

2018 Regular Session

HOUSE BILL NO. 562

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 45, 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 create a process to review criminal history to reduce  
7 an offender's disqualification from state recognition; to establish canons of statutory  
8 interpretation; to provide an effective date; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950,  
11 comprised of R.S. 37:41 through 45, is hereby enacted to read as follows:

12 Chapter 1-D. OCCUPATIONAL LICENSING REVIEW ACT

13 §41. Legislative policy

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

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

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

1        §42. Definitions

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

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

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

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

16              (a) Market competition.

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

18              (c) Private certification.

19              (d) Voluntary bonding or insurance.

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

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

22        R.S. 51:1401 et seq.

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

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

25              (i) Inspection.

26              (j) Bonding.

27              (k) Insurance.

28              (l) Registration.

29              (m) Government certification.

1           (n) Specialty occupational license for medical reimbursement.

2           (o) Occupational license.

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

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

15           (6) "Personal qualifications" are criteria related to an individual's personal  
16 background and characteristics, including but not limited to completion of an  
17 approved educational program, satisfactory performance on an examination, work  
18 experience, other evidence of attainment of requisite skills or knowledge, moral  
19 standing, criminal history, and completion of continuing education.

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

28           (8)(a) "Specialty occupational license for medical reimbursement" means a  
29 nontransferable authorization for an individual to qualify for payment or

1 reimbursement from a state agency for the nonexclusive provision of medical  
2 services based on meeting personal qualifications established by the legislature. A  
3 private company may recognize this credential.

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

11 §43. Sunrise and sunset reviews of occupational regulations

12 A.(1) **Sunrise reviews.** Proponents of new legislatively proposed  
13 occupational regulations shall submit a report to the legislature outlining that the  
14 newly proposed legislation complies with the policies set forth in R.S. 37:41. The  
15 report shall detail the following:

16 (a) Evidence of present, significant, and empirically substantiated harms to  
17 consumers in the state.

18 (b) Evidence that the proposed regulation meets the state's policy in R.S.  
19 37:41(2) of using the least restrictive regulation necessary to protect consumers from  
20 present, significant, and empirically substantiated harms.

21 (2) In its analysis used to support the evidence described in this Subsection,  
22 the proponent shall employ a rebuttable presumption that market competition and  
23 private remedies are sufficient to protect consumers.

24 B.(1) In its report to the legislature, the proponent shall use the following  
25 guidelines to analyze each of the following nine detailed needs to protect consumers  
26 and report whether the proposed legislation is needed to cure each of these needs:

27 (a) If the need is to provide consumers with a means to address contractual  
28 disputes, including pricing disputes, the proponent's presumptive recommendation  
29 shall be to enact a specific cause of action in a small claims division proceeding or

1 in the district court of the parish in which the violations occurred to remedy  
2 consumer harm. This cause of action may provide for reimbursement of attorney  
3 fees or court costs if the consumer's claim is successful.

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

8 (c) If the need is to protect consumers against uncleanly facilities or to  
9 promote general health and safety, the proponent's presumptive recommendation  
10 shall be to require periodic inspections of the provider's facility.

11 (d) If the need is to protect consumers against potential damages from a  
12 provider's failure to complete a contract fully or to standards, the proponent's  
13 presumptive recommendation shall be to require the provider is bonded.

14 (e) If the need is to protect a person who is not a party to a contract between  
15 the provider and consumer, the proponent's presumptive recommendation shall be  
16 to require the provider have insurance.

17 (f) If the need is to protect consumers against potential damages by a  
18 transient or fly-by-night provider not domiciled in this state, the proponent's  
19 presumptive recommendation shall be to require the provider register the provider's  
20 business with the secretary of state.

21 (g) If the need is to protect consumers against a shortfall or imbalance of  
22 knowledge about the good or service relative to the seller's knowledge, the  
23 proponent's presumptive recommendation shall be to enact voluntary private or state  
24 certification.

25 (h) If the need is to qualify providers of new or highly-specialized medical  
26 services for reimbursement by the state, the proponent's presumptive  
27 recommendation shall be to enact a specialty license for medical reimbursement.

