

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1678

By: Bergstrom

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6 AS INTRODUCED

7 An Act relating to occupational regulations;
8 establishing the state policy for the regulation of
9 occupations; defining terms; specifying criteria for
10 government regulation to increase opportunities,
11 promote competition, encourage innovation, and
12 protect consumers; establishing canons of statutory
13 interpretation; directing certain sunset review by
14 certain staff; establishing presumptions and means to
15 rebut certain presumptions; setting certain
16 guidelines for staff on certain recommendations;
17 directing certain report and findings; authorizing
18 certain comments on administrative rulemaking;
19 requiring certain rules be adopted by Legislature for
20 certain purpose; construing limitations; setting date
21 for certain review of occupational licenses;
22 mandating certain percentage of licenses be reviewed;
23 establishing review criteria; directing sunset
24 reports begin by certain date; construing staff
involvement in occupational licensing and reviews;
providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 802 of Title 40, unless there is
23 created a duplication in numbering, reads as follows:
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1 This act shall be known and may be cited as the "Occupational
2 License Review Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 802.1 of Title 40, unless there
5 is created a duplication in numbering, reads as follows:

6 Policy. For occupational regulations and their boards, it is
7 the policy of the state that:

8 1. The right of an individual to pursue a lawful occupation is
9 a fundamental right.

10 2. Where the state finds it is necessary to displace
11 competition, it will use the least restrictive regulation to protect
12 consumers from present, significant, and substantiated harms that
13 threaten public health and safety.

14 3. Legislative leaders will assign the responsibility to review
15 legislation, laws and administrative rules related to occupational
16 regulations.

17 SECTION 3. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 802.2 of Title 40, unless there
19 is created a duplication in numbering, reads as follows:

20 Definitions. For the purposes of this act, the words defined in
21 this section have the meaning given.

22 1. "Government certification" means a voluntary program in
23 which the state grants nontransferable recognition to an individual
24 who meets personal qualifications established by the Legislature.

1 Upon receiving initial and continuing approval from the government,
2 the individual may use "government certified" or "state certified"
3 as a designated title. A non-certified individual may also perform
4 the lawful occupation for compensation but may not use the title
5 "government certified" or "state certified". In this act,
6 "government certification" is not intended to be synonymous with
7 "occupational license" or to reflect credentials, such as those used
8 for medical board certification or held by a certified public
9 accountant, which are prerequisites to working lawfully in an
10 occupation.

11 2. "Government registration" means a requirement to give notice
12 to the government that may include the individual's name and
13 address, the individual's agent for service of process, the location
14 of the activity to be performed, and a description of the service
15 the individual provides. "Government registration" does not include
16 personal qualifications and is not transferable but it may require a
17 bond or insurance. Upon the government's receipt of notice, the
18 individual may use "government registered" as a designated title. A
19 non-registered individual may not perform the occupation for
20 compensation or use "government registered" as a designated title.
21 In this chapter, "government registration" is not intended to be
22 synonymous with "occupational license" or to reflect credentials,
23 such as those held by a registered nurse, which are prerequisites to
24 working lawfully in an occupation.

1 3. "Lawful occupation" means a course of conduct, pursuit or
2 profession that includes the sale of goods or services that are not
3 themselves illegal to sell irrespective of whether the individual
4 selling them is subject to an occupational regulation.

5 4. "Least restrictive regulation" means, from least to most
6 restrictive,

- 7 a. market competition,
- 8 b. third-party or consumer-created ratings and reviews,
- 9 c. private certification,
- 10 d. voluntary bonding or insurance,
- 11 e. specific private civil cause of action to remedy
12 consumer harm,
- 13 f. deceptive trade practice act,
- 14 g. mandatory disclosure of attributes of the specific
15 good or service,
- 16 h. regulation of the process of providing the specific
17 good or service,
- 18 i. regulation of the facility where the specific good or
19 service is sold,
- 20 j. inspection,
- 21 k. bonding,
- 22 l. insurance,
- 23 m. government registration,
- 24 n. government certification,

- o. specialty occupational license for medical reimbursement, and
- p. occupational license.

5. "Occupational license" means a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the Legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

6. "Occupational regulation" means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes government registration, government certification, and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation.

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

1 8. "Private certification" means a voluntary program in which a
2 private organization grants nontransferable recognition to an
3 individual who meets personal qualifications established by the
4 private organization. The individual may use a designated title of
5 "certified" in conjunction with the private organization's name, as
6 permitted by the private organization.

