
HOUSE COMMITTEE AMENDMENTS

2022 Regular Session

Substitute for Original House Bill No. 597 by Representative Freeman as proposed by the House Committee on Commerce

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To amend and reenact R.S. 37:43(4) through (10), to enact R.S. 37:44(4) and (5) and R.S. 49:953(C)(3) and 963(F), and to repeal R.S. 37:43(11), relative to occupational licensing; to allow an interested person to request review of a regulation issued by an occupational licensing board; to provide definitions; to allow for petition; to provide for procedure; to provide for judicial review; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 37:43(4) through (10) are hereby amended and reenacted and R.S. 37:44(4) and (5) are hereby enacted to read as follows:

§43. Definitions

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

* * *

(4) "Fiduciary" has the same meaning as that term is defined in R.S. 9:3801.

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

- (a) Market competition.
- (b) Third-party or consumer-created ratings and reviews.
- (c) 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.
- (d) Regulation of the process of providing the specific goods or services to consumers.
- (e) Inspection.

(f) Bonding or insurance.

(g) Registration.

(h) ~~Occupational license~~ Specialty occupational certification solely for medical reimbursement.

(i) Occupational license.

~~(5) (6) "Occupational license" means a nontransferable authorization granted by an occupational licensing board for an individual or entity meeting certain qualifications or personal qualifications, as that term is defined in Paragraph (1) of this Section, in order to fulfill a legitimate fiduciary, public health, safety, or welfare objective. In an occupation for which a license is required, it is unlawful for an individual or entity that does not possess a valid occupational license to perform the occupation for compensation.~~

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

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

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

(c) Controlled by active market participants.

~~(7) (8) "Occupational regulation" means a rule, regulation, restraint, practice, or policy allowing an individual to use an occupational title or work in a lawful occupation, including but not limited to registrations and occupational licenses in order to fulfill a legitimate fiduciary, public health, safety, or welfare objective.~~

"Occupational regulation" excludes any license, permit, or regulation established by a parish or municipality.

~~(8) (9) "Personal qualifications" means the criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination or other assessment, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.~~

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

(10) "Specialty occupational certification solely for medical reimbursement" means an authorization in law for an individual to qualify for governmental reimbursement for a non-exclusive provision of new or niche medical services based on meeting personal qualifications.

§44. State policy for promulgated occupational regulations

For occupational regulations promulgated by occupational licensing boards, each of the following apply as policy of this state:

* * *

(4) In an occupation for which a license is required, it is unlawful for an individual or entity that does not possess a valid occupational license to perform the occupation for compensation.

(5) A private health insurer and others may recognize a specialty occupational certification solely for medical reimbursement. Notwithstanding this specialty certification, a licensed or certified individual may provide similar services if allowed by that occupational regulation. An individual who does not hold this specialty certification may provide the same services for compensation, but the non-certified individual will not qualify for reimbursement from a government agency.

Section 2. R.S. 49:953(C)(3) and 963(F) are hereby enacted to read as follows:

§953. Procedure for adoption of rules; agency rule review

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C.

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(3) Any interested person may request review of an occupational regulation by submitting a petition to the occupational licensing board that issued the regulation. An occupational licensing board shall review a regulation provided for in the petition for full compliance with the least restrictive regulation as set forth in R.S. 37:43.

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§963. Judicial review of validity or applicability of rules

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F. With respect to the challenge of an occupational regulation, the plaintiff shall prevail if the court finds by a preponderance of evidence that the challenged occupational regulation on its face or in its effect burdens entry into a profession, trade, or occupation, and that an agency has failed to prove by a preponderance of evidence that the challenged occupational regulation is demonstrated to be necessary and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare objectives. Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff.

Section 3. R.S. 37:43(11) is hereby repealed in its entirety.

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 Draft 2022 Regular Session

Abstract: Allows a person to petition an occupational licensing board for review of a regulation issued by that board.

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.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

- (5) Inspection.
- (6) Bonding or insurance.
- (7) Registration.
- (8) Occupational license.

Proposed law changes present law and 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) Government certification.
- (9) Specialty occupational certification solely for medical reimbursement.
- (10) Occupational license.

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

Proposed law removes "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".

Proposed law requires a board to review a regulation it issued upon request from an interested person.

Proposed law provides procedure and standards for judicial review.

(Amends R.S. 37:43(4)-(10); Adds R.S. 37:44(4) and (5) and R.S. 49:953(C)(3) and (963)(F); Repeals R.S. 37:43(11))