28 (i) If the need is to address a systematic information shortfall in which a  
29 reasonable consumer of the service is permanently unable to distinguish between the

1 quality of providers, or there is an absence of institutions providing guidance to  
2 consumers, and the consumer's inability to distinguish and the lack of guidance will  
3 allow for significant and substantiated harms, the proponent's presumptive  
4 recommendation shall be to enact an occupational license.

5 (2) The proponent's analysis of the need for regulation as described in  
6 Paragraph (1) of this Subsection shall include, nonexclusively, the legislation's  
7 effects on a scope of practice, opportunities for workers, consumer choices and costs,  
8 general unemployment, market competition, governmental costs, and whether and  
9 how other states regulate the occupation.

10 (3) The proponent shall report its findings to the initial and subsequent  
11 legislative committees that will hear the proposed legislation for occupational  
12 regulation prior to the hearing and subsequent vote on the proposed legislation.

13 C. **Sunset reviews.** Starting July 1, 2018, each agency in this state providing  
14 occupational regulations is subject to a sunset review and shall submit a report to the  
15 legislature reviewing all occupational regulations promulgated and enforced by that  
16 agency.

17 D.(1) **Sunset reports.** Starting on January 1, 2019, each agency subject to  
18 sunset review shall use the analysis and guidelines outlined in Subsections A and B  
19 of this Section and report its findings to the speaker of the House of Representatives,  
20 the president of the Senate, the governor, and the attorney general. In its report, the  
21 agency shall recommend the legislature enact new legislation that may do any of the  
22 following:

23 (a) Repeal occupational regulations.

24 (b) Convert the occupational regulations to less restrictive regulations as  
25 described in R.S. 37:42.

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

28 (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, the  
29 agency may recommend no new legislation be enacted.

1        §44. Petition for Review of a Criminal Record

2                A. The right of an individual to pursue a lawful occupation is a fundamental  
3        right which includes both of the following:

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

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

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

15              C. The individual shall include in the petition the individual's criminal record  
16        or authorize the board to obtain the individual's criminal record.

17              D. The individual may include additional information about the individual's  
18        current circumstances, including the time since the offense, completion of the  
19        criminal sentence, other evidence of rehabilitation, testimonials, employment history,  
20        and employment aspirations.

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

23              F. Notwithstanding any other statute or rule, the board may find the  
24        individual's criminal record disqualifies the individual from obtaining state  
25        recognition if either of the following applies:

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

28              (2) The board concludes the state has an important interest in protecting  
29        public safety that is superior to the individual's right. The board may make this

1 conclusion only if it determines by clear and convincing evidence at the time of the  
2 petition that all of the following apply:

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

5 (b) The individual, based on the nature of the specific offense for which the  
6 individual was convicted and the individual's current circumstances as described in  
7 Subsection D of this Section, is more likely to reoffend by virtue of having the  
8 license than if the individual did not have the license.

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

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

14 (2) If the board determines the state's interest is superior to the individual's  
15 right, the board may advise the individual of actions the individual may take to  
16 remedy the disqualification. The individual may submit a revised petition reflecting  
17 the completion of the remedies at any time within ninety days from the date of the  
18 board's determination.

19 H. The individual may appeal the board's determination described in  
20 Subsection G of this Section in accordance with the Administrative Procedure Act  
21 and may submit a new petition to the board at any time within two years from the  
22 date of the board's final determination.

23 I. The board may rescind its determination at any time if the individual is  
24 convicted of an additional offense that the board determines meets the provisions of  
25 Subsection F of this Section.

26 J. The board may charge the individual a fee to recoup its costs not to exceed  
27 one hundred dollars for each petition.

28 K.(1) The Louisiana Workforce Commission, hereinafter referred to in this  
29 Section as "commission", shall designate internal personnel to establish an annual

1 reporting requirement for the commission's collection of data with respect to all of  
2 the following:

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

4 (b) The numbers of each board's approvals and denials.

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

7 (d) Other data the commission determines.

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

13 §45. Interpretation of Statutes and Rules

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

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

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

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

26 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 562 Original

2018 Regular Session

Emerson

**Abstract:** Creates the Occupational Licensing Review Act

Proposed law establishes the following as policy in the state of La. for occupational regulations and their respective boards:

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

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

**SUNRISE AND SUNSET REVIEWS OF OCCUPATIONAL REGULATIONS**

Proposed law authorizes proponents of new legislatively proposed occupational regulations to submit a report to the legislature outlining that the newly proposed legislation complies with the policies set forth in proposed law. Requires the report to detail the following:

- (1) Evidence of present, significant, and substantiated harms to consumers in this state.
- (2) Evidence that the proposed regulation meets the state's policy in proposed law of using the least restrictive regulation necessary to protect consumers from present, significant, and empirically substantiated harms.

