

2021 Regular Session

HOUSE BILL NO. 398

BY REPRESENTATIVE BUTLER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEY GENERAL: Creates an occupational licensing board review program within the office of the attorney general

1 AN ACT

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

10 Be it enacted by the Legislature of Louisiana:

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

12 §260. Occupational Licensing Board Review Program

13 A. It is the policy of the state that occupational regulations shall be construed
14 and applied to increase economic opportunities, promote competition, and encourage
15 innovation. Occupational licensing boards shall use the least restrictive regulation
16 to protect the public from present, significant, and substantiated harms that threaten
17 public health, safety, or welfare. Active state supervision of occupational regulatory
18 actions is essential to ensure adherence to this clearly articulated state policy.

19 B. In addition to any other powers, duties, or authority granted to the
20 attorney general and the Department of Justice by the constitution and laws of this

1 state, the attorney general shall provide review of proposed occupational regulations
2 and relevant proposed disciplinary actions of a state occupational licensing board
3 that elects to participate in the occupational licensing board review program
4 established in this Section. Such regulatory review shall be performed in accordance
5 with the terms of a written agreement between the occupational licensing board and
6 the attorney general, and the attorney general shall receive as compensation an
7 amount not to exceed ten dollars per licensee of the participating board.

8 C. Participation in the Occupational Licensing Board Review Program
9 established in this Section is voluntary and optional. An occupational licensing board
10 that chooses to participate in the program established in this Section is not required
11 to comply with the requirements of the Occupational Board Compliance Act, R.S.
12 37:42, et seq.

13 D.(1) Prior to submitting a notice of final regulation to the proper legislative
14 oversight committees, the occupational licensing board shall submit any
15 occupational regulation it seeks to promulgate, together with a report of any public
16 comments received regarding the proposed regulation, to the Department of Justice.

17 (2) The Department of Justice shall review each occupational regulation
18 submitted to ensure compliance with clearly articulated state policy pursuant to this
19 Section and may also consider any guidelines adopted by the Federal Trade
20 Commission.

21 (3) Following the review, the Department of Justice shall do any of the
22 following:

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

25 (b) Disapprove the proposed occupational regulation and require the
26 occupational licensing board to revise and resubmit the occupational regulation for
27 approval.

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

1 E.(1) Prior to taking any disciplinary action that impacts market competition,
2 the occupational licensing board shall submit the proposed discipline and supporting
3 documentation to the Department of Justice.

4 (2) The Department of Justice shall review the proposed disciplinary action
5 to ensure compliance with clearly articulated state policy pursuant to this Section and
6 may also consider any guidelines adopted by the Federal Trade Commission.

7 (3) Following the review, the Department of Justice shall do any of the
8 following:

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

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

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

17 (d) The decision by the Department of Justice shall be communicated in
18 writing with an explanation of the basis of the decision.

19 F.(1) There is hereby established in the state treasury a special fund to be
20 known as the Department of Justice Occupational Licensing Board Review Program
21 Fund, hereafter referred to as "the fund."

22 (2) The fund shall be comprised of monies received by the attorney general
23 from participating occupational licensing boards as compensation for the regulatory
24 review activities undertaken pursuant to this Subsection.

25 (3) Monies in the fund shall be subject to annual appropriation to the
26 Department of Justice solely for the support of occupational licensing board
27 regulatory review activities and general operating expenses. Monies so appropriated
28 shall be used to supplement the department's budget and shall not be used to
29 displace, replace, or supplant appropriations from the state general fund for

1 operations of the department below the level of state general fund appropriation for
2 the foregoing year.

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

7 G. For the purposes of this Section:

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

10 (a) Licensed by an occupational licensing board.

11 (b) A provider of any service subject to the regulatory authority of an
12 occupational licensing board.

13 (c) Subject to the jurisdiction of an occupational licensing board.

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

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

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

19 (c) Controlled by active market participants.

20 (3) "Occupational regulation" means a rule, regulation, restraint, practice, or
21 policy allowing an individual to use an occupational title or work in a lawful
22 occupation, including but not limited to registrations and occupational licenses. Any
23 license, permit, or regulation established by a parish or municipality is excluded.

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

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

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 398 Original

2021 Regular Session

Butler

Abstract: Creates the Occupational Licensing Board Review Program in the office of the attorney general.

Proposed law provides that occupational regulations shall be applied to increase economic opportunities, promote competition, and encourage innovation. Provides that 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.

Proposed law provides that the attorney general shall review both proposed occupational regulations and relevant disciplinary actions of a state occupational licensing board that elects to participate in the Occupational Licensing Board Review Program. Provides for the terms of agreement between the occupational licensing board and the attorney general.

Proposed law provides that the attorney general shall receive as compensation an amount not to exceed \$10 per licensee of the participating board.

Proposed law provides that participation in the Occupational Licensing Board Review Program is voluntary and optional.

Proposed law provides that the occupational licensing board shall submit any occupational regulation it seeks to promulgate, together with a report of any public comments received regarding the proposed regulation, to the Department of Justice before submitting notice of final regulation to the proper legislative oversight committees.

Proposed law provides that the Department of Justice shall review each submitted occupational regulation to ensure compliance with clearly articulated state policy and may also consider any guidelines adopted by the Federal Trade Commission.

Proposed law provides that following the review, the Department of Justice shall do any of the following:

- (1) Approve the proposed occupational regulation and authorize the occupational licensing board to proceed with promulgation.
- (2) Disapprove the proposed occupational regulation and require the occupational licensing board to revise and resubmit the occupational regulation for approval.

Proposed law provides that the occupational licensing board shall submit the proposed discipline and supporting documentation to the Department of Justice before taking any disciplinary action that impacts market competition.

Proposed law provides that the Department of Justice shall review the proposed disciplinary action to ensure compliance with clearly articulated state policy and may also consider any guidelines adopted by the Federal Trade Commission.

Proposed law provides that following the review, the Department of Justice shall do any of the following:

- (1) Determine that the proposed disciplinary action does not implicate any market competition interests.
- (2) Approve the proposed disciplinary action as a proper exercise of state regulatory action in accordance with clearly articulated state policy, notwithstanding possible impact on market competition, and authorize the occupational licensing board to proceed with imposing it.
- (3) Disapprove of the proposed disciplinary action and decline to authorize its imposition.

Proposed law establishes a special fund in the state treasury known as the Department of Justice Occupational Licensing Board Review Program Fund. Provides that the fund shall be comprised of monies received by the attorney general from participating occupational licensing boards as compensation for regulatory review activities.

Proposed law provides that monies in the fund shall be subject to annual appropriation to the Department of Justice solely for the support of occupational licensing board regulatory review activities and general operating expenses.

Proposed law provides that appropriated monies shall be used to supplement the Department of Justice's budget and shall not be used to displace, replace, or supplant appropriations from the state general fund for operations of the Department of Justice below the level of state general fund appropriation for the foregoing year.

Proposed law provides that all unencumbered and unexpended monies in the fund at the end of the fiscal year shall remain in the fund. Provides that the treasurer shall invest monies into the fund in the same manner as those in the state general fund, and any interest earned on such investment shall be deposited in and credited to the fund.

Proposed law provides for definitions.

Proposed law authorizes the Department of Justice to promulgate rules and procedures as necessary to implement the Occupational Licensing Board Review Program.

Proposed law provides that an occupational licensing board may require, as a condition of licensure or renewal of licensure, that an individual obtain or maintain certification from a private organization that credentials individuals in the relevant occupation.

(Adds R.S. 49:260)