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To: Members of the Study Committee on Occupational Licenses

From: Kyle Koenen, Policy Director at the Wisconsin Institute for Law & Liberty & Michael Jahr, Vice President of Communications & Government Relations at the Badger Institute

Date: November 14, 2022

Re: Bill Drafts Under Consideration at November 15th Meeting

First and foremost, we would like to thank the Chairman and committee members for giving both of our organizations the opportunity to present at the September 27th meeting. We appreciated being able to share our perspectives on these important issues. The purpose of this communication is to offer some thoughts and suggestions on bill drafts under consideration by the committee. For the sake of brevity, we have limited our comments to a selected number of bills under consideration by the committee.

Systems of Review

We applaud the committee for considering formalized systems of review for occupational licenses. However, we would suggest some changes to the bills as structured. First, while a Joint Legislative Committee that is dedicated to tackling occupational licensing issues is a worthwhile idea to consider, we have concerns with the structure as proposed in both LRB-0470 and LRB-0466. Our primary concern is that both DSPS and DATCP are tasked with enforcing occupational licensing regulations, so their interests may not be aligned with reducing barriers to people trying to enter the workforce. If a legislative committee is going to be considered, it should be composed of legislative representatives, and its call should be the consideration of final sunrise and sunset review reports.

LRB-0470/P1 Sunrise Review

LRB-0470 would create a sunrise review process for occupational licenses in Wisconsin. This bill is a prudent step toward ensuring legislators are fully informed before enacting new regulatory hurdles on working Wisconsinites. The draft language is a good start, but we have a few questions for the committee to consider.

1. *Who would conduct these reviews?*

Under the bill draft, it appears that the hybrid committee would be tasked with preparing the reports. To our knowledge, there currently is no analogous duty assigned to a legislative

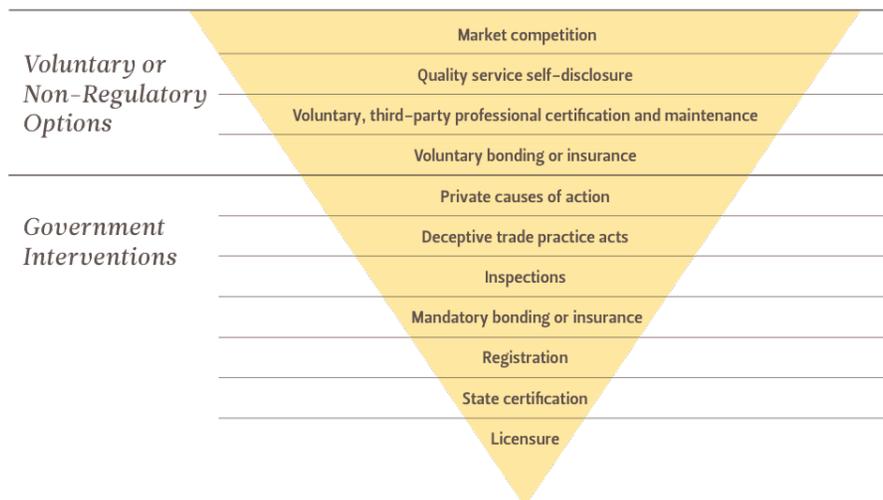
committee and we question how this would work in practice. Would it be the chairman’s staff preparing it, or perhaps a legislative service agency?

We suggest **clearly defining who is tasked with gathering the information and preparing the report**, whether it’s a legislative service agency (Legislative Audit Bureau, Legislative Council, Legislative Reference Bureau) or a newly formed entity. One potential solution would be the creation of a Director of Licensing Reviews position that would be appointed by the Joint Committee on Legislative Organization. This position would be tasked with preparing final reports, but instead of having their own workforce, could work with other legislative service agencies to prepare aspects of the report. For example, the Legislative Reference Bureau could assist with preparing information on how neighboring states regulate a profession. Whomever is ultimately tasked with preparing this report should be independent of potential biases or political pressures.

2. *What is considered least restrictive form of regulation to protect public health, safety and welfare?*

If the committee ultimately tasks an independent entity with preparing sunrise review reports, the set of criteria they should follow needs to be more clearly defined. Page 4, Lines 18 through 20 of the draft legislation requires the report to consider the least restrictive means of protecting public health, safety and welfare. However, “least restrictive” is not defined. Without further definition, the determination of what form of regulation is least restrictive will be left solely to the person preparing the report.

