

2022 Regular Session

HOUSE BILL NO. 597

BY REPRESENTATIVE FREEMAN

BOARDS/COMMISSIONS: Provides relative to occupational licensing

1 AN ACT

2 To amend and reenact R.S. 37:43(4), (5), (6), (7), and (9) and 45(A)(1), (B), and (C)(3), to
3 enact R.S. 37:45(I), 48, and 49, and to repeal R.S. 37:43(10) and (11), relative to
4 occupational licensing; to provide definitions; to add members to the occupational
5 licensing review commission; to provide for appeals and challenges; to require
6 review by licensing boards; to make technical changes; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 37:43(4), (5), (6), (7), and (9) and 45(A)(1), (B), and (C)(3) are
10 hereby amended and R.S. 37:45(I), 48, and 49 are hereby enacted to read as follows:

11 §43. Definitions

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

14 * * *

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

- 17 (a) Market competition.
- 18 (b) Third-party or consumer-created ratings and reviews.

1 (c) Specific private civil cause of action to remedy consumer harm as
2 provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401
3 et seq.

4 (d) Regulation of the process of providing the specific goods or services to
5 consumers.

6 (e) Inspection.

7 (f) Bonding or insurance.

8 (g) Registration.

9 (h) ~~Occupational license~~ Government certification.

10 (i) Specialty occupational certification solely for medical reimbursement.

11 (j) Occupational license.

12 (5) "Government certification" means a nontransferable recognition
13 voluntarily granted by the government to an individual who meets personal
14 qualifications related to a lawful occupation. Upon the government's initial and
15 continuing approval, the individual may use "government certified" or "state
16 certified" as a title. A non-certified individual also may perform the lawful
17 occupation for compensation but may not use the title "government certified" or
18 "state certified." In this Chapter, the term "government certification" is not
19 synonymous with "occupational license" nor is it intended to include credentials,
20 such as those used for medical-board certification or held by a certified public
21 accountant, that are prerequisites to working lawfully in an occupation.

22 ~~(5)~~ (6) "Occupational license" means a nontransferable authorization granted
23 by an occupational licensing board for an individual or entity meeting certain
24 qualifications or personal qualifications. In an occupation for which a license is
25 required, it is unlawful for an individual or entity that does not possess a valid
26 occupational license to perform the occupation for compensation.

27 ~~(6)~~ (7) "Occupational licensing board" means any state executive branch
28 board, commission, department, or other agency that is all of the following:

1 (a) Regulates the entry of persons into, or regulating the conduct of persons
2 within, a particular profession or occupation.

3 (b) Authorized to issue and revoke occupational licenses or registrations.

4 (c) Controlled by active market participants.

5 ~~(7) "Occupational regulation" means a rule, regulation, restraint, practice, or~~
6 ~~policy allowing an individual to use an occupational title or work in a lawful~~
7 ~~occupation, including but not limited to registrations and occupational licenses.~~
8 ~~"Occupational regulation" excludes any license, permit, or regulation established by~~
9 ~~a parish or municipality.~~

10 (8) "Personal qualifications" means the criteria related to an individual's
11 personal background and characteristics, including completion of an approved
12 educational program, satisfactory performance on an examination or other
13 assessment, work experience, other evidence of attainment of requisite skills or
14 knowledge, moral standing, criminal history, and completion of continuing
15 education.

16 (9) ~~"Qualifications" means the criteria related to an entity's background and~~
17 ~~characteristics, including but not limited to the personal qualifications of certain~~
18 ~~persons associated with the entity, including but not limited to that or those of an~~
19 ~~individual's personal background and characteristics, including completion of an~~
20 ~~approved educational program, satisfactory performance on an examination or~~
21 ~~assessment, work experience, other evidence of attainment of requisite skills or~~
22 ~~knowledge, moral standing, criminal history, and completion of continuing~~
23 ~~education.~~

24 "Specialty occupational certification solely for medical reimbursement"
25 means an authorization in law for an individual to qualify for governmental
26 reimbursement for a non-exclusive provision of new or niche medical services based
27 on meeting personal qualifications. A private health insurer and others may
28 recognize this credential. Notwithstanding this specialty certification, a licensed or
29 certified individual may provide similar services if allowed by that occupational

1 regulation. An individual who does not hold this specialty certification may provide
2 the same services for compensation, but the non-certified individual will not qualify
3 for reimbursement from a government agency.