Proposed law requires proponents to employ a rebuttable presumption that market competition and private remedies are sufficient to protect consumers. Further provides for the report to use the list of guidelines provided in proposed law.

Proposed law requires a proponent's analysis of the need for regulation to include, nonexclusively, the effects of legislation on a scope of practice, opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and whether and how other states regulate the occupation.

Proposed law requires a proponent to report its findings to the initial and subsequent legislative committees that will hear the proposed legislation prior to the hearing and subsequent vote on the proposed legislation.

Starting July 1, 2018, proposed law subjects each agency in this state providing occupational regulations to a sunset review. Requires such agency to submit a report to the legislature reviewing all occupational regulations promulgated and enforced by that agency.

Starting on January 1, 2019, proposed law requires each agency subject to sunset review to use the analysis and criteria outlined in proposed law. Requires such agency to report its findings to the speaker of the House of Representatives, the president of the Senate, the governor, and the attorney general. Requires the report to include certain recommendations to the legislature as described in proposed law.

**PETITIONS FOR REVIEW OF A CRIMINAL RECORD**

Proposed law describes the following as fundamental rights with respect to an individual's right to pursue a lawful occupation:

- (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 of the individual's personal qualifications (hereinafter "state recognition").
- (2) The state not using a criminal record as an automatic or mandatory permanent bar to an individual's receiving state recognition.

Proposed law authorizes an individual with a criminal record to petition a licensing board, agency, department, or other state or local issuer of occupational licenses (hereinafter "board") 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 include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record. Authorizes the individual to include additional information about the individual's 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 the individual from obtaining state recognition and provides the board may find the individual's criminal record disqualifies the individual from obtaining state recognition if either of the following applies:

- (1) The individual's criminal record includes a conviction for a felony or violent misdemeanor.
- (2) The board concludes the state has an important interest in protecting public safety that is superior to the individual's right. The board may make this conclusion only if it determines, by clear and convincing evidence at the time of the petition that all of the following apply:
  - (a) The specific offense for which the individual was convicted is substantially related to the state's interest.
  - (b) Based on the nature of the specific offense for which the individual was convicted and the individual's described circumstances, the individual is more likely to reoffend by virtue of having the license than if the individual did not have the license.
  - (c) A reoffense will cause greater harm than it would if the individual did not have the license.

Proposed law requires the board to issue its determination to the individual within 90 days from the date the board receives the petition. Requires the board's determination to be in writing and include the criminal record, findings of fact, and conclusions of law. Provides if the board determines the state's interest as superior to the individual's right, the board may advise the individual of actions the individual may take to remedy the disqualification. Further provides the individual may submit a revised petition reflecting the completion of the remedies at any time within 90 days from the date of receipt of the board's determination.

Proposed law authorizes the individual to appeal the board's determination in accordance with the Administrative Procedure Act. Further authorizes the individual to submit a new petition to the board at any time within 2 years from the date of the board's determination.

Proposed law authorizes the board to rescind its determination at any time if the individual is convicted of an additional offense the board determines disqualifies the individual from obtaining state recognition.

Proposed law authorizes the board to charge the individual a fee to recoup its costs not to exceed \$100.00 for each petition.

Proposed law requires the La. Workforce Commission (hereinafter "commission") to 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 numbers of each board's approvals and denials.
- (3) The type of offenses for which each board approved or denied the petitions.
- (4) Other data the commission determines.

Proposed law requires the commission to compile and annually provide a report of the collected data to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs, and to make the report available on the official website of the commission on or before February 1st of each calendar year.

Unless the occupational regulation is unambiguous, proposed law provides the following canons of interpretation:

- (1) Requires occupational regulations to be construed and applied to increase economic opportunities, promote competition, and encourage innovation.
- (2) Requires any ambiguities in occupational regulations to be construed in favor of working licensees, aspiring licensees, and persons aspiring work related to regulated occupations.
- (3) Requires the scope of practice in occupational regulations 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. 37:41-45)