

2018 Regular Session

HOUSE BILL NO. 748 (Substitute for House Bill No. 562 by Representative Emerson)

BY REPRESENTATIVE EMERSON

LICENSING: Establishes the Occupational Licensing Review Act

1 AN ACT

2 To enact Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 37:41 through 46, relative to creating the Occupational Licensing Review
4 Act; to provide with respect to occupational regulations; to establish state policy for
5 the regulation of occupations; to provide for definitions; to specify certain criteria
6 for government regulations; to establish the office of supervision of occupational
7 boards; to create a process to review criminal history to reduce an offender's
8 disqualification from state recognition; to provide for a fee; to provide an effective
9 date; and to provide for related matters

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 37:41 through 46, is hereby enacted to read as follows:

13 CHAPTER 1-D. OCCUPATIONAL LICENSING REVIEW ACT

14 §41. Legislative policy

15 For occupational regulations and their boards, each of the following shall
16 apply as policy of this state:

17 (1) The right of an individual to pursue a lawful occupation is a fundamental
18 right.

1 (2) Where the state finds it necessary to displace competition, it shall use the
2 least restrictive regulation to protect consumers from present, significant, and
3 empirically substantiated harms threatening public health and safety.

4 §42. Definitions

5 For the purposes of this Chapter, the following words have the meaning
6 herein ascribed to them, unless the context clearly otherwise indicates:

7 (1) "Certification" means a voluntary program in which a private
8 organization or the state government grants nontransferable recognition to an
9 individual who meets personal qualifications established by the private organization
10 or the legislature. Upon approval, the individual may use "certified" as a designated
11 title. A noncertified individual may also perform the lawful occupation for
12 compensation but may not use the title "certified".

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

17 (3) "Least restrictive regulation" means, from least to most restrictive, all of
18 the following:

19 (a) Market competition.

20 (b) Third-party or consumer-created ratings and reviews.

21 (c) Private certification.

22 (d) Voluntary bonding or insurance.

23 (e) Specific private civil cause of action to remedy consumer harm.

24 (f) Applications of Unfair Trade Practices and Consumer Protection Law,

25 R.S. 51:1401 et seq.

26 (g) Mandatory disclosure of attributes of the specific good or service.

27 (h) Regulation of the process of providing the specific good or service.

28 (i) Inspection.

29 (j) Bonding.

1 (k) Insurance.

2 (l) Registration.

3 (m) Government certification.

4 (n) Specialty occupational license for medical reimbursement.

5 (o) Occupational license.

6 (4) "Occupational license" is a nontransferable authorization for an
7 individual to exclusively perform a lawful occupation for compensation based on
8 meeting personal qualifications established by the legislature. In an occupation for
9 which a license is required, it is illegal for an individual who does not possess a valid
10 occupational license to perform the occupation for compensation.

11 (5) "Occupational regulation" means a statute, rule, practice, policy, or other
12 state law allowing an individual to use an occupational title or work in a lawful
13 occupation, including but not limited to registrations, certifications, and occupational
14 licenses. "Occupational regulation" excludes a business license, facility license,
15 building permit, or zoning and land use regulation except to the extent those related
16 state laws regulate an individual's personal qualifications to perform a lawful
17 occupation.

18 (6) "Office" means the office of supervision of occupational boards.

19 (7) "Personal qualifications" means criteria related to an individual's
20 personal background and characteristics, including but not limited to completion of
21 an approved educational program, satisfactory performance on an examination, work
22 experience, other evidence of attainment of requisite skills or knowledge, moral
23 standing, criminal history, and completion of continuing education.

24 (8) "Registration" means a requirement to give notice to the state that may
25 include the individual's name and address, the individual's agent for service of
26 process, the location of the activity to be performed, and a description of the service
27 the individual provides. "Registration" does not include personal qualifications but
28 may require a bond or insurance. Upon the state's receipt of notice, the individual
29 may use "registered" as a designated title. A nonregistered individual may not

1 perform the occupation for compensation or use "registered" as a designated title.

2 "Registration" is not transferable.

3 (9)(a) "Specialty occupational license for medical reimbursement" means a
4 nontransferable authorization for an individual to qualify for payment or
5 reimbursement from a state agency for the nonexclusive provision of medical
6 services based on meeting personal qualifications established by the legislature. A
7 private company may recognize this credential.

