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**HOUSE BILL 1770**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Representative Walsh

AN ACT Relating to occupational board reform; and adding a new chapter to Title 18 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  Sections 1 through 5 of this act may be known and cited as the occupational board reform act.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Government certification" means a nontransferable recognition granted to an individual by an occupational board through a voluntary program in which the individual meets personal qualifications established by the legislature. Government certification allows the certified individual to use a designated title.

(b) Except that in analyzing health professions subject to chapter 18.120 RCW, "certification" has the same meaning as in RCW 18.120.020.

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

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

(a) Market competition;

(b) Third-party or consumer-created ratings and reviews;

(c) Private certification;

(d) Specific private civil cause of action to remedy consumer harm;

(e) Unfair methods of competition and unfair or deceptive acts or practices under chapter 19.86 RCW;

(f) Mandatory disclosure of attributes of the specific goods or services;

(g) Regulation of the process of providing the specific goods or services to consumers;

(h) Inspection;

(i) Bonding or insurance;

(j) Registration;

(k) Government certification; and

(l) Occupational license.

(4) "Occupational board" means a board, commission, department, or other entity created by state law that regulates providers through occupational regulations.

(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 and that is required in order to legally perform the lawful occupation for compensation.

(6)(a) "Occupational regulation" means a statute, rule, practice, or policy requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation, including any government certification, registration, and occupational license.

(b) "Occupational regulation" does not include:

(i) Business licensure, facility licensure, building permit requirements, or zoning and land-use regulation except to the extent that the same state law that requires a business license, a facility license, a building permit, or zoning and land-use regulation also regulates an individual's personal qualifications to perform a lawful occupation; or

(ii) An occupational license administered by the supreme court.

(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, moral standing, criminal history, and completion of continuing education.

(8) "Private certification" means a nontransferable recognition granted to an individual by a private organization through a voluntary program in which the individual meets personal qualifications established by the private organization.

(9) "Provider" means an individual provider of goods or services engaged in a lawful occupation.

(10)(a) "Registration" means a nontransferable registration granted to an individual under which (i) the individual is required 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; (ii) upon receipt of the notice by the government, the individual may use the term registered as a designated title to engage in a lawful occupation; and (iii) such notice is required to engage in the lawful occupation for compensation and is required in order to use the term registered as a designated title to engage in the lawful occupation.

(b) Registration may require a bond or insurance.

(c) Except that in analyzing health professions subject to chapter 18.120 RCW, "registration" has the same meaning as in RCW 18.120.020.

(11) Except as provided in this section, when the terms certification, certified, registration, or registered are used outside of this chapter to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of this chapter as requiring an individual to meet the requirements for an occupational license.

NEW SECTION. **Sec.**  It is the policy of the state of Washington to:

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

(2) Use the least restrictive regulation necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and that is consistent with the public interest;

(3) Enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

(4) Construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

(5) Use the least restrictive method of regulation as set out in RCW 18.120.010 for lawful occupations subject to chapter 18.120 RCW; and

(6) Provide ongoing legislative review of occupation regulations.

NEW SECTION. **Sec.**  (1) The fundamental right of an individual to pursue an occupation includes the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications.

(2)(a) An individual who has 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 from that occupational board. The preliminary application may be submitted at any time, including prior to obtaining required education or paying any fee, other than the fee for the preliminary application under subsection (7) of this section.

(b) The individual may include with the preliminary application additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(3) Upon receipt of a preliminary application under subsection (2) of this section and a fee if required under subsection (7) of this section, the appropriate occupational board shall make a determination of whether the individual's criminal conviction would disqualify the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board.

(4) The occupational board shall issue its determination in writing within ninety days after receiving a preliminary application under subsection (2) of this section. The determination shall include findings of fact and conclusions of law. If the occupational board determines that the individual's criminal conviction would disqualify the individual, the occupational board may advise the individual of any action the individual may take to remedy the disqualification. If the occupational board finds that the individual has been convicted of a subsequent criminal conviction, the occupational board may rescind a determination upon finding that the subsequent criminal conviction would be disqualifying under subsection (3) of this section.

(5) The individual may appeal the determination of the occupational board. The appeal shall be in accordance with chapter 34.05 RCW.

(6) An individual shall not file another preliminary application under this section with the same occupational board within two years after the final decision on the previous preliminary application, except that if the individual has taken action to remedy the disqualification as advised by the occupational board, the individual may file another preliminary application under this section with the same occupational board six months after the final decision on the previous preliminary application.

(7) An occupational board may charge a fee not to exceed one hundred dollars for each preliminary application filed pursuant to this section. The fee is intended to offset the administrative costs incurred under this section.

NEW SECTION. **Sec.**  (1) Beginning in 2020, each standing committee of the legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the chief clerk of the house of representatives, the secretary of the senate, and each member of the house of representatives and senate by August 31st of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

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

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

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

(c) The number of members of the occupational board and how the members are appointed;

(d) The qualifications for membership on the occupational board;

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

(j) A comparison of whether and how other states regulate the occupation.

(4)(a) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 3 of this act and considering the following recommended courses of action for meeting such policies:

(i) If the need is to protect consumers against fraud, the recommended course of action should be to strengthen powers under chapter 19.86 RCW, or require disclosures that will reduce misleading attributes of the specific goods or services;

(ii) If the need is to protect consumers against unclean facilities or to promote general health and safety, the recommended course of action should be to require periodic inspections of such facilities;

(iii) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the recommended course of action should be to require that providers be bonded;

(iv) If the need is to protect a person who is not party to a contract between the provider and consumer, the recommended course of action should be to require that the provider have insurance;

(v) If the need is to protect consumers against potential damages by transient providers, the recommended course of action should be to require that providers register their businesses with the state;

(vi) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the recommended course of action should be to enact government certification; and

(vii) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the recommended course of action should be to enact an occupational license.

(b) If education, training, or experience is a qualification in the occupational regulation under review, the committee shall include in its report a review and analysis of the hours or other amount of education, training, or experience required to ensure such requirements are as least restrictive as necessary to protect the public's health, safety, and welfare.

(5) If a lawful occupation is subject to chapter 18.120 RCW, the analysis under subsection (4)(a) of this section shall be made using the least restrictive method of regulation as set out in RCW 18.120.010.

(6) In developing recommendations under this section, the committee shall review any report issued to the legislature pursuant to chapter 18.120 RCW, if applicable, and consider any findings or recommendations of such report related to the occupational regulations under review.

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 3 of this act.

(8) For purposes of performing the committee's duties under this section, committee members may participate in a review and analysis of occupational regulations, attend meetings, and vote, electronically or in person, on any substantive issue put to the committee by the chair of the committee.

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 18 RCW.

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