

SB0016S02 compared with SB0016S01

~~text~~ shows text that was in SB0016S01 but was deleted in SB0016S02.

text shows text that was not in SB0016S01 but was inserted into SB0016S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

LICENSING AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Joel Ferry

LONG TITLE

General Description:

This bill addresses proposed and existing regulated occupations.

Highlighted Provisions:

This bill:

- ▶ creates the Office of Professional Licensure Review (office);
- ▶ defines terms;
- ▶ requires the office to:
 - conduct a sunrise review for each application to establish a new regulated occupation;
 - review each regulated occupation at least once every 10 years; and
 - review and respond to each legislator inquiry regarding an occupational licensing matter;

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- ▶ establishes criteria for conducting a sunrise review or periodic review;
- ▶ provides legislative oversight of the scheduling and scope of each periodic review;
- ▶ requires the office to annually prepare and submit a written report to the Business and Labor Interim Committee;
- ▶ provides a sunset date for provisions of this bill, subject to review;~~{and}~~
- ▶ repeals the Occupational and Professional Licensure Review Committee Act~~{.}~~;
and
▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-301, as last amended by Laws of Utah 2019, Chapter 133

58-55-201, as last amended by Laws of Utah 2020, Chapters 154 and 339

63I-1-213, as last amended by Laws of Utah 2021, Chapter 26

ENACTS:

13-1b-101, Utah Code Annotated 1953

13-1b-102, Utah Code Annotated 1953

13-1b-201, Utah Code Annotated 1953

13-1b-202, Utah Code Annotated 1953

13-1b-203, Utah Code Annotated 1953

13-1b-301, Utah Code Annotated 1953

13-1b-302, Utah Code Annotated 1953

13-1b-303, Utah Code Annotated 1953

13-1b-304, Utah Code Annotated 1953

REPEALS:

36-23-101, as enacted by Laws of Utah 1999, Chapter 152

36-23-101.5, as last amended by Laws of Utah 2019, Chapter 276

36-23-102, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307

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36-23-103, as last amended by Laws of Utah 2013, Chapter 323

36-23-104, as last amended by Laws of Utah 2014, Chapter 387

36-23-105, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307

36-23-106, as last amended by Laws of Utah 2018, Chapter 281 and last amended by
Coordination Clause, Laws of Utah 2018, Chapter 307

36-23-107, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307

36-23-108, as enacted by Laws of Utah 1999, Chapter 152

36-23-109, as last amended by Coordination Clause, Laws of Utah 2018, Chapter 307

58-1-110, as enacted by Laws of Utah 2013, Chapter 323

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-1b-101** is enacted to read:

CHAPTER 1b. OFFICE OF PROFESSIONAL LICENSURE REVIEW

Part 1. General Provisions

13-1b-101. Definitions.

As used in this chapter:

(1) "Department" means the Department of Commerce.

(2) "Director" means the director of the office.

(3) "Executive director" means the executive director of the Department of Commerce.

(4) "Government requestor" means:

(a) the governor;

(b) an executive branch officer other than the governor;

(c) an executive branch agency;

(d) a legislator; or

(e) a legislative committee.

(5) "Health, safety, or financial welfare of the public" includes protecting against physical injury, property damage, or financial harm of the public.

(6) "License" or "licensing" means a state-granted authorization for a person to engage in a specified occupation:

(a) based on the person meeting personal qualifications established under state law;

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and

(b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.

(7) "Newly regulate" means to create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation.

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

(9) "Office" means the Office of Professional Licensure Review created in this chapter.

(10) "Periodic review" means a review described in Subsection 13-1b-203(2).

(11) (a) "Personal qualifications" means criteria established in state law related to an individual's background.

(b) "Personal qualifications" includes:

(i) completion of an approved education program;

(ii) satisfactory performance on an examination;

(iii) work experience; and

(iv) completion of continuing education.

(12) "Regulated occupation" means an occupation that:

(a) requires a person to obtain a license to practice the occupation; or

(b) provides for state certification or state registration.

(13) "State certification" means a state-granted authorization given to a person to use the term "state certified" as part of a designated title related to engaging in a specified occupation:

(a) based on the person meeting personal qualifications established under state law;

and

(b) where state law prohibits a noncertified person from using the term "state certified" as part of a designated title but does not otherwise prohibit a noncertified person from engaging in the occupation for compensation.

(14) "State registration" means a state-granted authorization given to a person to use the term "state registered" as part of a designated title related to engaging in a specified occupation:

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(a) based on the person meeting requirements established under state law, which may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and bond or insurance requirements;

(b) where state law does not require the person to meet any personal qualifications; and

(c) where state law prohibits a nonregistered person from using the term "state registered" as part of a designated title.

(15) "Sunrise review" means a review under this chapter of an application to establish a new regulated occupation.

Section 2. Section **13-1b-102** is enacted to read:

13-1b-102. Applicability.

This chapter applies to any regulation of an occupation that is administered by a state executive branch agency.

Section 3. Section **13-1b-201** is enacted to read:

Part 2. Organization

13-1b-201. Creation of office -- Director appointed -- Personnel.

(1) There is created within the department the Office of Professional Licensure Review to perform the functions and duties described in this chapter.

(2) The office is under the direction and control of a director appointed by the executive director with approval of the governor.

(3) The executive director shall establish the salary of the director in accordance with standards established by the Division of Human Resource Management.