8 (b) Notwithstanding the specialty license described in Subparagraph (a) of
9 this Paragraph, it is legal for a person regulated by another occupational regulation
10 to provide similar services as defined in the specialty license for compensation and
11 medical reimbursement. It is also legal for an individual who does not possess the
12 specialty license to provide the identified medical services of the specialty license
13 for compensation, but the unlicensed individual does not qualify for payment or
14 reimbursement from a state agency.

15 §43. Office of supervision of occupational boards

16 The office of supervision of occupational boards is hereby created within the
17 office of the governor.

18 §44. Sunrise and sunset reviews of occupational regulations

19 A.(1) **Sunrise reviews.** The office is responsible for reviewing proposed
20 legislation to enact or modify an occupational regulation to ensure compliance with
21 the policies set forth in R.S. 37:41.

22 (2) The office shall do both of the following:

23 (a) Require proponents to submit evidence of present, significant, and
24 empirically substantiated harms to consumers in the state which may require the
25 office to gather information from others knowledgeable of the occupation, labor-
26 market economics, or other factors.

27 (b) Determine if the proposed regulation meets the state's policy in R.S.
28 37:41(2) of using the least restrictive regulation necessary to protect consumers from
29 present, significant, and empirically substantiated harms.

1 (3)(a) In its analysis used to make the determination described in
2 Subparagraph (2)(b) of this Paragraph, the office shall employ a rebuttable
3 presumption that market competition and private remedies are sufficient to protect
4 consumers.

5 (b) The presumption described in Subparagraph (a) of this Paragraph may
6 be rebutted if the office finds credible empirical evidence of a systematic problem
7 warranting enactment of a state regulation to protect consumers. If such a problem
8 is present, the office shall recommend the least restrictive government regulation to
9 address the problem using the following list of guidelines to form its
10 recommendation:

11 (i) If the need is to provide consumers with a means to address contractual
12 disputes, including pricing disputes, the office's presumptive recommendation shall
13 be to enact a specific cause of action in a small claims division proceeding or in the
14 district court of the parish in which the violations occurred to remedy consumer
15 harm. This cause of action may provide for reimbursement of attorney fees or court
16 costs if the consumer's claim is successful.

17 (ii) If the need is to protect consumers against fraud, the office's presumptive
18 recommendation shall be to strengthen powers under the state's Unfair Trade
19 Practices and Consumer Protection Law, R.S. 51:1401 et seq., or require disclosures
20 intended to reduce misleading attributes of the specific good or service.

21 (iii) If the need is to protect consumers against unclean facilities or to
22 promote general health and safety, the office's presumptive recommendation shall
23 be to require periodic inspections of the provider's facility.

24 (iv) If the need is to protect consumers against potential damages from a
25 provider's failure to complete a contract fully or to standards, the office's
26 presumptive recommendation shall be to require the provider is bonded.

27 (v) If the need is to protect a person who is not a party to a contract between
28 the provider and consumer, the office's presumptive recommendation shall be to
29 require the provider have insurance.

1 (vi) If the need is to protect consumers against potential damages by a
2 transient provider not domiciled in this state, the office's presumptive
3 recommendation shall be to require the provider to register the provider's business
4 with the secretary of state.

5 (vii) If the need is to protect consumers against a shortfall or imbalance of
6 knowledge about the good or service relative to the seller's knowledge, the office's
7 presumptive recommendation shall be to enact voluntary private or state
8 certification.

9 (viii) If the need is to qualify providers of new or highly specialized medical
10 services for reimbursement by the state, the office's presumptive recommendation
11 shall be to enact a specialty license for medical reimbursement.

12 (ix) If the need is to address a systematic information shortfall in which a
13 reasonable consumer of the service is permanently unable to distinguish between the
14 quality of providers, or there is an absence of institutions providing guidance to
15 consumers, and the consumer's inability to distinguish and the lack of guidance will
16 allow significant and substantiated harms, the office's presumptive recommendation
17 shall be to enact an occupational license.

18 (4) The office's analysis of the need for regulation as described in
19 Subparagraph (3)(b) of this Paragraph shall include, nonexclusively, the effects of
20 the proposed legislation including the scope of practice, opportunities for workers,
21 consumer choices and costs, general unemployment, market competition,
22 governmental costs, and whether and how other states regulate the occupation.

23 (5) The office shall report its findings to every legislative committee that will
24 hear the proposed legislation for occupational regulation prior to the hearing and
25 subsequent vote on the proposed legislation.

