STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1678

By: Bergstrom

AS INTRODUCED

An Act relating to occupational regulations; establishing the state policy for the regulation of occupations; defining terms; specifying criteria for government regulation to increase opportunities, promote competition, encourage innovation, and protect consumers; establishing canons of statutory interpretation; directing certain sunset review by certain staff; establishing presumptions and means to rebut certain presumptions; setting certain guidelines for staff on certain recommendations; directing certain report and findings; authorizing certain comments on administrative rulemaking; requiring certain rules be adopted by Legislature for certain purpose; construing limitations; setting date for certain review of occupational licenses; mandating certain percentage of licenses be reviewed; establishing review criteria; directing sunset 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:

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

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

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

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

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

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

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

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

1. “Government certification” means a voluntary program in which the state grants nontransferable recognition to an individual who meets personal qualifications established by the Legislature.
Upon receiving initial and continuing approval from the government, the individual may use “government certified” or “state certified” as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title “government certified” or “state certified”. In this act, “government certification” is not intended to be synonymous with “occupational license” or to reflect credentials, such as those used for medical board certification or held by a certified public accountant, which are prerequisites to working lawfully in an occupation.

2. “Government registration” means a requirement to give notice to the government that may include the individual’s name and address, the individual’s agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. “Government registration” does not include personal qualifications and is not transferable but it may require a bond or insurance. Upon the government’s receipt of notice, the individual may use “government registered” as a designated title. A non-registered individual may not perform the occupation for compensation or use “government registered” as a designated title. In this chapter, “government registration” is not intended to be synonymous with “occupational license” or to reflect credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.
3. “Lawful occupation” means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

4. “Least restrictive regulation” means, from least to most restrictive,
   a. market competition,
   b. third-party or consumer-created ratings and reviews,
   c. private certification,
   d. voluntary bonding or insurance,
   e. specific private civil cause of action to remedy consumer harm,
   f. deceptive trade practice act,
   g. mandatory disclosure of attributes of the specific good or service,
   h. regulation of the process of providing the specific good or service,
   i. regulation of the facility where the specific good or service is sold,
   j. inspection,
   k. bonding,
   l. insurance,
   m. government registration,
   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.
8. “Private certification” means a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications established by the private organization. The individual may use a designated title of “certified” in conjunction with the private organization’s name, as permitted by the private organization.

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

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

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

B. Sunrise reviews.

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

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

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

4. The staff’s analysis will employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in subsections 1 through 4 of Section 3.
of this act. The staff will give added consideration to the use of
private certification programs that allow a provider to give
consumers information about the provider’s knowledge, skills and
association with a private certification organization.

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

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

   a. contractual disputes, including pricing disputes,
      staff may recommend enacting a specific civil cause of
      action in small-claims court or district court to
      remedy consumer harm. This cause of action may
      provide for reimbursement of the attorney’s fees or
      court costs, if a consumer’s claim is successful,
   b. fraud, staff may recommend strengthening powers under
      the state’s deceptive trade practices acts or
      requiring disclosures that will reduce misleading
      attributes of the specific good or service,
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,
j. a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license, and

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

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

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

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

   a. the type of regulation, if any,
b. the requisite personal qualifications, if any, and
c. the scope of practice, if applicable.

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

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

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

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

A. Sunset analysis of existing occupational licenses.

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

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

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

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

C. Sunset reports.

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

a. repeals the occupational licenses,

b. converts the occupational licenses to less restrictive regulations in Section 4 of this act,

c. instructs the relevant licensing board or agency to promulgate revised regulations reflecting the Legislature’s decision to use a less restrictive alternatives to occupational licenses,

d. changes the requisite personal qualifications of an occupational license,

e. redefines the scope of practice in an occupational license, or

f. reflects other recommendations to the Legislature.

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

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

SECTION 6.    NEW LAW    A new section of law to be codified in the Oklahoma Statutes as Section 802.5 of Title 40, unless there is created a duplication in numbering, reads as follows:
Interpretation of Statutes and Rules. In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy or practice, the following canons of interpretation are to govern, unless the regulation is unambiguous:

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

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

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

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