
DIGEST

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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)