

ACT No. 399

2021 Regular Session

HOUSE BILL NO. 398

BY REPRESENTATIVE BUTLER

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AN ACT

To enact R.S. 49:260, relative to the attorney general; to provide for a purpose; to provide for regulatory review; to provide for participation in the occupational licensing review program; to provide for submissions; to provide for decision-making by the Department of Justice; to provide for discipline; to create a special fund in the state treasury; to provide for monies in the special fund; to provide for appropriations; to provide for investments; to provide for deposits; to provide for definitions; to provide for promulgation of rules; to provide for certification; to provide for exemptions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 49:260 is hereby enacted to read as follows:

§260. Department of Justice Occupational Licensing Review Program

A. It is the policy of the state that where the state finds it necessary to displace competition, occupational licensing boards shall use the least restrictive regulation to protect the public from present, significant, and substantiated harms that threaten public health, safety, or welfare. Active state supervision of occupational regulatory actions is a method of ensuring adherence to this clearly articulated state policy. By establishing this program, the state intends to ensure that participating boards and board members will avoid liability under federal antitrust laws.

1 B. In addition to any other powers, duties, or authority granted to the
2 attorney general and the Department of Justice by the constitution and laws of this
3 state, the attorney general shall have the authority to enter into an agreement to
4 provide active supervision of proposed occupational regulations and proposed anti-
5 competitive disciplinary actions of a state occupational licensing board. Such active
6 supervision shall be performed in accordance with this Section and the terms of the
7 written agreement between the occupational licensing board and the Department of
8 Justice. Participating licensing boards shall pay to the Department of Justice
9 annually the amount set forth in the agreement. The dollar amount set forth in the
10 agreement shall be equal to or less than the number of licensees multiplied by ten.

11 C. Participation in the Department of Justice Occupational Licensing Review
12 Program established in this Section is voluntary and optional. An occupational
13 licensing board that chooses to participate in the program established in this Section
14 is not required to comply with the requirements of the Occupational Board
15 Compliance Act, R.S. 37:41, et seq.

16 D.(1) Prior to submitting a notice of final regulation to the proper legislative
17 oversight committees, the occupational licensing board shall submit any
18 occupational regulation it seeks to promulgate, together with a report of any public
19 comments received, agency response to comments, and the statement of proposed
20 fiscal impact, to the Department of Justice.

21 (2) The Department of Justice shall review the substance of each proposed
22 occupational regulation submitted to ensure compliance with clearly articulated state
23 policy pursuant to this Section and may also consider any other applicable law.

24 (3) Following the review, the Department of Justice shall do one of the
25 following:

26 (a) Approve the proposed occupational regulation and authorize the
27 occupational licensing board to proceed with promulgation.

28 (b) Disapprove the proposed occupational regulation and require the
29 occupational licensing board to revise and resubmit the occupational regulation for
30 approval.

1 (4) The decision by the Department of Justice shall be communicated in
2 writing with an explanation of the basis for the decision.

3 (5) Compliance with this Subsection shall not be required for emergency
4 rules adopted pursuant to the Administrative Procedure Act, but emergency rules
5 shall not be used to circumvent active supervision of proposed occupational
6 regulations. Nothing in this Subsection shall prevent the occupational licensing
7 board from electing to submit an emergency rule that meets the definition of
8 occupational regulation for review.

9 E.(1) Prior to taking an anti-competitive disciplinary action, the occupational
10 licensing board shall submit the proposed action and supporting documentation to
11 the Department of Justice.

12 (2) The Department of Justice shall review the substance of the proposed
13 disciplinary action to ensure compliance with clearly articulated state policy pursuant
14 to this Section and may also consider any other applicable law.

15 (3) Following the review, the Department of Justice shall do any of the
16 following:

17 (a) Determine that the proposed disciplinary action does not implicate any
18 market competition interests.

19 (b) Approve the proposed disciplinary action as a proper exercise of state
20 regulatory action in accordance with clearly articulated state policy, notwithstanding
21 possible impact on market competition, and authorize the occupational licensing
22 board to proceed with imposing the disciplinary action.

