WEST VIRGINIA CODE: §30-1A-3

§30-1A-3. Analysis and evaluation of application.

(a) The Joint Standing Committee on Government Organization shall refer the completed application of the professional or occupational group or organization to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsections (c) through subsection (k) of this section. The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit a report, and such supporting materials as may be required, to the Joint Standing Committee on Government Organization, as set out in this section.

(c) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall determine if the proposed regulation meets the state's policy as set forth in §30-1A-1(b) of this code of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms.

(d) The Performance Evaluation and Research Division of the Office of the Legislative Auditor's analysis in subsection (c) of this section will use a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in §30-1A-1a(1) through §30-1A-1a(4) of this code. The Joint Standing Committee on Government Organization will consider 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.

(e) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may rebut the presumption in subsection (d) of this section if it finds both credible empirical evidence of present, significant, and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committee may recommend the least restrictive government regulation to address the harm, as listed in §30-1A-1a(5) through §30-1A-1a(16) of this code.

(f) The Performance Evaluation and Research Division of the Office of the Legislative Auditor will use the following guidelines to form its recommendation in subsection (j) or subsection (k) of this section. If the harm arises from:

(1) Contractual disputes, including pricing disputes, the office may recommend enacting a specific civil cause of action in small-claims court or circuit court to remedy consumer harm. This cause of action may provide for reimbursement of attorney's fees or court costs, if a consumer's claim is successful;

WV Legislature

(2) Fraud, the office 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 or other relevant recommendations;

(3) General health and safety risks, the office may recommend enacting a regulation on the related process or requiring a facility license;

(4) A lack of protection for a person who is not a party to a contract between providers and consumers, the office may recommend requiring the provider have insurance;

(5) A shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), the office may recommend enacting government certification;

(6) An inability to qualify providers of new or highly specialized medical services for reimbursement by the state, the office may recommend enacting a specialty certification solely for medical reimbursement;

(7) 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, the office may recommend enacting an occupational license; and

(8) The need to address multiple types of harm, the office 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.

(g) The Performance Evaluation and Research Division and other relevant divisions of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section shall include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The Performance Evaluation and Research Division of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section should include comparisons of 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.

(i) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may also request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor market economics, or other factors, including costs and benefits, a professional who works in the profession, a board member who regulates the profession, and any other interested party.

(j) For an application proposing the regulation of an unregulated profession or occupation,

WV Legislature

the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report shall include evaluation, analysis, and findings as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and any evidence of present, significant, and substantiated harms to consumers in the state;

(2) The requisite personal qualifications, if any;

(3) The scope of practice, if applicable;

(4) If regulation is required to address evidence of harm to consumers in the state, the least restrictive regulation of the occupation or profession; and

(5) Whether the professional or occupational group or organization should be regulated as proposed in the application.

(k) For an application proposing the establishment, revision, or expansion of the scope of practice of a regulated profession or occupation, the report shall include the evaluation, analysis, and findings as set forth in subsection (j) of this section inasmuch as applicable, and a clear recommendation as to whether the scope of practice should be established, revised, or expanded as proposed in the application.

(l) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit its report to the Joint Standing Committee on Government Organization no later than nine months after receiving the application for analysis.

WV Legislature