4 * * *

5 §45. Occupational Licensing Review Commission

6 A.(1) There is hereby created the Occupational Licensing Review
7 Commission to be composed of the governor or his designee, the secretary of state
8 or his designee, the commissioner of agriculture or his designee, the commissioner
9 of insurance or his designee, ~~and the state treasurer or his designee,~~ two members of
10 the House Committee on Commerce to be appointed by the chair of that committee,
11 one member of the House of Representatives to be appointed by the speaker, two
12 members of the Senate Committee on Commerce, Consumer Protection, and
13 International Affairs to be appointed by the chair of that committee, and one member
14 of the Senate to be appointed by the president. The governor shall be the chairman
15 of the commission and the secretary of state shall be the secretary. The commission
16 shall meet as needed or as called by the chair and such meetings shall be subject to
17 the Open Meetings Law. A majority of the members constitutes a quorum at any
18 meeting. ~~Any final action taken by the commission requires the affirmative vote of~~
19 ~~a majority of the members.~~

20 * * *

21 B. ~~Beginning January 1, 2019, the~~ The commission is responsible for the
22 active supervision of state executive branch occupational licensing boards controlled
23 by active market participants to ensure compliance with state policy in the adoption
24 of occupational regulations promulgated by an occupational licensing board. The
25 required active supervision described in this Chapter does not extend to individual
26 disciplinary actions taken or imposed by an occupational licensing board as to any
27 active market participant subject to the jurisdiction of the occupational licensing
28 board.

1 C.

2 * * *

3 (3) Following the review, the commission shall do either of the following:

4 (a) ~~Approve~~ Unanimously vote to approve the occupational regulation and
5 authorize the occupational licensing board to initiate promulgation of the regulation
6 in accordance with the Administrative Procedure Act. ~~This~~ The approval shall be in
7 writing and explain the rationale for the action.

8 (b)(i) ~~Disapprove~~ In the absence of unanimous approval, disapprove the
9 occupational regulation ~~with any recommended~~ and recommend amendments to
10 improve the occupational regulation ~~and require the occupational licensing board to~~
11 ~~resubmit the occupational regulation for approval prior to promulgating the~~
12 ~~regulation in accordance with the Administrative Procedure Act.~~ The disapproval
13 shall be in writing and explain the rationale for the action.

14 (ii) ~~Any~~ The recommended amendments shall be provided to the
15 occupational licensing board for its further consideration within thirty days of the
16 date the occupational licensing board provides the proposed regulation to the
17 commission for review.

18 (iii) ~~The disapproval shall be in writing and explain the rationale for the~~
19 ~~action.~~

20 (iv) In the event the commission elects to disapprove the regulation ~~with~~
21 ~~suggested amendments~~, the occupational licensing board shall not go forward with
22 promulgation of the proposed regulation through any means, including but not
23 limited to promulgation in accordance with the Administrative Procedure Act until
24 ~~such time as~~ the occupational regulation is approved by the commission.

25 * * *

26 I. Any commission vote on a submitted occupational regulation that fails to
27 garner unanimous approval shall be recorded as a disapproval.

28 * * *

1 §48. Appeals and challenges

2 A.(1) Any person may challenge or appeal any occupational regulation
3 promulgated by an occupational licensing board to the Occupational Licensing
4 Review Commission for review to ensure full compliance with the least restrictive
5 regulation method in accordance with R.S. 37:43 and 44.

6 (2) Within ninety days of receiving a request to review an occupational
7 regulation, the commission shall do either of the following:

8 (a) Repeal the occupational regulation promulgated by the occupational
9 licensing board with a simple majority vote of the commission and a written
10 explanation of the commission's decision.

11 (b) Uphold the occupational regulation promulgated by the occupational
12 licensing board with a simple majority vote of the commission and a written
13 explanation of the commission's decision.

14 B.(1) Any person may file an action in a court of general jurisdiction to
15 challenge any occupational regulation promulgated by an occupational licensing
16 board, including but not limited to an occupational regulation upheld by the
17 commission, to ensure compliance with the least restrictive regulation in accordance
18 with R.S. 37:43 and 44.

19 (2) With respect to the challenge of an occupational regulation, the plaintiff
20 shall prevail if the court finds by a preponderance of evidence that the challenged
21 occupational regulation on its face or in its effect burdens entry into a profession,
22 trade, or occupation, and that an agency has failed to prove by a preponderance of
23 evidence that the challenged occupational regulation is not demonstrated to be
24 necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety,
25 or welfare objectives.

26 (3) Upon a finding for the plaintiff, the court shall enjoin further enforcement
27 of the challenged occupational regulation and shall award reasonable attorney's fees
28 and costs to the plaintiff.

1 C. Each occupational licensing board shall post prominently on its website
2 notice of an individual's right to petition the Occupational Licensing Review
3 Commission for review pursuant to this Section.

4 §49. Licensure board review

5 A. Within one year of enactment of this Section, every occupational
6 licensing board shall conduct a comprehensive review of all occupational regulations
7 within its jurisdiction and submit a report to the commission. The report is to
8 include all of the following:

9 (1) The specific fiduciary, public health, safety, or welfare objectives served
10 by the regulation.

