the term "state registered" as part of a designated title related to engaging in a specified lawful occupation:

(a) based on the person meeting requirements established under state law, which may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and bond or insurance requirements;

(b) where state law does not require the person to meet any personal qualifications; and

(c) where state law prohibits a nonregistered person from using the term "state registered" as part of a designated title.

~~[(5)]~~ (10) "Sunrise review" means a review under this chapter of a proposal to newly regulate [an occupation or profession] a lawful occupation.

~~[(6)]~~ (11) "Sunset review" means a review under this chapter of a statute[: (a) regarding a licensed profession under Title 58, Occupations and Professions; and (b)] regarding a regulated lawful occupation that is scheduled for termination under [Section 63I-1-258] Title 63I, Chapter 1, Part 2, Repeal Dates 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.

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(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.

(1) If a government requestor or a representative of [~~an occupation or profession~~] a lawful occupation that is not licensed by the state proposes that the state license or newly regulate [~~an occupation or profession~~] a lawful occupation, 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) Along with any other information requested by the committee, the application shall include a description of:

(a) why licensing or other regulation of the lawful occupation is required to protect against present, recognizable, and significant harm to the health or safety of the public; and

(b) what is the least restrictive regulation of the lawful occupation that would protect against recognizable and significant harm to the health or safety of the public.

~~[(2)]~~ (3) If an application is submitted by a representative of [~~an occupation or profession~~] a lawful occupation, the application shall include a nonrefundable fee of \$500.

~~[(3)]~~ (4) All application fees shall be deposited [~~in~~] into 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~~

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~~occupation or profession under Title 58, Occupations and Professions, that are] regulated~~
lawful occupation that is scheduled for termination under [Section 63I-1-258] Title 63I,
Chapter 1, Part 2, Repeal Dates 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 or other regulation matter referred to the committee by the Legislature, the Legislative Management Committee, or other legislative committee.

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

(b) In conducting a review or study under this Subsection (2), the committee shall consider if the committee's recommendations would negatively affect the interest of members of the regulated lawful occupation, including the effect on matters of reciprocity with other states.

~~(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]~~ lawful occupation proposed to be

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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:

(a) consider whether state regulation of the [~~occupation or profession~~] lawful occupation 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 lawful occupation, including the effect on matters of reciprocity with other states;

~~(b)~~ (c) if the committee determines that state regulation of the [~~occupation or profession~~] lawful occupation 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~~] lawful occupation 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 state certification, state registration, 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;

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(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~~] lawful occupation:

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

(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~~] lawful occupation requires knowledge, skills, and abilities that are:

(i) teachable; and

(ii) testable;

(f) whether the [~~occupation or profession~~] lawful occupation is clearly distinguishable from other [~~occupations or professions~~] lawful occupations that are already regulated;

(g) whether the [~~occupation or profession~~] lawful occupation 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~~] lawful occupation involves the treatment of an illness, injury, or health care condition; and

(ii) practitioners of the [~~occupation or profession~~] lawful occupation 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.

(1) [~~Before the annual written report~~] As part of the annual report described in Section 36-23-106 [~~is submitted for 2013~~], the committee shall study and make recommendations

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regarding potentially less restrictive alternatives to licensing for the regulation of [~~occupations and professions~~] lawful occupations, 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.

(2) The committee shall study and make recommendations regarding ~~approximately 20% of~~ lawful occupations that require a license in the state so that each licensed lawful occupation is reviewed every ~~five years~~.

Legislative Review Note

~~10 years~~.

Section 7. Coordinating S.B. 212 with H.B. 94 -- Superceding amendments.

If this S.B. 212 and H.B. 94, Occupational and Professional Licensure Review Committee Amendments, both pass and become law, it is the intent of the Legislature that the amendments to Sections 36-23-101.5, 36-23-102, 36-23-105, 36-23-106, 36-23-107, and 36-23-109 in this bill supersede the amendments to the same sections in H.B. 94, Occupational and Professional Licensure Review Committee Amendments, when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication.