



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3646

Introduced 11/13/2018, by Sen. Jennifer Bertino-Tarrant

SYNOPSIS AS INTRODUCED:

New Act

Creates the Occupational Board Reform Act. Provides for the statement of policy. Provides that an individual with a criminal conviction may submit to the appropriate occupational board a preliminary application for an occupational license, government certification, or State recognition of the individual's personal qualifications for a determination as to whether the individual's criminal conviction would disqualify the individual from obtaining the occupational license, government certification, or State recognition of the individual's personal qualifications. Provides that the appropriate occupational board shall issue the determination in writing within 90 days after receiving the preliminary application. Provides that an occupational board may charge a fee not to exceed \$100 for each preliminary application filed. Provides that an individual may appeal the determination. Provides specified requirements concerning the preliminary application and determination. Requires each standing committee of the General Assembly to review and analyze approximately 20% of the occupational regulations within its jurisdiction and submit an annual report electronically to the General Assembly by December 15 of each year beginning in 2019. Provides requirements for the specified annual report. Provides that the standing committee shall complete the specified process for all occupational regulations within its jurisdiction within 5 years and every 5 years thereafter. Provides that if the standing committee finds that it is necessary to change occupational regulations, the standing committee shall recommend the least restrictive regulation consistent with the public interest and specified policies.

LRB100 24108 XWW 43222 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Occupational Board Reform Act.

6 Section 5. Definitions. In this Act:

7 "Certificate" or "certification", with regard to health
8 professionals, means a voluntary process by which a statutory
9 regulatory entity grants recognition to an individual who has
10 met certain prerequisite qualifications specified by such
11 regulatory entity and who may assume or use the term
12 "certified" in the title or designation to perform prescribed
13 professional tasks.

14 "Government certification" means a nontransferable
15 recognition granted to an individual by an occupational board
16 through a voluntary program in which the individual meets
17 personal qualifications established by the General Assembly
18 and that allows the certified individual to use a designated
19 title.

20 "Lawful occupation" means a course of conduct, a pursuit,
21 or a profession that includes the sale of goods or services
22 that are not themselves illegal to sell irrespective of whether
23 the individual selling them is subject to an occupational

1 regulation.

2 "Least restrictive regulation" means one of the following
3 types of regulation, listed from least restrictive to most
4 restrictive, consistent with the health, safety, and welfare of
5 the public:

6 (1) market competition;

7 (2) third-party or consumer-created ratings and
8 reviews;

9 (3) private certification;

10 (4) specific private civil causes of action to remedy
11 consumer harm;

12 (5) deceptive trade practices under the Uniform
13 Deceptive Trade Practices Act;

14 (6) mandatory disclosure of attributes of the specific
15 goods or services;

16 (7) regulation of the process of providing the specific
17 goods or services to consumers;

18 (8) inspection;

19 (9) bonding or insurance;

20 (10) registration;

21 (11) government certification; and

22 (12) occupational license.

23 "Occupational board" means a board, commission,
24 department, or other entity created by State law that regulates
25 providers through occupational regulations.

26 "Occupational license" means a nontransferable

1 authorization in law (1) for an individual to perform
2 exclusively a lawful occupation for compensation based on
3 meeting personal qualifications established by the General
4 Assembly and (2) that is required in order to legally perform
5 the lawful occupation for compensation.

6 "Occupational regulation" means a statute, rule,
7 regulation, practice, policy, or other State law requiring an
8 individual to possess certain personal qualifications or to
9 comply with registration requirements to use an occupational
10 title or work in a lawful occupation. "Occupational regulation"
11 includes any government certification, registration, or
12 occupational license. "Occupational regulation" does not
13 include (1) business licensure, facility licensure, building
14 permit requirements, or zoning and land-use regulations,
15 except to the extent that the same State laws that require a
16 business license, a facility license, or a building permit or
17 zoning and land-use regulations also regulate an individual's
18 personal qualifications to perform a lawful occupation or (2)
19 an occupational license administered by the Supreme Court.

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

1 "Private certification" means a nontransferable
2 recognition granted to an individual by a private organization
3 through a voluntary program in which the individual meets
4 personal qualifications established by the private
5 organization.

6 "Provider" means an individual provider of goods or
7 services engaged in a lawful occupation.

8 "Registration" means a nontransferable registration
9 granted to an individual under which (1) the individual is
10 required to give notice to the government, which may include
11 the individual's name and address, the individual's agent for
12 service of process, the location of the activity to be
13 performed, and a description of the service the individual
14 provides, (2) upon receipt of the notice by the government, the
15 individual may use the term "registered" as a designated title
16 to engage in a lawful occupation, and (3) such notice is
17 required to engage in the lawful occupation for compensation
18 and is required in order to use the term "registered" as a
19 designated title to engage in the lawful occupation.
20 "Registration" may require a bond or insurance.