To ensure the legislative intent is met, **we suggest adopting language that more closely reflects the structure of the inverted pyramid below**, where the top of the pyramid reflects the least restrictive means of regulating a profession and the bottom reflects the most restrictive. (Source: Insititute for Justice)



3. *What is considered evidence of physical, emotional or financial harm?*

The draft language references “a description of the problem to be solved by regulation and the reasons why regulation is necessary, including any physical, emotional, or financial harm to

clients that MAY (emphasis added) occur from a failure to provide service at an appropriate standard...”

We recommend strengthening this language by removing the words “may occur” and instead requiring the report to include “documented evidence of substantial and systematic harm that is not remote or speculative.”

4. Why are the standards of sunrise and sunset review different?

To the extent possible, the analyses of both the sunrise and sunset review should be harmonized. To achieve this, the sunrise bill should include the following analyses from the sunset bill:

- The impact on market competition, consumer choice and the cost of services.
- Whether the potential regulatory scheme duplicates activities of other entities or the private sector.
- Whether the proposed regulatory scheme would impede low or moderate-income individuals from entering the profession.

LRB-0466/P1 Sunset Review

Under LRB-0466, the Joint Review Committee on Occupational Credentials would review each currently credentialed occupation on an 8-year rotational basis. While the schedule of review by the committee seems tenable, **we strongly recommend that the review should be prepared by an independent third party that has no vested interest** in whether a profession’s regulatory framework should change. Currently, the bill requires the department or credentialing board responsible for issuing the credential to present the information that would be used to for the committee to make a determination. In our opinion, this presents a major conflict of interest. Credentialing boards are mostly comprised of licensees in the field and granting them the authority to present the facts is problematic.

Similar to our comments on LRB-0470, **we would suggest defining what is considered the “least restrictive form of regulation.”**

LRB-0465/P2 Universal License Recognition

LRB-0465 creates an expedited process for out-of-state licensees to become licensed in Wisconsin. Generally speaking, the bill is relatively effective, but we’d offer a few suggestions to improve the language.

First, the bill allows a licensee from another state that has a substantially equivalent scope of practice to become licensed in Wisconsin, but only if they have practiced for 3 of the last 5 years. This requirement is unnecessary and arbitrary in nature. A person who completed the requirements to practice in another state should not have to jump through additional hurdles upon moving to Wisconsin. **We strongly recommend that this requirement be removed,** however if it’s retained, **we suggest that the number of years be substantially reduced.**

The bill also allows a licensee to be granted a reciprocal credential if the requirements for gaining their credential were substantially equivalent. With both of these provisions the term “substantial equivalency” is referenced. The bill gives agencies a large amount of discretion to determine what constitutes “substantial equivalency.” Without further clarification, agencies could come to drastically different conclusions about what that means. We suggest that the following measures be considered by the committee:

1. The legislation could also provide a cause of action for applicants that are denied. Under a cause of action, the applicant could appeal to a circuit court review to review the agency determination.
2. An interpretive rule of thumb or statement of policy could be added to the legislation to clarify legislative intent. For example, “the agency shall liberally construe the phrase substantially equivalent in favor of finding reciprocity.”
3. The agency could be required to promulgate rules to clarify what constitutes substantial equivalency for each license category. It should be clarified that the promulgation of these rules should not impede a rapid implementation of the law.

LRB-0365/P2 Data in a Biennial Report

This bill would provide valuable information to policymakers about the agency’s performance. However, we suggest a slight change in the language that would create even greater transparency. Currently, the bill only requires the agency to disclose metrics for the agency as a whole or in specific categories of licenses. **We suggest that the bill be broadened to require disclosure of the processing time of each individual credential type, as well as applications received.** We also recommend adding a requirement that the report be posted prominently on the DSPS website.

Thank you to the committee for its consideration of these comments. While we did not offer comments on all of the bills, we are generally supportive of the other concepts that have been presented to the committee. If you have any questions or concerns, please feel free to reach out to either of us.

Kyle Koenen
Policy Director
Wisconsin Institute for Law & Liberty
Kyle@will-law.org

Michael Jahr
Vice President of Communications and Government Affairs
Badger Institute
Michael@badgerinstitute.org