



2017 ASSEMBLY BILL 369

June 2, 2017 - Introduced by Representatives HUTTON, KOYENGA, NYGREN, HORLACHER, FELZKOWSKI, SANFELIPPO, GANNON, ROHRKASTE, KULP, BRANDTJEN, RODRIGUEZ, DUCHOW, SPIROS, MURPHY, MACCO, TUSLER, THIESFELDT, NEYLON, R. BROOKS, TITTL and EDMING, cosponsored by Senators KAPENGA, DARLING, TIFFANY, NASS, STROEBEL and WANGGAARD. Referred to Committee on Regulatory Licensing Reform.

- 1 **AN ACT to create** 13.0963, 15.407 (19) and 440.023 of the statutes; **relating to:**
2 review of and reports concerning occupational licenses.

Analysis by the Legislative Reference Bureau

This bill creates the Occupational License Review Council. The council is created in the Department of Safety and Professional Services and consists of the following members:

1. Four members appointed by the governor to serve at the pleasure of the governor.
2. Two members of the senate appointed by the senate majority leader.
3. Two members of the assembly appointed by the speaker of the assembly.
4. The secretary of safety and professional services or his or her designee, who serves as the council's chair. The secretary or designee is a nonvoting member, except that he or she may vote in the case of a tie.

The council is required to submit a report by December 31, 2018, to the governor, the chief of the Legislative Reference Bureau, and the legislature that includes the council's recommendations for the elimination of occupational licenses in this state, or the modification of laws and rules governing occupational licenses, and the reduction or elimination of occupational license continuing and other education requirements. The council's recommendations for the elimination of occupational licenses must take into account a number of considerations, including any statement or analysis provided by the agency or board administering an occupational license and including an evaluation of whether the unregulated practice of the profession, occupation, or trade can clearly harm or endanger the health, safety, or welfare of the public.

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Under the bill, the LRB is required to prepare legislation based on the council's recommendations, and the proposed legislation is required to be introduced without change and referred to the appropriate standing committee of each house. The legislature must take final action on the proposed legislation no later than June 30, 2019. The bill provides that a new council convenes every ten years to repeat the process described above.

Under the bill, for purposes of the council's functions, the term "occupational license" means any license, permit, certification, registration, or other approval granted by DSPS or a board under DSPS and any other license, permit, certification, registration, or approval granted to a person by this state in order that the person may engage in a profession, occupation, or trade or use one or more titles in association with his or her profession, occupation, or trade.

This bill also requires the Department of Administration to prepare a report containing certain information on any bill that is introduced in the legislature that requires an individual to obtain a license in order to engage in a particular profession or occupation or that requires that a license be obtained in order for a particular type of business to be owned or operated. The LRB must submit any bill to which the requirement applies to DOA, and the report must be distributed before certain actions are taken on the bill in the legislature.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 13.0963 of the statutes is created to read:

2 **13.0963 Review of bills creating occupational licenses. (1) DEFINITION.**

3 In subs. (2) and (3), "license" includes any permit, certificate, approval, registration,
4 charter, or similar form of permission.

5 **(2) REPORT ON BILLS CREATING OCCUPATIONAL LICENSES.** (a) If any bill that is
6 introduced in either house of the legislature creates a requirement that an individual
7 obtain a license in order to engage in a particular profession or occupation or a
8 requirement that a license be obtained in order for a particular type of business to
9 be owned or operated, the department of administration shall prepare and issue an
10 occupational license report on the bill within 30 business days after it is introduced.
11 The department shall request information from any individual or business that the

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1 department considers likely to be affected by the proposed licensure requirement
2 and shall request a statement or analysis from the agency that would be required to
3 administer the licensure requirement. Individuals, businesses, and agencies shall
4 comply with requests by the department for information that is reasonably
5 necessary for the department to prepare the report. To the greatest extent possible,
6 reports under this section shall be based on the information obtained by the
7 department from individuals, businesses, and agencies under this paragraph.