7 9. "Specialty occupational license for medical reimbursement"
8 means a non-transferable authorization in law for an individual to
9 qualify for payment or reimbursement from a government agency for
10 the non-exclusive provision of medical services based on meeting
11 personal qualifications established by the Legislature. A private
12 company may recognize this credential. Notwithstanding this
13 specialty license, it is legal for a person regulated under another
14 occupational regulation to provide similar services as defined in
15 that statute for compensation and reimbursement. It is also legal
16 for an individual who does not possess this specialty license to
17 provide the identified medical services for compensation, but the
18 non-licensed individual will not qualify for payment or
19 reimbursement from a government agency.

20 SECTION 4. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 802.3 of Title 40, unless there
22 is created a duplication in numbering, reads as follows:

23 Sunrise Review of Occupational Regulations.
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1 A. Sunrise analysis of legislation involving occupational
2 regulations. The Speaker of the House of Representatives, the
3 President Pro Tempore of the Senate and the Chair of each relevant
4 standing committee of the Legislature will assign to the designated
5 staff (hereafter "staff") the responsibility to analyze proposals
6 and legislation to create new occupational regulations or modify
7 existing occupational regulations.

8 B. Sunrise reviews.

9 1. The staff is responsible for reviewing legislation to enact
10 or modify an occupational regulation to ensure compliance with the
11 policies in Section 2 of this act.

12 2. The staff will require proponents to submit evidence of
13 present, significant, and substantiated harms to consumers in the
14 state. The staff also may request information from state agencies
15 that contract with individuals in regulated occupations and others
16 knowledgeable of the occupation, labor-market economics, or other
17 factors, costs and benefits.

18 3. The staff will determine if the proposed regulation meets
19 the state's policy in Section 2 of this act using the least
20 restrictive regulation necessary to protect consumers from present,
21 significant, and substantiated harms.

22 4. The staff's analysis will employ a rebuttable presumption
23 that consumers are sufficiently protected by market competition and
24 private remedies, as listed in subsections 1 through 4 of Section 3

1 of this act. The staff will give added consideration to the use of
2 private certification programs that allow a provider to give
3 consumers information about the provider's knowledge, skills and
4 association with a private certification organization.

5 5. The staff may rebut the presumption if it finds credible
6 empirical evidence of present, significant and substantiated harm to
7 consumers that warrants enacting a regulation to protect consumers.
8 If evidence of such harm is found, the staff will recommend the
9 least restrictive government regulation to address the harm, as
10 listed in paragraph 4 of Section 3 of this act.

11 6. The staff will use the following guidelines to form its
12 recommendation. If the harm arises from:

- 13 a. contractual disputes, including pricing disputes,
14 staff may recommend enacting a specific civil cause of
15 action in small-claims court or district court to
16 remedy consumer harm. This cause of action may
17 provide for reimbursement of the attorney's fees or
18 court costs, if a consumer's claim is successful,
- 19 b. fraud, staff may recommend strengthening powers under
20 the state's deceptive trade practices acts or
21 requiring disclosures that will reduce misleading
22 attributes of the specific good or service,
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- c. general health and safety risks, staff may recommend enacting a regulation on the related process or requiring a facility license,
- d. unclean facilities, staff may recommend requiring periodic facility inspections,
- e. a provider's failure to complete a contract fully or to standards, staff may recommend requiring the provider to be bonded,
- f. a lack of protection for a person who is not a party to a contract between providers and consumers, staff may recommend requiring the provider have insurance,
- g. transactions with transient, out-of-state, or fly-by-night providers, staff may recommend requiring the provider register its business with the Secretary of State,
- h. a shortfall or imbalance of knowledge about the good or service relative to the seller's knowledge (asymmetrical information), staff may recommend enacting government certification,
- i. an inability to qualify providers of new or highly-specialized medical services for reimbursement by the state, staff may recommend enacting a specialty license for medical reimbursement,

1 j. a systematic information shortfall in which a
2 reasonable consumer of the service is permanently
3 unable to distinguish between the quality of providers
4 and there is an absence of institutions that provide
5 guidance to consumers, staff may recommend enacting an
6 occupational license, and

7 k. the need to address multiple types of harm, staff may
8 recommend a combination of regulations. This may
9 include a government regulation combined with a
10 private remedy including third-party or consumer-
11 created ratings and reviews, or private certification.

12 7. The staff's analysis of the need for regulation will include
13 the effects of legislation, including the legislation's scope of
14 practice, on opportunities for workers, consumer choices and costs,
15 general unemployment, market competition, governmental costs, and
16 other effects.