26 **B. Sunset reviews.** Beginning July 1, 2018, the office shall use the criteria
27 in Paragraphs (A)(2) through (4) of this Section to annually review approximately
28 twenty percent of the state's current occupational regulations. The office shall review

1 all occupational regulations within the subsequent five years and shall repeat such
2 review process in each five-year period thereafter.

3 C.(1) **Sunset reports.** Beginning January 1, 2019, the office shall annually
4 report the findings of its reviews to the speaker of the House of Representatives, the
5 president of the Senate, the governor, and the attorney general. In its report, the
6 office shall recommend the legislature enact legislation that may do any of the
7 following:

8 (a) Repeal occupational regulations.

9 (b) Convert the occupational regulations to less restrictive regulations as
10 defined in R.S. 37:42.

11 (c) Instruct the relevant licensing board or agency to promulgate revised
12 regulations reflecting the legislature's decision to use a less restrictive regulation.

13 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the
14 office may recommend no legislation be enacted.

15 §45. Petition for review of a criminal record

16 A. The right of an individual to pursue a lawful occupation is a fundamental
17 right that includes both of the following:

18 (1) The right of an individual with a criminal record to petition the state to
19 obtain a certification, occupational license, specialty occupational license for medical
20 reimbursement, or other state recognition, hereinafter referred to in this Section as
21 "state recognition", with respect to the individual's personal qualifications.

22 (2) The state not using a criminal record as an automatic or mandatory
23 permanent bar to an individual's receiving state recognition.

24 B. An individual with a criminal record may petition a licensing board,
25 agency, department, or other state or local issuer of occupational licenses, hereinafter
26 referred to in this Section as "board", at any time, including before obtaining any
27 required education or training, for a determination of whether the individual's
28 criminal record will disqualify the individual from obtaining state recognition.

1 C. The individual shall include in the petition his criminal record or
2 authorize the board to obtain his criminal record.

3 D. The individual may include additional information about his current
4 circumstances, including the time since the offense, completion of the criminal
5 sentence, other evidence of rehabilitation, testimonials, employment history, and
6 employment aspirations.

7 E. The board is authorized to determine whether the individual's criminal
8 record disqualifies him from obtaining state recognition.

9 F. Notwithstanding any other provision of law to the contrary, the board may
10 find the individual's criminal record disqualifies him from obtaining state recognition
11 if either of the following applies:

12 (1) The individual's criminal record includes a conviction for a felony or
13 violent misdemeanor.

14 (2) The board concludes the state has an important interest in protecting
15 public safety that is superior to the individual's right. The board may make this
16 conclusion only if it determines by clear and convincing evidence at the time of the
17 petition that all of the following apply:

18 (a) The specific offense for which the individual was convicted is
19 substantially related to the state's interest.

20 (b) The individual, based on the nature of the specific offense for which the
21 individual was convicted and the individual's current circumstances, is more likely
22 to reoffend by virtue of having the license than if he did not have the license.

23 (c) A reoffense will cause greater harm than it would if the individual did not
24 have the license.

25 G.(1) The board shall issue its determination to the individual within ninety
26 days from the date the board receives the petition. The determination shall be in
27 writing and include the criminal record, findings of fact, and conclusions of law.

28 (2) If the board determines the state's interest is superior to the individual's
29 right, the board may advise the individual of actions he may take to remedy the

1 disqualification. The individual may submit a revised petition reflecting the
2 completion of the remedies at any time within ninety days from the date of the
3 board's determination.

4 (3) The individual may appeal the board's determination in accordance with
5 the Administrative Procedure Act and may submit a new petition to the board at any
6 time within two years from the date of the board's final determination.

7 H. The board may rescind its determination at any time if the individual is
8 convicted of an additional offense that the board determines meets the provisions of
9 Subsection F of this Section.

10 I. The board is authorized to charge and collect from the individual a fee to
11 recoup its costs for each petition. The fee shall not exceed one hundred dollars.

12 J.(1) The Louisiana Workforce Commission, hereinafter referred to in this
13 Section as "commission", shall designate internal personnel to establish an annual
14 reporting requirement for the commission's collection of data with respect to all of
15 the following:

16 (a) The number of applicants petitioning each board.

17 (b) The number of petitions approved and denied by each board.

18 (c) The type of offenses for which each board approved or denied the
19 petitions.

20 (d) Other data as determined by the commission.

21 (2) The commission shall compile and annually provide a report of the data
22 collected in Paragraph (1) of this Subsection to the House Committee on Commerce
23 and the Senate Committee on Commerce, Consumer Protection, and International
24 Affairs, and shall make the report available on the official website of the commission
25 on or before February first of each calendar year.

