

2018 Regular Session

SENATE BILL NO. 494

BY SENATOR THOMPSON

FEES/LICENSES/PERMITS. Establishes the Occupational Licensing Review Act. (7/1/18)

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 an effective date; and to provide

9 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**

1 **fundamental right.**

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

5 **§42. Definitions**

6 **As used in this Chapter:**

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**
10 **organization or the legislature. Upon approval, the individual may use**
11 **"certified" as a designated title. A noncertified individual may also perform the**
12 **lawful occupation for compensation but may not use the title "certified".**

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

17 **(3) "Least restrictive regulation" means, from least to most restrictive,**
18 **all of 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**
25 **Law, 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**
8 **on meeting personal qualifications established by the legislature. In an**
9 **occupation for which a license is required, it is illegal for an individual who does**
10 **not possess a valid occupational license to perform the occupation for**
11 **compensation.**

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

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

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

26 **(8) "Registration" means a requirement to give notice to the state that**
27 **may include the individual's name and address, the individual's agent for**
28 **service of process, the location of the activity to be performed, and a description**
29 **of the service the individual provides. "Registration" does not include personal**

1 qualifications but may require a bond or insurance. Upon the state's receipt of
2 notice, the individual may use "registered" as a designated title. A
3 nonregistered individual may not perform the occupation for compensation or
4 use "registered" as a designated title. "Registration" is not transferable.

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

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

17 §43. Office of supervision of occupational boards

18 The office of supervision of occupational boards is hereby created within
19 the office of the governor.

20 §44. Sunrise and sunset reviews of occupational regulations

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

24 (2) The office shall do both the following:

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

29 (b) Determine if the proposed regulation meets the state's policy in R.S.

1 37:41(2) of using the least restrictive regulation necessary to protect consumers
2 from present, significant, and empirically substantiated harms.

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

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

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

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

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

28 (iv) If the need is to protect consumers against potential damages from
29 a provider's failure to complete a contract fully or to standards, the office's

1 presumptive recommendation shall be to require the provider is bonded.

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

5 (vi) If the need is to protect consumers against potential damages by a
6 transient or fly-by-night provider not domiciled in this state, the office's
7 presumptive recommendation shall be to require the provider register the
8 provider's business with the secretary of state.

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

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

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

23 (4) The office's analysis of the need for regulation as described in
24 Subparagraph (3)(b) this Subsection shall include, nonexclusively, the effects of
25 legislation including legislation's scope of practice, opportunities for workers,
26 consumer choices and costs, general unemployment, market competition,
27 governmental costs, and whether and how other states regulate the occupation.

28 (5) The office shall report its findings to every legislative committee that
29 will hear the proposed legislation for occupational regulation prior to the

1 hearing and subsequent vote on the proposed legislation.

2 B. Sunset reviews. Beginning July 1, 2018, the office shall use the
3 criteria in Paragraphs (A)(2) through (4) of this Section to annually review
4 approximately twenty percent of the state's current occupational regulations.
5 The office shall review all occupational regulations within the subsequent five
6 years and shall repeat such review process in each five-year period thereafter.

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

12 (a) Repeal occupational regulations.

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

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

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

20 §45. Petition for Review of a Criminal Record

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

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

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

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

7 **C. The individual shall include in the petition his criminal record or**
8 **authorize the board to obtain his criminal record.**

9 **D. The individual may include additional information about his current**
10 **circumstances, including the time since the offense, completion of the criminal**
11 **sentence, other evidence of rehabilitation, testimonials, employment history, and**
12 **employment aspirations.**

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

15 **F. Notwithstanding any other law to the contrary, the board may find the**
16 **individual's criminal record disqualifies him from obtaining state recognition**
17 **if either of the following applies:**

18 **(1) The individual's criminal record includes a conviction for a felony or**
19 **violent misdemeanor.**

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

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

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

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

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

7 (2) If the board determines the state's interest is superior to the
8 individual's right, the board may advise the individual of actions he may take
9 to remedy the disqualification. The individual may submit a revised petition
10 reflecting the completion of the remedies at any time within ninety days from
11 the date of the board's determination.

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

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

19 I.(1) The Louisiana Workforce Commission, hereinafter referred to in
20 this Section as "commission", shall designate internal personnel to establish an
21 annual reporting requirement for the commission's collection of data with
22 respect to all of the following:

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

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

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

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

28 (2) The commission shall compile and annually provide a report of the
29 data collected in Paragraph (1) of this Subsection to the House Committee on

1 Commerce and the Senate Committee on Commerce, Consumer Protection and
2 International Affairs, and shall make the report available on the official website
3 of the commission on or before February first of each calendar year.

4 **§46. Interpretation of Statutes and Rules**

5 **In construing any occupational regulation, including an occupational**
6 **licensing statute, rule, policy, or practice, the following canons of interpretation**
7 **are to govern, unless the regulation is unambiguous:**

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

10 **(2) Any ambiguities in occupational regulations shall be construed in**
11 **favor of working licensees, aspiring licensees, and persons aspiring to work in**
12 **regulated occupations.**

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

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ridge.

DIGEST

SB 494 Original 2018 Regular Session Thompson

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 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 provide 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 a 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 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 to work in 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)