

2022 Regular Session

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

BY REPRESENTATIVES FREEMAN, BEAULLIEU, COUSSAN, DUPLESSIS, EDMONSTON, EMERSON, FRIEMAN, GLOVER, HARRIS, HORTON, JEFFERSON, JENKINS, TRAVIS JOHNSON, LAFLEUR, LARVADAIN, LYONS, GREGORY MILLER, NEWELL, CHARLES OWEN, PIERRE, SCHAMERHORN, AND SEABAUGH

BOARDS/COMMISSIONS: Provides relative to occupational licensing

1 AN ACT

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

9 §43. Definitions

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

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

14 (a) Licensed by an occupational licensing board.

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

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

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

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

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

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

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

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

13 (a) Market competition.

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

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

18 (d) Regulation of the process of providing the specific goods or services to  
19 consumers.

20 (e) Inspection.

21 (f) Bonding or insurance.

22 (g) Registration.

23 (h) Occupational license.

24 ~~(5)~~(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.~~

8           ~~(11) "State policy" means the policy described in R.S. 37:44.~~  
 9           Section 2. R.S. 49:953(C)(3) and 963(F) and (G) are hereby enacted to read as  
 10 follows:

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

12   \*         \*         \*

13           C.

14   \*         \*         \*

15           (3) Any interested person may request review of an occupational regulation  
 16           by submitting a petition to the occupational licensing board that issued the  
 17           regulation. An occupational licensing board shall review a regulation provided for  
 18           in the petition for full compliance with the least restrictive regulation as set forth in  
 19           R.S. 37:43 or R.S. 49:260, as applicable.

20   \*         \*         \*

21           §963. Judicial review of validity or applicability of rules

22   \*         \*         \*

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

1 of the challenged occupational regulation and shall award reasonable attorney fees  
 2 and costs to the plaintiff, except in the case of a challenged occupational regulation  
 3 promulgated by an occupational licensing board that participates in the Department  
 4 of Justice Occupational Licensing Review Program pursuant to R.S. 49:260.

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

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#### 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)]

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HB 1062 Reengrossed

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", "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 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 provides an exception to the judicial review standards provided in proposed law for challenged regulations promulgated by an occupational licensing board that participates in the Dept. of Justice Occupational Licensing Review Program.

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. 49:953(C)(3) and (963)(F) and (G))

#### Summary of Amendments Adopted by House

##### The House Floor Amendments to the engrossed bill:

1. Remove all references to a "specialty occupational certification solely for medical reimbursement".
2. Remove provisions relative to state policy for promulgated occupational regulations.

3. Create an exception to the standard of judicial review provided in proposed law for regulations promulgated by a board that participates in the occupational review program administered by the Dept. of Justice.
4. Make technical changes.