

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 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 provide for the review of
6 occupational regulations; to provide for certain reporting relative to applicants with
7 criminal records; to provide an effective date; and to provide for related matters

8 Be it enacted by the Legislature of Louisiana:

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

11 CHAPTER 1-D. OCCUPATIONAL LICENSING REVIEW ACT

12 §41. Legislative policy

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

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

17 (2) Where the state finds it necessary to regulate an occupation or profession,
18 it shall use the least restrictive regulation to protect consumers from present,
19 significant, and empirically substantiated harms threatening public health and safety.

1 §42. Definitions

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

4 (1) "Certification" means a voluntary program for which either of the
5 following applies:

6 (a) A private organization grants nontransferable recognition to an
7 individual who meets personal qualifications established by the private organization,
8 but such individual is not lawfully required to perform a lawful occupation for
9 compensation. Individuals possessing a "certification" from a voluntary program
10 shall not utilize the term "certified" as a title.

11 (b) The state government or the legislature provides recognition that an
12 individual possesses all lawful requirements to engage in the scope of practice of a
13 lawful occupation for compensation either individually, under the direct supervision
14 of a licensed practitioner, or otherwise as prescribed by the laws, rules, and
15 regulations of the state entity regulating the profession. The "certification" may be
16 used by a licensed practitioner to represent expert qualifications only when lawfully
17 authorized in the laws, rules, and regulations of the state entity regulating the
18 profession.

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

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

25 (a) Market competition.

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

27 (c) Private certification.

28 (d) Voluntary bonding or insurance.

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

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

2 R.S. 51:1401 et seq.

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

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

5 (i) Inspection.

6 (j) Bonding.

7 (k) Insurance.

8 (l) Registration.

9 (m) Government certification.

10 (n) Specialty occupational license for medical reimbursement.

11 (o) Occupational license.

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

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

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

1 (7) "Registration" means a requirement to give notice to the state that may
2 include the individual's name and address, the individual's agent for service of
3 process, the location of the activity to be performed, and a description of the service
4 the individual provides. "Registration" does not include personal qualifications but
5 may require a bond or insurance. Upon the state's receipt of notice, the individual
6 may use "registered" as a designated title. A nonregistered individual may not
7 perform the occupation for compensation or use "registered" as a designated title.
8 "Registration" is not transferable.

9 §43. Sunrise and sunset reviews of occupational regulations

10 A.(1) Sunrise reviews. The office of the governor, hereinafter referred to in
11 this Section as "office", is responsible for reviewing proposed legislation to enact or
12 modify an occupational regulation to ensure compliance with the policies set forth
13 in R.S. 37:41.

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

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

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

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

26 (b) The presumption described in Subparagraph (a) of this Paragraph may
27 be rebutted if the office finds credible empirical evidence of a systematic problem
28 warranting enactment of a state regulation to protect consumers. If such a problem

1 is present, the office shall recommend the least restrictive government regulation to
2 address the problem.

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

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

11 B. Sunset reviews. The office shall annually review twenty percent of the
12 state's current occupational regulations and shall review all occupational regulations
13 within the subsequent five years and repeat such review process in each five-year
14 period thereafter.

15 C.(1) Sunset reports. The office shall annually report the findings of its
16 reviews to the speaker of the House of Representatives, the president of the Senate,
17 and the attorney general. In its report, the office shall recommend the legislature
18 enact legislation that may do any of the following:

19 (a) Repeal occupational regulations.

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

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

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

26 §44. Louisiana Workforce Commission; criminal records; reporting

27 A.(1) The Louisiana Workforce Commission, hereinafter referred to in this
28 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 with a criminal record applying for an
4 occupational license from each board.

5 (b) The number of applications approved and denied by each board.

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

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

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

14 §45. Interpretation of statutes and rules

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

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

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

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

27 Section 2. R.S. 37:43(C) as enacted by Section 1 of this Act shall become effective
28 on January 1, 2019.

29 Section 3. 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 Reengrossed

2018 Regular Session

Emerson

Abstract: Creates the Occupational Licensing Review Act.

Proposed law provides for the following legislative policies:

- (1) The right of an individual to pursue a lawful occupation is a fundamental right.
- (2) When the state finds it necessary to regulate an occupation or profession, the state is required to 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", "personal qualifications", and "registration".

Proposed law requires the office of the governor (hereinafter "office"), beginning July 1, 2018, to annually review approximately 20% of the state's current occupational regulations. Requires the office to review all occupational regulations within the subsequent five years. Further requires the office to repeat the review process in five-year intervals.

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

Proposed law requires the office's report to recommend the legislature propose 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 office may recommend no new legislation be enacted.

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 with criminal records applying for an occupational license from each board.
- (2) The number of applications approved and denied by each board.
- (3) The type of offenses for which each board approved or denied the applications.
- (4) Other data as determined by the commission.

Proposed law requires the commission to 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. Requires the commission to make the report available on the commission's official website on or before February first of each calendar year.

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

- (1) For occupational regulations to be construed and applied to increase economic opportunities, promote competition, and encourage innovation.
- (2) For any ambiguities in occupational regulations to be construed in favor of working licensees, aspiring licensees, and persons aspiring work related to regulated occupations.
- (3) For 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)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Amend the definition of "certification".
2. Remove the definition of "speciality occupational license for medical reimbursement".
3. Remove the definition of "office" relative to the office of supervision of occupational boards.
4. Redesignate authority from the office of supervision of occupational boards to the office of the governor with respect to the responsibility for reviewing proposed legislation of occupations and relative to making reports to the legislature.
5. Remove the set of guidelines to be used for the evaluation of occupational regulations.
6. Remove provisions authorizing a person with a criminal record to petition an occupational licensing entity to determine whether the person's criminal record would disqualify such person from receiving the sought-after occupational license.
7. Require the La. Workforce Commission to establish reporting requirements relative to applicants with criminal records who apply to occupational licensing entities for occupational licenses.
8. Make technical changes.