17 8. The staff's analysis of the need for regulation will compare
18 the legislation to whether and how other states regulate the
19 occupation, including the occupation's scope of practice that other
20 states use and the personal qualifications other states require.

21 9. The staff will report its findings and recommendations to
22 the initial and subsequent committees that will hear the
23 legislation. The report will include recommendations addressing:

24 a. the type of regulation, if any,

1 b. the requisite personal qualifications, if any, and

2 c. the scope of practice, if applicable.

3 10. The staff may comment on whether and how much
4 responsibility the legislation delegates to a licensing board to
5 promulgate administrative rules, particularly rules relating to
6 establishing the occupation's scope of practice or the personal
7 qualifications required to work in the occupation. The comment may
8 make legislators aware of exposure to antitrust litigation that the
9 legislation may cause because of excessive or ambiguous delegation
10 of authority to licensing boards to engage in administrative
11 rulemaking.

12 C. Rule. Each session the House of Representatives and the
13 Senate may each consider the adoption of a rule requiring a
14 committee considering legislation which enacts or modifies an
15 occupational regulation to receive the staff's analysis and
16 recommendations provided in this act prior to voting on the
17 legislation.

18 D. Limitations. Nothing in Section 4 of this act shall be
19 construed to preempt federal regulation or to require a private
20 certification organization to grant or deny private certification to
21 any individual.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 802.4 of Title 40, unless there
24 is created a duplication in numbering, reads as follows:

1 Sunset Review of Occupational Licenses.

2 A. Sunset analysis of existing occupational licenses.

3 1. Starting on January 1, 2021, the Speaker of the House of
4 Representatives, the President Pro Tempore of the Senate and the
5 Chair of each relevant standing committee of the Legislature will
6 assign to the designated staff (hereafter "staff") the
7 responsibility to analyze existing occupational licenses.

8 2. Each relevant standing committee of the Legislature is
9 responsible for reviewing annually approximately twenty percent
10 (20%) of the current occupational licenses under the committee's
11 jurisdiction. The committee chair will select the occupational
12 licenses to be reviewed annually.

13 3. Each relevant standing committee of the Legislature will
14 review all occupational licenses under the committee's jurisdiction
15 within the subsequent five (5) years and will repeat such review
16 processes in each five-year period thereafter.

17 B. Criteria. The staff will use the criteria in paragraphs 2
18 through 8 of subsection B of Section 4 of this act to analyze
19 existing occupational licenses.

20 C. Sunset reports.

21 1. Starting on January 1, 2021, the staff will report annually
22 the findings of its reviews to the Speaker of the House of
23 Representatives, the President Pro Tempore of the Senate, Chairs of
24 the relevant standing committees, the Governor, and the Attorney
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1 General. In its report, the staff will recommend the Legislature
2 enact new legislation that:

- 3 a. repeals the occupational licenses,
- 4 b. converts the occupational licenses to less restrictive
5 regulations in Section 4 of this act,
- 6 c. instructs the relevant licensing board or agency to
7 promulgate revised regulations reflecting the
8 Legislature's decision to use a less restrictive
9 alternatives to occupational licenses,
- 10 d. changes the requisite personal qualifications of an
11 occupational license,
- 12 e. redefines the scope of practice in an occupational
13 license, or
- 14 f. reflects other recommendations to the Legislature.

15 2. The staff may recommend that no new legislation be enacted.

16 D. Limitations. Nothing in Section 4 of this act shall be
17 construed to preempt federal regulation, authorize the staff to
18 review the means that a private certification organization uses to
19 issue, deny or revoke a private certification to any individual, or
20 require a private certification organization to grant or deny
21 private certification to any individual.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 802.5 of Title 40, unless there
24 is created a duplication in numbering, reads as follows:

1 Interpretation of Statutes and Rules. In construing any
2 governmental regulation of occupations, including an occupational
3 licensing statute, rule, policy or practice, the following canons of
4 interpretation are to govern, unless the regulation is unambiguous:

5 1. Occupational regulations will be construed and applied to
6 increase economic opportunities, promote competition, and encourage
7 innovation;

8 2. Any ambiguities in occupational regulations will be
9 construed in favor of workers and aspiring workers to work; and

10 3. The scope of practice in occupational regulations is to be
11 construed narrowly to avoid burdening individuals with regulatory
12 requirements that only have an attenuated relationship to the goods
13 and services they provide.

14 SECTION 7. This act shall become effective November 1, 2020.

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