21 Section 10. Use of terms. For purposes of this Act:

22 (1) Government certification and registration are not
23 synonymous with occupational license.

24 (2) Except as provided in Section 5 of this Act, when
25 the terms "certification" and "certified" are used outside

1 of this Act to mean a requirement that an individual meet
2 certain personal qualifications to work legally, those
3 terms in that context shall be interpreted for purposes of
4 this Act as requiring an individual to meet the
5 requirements for an occupational license.

6 (3) Except as provided in Section 5 of this Act, when
7 the terms "registration" and "registered" are used outside
8 of this Act to mean a requirement that an individual meet
9 certain personal qualifications to work legally, those
10 terms in that context shall be interpreted for purposes of
11 this Act as requiring an individual to meet the
12 requirements for an occupational license.

13 Section 15. Statement of policy. It is the policy of the
14 State of Illinois:

15 (1) To protect the fundamental right of an individual
16 to pursue a lawful occupation.

17 (2) To use the least restrictive regulation that is
18 necessary to protect consumers from undue risk of present,
19 significant, and substantiated harms that clearly threaten
20 or endanger the health, safety, or welfare of the public
21 when competition alone is not sufficient and that is
22 consistent with the public interest.

23 (3) To enforce an occupational regulation against an
24 individual only to the extent that the individual sells
25 goods or services that are included explicitly in the

1 statutes that govern the occupation.

2 (4) To construe and apply occupational regulations to
3 increase opportunities, promote competition, and encourage
4 innovation.

5 (5) To use the least restrictive method of regulation.

6 (6) To provide ongoing legislative review of
7 occupational regulations.

8 Section 20. Individual with criminal conviction;
9 preliminary application; occupational board; duties;
10 determination; appeal; fee.

11 (a) The fundamental right of an individual to pursue an
12 occupation includes the right of an individual with a criminal
13 history to obtain an occupational license, government
14 certification, or State recognition of the individual's
15 personal qualifications.

16 (b) An individual who has a criminal conviction may submit
17 to the appropriate occupational board a preliminary
18 application for an occupational license, government
19 certification, or State recognition of the individual's
20 personal qualifications for a determination as to whether the
21 individual's criminal conviction would disqualify the
22 individual from obtaining the occupational license, government
23 certification, or State recognition of the individual's
24 personal qualifications from that occupational board. The
25 preliminary application may be submitted at any time, including

1 prior to obtaining required education or paying any fee, other
2 than the fee for the preliminary application described in
3 subsection (g) of this Section.

4 The individual may include with the preliminary
5 application additional information about the individual's
6 current circumstances, including the time since the offense,
7 completion of the criminal sentence, other evidence of
8 rehabilitation, testimonials, employment history, and
9 employment aspirations.

10 (c) Upon receipt of a preliminary application under
11 subsection (b) of this Section and a fee if required under
12 subsection (g) of this Section, the appropriate occupational
13 board shall make a determination of whether the individual's
14 criminal conviction would disqualify the individual from
15 obtaining an occupational license, government certification,
16 or State recognition of the individual's personal
17 qualifications from that occupational board.

18 (d) The occupational board shall issue its determination in
19 writing within 90 days after receiving a preliminary
20 application under subsection (b) of this Section. The
21 determination shall include findings of fact and conclusions of
22 law. If the occupational board determines that the individual's
23 criminal conviction would disqualify the individual, the
24 occupational board may advise the individual of any action the
25 individual may take to remedy the disqualification. If the
26 occupational board finds that the individual has been convicted

1 of a subsequent criminal conviction, the occupational board may
2 rescind a determination upon finding that the subsequent
3 criminal conviction would be disqualifying under subsection
4 (c) of this Section.

5 (e) The individual may appeal the determination of the
6 occupational board. The appeal shall be in accordance with
7 Article 2105 of the Civil Administrative Code of Illinois.

8 (f) An individual shall not file another preliminary
9 application under this Section with the same occupational board
10 within 2 years after the final decision on the previous
11 preliminary application, except that if the individual has
12 taken action to remedy the disqualification as advised by the
13 occupational board, the individual may file another
14 preliminary application under this Section with the same
15 occupational board 6 months after the final decision on the
16 previous preliminary application.