11 (2) A detailed explanation of why the regulation is necessary to serve the
12 specified objectives.

13 (3) An analysis of the effects of regulation on opportunities for workers,
14 consumer choices and costs, general unemployment, market competition,
15 governmental costs, and other effects, to the extent information is available.

16 (4) A comparative analysis between the regulation being reviewed and how
17 other states regulate the occupation. If other states do not regulate the occupation,
18 that shall be expressly stated.

19 B. To the extent the agency finds any regulation that does not satisfy the
20 standard set forth in R.S. 37:43 and 44, it shall do one of the following:

21 (1) Repeal the occupational regulation.

22 (2) Modify the occupational regulation to conform with the standard set forth
23 in R.S. 37:43 and 44, if that action is within the occupation agency's authority.

24 (3) Recommend to the legislature actions necessary to repeal or modify the
25 occupational regulation to conform to the standard of R.S. 37:43 and 44 if that action
26 is not within the occupational licensing board's authority.

27 C. Within twelve months following enactment, each occupational licensing
28 board shall report to the Occupational Licensing Review Commission on all actions
29 taken to conform with this Section.

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 597 Original

2022 Regular Session

Freeman

Abstract: Makes changes to various aspects of the Occupational Licensing Review Commission.

Present law defines "least restrictive regulation" by ranking the following regulations from least to most restrictive in this order:

- (1) Market competition.
- (2) Third-party or consumer-created ratings and reviews.
- (3) Specific private civil cause of action to remedy consumer harm as provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.
- (4) Regulation of the process of providing the specific goods or services to consumers.
- (5) Inspection.
- (6) Bonding or insurance.
- (7) Registration.
- (8) Occupational license.

Proposed law retains the rankings of 1-7 above and provides the following regulations in this order:

- (1) Government certification.
- (2) Specialty occupational certification solely for medical reimbursement.
- (3) Occupational license.

Present law also defines "occupational license", "occupational licensing board", "occupational regulation", "personal qualifications", "qualifications", "registration", and "state policy".

Proposed law removes "occupational regulation", "qualifications", "registration", and "state policy" from the list of definitions.

Proposed law adds definitions for "government certification" and "specialty occupational certification solely for medical reimbursement".

Present law creates the Occupational Licensing Review Commission, hereinafter "commission", and provides for the five members of the board. Proposed law retains present law and adds the following members:

- (1) Two members of the House Committee on Commerce, to be appointed by the chair of that committee.

- (2) One member of the House of Representatives, to be appointed by the speaker.
- (3) Two members of the Senate Committee on Commerce, Consumer Protection, and International Affairs, to be appointed by the chair of that committee.
- (4) One member of the Senate, to be appointed by the president.

Present law requires a majority vote of the commission in order to take any final action by the committee. Proposed law changes the majority vote requirement to a unanimous vote requirement.

Present law requires the commission to either approve or reject the occupational regulation. In the case of a rejection, the board may suggest amendments and shall require the occupational licensing board to resubmit the regulation prior to promulgation.

Proposed law requires the commission to approve or reject the occupational regulation. In the case of a rejection, however, proposed law requires the commission to provide the suggested amendments.

Proposed law allows any person to challenge or appeal any regulation promulgated by an occupational licensing board to the commission.

Proposed law requires the commission to either repeal or uphold the regulation within 90 days from receiving the request to review and to provide a written explanation of the decision.

Proposed law allows any person to file an action in court to challenge any occupational regulation promulgated by an occupational licensing board.

A person who brings an action pursuant to proposed law shall prevail if they show by a preponderance of the evidence that the challenged regulation is not demonstrated to be necessary and narrowly tailored to achieve certain objectives. If plaintiff prevails, the court shall enjoin enforcement of the regulation and award attorney's fees and costs to plaintiff.

Within one year of enactment of proposed law, each occupational licensing board is required to conduct a comprehensive review of all regulations within their jurisdiction and submit a report to the commission. The report is to contain all of the following:

- (1) The specific objectives served by the regulation.
- (2) A detailed explanation of why the regulation is necessary.
- (3) An analysis of the impact of the regulation on certain persons.
- (4) An analysis of how other states regulate similar occupations.

If an agency finds a regulation does not meet the standards provided in proposed law, the agency is to repeal the regulation, modify the regulation, or recommend to the legislature that the regulation be repealed or modified.

Within one year following enactment of proposed law, each occupational licensing board is required to report to the commission on all actions taken to conform with proposed law.

(Amends R.S. 37:43(4), (5), (6), (7), and (9) and 45(A)(1), (B), and (C)(3); Adds R.S. 37:45(I), 48, and 49; Repeals R.S. 37:43(10) and (11))