WEST VIRGINIA CODE CHAPTER 30 ARTICLE 1A

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§30-1A-1. Legislative findings; policy.

(a) The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation and analyzing existing occupational regulations will better enable it to evaluate the need for the regulation and to determine the least restrictive regulation consistent with public health and safety.

(b) For occupational regulations and the boards of this state, it is the policy of this state that:

(1) The right of an individual to pursue a lawful occupation is a fundamental right;

(2) Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety; and

(3) Legislative leaders will assign the responsibility to review legislation and laws related to occupational regulations.

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§30-1A-1a. Definitions.

For the purposes of this chapter, the words defined in this section have the meaning given.

"Government certification" means a voluntary, government-granted, and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A noncertified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified". In this chapter, the term "government certification" is not synonymous with "occupational license". It also is not intended to include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

"Government registration" means a requirement 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. "Government registration" does not include personal qualifications and is not transferable but it may require a bond or insurance. Upon the government's receipt of notice, the individual may use "government registered" as a title. A nonregistered individual may not perform the occupation for compensation or use "government registered" as a title. In this chapter, "government registration" is not intended to be synonymous with "occupational license". It also is not intended to include credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.

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

"Least restrictive regulation" means, from least to most restrictive:

(1) Market competition;

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

(3) Private certification;

(4) Voluntary bonding or insurance;

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

(6) Deceptive trade practice act;

(7) Mandatory disclosure of attributes of the specific good or service;

(8) Regulation of the process of providing the specific good or service;

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(9) Regulation of the facility where the specific good or service is sold;

(10) Inspection;

(11) Bonding;

(12) Insurance;

(13) Government registration;

(14) Government certification;

(15) Specialty occupational certification solely for medical reimbursement; and

(16) Occupational license.

“Occupational license” is 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. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

“Occupational regulation” means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes government registration, government certification, and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual’s personal qualifications to perform a lawful occupation.

“Personal qualifications” are criteria related to an individual’s personal background and characteristics. They may include one or more of the following: Completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite knowledge and skills, passing a review of the individual’s criminal record, and completion of continuing education.

“Private certification” is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of “certified” or other title conferred by the private organization.

“Specialty occupational certification solely for medical reimbursement” means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the nonexclusive provision of new or niche medical services based on meeting personal qualifications established by the Legislature. A private health insurance company or other private company may recognize this credential.

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Notwithstanding this specialty certification, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty certification to provide the identified medical services for compensation, but the noncertified individual will not qualify for payment or reimbursement from a government agency.

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§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

(a) The Joint Standing Committee on Government Organization is responsible for facilitating the review of all legislation to enact or modify an occupational regulation to ensure compliance with the policy in §30-1A-1 of this code. The Joint Standing Committee on Government Organization shall refer the review of a proposal for regulation of any unregulated profession or occupation to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) Any professional or occupational group or organization, any individual, or any other interested party that proposes the regulation of any unregulated profession or occupation, or who proposes to establish, revise, or expand the scope of practice of a regulated profession or occupation shall submit an application to the Joint Standing Committee on Government Organization, as set out in this article.

(c) The Joint Standing Committee on Government Organization may only accept an application for regulation of a profession or occupation, or establishment, revision, or expansion of the scope of practice of a regulated profession or occupation, when the party submitting an application files with the committee a statement of support for the proposed regulation that has been signed by at least 10 residents or citizens of the State of West Virginia who are members of the professional or occupational group or organization for which regulation is being sought, or for which establishment, revision, or expansion of the scope of practice of a regulated profession or occupation is being sought.

(d) The completed application shall contain:

(1) A description of the occupation or profession for which regulation is proposed, or for which establishment, revision, or expansion of the scope of practice of a regulated profession or occupation is proposed, including a list of associations, organizations, and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation or establishment, revision, or expansion of the scope of practice is necessary;

(3) The reasons why government certification, government registration, occupational licensure, or other type of regulation is being requested and why that regulatory alternative was chosen over a less restrictive alternative;

(4) A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation or the establishment, revision, or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

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(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in this chapter;

(6) The benefit to the public that would result from the proposed regulation or establishment, revision, or expansion of the scope of practice;

(7) The cost of the proposed regulation or establishment, revision, or expansion of the scope of practice; and

(8) Evidence, if any, of present, significant, and substantiated harms to consumers in the state.

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§30-1A-2a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 203.

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§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;

(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

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

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(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.

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§30-1A-4. Public hearing and committee recommendations.

(a) After receiving the required report, the Joint Standing Committee on Government Organization may conduct public hearings to receive testimony from the public, the Governor or his or her designee, the group, organization, or individual who submitted the proposal for regulation, a professional who works in the field, a board member who regulates the profession, and any other interested party.

(b) The Joint Standing Committee on Government Organization may issue additional findings and recommendations regarding:

(1) The least restrictive regulation of the occupation or profession; and

(2) Whether regulation would result in the creation of a new agency or board or could be implemented more efficiently through an existing agency or board.

(c) The Joint Standing Committee on Government Organization shall provide the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report and its findings and recommendations, if any, to the next regular session of the Legislature.

(d) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall publish its report on its website. The Joint Standing Committee on Government Organization shall also make the report and any additional findings and recommendations publicly available.

(e) Any committee considering legislation to enact or modify an occupational regulation shall receive the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report and the Joint Standing Committee on Government Organization's findings and recommendations as provided for in subsection (b) of this section, if applicable, prior to voting on the legislation.

(f) Nothing in this article shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual.

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§30-1A-5. Review of existing occupational licenses.

(a) Starting on July 1, 2021, the Performance Evaluation and Research Division of the Office of the Legislative Auditor is responsible for annually reviewing those current occupational licenses that the committee chairs select.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall review all occupational licenses within the subsequent eight years and shall repeat such review processes in each eight-year period thereafter.

(c) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall use the criteria set forth in §30-1A-3(c) through §30-1A-3(i) of this code to analyze all existing occupational licenses. The office also may consider research or other credible evidence regarding whether an existing regulation directly helps consumers to avoid present, significant, and recognizable harm.

(d)(1) Starting on July 1, 2022, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall report the findings of its reviews to the Joint Standing Committee on Government Organization. In its report, the Performance Evaluation and Research Division of the Office of the Legislative Auditor may make recommendations to the committee that the Legislature enact new legislation that:

(A) Repeals the occupational licenses;

(B) Converts the occupational licenses to less restrictive regulation as set forth in the definition of "least restrictive regulation" in §30-1A-1a of this code;

(C) Changes the requisite personal qualifications of an occupational license;

(D) Redefines the scope of practice in an occupational license; or

(E) Reflects other recommendations to the Legislature.

(2) The Performance Evaluation and Research Division of the Office of the Legislative Auditor also may recommend that no new legislation is enacted.

(3) Nothing in this article shall be construed to authorize the office to review the means that a private certification organization uses to issue, deny, or revoke a private certification to any individual, or to require a private certification organization to grant or deny private certification to any individual.

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§30-1A-6. Article construction.

(a) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing department or agency.

(b) Notwithstanding the provisions of subsection (a) of this section, the recommendations of the Joint Standing Committee on Government Organization are to be given considerable weight in determining if a profession or occupation should be regulated, or if the scope of practice of a regulated profession or occupation should be established, revised, or expanded.

(c) In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy, or practice, the following interpretations are to govern, unless the regulation is unambiguous:

(1) Occupational regulations should be construed and applied to increase economic opportunities, promote competition, and encourage innovation;

(2) Any ambiguities in occupational regulations should be construed in favor of workers and aspiring workers to work; and

(3) The scope of practice in occupational regulations should be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.

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