
HOUSE BILL 1770

State of Washington

66th Legislature

2019 Regular Session

By Representative Walsh

Read first time 01/30/19. Referred to Committee on Consumer Protection & Business.

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

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

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

6 NEW SECTION. **Sec. 2.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

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

15 (b) Except that in analyzing health professions subject to
16 chapter 18.120 RCW, "certification" has the same meaning as in RCW
17 18.120.020.

18 (2) "Lawful occupation" means a course of conduct, a pursuit, or
19 a profession that includes the sale of goods or services that are not
20 themselves illegal to sell irrespective of whether the individual

1 selling the goods or services is subject to an occupational
2 regulation.

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

7 (a) Market competition;

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

9 (c) Private certification;

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

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

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

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

18 (h) Inspection;

19 (i) Bonding or insurance;

20 (j) Registration;

21 (k) Government certification; and

22 (l) Occupational license.

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

26 (5) "Occupational license" means a nontransferable authorization
27 in law for an individual to perform exclusively a lawful occupation
28 for compensation based on meeting personal qualifications established
29 by the legislature and that is required in order to legally perform
30 the lawful occupation for compensation.

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

36 (b) "Occupational regulation" does not include:

37 (i) Business licensure, facility licensure, building permit
38 requirements, or zoning and land-use regulation except to the extent
39 that the same state law that requires a business license, a facility
40 license, a building permit, or zoning and land-use regulation also

1 regulates an individual's personal qualifications to perform a lawful
2 occupation; or

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

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

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

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

16 (10)(a) "Registration" means a nontransferable registration
17 granted to an individual under which (i) the individual is required
18 to give notice to the government that may include the individual's
19 name and address, the individual's agent for service of process, the
20 location of the activity to be performed, and a description of the
21 service the individual provides; (ii) upon receipt of the notice by
22 the government, the individual may use the term registered as a
23 designated title to engage in a lawful occupation; and (iii) such
24 notice is required to engage in the lawful occupation for
25 compensation and is required in order to use the term registered as a
26 designated title to engage in the lawful occupation.

27 (b) Registration may require a bond or insurance.

28 (c) Except that in analyzing health professions subject to
29 chapter 18.120 RCW, "registration" has the same meaning as in RCW
30 18.120.020.

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

38 NEW SECTION. **Sec. 3.** It is the policy of the state of
39 Washington to:

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

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

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

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

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

16 (6) Provide ongoing legislative review of occupation regulations.

17 NEW SECTION. **Sec. 4.** (1) The fundamental right of an individual
18 to pursue an occupation includes the right of an individual with a
19 criminal history to obtain an occupational license, government
20 certification, or state recognition of the individual's personal
21 qualifications.

22 (2)(a) An individual who has a criminal conviction may submit to
23 the appropriate occupational board a preliminary application for an
24 occupational license, government certification, or state recognition
25 of the individual's personal qualifications for a determination as to
26 whether the individual's criminal conviction would disqualify the
27 individual from obtaining the occupational license, government
28 certification, or state recognition of the individual's personal
29 qualifications from that occupational board. The preliminary
30 application may be submitted at any time, including prior to
31 obtaining required education or paying any fee, other than the fee
32 for the preliminary application under subsection (7) of this section.

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

38 (3) Upon receipt of a preliminary application under subsection
39 (2) of this section and a fee if required under subsection (7) of

1 this section, the appropriate occupational board shall make a
2 determination of whether the individual's criminal conviction would
3 disqualify the individual from obtaining an occupational license,
4 government certification, or state recognition of the individual's
5 personal qualifications from that occupational board.

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

18 (5) The individual may appeal the determination of the
19 occupational board. The appeal shall be in accordance with chapter
20 34.05 RCW.

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

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

33 NEW SECTION. **Sec. 5.** (1) Beginning in 2020, each standing
34 committee of the legislature shall annually review and analyze
35 approximately twenty percent of the occupational regulations within
36 the jurisdiction of the committee and prepare and submit an annual
37 report electronically to the chief clerk of the house of
38 representatives, the secretary of the senate, and each member of the
39 house of representatives and senate by August 31st of each year as

1 provided in this section. Each committee shall complete this process
2 for all occupational regulations within its jurisdiction within five
3 years and every five years thereafter. Each report shall include the
4 committee's recommendations regarding whether the occupational
5 regulations should be terminated, continued, or modified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (5) If a lawful occupation is subject to chapter 18.120 RCW, the
38 analysis under subsection (4)(a) of this section shall be made using
39 the least restrictive method of regulation as set out in RCW
40 18.120.010.

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

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

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

15 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
16 constitute a new chapter in Title 18 RCW.

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