8 (b) A bill that requires a report by the department of administration under this
9 section shall have that requirement noted on its jacket when the jacket is prepared.
10 When a bill that requires a report under this section is introduced, the legislative
11 reference bureau shall submit a copy of the bill to the department of administration.

12 (c) The report prepared under this section shall be printed as an appendix to
13 the applicable bill and shall be distributed in the same manner as amendments. The
14 report shall be distributed before any vote is taken on the bill by either house of the
15 legislature if the bill is not referred to a standing committee, or before any public
16 hearing is held before any standing committee or, if no public hearing is held, before
17 any vote is taken by the committee. The department of administration shall also
18 publish the report on its Internet site.

19 **(3) FINDINGS TO BE CONTAINED IN THE REPORT.** The department of administration
20 shall include all of the following in a report prepared under sub. (2):

21 (a) An evaluation of whether the unregulated practice of the profession,
22 occupation, or business can clearly harm or endanger the health, safety, or welfare
23 of the public, and whether the potential for the harm is recognizable and not remote
24 or speculative.

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1 (b) An evaluation of whether the public can reasonably be expected to benefit
2 from the requirement for the license.

3 (c) An evaluation of what the least restrictive regulation is that will effectively
4 protect the public, as determined under sub. (4).

5 (d) An analysis of licensure requirements for that profession, occupation, or
6 business in other states, including educational and reciprocity requirements.

7 (e) An estimate of the number of individuals or businesses that would be
8 affected by the requirement.

9 (f) An estimate of the total additional financial burden that will be imposed on
10 an individual or business as a result of the licensure requirement, including
11 education or training costs, examination fees, private credential fees, credential fees
12 imposed by the agency, and other costs that the individual or business will have to
13 incur in order to obtain the license.

14 (g) Any statement or analysis from the agency that would administer the
15 licensure requirement.

16 **(4) DETERMINATION OF LEAST RESTRICTIVE REGULATION.** (a) In this subsection:

17 1. "Certification" means a voluntary program to which all of the following
18 apply:

19 a. A private organization or the state grants a nontransferable recognition to
20 an individual who meets certain personal qualifications established by the private
21 organization or by law.

22 b. Upon approval, the individual may use "certified" as a designated title.

23 c. A noncertified individual may perform the occupation for compensation but
24 may not use the title "certified."

25 2. "Occupational license" means a program to which all of the following apply:

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1 a. The state grants a nontransferable authorization to an individual who meets
2 certain personal qualifications established by law in order to perform an occupation
3 for compensation.

4 b. It is unlawful for an individual who does not possess the requisite
5 authorization to perform the occupation for compensation.

6 3. “Personal qualifications” means criteria related to an individual’s personal
7 background and characteristics, including completion of an approved educational
8 program, satisfactory performance on an examination, work experience, other
9 evidence of attainment of requisite skills or knowledge, moral standing, criminal
10 history, and completion of continuing education.

11 4. “Registration” means a program to which all of the following apply:

12 a. It requires an individual to provide notice to the state that may include the
13 individual’s name and address, the individual’s agent for service of process, the
14 location of the activity to be performed, and a description of the service the individual
15 provides.

16 b. It does not require certain personal qualifications to be satisfied, but may
17 require a bond or insurance.

18 c. Upon registering, the individual may use “registered” as a designated title.

19 d. A nonregistered individual may not perform the occupation for
20 compensation or use “registered” as a designated title.

21 (b) For purposes of sub. (3) (c), “least restrictive regulation” means one of the
22 following, from least restrictive to most restrictive:

23 1. Market competition.

24 2. Third-party or consumer-created ratings and reviews.

25 3. Private certification.

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- 1 4. A specific private civil cause of action to remedy consumer harm.
- 2 5. The designation of an unfair trade practice or method of competition in
- 3 business.
- 4 6. The regulation of the process of providing the specific goods or services to
- 5 consumers.
- 6 7. An inspection requirement.
- 7 8. A bonding or insurance requirement.
- 8 9. A registration requirement.
- 9 10. A governmental certification requirement.
- 10 11. An occupational license requirement.

