
DIGEST

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HB 398 Engrossed

2021 Regular Session

Butler

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

Proposed law 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 when the state finds it necessary to displace competition.

Proposed law provides that boards and board members participating in the Occupational Licensing Review Program will not be held liable under federal antitrust laws.

Proposed law provides that the attorney general shall have the authority to enter into an agreement to provide active supervision of proposed occupational regulations and proposed anti-competitive disciplinary actions of a state occupational licensing board.

Proposed law provides that participating licensing boards shall pay to the Department of Justice annually the amount set forth in the agreement. Provides that the dollar amount in the agreement shall be equal to or less than the number of licensees multiplied by 10.

Proposed law provides that participation in the Occupational Licensing 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, agency response to comments, and the statement of proposed fiscal impact 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 the substance of each occupational regulation to ensure compliance with clearly articulated state policy and may also consider any other applicable law.

Proposed law provides that following the review, the Department of Justice shall do one 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 emergency rules adopted pursuant to the Louisiana Administrative Procedure Act are not required to comply with proposed law. Provides that emergency rules shall not be used to circumvent active supervision of proposed occupational regulations.

Proposed law provides that the occupational licensing board shall submit the proposed action and supporting documentation to the Department of Justice before taking any anti-competitive disciplinary action.

Proposed law provides that the Department of Justice shall review the substance of the proposed disciplinary action to ensure compliance with clearly articulated state policy and may also consider any applicable law.

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 provides that all forms of records, writings, accounts, letters, exhibits, data, pictures, drawing, charts, reports, or photographs shall be considered to be in the custody and control of the occupational licensing board. Provides for public records exemptions.

Proposed law establishes a special fund in the state treasury known as the Department of Justice Occupational Licensing 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 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.

Proposed law provides that Occupational Licensing Review Program shall not regulate the practice of law.

(Adds R.S. 49:260)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Make technical changes.
2. Specify the purpose of the Occupational Licensing Review Program.
3. Ensure participating boards and members will avoid liability under federal antitrust laws.
4. Establish the monetary amount to be paid to the Department of Justice from participating licensing boards.
5. Incorporate public comments, agency responses to public comments, and proposed fiscal impact statements within the report that an occupational licensing board submits to the Department of Justice.
6. Expand bodies of law that the Department of Justice may consider during its review from Federal Trade Commission guidelines to any other applicable law.
7. Add an exemption for emergency rules.
8. Specify that disciplinary actions will be taken against anti-competitive actions.
9. Change the term "discipline" to "action".

10. Specify that certain documents and data shall be considered to be in the custody and control of an occupational licensing board.
11. Provide for public records exemptions.
12. Refine the licensing requirement in the definition of "active market participant".
13. Delete language from the definition of "active market participant" referring to jurisdiction of the occupational licensing board.
14. Add a definition for "active supervision".
15. Refine the definition for "occupational regulation".
16. Add an exemption relative to regulating the practice of law.