

DRAFT: July 22, 2021

RULES OF THE OCCUPATIONAL LICENSING REVIEW SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL

1. Purpose. Act 600 of 2019, the Red Tape Reduction Sunrise and Sunset Act of 2019, tasked the Legislative Council with conducting an annual rotating review of all occupational authorizations in the state with the purpose of determining and implementing the least restrictive form of occupational authorization to protect consumers from significant and substantiated harms to public health and safety.

2. Definitions. As used in these rules:

(a) “Occupational authorization” means a license, government-required certificate, registration, permit, or other form of authorization required by law or rule that is required for an individual to engage in a particular occupation or profession; and

(b) “Occupational entity” means an office, board, commission, department, council, bureau, or other agency of state government having authority to establish or issue an occupational authorization.

3. Review of Occupational Authorizations and Occupational Entities.

(a) **Annual Review.** The Subcommittee shall review each occupational authorization and each occupational entity on an annual rotating basis to determine if the existing occupational authorization or occupational entity, or both, is consistent with the purpose set forth in Section 1 of these rules.

(b) **Groups.**

(1) The occupational authorizations and the occupational entities shall be divided into six (6) groups.

(2) A member of the General Assembly may request in writing to the Legislative Council co-chairs to review an occupational authorization or occupational entity out of the rotating basis. A decision by the Legislative Council co-chairs to approve a request for review out of group rotation will be reported to the Subcommittee at its next regularly scheduled meeting.

(3) The Subcommittee shall review one (1) group each year. After all groups have been reviewed one (1) time, the Subcommittee shall continue its review beginning again with the first group that was reviewed.

(c) **Standard of Review.**

(1) During its review of each occupational entity and occupational authorization, the Subcommittee shall analyze whether consumers are sufficiently protected by:

(A) Competition;

(B) Public knowledge of the reputations of the occupational practitioners;

(C) Private ratings and reviews;

(D) Private certification;

(E) Voluntary bonding; and

(F) Voluntary insurance.

(2) If during its review, the Subcommittee finds substantiated evidence that the items in subdivision (c)(1) of this section provides for insufficient protection from

significant harm, the Subcommittee shall use the following guidelines in conducting its review:

(A) The effects of existing occupational authorizations and any proposed occupational reform on opportunities for workers, consumer choices, consumer costs, general unemployment, market competition, government costs, and any other effects deemed relevant;

(B) Whether the occupational authorization and proposed occupational reform employs the least restrictive form of occupational authorization;

(C) To what degree existing occupational regulation and reform delegate administrative rules promulgation to the occupational entity concerning the:

(i) Scope of practice for the occupation or profession; or

(ii) Qualifications for the occupational authorization; and

(D) Whether a significant and substantiated exposure to antitrust litigation under any existing occupational regulation and under any proposed occupational reform exists.

(d) Recommendations.

(1) During its December meeting of each even-numbered year, the Subcommittee shall submit to the Legislative Council its recommendations regarding the:

(A) Repeal of an occupational authorization;

(B) Conversion of an occupational authorization to a less restrictive occupational authorization;

(C) Promulgation of revised rules reflecting the use of less restrictive occupational authorization;

(D) Modification of qualifications for an occupational authorization;

(E) Modification or redefinition of the scope of practice of an occupation or profession; or

(F) Any other relevant legislative reforms deemed necessary, including without limitation the following:

(i)(a) Allowing lawsuits in small claims court or district court to remedy a specific consumer harm arising from contractual disputes, including pricing disputes.

(b) This proposed legislation may provide for reimbursement of attorney's fees or court costs if a consumer claim is successful;

(ii) Strengthening the powers of deceptive trade practice laws or requiring disclosures to reduce misleading attributes of the specific good or services in order to address fraud;

(iii) Regulating an occupational process or business license in order to ensure public health and safety;

(iv) Requiring periodic facility inspections to address issues of unclean facilities;

(v) Requiring bonding of certain occupational licensees to address the issues of failure of occupational licensees to complete contracts fully or comply with occupational standards;

(vi) Requiring certain occupational licensees to have insurance to address the issue of lack of protection for a person who is not a party to a contract between an occupational licensee and a consumer;

(vii) Requiring registration with the Secretary of State of occupational licenses that are considered transient, out-of-state, or temporary;

(viii) Enacting government-required certification or other occupational authorization to correct shortfalls or lack of knowledge regarding a good or service among consumers relative to the occupational practitioner's knowledge; or

(ix) Enacting or maintaining an occupational authorization in situations in which there is found to be a systematic information shortfall in which a reasonable consumer of a service is permanently unable to distinguish between the quality of occupational licensees and an absence of guidance to the consumers exists.

(2) Upon adoption of any of the recommendations of the Subcommittee by the Legislative Council, the recommendations shall be submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

4. Filing of Occupational Entity Reports with the Subcommittee.

(a) No later than the 15th of the month immediately preceding the month the occupational authorization is scheduled for review by the Subcommittee, the occupational entity shall file a report with the Subcommittee providing the following information:

(1) The name of the occupation, the type of regulation, and the scope of practice for each occupation that the occupational entity regulates;

(2) The amount of any fee or penalty associated with each occupation;

(3) The number of individuals regulated by the occupational entity, grouped by occupational authorization;

(4) A statement describing in what respects, if any, each occupational authorization is required by state or federal law;

(5) A copy of all administrative rules regarding the occupational authorization; and

(6) Evidence of any of the items listed in subdivision 3.(d)(1)(F) of these rules that the occupational entity desires the Subcommittee to review.

(b) Entity reports required under subsection 4.(a) of these rules shall be submitted **through an online submission form maintained by the Bureau of Legislative Research.**