11 **SECTION 2.** 15.407 (19) of the statutes is created to read:

12 **15.407 (19) OCCUPATIONAL LICENSE REVIEW COUNCIL.** There is created in the
13 department of safety and professional services an occupational license review
14 council. The council shall consist of the following members:

15 (a) Four members appointed by the governor to serve at the pleasure of the
16 governor.

17 (b) Two members of the senate appointed by the senate majority leader.

18 (c) Two members of the assembly appointed by the speaker of the assembly.

19 (d) The secretary of safety and professional services or his or her designee, who
20 shall serve as chair of the council. The secretary or the secretary's designee shall
21 serve as a nonvoting member, except that he or she may vote in the case of a tie.

22 (e) The members under pars. (a) to (c) shall be appointed no later than January
23 31, 2018, and no later than January 31 of every 10th year thereafter. The secretary
24 of safety and professional services shall convene the council no later than February
25 5, 2018, and no later than the first Monday in February every 10th year thereafter.

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1 **SECTION 3.** 440.023 of the statutes is created to read:

2 **440.023 Occupational license review council. (1) DEFINITIONS.** In this
3 section:

4 (a) "Council" means the occupational license review council.

5 (b) "Occupational license" means any of the following:

6 1. A license, permit, certification, registration, or other approval granted under
7 s. 167.10 (6m) or under ch. 101 or 145 or under chs. 440 to 480.

8 2. A license, permit, certification, registration, or other approval not included
9 under subd. 1., if granted to a person by this state in order that the person may
10 engage in a profession, occupation, or trade in this state or in order that the person
11 may use one or more titles in association with his or her profession, occupation, or
12 trade.

13 **(2) REPORT.** No later than December 31, 2018, and no later than December 31
14 of every 10th year thereafter, the council shall submit a report to the governor, the
15 chief of the legislative reference bureau, and the chief clerk of each house of the
16 legislature for distribution to the legislature under s. 13.172 (2). In preparing the
17 report, the council shall take into account the impact the council estimates its
18 recommendations will have on state revenues and expenditures. The report shall
19 include all of the following:

20 (a) The council's recommendations for the elimination of occupational licenses
21 or the modification of laws and rules governing occupational licenses based on all of
22 the following:

23 1. The council's evaluation of whether the unregulated practice of the
24 profession, occupation, or trade can clearly harm or endanger the health, safety, or

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1 welfare of the public, and whether the potential for the harm is recognizable and not
2 remote or speculative.

3 2. The council's evaluation of whether the public reasonably benefits from the
4 occupational license requirement.

5 3. The council's evaluation of whether the public can be effectively protected
6 by any means other than requiring an occupational license and whether the
7 occupational license is the least restrictive regulation, as defined in s. 13.0963 (4) (b),
8 that will effectively protect the public.

9 4. The council's analysis of licensure requirements for the regulated profession,
10 occupation, or trade in other states, including educational and reciprocity
11 requirements.

12 5. The council's estimate of the number of individuals or entities that are
13 affected by the occupational license requirement.

14 6. The council's estimate of the total financial burden imposed on individuals
15 or entities as a result of the occupational licensure requirement, including education
16 or training costs, examination fees, private credential fees, occupational license fees
17 imposed by the state, and other costs individuals or entities incur in order to obtain
18 the required occupational license.

19 7. Any statement or analysis provided by the agency or board administering
20 the occupation license.

21 (b) The council's recommendations for the reduction or elimination of
22 continuing and other education requirements for occupational licenses not
23 recommended for elimination under par. (a).

24 **(3) LEGISLATIVE ACTION.** (a) The legislative reference bureau shall prepare
25 legislation that gives effect to the council's recommendations under sub. (2).