23 (c) Disapprove of the proposed disciplinary action and decline to authorize
24 its imposition.

25 (4) The decision by the Department of Justice shall be communicated in
26 writing with an explanation of the basis of the decision. This written explanation
27 shall be considered confidential until the disciplinary action has become a final
28 determination of the board.

1 (5) All records, writings, accounts, letters, exhibits, data, pictures, drawings,
2 charts, reports, or photographs shall be considered to be in the custody and control
3 of the occupational licensing board, and all exemptions contained in R.S. 44:1, et
4 seq., or any other provision of law shall continue to apply.

5 F.(1) There is hereby established in the state treasury a special fund to be
6 known as the Department of Justice Occupational Licensing Review Program Fund,
7 hereafter referred to in this Section as "the fund".

8 (2) Notwithstanding any provision of law to the contrary, after compliance
9 with the requirements of Article VII, Section 9(B) of the Constitution of Louisiana,
10 relative to the Bond Security and Redemption Fund, and after a sufficient amount is
11 allocated from that fund to pay all of the obligations secured by the full faith and
12 credit of the state which become due and payable within any fiscal year, the treasurer
13 shall pay an amount into the fund equal to the amount of monies received by the
14 attorney general from participating occupational licensing boards as compensation
15 for the regulatory review activities undertaken pursuant to this Subsection.

16 (3) Monies in the fund shall be subject to annual appropriation to the
17 Department of Justice solely for the support of occupational licensing board
18 regulatory review activities and general operating expenses. Monies so appropriated
19 shall be used to supplement the department's budget and shall not be used to
20 displace, replace, or supplant appropriations from the state general fund for
21 operations of the department below the level of state general fund appropriation for
22 the foregoing year.

23 (4) All unencumbered and unexpended monies in the fund at the end of the
24 fiscal year shall remain in the fund. Monies in the fund shall be invested by the
25 treasurer in the same manner as those in the state general fund, and any interest
26 earned on such investment shall be deposited in and credited to the fund.

27 G. For the purposes of this Section:

28 (1) "Active market participant" means an individual or entity that is any of
29 the following:

1 (a) Licensed by the occupational licensing board to which they are
2 appointed, including subspecialties licensed by that board.

3 (b) A provider of any service subject to the regulatory authority of that
4 occupational licensing board.

5 (2) "Active supervision" shall include all of the following duties and powers:

6 (a) Independent review and evaluation of the substance of the proposed
7 occupational regulation or the proposed anti-competitive disciplinary action, not
8 merely the procedures followed to produce it.

9 (b) The ability to approve, reverse, veto, or modify a proposed occupational
10 regulation or proposed anti-competitive disciplinary action to ensure it complies with
11 state policy rather than merely a party's individual interests.

12 (c) The ability to obtain the information necessary to perform a proper
13 evaluation of the occupational board's proposed occupational regulation or the
14 proposed anti-competitive disciplinary action.

15 (d) A written decision outlining the reasons and rationale for approving,
16 reversing, vetoing, or modifying the recommended action.

17 (3) "Occupational licensing board" means any state executive branch board,
18 commission, department, or other agency that is all of the following:

19 (a) Regulating the entry of persons into, or regulating the conduct of persons
20 within, a particular profession or occupation.

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

22 (c) Controlled by active market participants.

23 (4) "Occupational regulation" means a rule as defined in the Administrative
24 Procedure Act that has reasonably foreseeable anti-competitive effects. Any license,
25 permit, or regulation established by a parish, municipality, or a board not composed
26 of a controlling number of active market participants is excluded.

27 H. The Department of Justice is authorized to promulgate rules and
28 procedures as necessary to implement the program established by this Section.

1 I. Nothing in this Section is intended to restrict an occupational licensing
 2 board from requiring, as a condition of licensure or renewal of licensure, that an
 3 individual's personal qualifications include obtaining or maintaining certification
 4 from a private organization that credentials individuals in the relevant occupation.

5 J. The provisions of this Section shall not apply to the regulation of the
 6 practice of law.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____