17 (g) An occupational board may charge a fee not to exceed
18 \$100 for each preliminary application filed under this Section.
19 The fee is intended to offset the administrative costs incurred
20 under this Section.

21 Section 25. Standing committees of the General Assembly;
22 duties; report; contents.

23 (a) Beginning in 2019, each standing committee of the
24 General Assembly shall annually review and analyze
25 approximately 20% of the occupational regulations within the

1 jurisdiction of the committee and prepare and submit an annual
2 report to the General Assembly. The annual report to the
3 General Assembly shall be filed by December 15 of each year
4 with the Clerk of the House of Representatives and the
5 Secretary of the Senate in electronic form only as provided in
6 this Section, in the manner that the Clerk and the Secretary
7 shall direct. Each committee shall complete this process for
8 all occupational regulations within its jurisdiction within 5
9 years and every 5 years thereafter. Each report shall include
10 the committee's recommendations regarding whether the
11 occupational regulations should be terminated, continued, or
12 modified.

13 (b) Each committee may require the submission of
14 information by the affected occupational board and other
15 affected or interested parties.

16 (c) A committee's report shall include, but not be limited
17 to, the following:

18 (1) the title of the regulated occupation and the name
19 of the occupational board responsible for enforcement of
20 the occupational regulations;

21 (2) the statutory citation or other authorization for
22 the creation of the occupational regulations and
23 occupational board;

24 (3) the number of members of the occupational board and
25 how the members are appointed;

26 (4) the qualifications for membership on the

1 occupational board;

2 (5) the number of times the occupational board is
3 required to meet during the year and the number of times it
4 actually met;

5 (6) annual budget information for the occupational
6 board for the 5 most recently completed fiscal years;

7 (7) for the immediately preceding 5 calendar years, or
8 for the period of time less than 5 years for which the
9 information is practically available, the number of
10 government certifications, occupational licenses, and
11 registrations the occupational board has issued, revoked,
12 denied, or assessed penalties against, listed anonymously
13 and separately per type of credential, and the reasons for
14 those revocations, denials, and other penalties;

15 (8) a review of the basic assumptions underlying the
16 creation of the occupational regulations;

17 (9) a statement from the occupational board on the
18 effectiveness of the occupational regulations; and

19 (10) a comparison of whether and how other states
20 regulate the occupation.

21 (d) Subject to subsection (e) of this Section, each
22 committee shall also analyze, and include in its report,
23 whether the occupational regulations meet the policies stated
24 in Section 15 and shall consider the following recommended
25 courses of action for meeting those policies:

26 (1) if the need is to protect consumers against fraud,

1 the likely recommendation will be to strengthen powers
2 under the Uniform Deceptive Trade Practices Act or require
3 disclosures that will reduce misleading attributes of the
4 specific goods or services;

5 (2) if the need is to protect consumers against unclean
6 facilities or to promote general health and safety, the
7 likely recommendation will be to require periodic
8 inspections of such facilities;

9 (3) if the need is to protect consumers against
10 potential damages from failure by providers to complete a
11 contract fully or up to standards, the likely
12 recommendation will be to require that providers be bonded;

13 (4) if the need is to protect a person who is not party
14 to a contract between the provider and consumer, the likely
15 recommendation will be to require that the provider have
16 insurance;

17 (5) if the need is to protect consumers against
18 potential damages by transient providers, the likely
19 recommendation will be to require that providers register
20 their businesses with the Secretary of State;

21 (6) if the need is to protect consumers against a
22 shortfall or imbalance of knowledge about the goods or
23 services relative to the providers' knowledge, the likely
24 recommendation will be to enact government certification;
25 and

26 (7) if the need is to address a systematic information

1 shortfall such that a reasonable consumer is unable to
2 distinguish between the quality of providers, there is an
3 absence of institutions that provide adequate guidance to
4 the consumer, and the consumer's inability to distinguish
5 between providers and the lack of adequate guidance allows
6 for undue risk of present, significant, and substantiated
7 harms, the likely recommendation will be to enact an
8 occupational license.

9 (e) If a lawful occupation is subject to a health
10 profession regulated by the Department of Financial and
11 Professional Regulation, then the analysis under subsection
12 (d) of this Section shall be made using the least restrictive
13 method of regulation.

14 (f) In developing recommendations under this Section, the
15 committee shall review any report issued to the General
16 Assembly, if applicable, and consider any findings or
17 recommendations of such report related to the occupational
18 regulations under review.

19 (g) If the committee finds that it is necessary to change
20 occupational regulations, the committee shall recommend the
21 least restrictive regulation consistent with the public
22 interest and the policies in this Section and Section 15.