

2022 Regular Session

HOUSE BILL NO. 1062 (Substitute for House Bill No. 597 Representative Freeman)

BY REPRESENTATIVE FREEMAN

BOARDS/COMMISSIONS: Provides relative to occupational licensing

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

10 §43. Definitions

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

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

15 (a) Licensed by an occupational licensing board.

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

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

19 (2) "Active supervision" includes but is not limited to the Occupational  
20 Licensing Review Commission's responsibilities to do all of the following:

1 (a) Review the substance of an occupational regulation proposed by any  
2 occupational licensing board.

3 (b) Approve or disapprove with suggested amendments, or allow an  
4 occupational licensing board to withdraw for revision an occupational regulation to  
5 ensure compliance with state policy.

6 (3) "Commission" means the Occupational Licensing Review Commission  
7 as provided for in R.S. 37:45.

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

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

11 (a) Market competition.

12 (b) Third-party or consumer-created ratings and reviews.

13 (c) Specific private civil cause of action to remedy consumer harm as  
14 provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401  
15 et seq.

16 (d) Regulation of the process of providing the specific goods or services to  
17 consumers.

18 (e) Inspection.

19 (f) Bonding or insurance.

20 (g) Registration.

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

23 (i) Occupational license.

24 ~~(5)(6)~~ (6) "Occupational license" means a nontransferable authorization granted  
25 by an occupational licensing board for an individual or entity meeting ~~certain~~  
26 ~~qualifications or personal qualifications,~~ as that term is defined in Paragraph (1) of  
27 this Section, in order to fulfill a legitimate fiduciary, public health, safety, or welfare  
28 objective. ~~In an occupation for which a license is required, it is unlawful for an~~

1 individual or entity that does not possess a valid occupational license to perform the  
2 occupation for compensation.

3 ~~(6)~~ (7) "Occupational licensing board" means any state executive branch  
4 board, commission, department, or other agency that is all of the following:

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

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

8 (c) Controlled by active market participants.

9 ~~(7)~~ (8) "Occupational regulation" means a rule, regulation, restraint, practice,  
10 or policy allowing an individual to use an occupational title or work in a lawful  
11 occupation, including but not limited to registrations and occupational licenses in  
12 order to fulfill a legitimate fiduciary, public health, safety, or welfare objective.

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

15 ~~(8)~~ (9) "Personal qualifications" means the criteria related to an individual's  
16 personal background and characteristics, including completion of an approved  
17 educational program, satisfactory performance on an examination or other  
18 assessment, work experience, other evidence of attainment of requisite skills or  
19 knowledge, moral standing, criminal history, and completion of continuing  
20 education.

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

1           ~~(10) "Registration" means a requirement to give notice to the state that may~~  
2           ~~include the individual's or entity's name and address, the individual's or entity's agent~~  
3           ~~for service of process, the location of the activity to be performed, and a description~~  
4           ~~of the service the individual or entity provides. "Registration" does not include~~  
5           ~~qualifications or personal qualifications but may require a bond or insurance. Upon~~  
6           ~~the state's receipt of notice, the individual or entity may use "registered" as a~~  
7           ~~designated title. "Registration" is not transferable. "Specialty occupational~~  
8           ~~certification solely for medical reimbursement" means an authorization in law for an~~  
9           ~~individual to qualify for governmental reimbursement for a non-exclusive provision~~  
10           ~~of new or niche medical services based on meeting personal qualifications.~~

11           ~~(11) "State policy" means the policy described in R.S. 37:44.~~  
12           §44. State policy for promulgated occupational regulations  
13           For occupational regulations promulgated by occupational licensing boards,  
14           each of the following apply as policy of this state:

15   \*       \*       \*

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

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

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

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

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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.

\* \* \*

§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.

G. The provisions of this Chapter shall not apply to administrative rules promulgated pursuant to the Human Life Protection Act, R.S. 40:1061 et seq.

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 1062 Original                                      2022 Regular Session                                      Freeman

**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.
- (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.

Proposed law does not apply to administrative rules promulgated in accordance with the Human Life Protection Act, which is provided for in present law.

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