26 §46. Interpretation of statutes and rules

27 In construing any occupational regulation, including an occupational
28 licensing statute, rule, policy, or practice, the following canons of interpretation are
29 to govern, unless the regulation is unambiguous:

1 (1) Occupational regulations shall be construed and applied to increase
2 economic opportunities, promote competition, and encourage innovation.

3 (2) Any ambiguities in occupational regulations shall be construed in favor
4 of working licensees, aspiring licensees, and persons aspiring work related to
5 regulated occupations.

6 (3) The scope of practice in occupational regulations is to be construed
7 narrowly so as to avoid its application to individuals who would be burdened by
8 regulatory requirements that are only partially related to the goods and services they
9 provide.

10 Section 2. The provisions of this Act shall become effective July 1, 2018.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 748 Original

2018 Regular Session

Emerson

Abstract: Creates the Occupational Licensing Review Act.

Proposed law provides for the following legislative policies:

- (1) The rights of an individual to pursue a lawful occupation is a fundamental right.
- (2) When the state finds it necessary to displace competition, it shall use the least restrictive regulation to protect consumers from present, significant, and empirically substantiated harms threatening public health and safety.

Proposed law defines "certification", "lawful occupation", "least restrictive regulation", "occupational license", "occupational regulation", "office", "personal qualifications", "registration", and "specialty occupational license for medical reimbursement".

Proposed law creates the office of supervision of occupational boards ("office") with the office of the governor.

Proposed law provides for responsibilities and duties of the office.

Proposed law requires the office, beginning July 1, 2018, annually review approximately 20% of the state's current occupational regulations using certain criteria.

Proposed law requires the office, beginning on January 1, 2019, annually report the findings of its reviews to the speaker of the House of Representatives, the president of the Senate, the governor, and the attorney general.

Proposed law requires that in the office's report, it shall recommend the legislature enact legislation that may do any of the following:

- (1) Repeal occupational regulations.
- (2) Convert the occupational regulations to less restrictive regulations.
- (3) Instruct the relevant licensing board or agency to promulgate revised regulations reflecting the legislature's decision to use a less restrictive regulation.

Proposed law provides that the right of an individual to pursue a lawful occupation is a fundamental right that includes both of the following:

- (1) The right of an individual with a criminal record to petition the state to obtain a certification, occupational license, specialty occupational license for medical reimbursement, or other state recognition with respect to the individual's personal qualifications.
- (2) The state not using a criminal record as an automatic or mandatory permanent bar to an individual's receiving state recognition.

Proposed law provides that an individual with a criminal record may petition a licensing entity at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Proposed law requires the individual to provide his criminal record or an authorization for the licensing entity to obtain his criminal record.

Proposed law provides that an individual may include additional information about the his current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

Proposed law authorizes the board to determine whether the individual's criminal record disqualifies him from obtaining state recognition.

Proposed law requires the board to issue its determination to the individual within 90 days from the date the board receives the petition.

Proposed law provides that if the board determines the state's interest is superior to the individual's right, the board may advise the individual of actions he may take to remedy the disqualification and provides for the resubmission of a revised petition.

Proposed law provides for the appeal process of the board's determination and allows the individual to submit new petition to the board at any time within two years from the date of the board's final determination.

Proposed law provides that the board may rescind its determination at any time if the individual is convicted of certain offenses.

Proposed law authorizes the board to charge and collect a fee to recoup its costs for each petition, and such fee shall not exceed \$100.

Proposed law provides that the La. Workforce Commission ("commission") shall designate internal personnel to establish an annual reporting requirement for the commission's collection of data with respect to all of the following:

- (1) The number of applicants petitioning each board.
- (2) The number of petitions approved and denied by each board.

- (3) The type of offenses for which each board approved or denied the petitions.
- (4) Other data as determined by the commission.

Proposed law provides that the commission shall compile and annually provide a report of the data collected to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs, and shall make the report available on the official website of the commission on or before February first of each calendar year.

Proposed law provides for interpretation of statutes and rules as follows:

- (1) Occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation.
- (2) Any ambiguities in occupational regulations shall be construed in favor of working licensees, aspiring licensees, and persons aspiring work related to regulated occupations.
- (3) The scope of practice in occupational regulations is to be construed narrowly so as to avoid its application to individuals who would be burdened by regulatory requirements that are only partially related to the goods and services they provide.

Effective July 1, 2018.

(Adds R.S. 37:41-46)