Section 4. Section **13-1b-202** is enacted to read:

13-1b-202. Powers of the director and the office.

(1) The director may employ personnel necessary to carry out the duties and responsibilities of the office at salaries determined by the executive director in accordance with standards established by the Division of Human Resource Management.

(2) The office may:

(a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the responsibilities of the office described in this chapter, including rules creating criteria for conducting a sunrise review or a periodic review;

(b) make recommendations to other state executive branch agencies regarding

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regulated occupations; and

(c) survey stakeholders regarding appropriate criteria for conducting a sunrise review or a periodic review.

(3) A state executive branch agency may adopt or reject a recommendation described in Subsection (2)(b).

Section 5. Section **13-1b-203** is enacted to read:

13-1b-203. Duties.

The office shall:

(1) for each application submitted in accordance with Section 13-1b-301, conduct a sunrise review in accordance with Section 13-1b-302 before November 1:

(a) of the year in which the application is submitted, if the application is submitted on or before July 1; or

(b) of the subsequent year, if the application is submitted after July 1;

(2) beginning in 2023 and in accordance with Section 13-1b-303, conduct a review of each regulated occupation at least once every 10 years;

(3) review and respond to any legislator inquiry regarding a proposed or existing regulated occupation; and

(4) report to the Business and Labor Interim Committee in accordance with Section 13-1b-304.

Section 6. Section **13-1b-301** is enacted to read:

Part 3. Office Review and Reporting

13-1b-301. Application for sunrise review -- Fees.

(1) If a government requestor or a representative of an occupation that is not a regulated occupation proposes that the state make the occupation a regulated occupation, the government requestor or representative shall, before the introduction of any proposed legislation, submit to the office an application for sunrise review in a form the office prescribes.

(2) The application described in Subsection (1) shall describe:

(a) why making the occupation a regulated occupation is necessary to protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public; and

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(b) the least restrictive regulation of the occupation that would protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public.

(3) If a representative of an occupation submits an application in accordance with this section, the application shall include a nonrefundable fee of \$500.

(4) All application fees collected under this section shall be deposited into the General Fund.

Section 7. Section **13-1b-302** is enacted to read:

13-1b-302. Review criteria.

In conducting a sunrise review or a periodic review, unless otherwise directed in accordance with Subsection 13-1b-203(3), the office shall consider the following criteria:

(1) whether the regulation of the occupation is necessary to address a present, recognizable, and significant harm to the health, safety, or financial welfare of the public;

(2) for any harm to the health, safety, or financial welfare of the public, the harm's:

(a) severity;

(b) probability; and

(c) permanence;

(3) the extent to which the proposed or existing regulation of the occupation protects against or diminishes the harm described in Subsection (1);

(4) whether the proposed or existing regulation of the occupation:

(a) affects the supply of qualified practitioners;

(b) creates barriers to:

(i) service that are not in the public financial welfare or interest; or

(ii) entry into the occupation or related occupations;

(c) imposes new costs on existing practitioners;

(d) affects:

(i) license reciprocity with other jurisdictions; or

(ii) mobility of practitioners; or

(e) if the occupation involves a health care provider, impacts the health care provider's ability to obtain payment of benefits for the health care provider's treatment of an illness, injury, or health care condition under an insurance contract subject to Section 31A-22-618;

(5) if the review involves licensing, the potential alternative pathways for a person to

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obtain a license;

(6) the costs to the state of regulating the occupation;

(7) whether the proposed or existing administering agency has sufficient expertise and

resources;

(8) the regulation of the occupation in other jurisdictions;

(9) the scope of the proposed or existing regulation, including:

(a) whether the occupation is clearly distinguishable from an already regulated

occupation; and

(b) potential for regulating only certain occupational activities;

(10) the potentially less burdensome alternatives to the proposed or existing regulation

and the effect of implementing an alternative method of regulation on:

(a) the health, safety, or financial welfare of the public;

(b) the occupation; and

(c) practitioners of the occupation; and

(11) any other criteria the office adopts, including criteria suggested in a stakeholder

survey.

Section 8. Section **13-1b-303** is enacted to read:

13-1b-303. Legislative prioritization of reviews.

(1) Before October 1 of each year, the office shall prepare and submit to the Business and Labor Interim Committee a list of each periodic review that the office proposes to conduct during the upcoming year, including the scope of each periodic review.

(2) Before December 1 of the calendar year in which the office submits a list under Subsection (1), the Business and Labor Interim Committee shall:

(a) approve the list, with or without modification; and

(b) submit a copy of the approved list to the Legislative Management Committee for approval, with or without modification.

Section 9. Section **13-1b-304** is enacted to read:

13-1b-304. Reporting.

(1) Beginning in 2024, before October 1, the office shall annually prepare and submit a written report to the Business and Labor Interim Committee that describes the office's work during the prior year.

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(2) In a written report described in Subsection (1), the office shall include:

(a) a summary of each periodic review, each sunrise review, and each response to a legislator inquiry; and

(b) each recommendation the office made to another state executive branch agency regarding a regulated occupation.

Section 10. Section 58-1-301 is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division.

(b) Each completed application shall:

(i) contain documentation of the particular qualifications required of the applicant;

(ii) include the applicant's social security number;

(iii) be verified by the applicant; and

(iv) be accompanied by the appropriate fees.

(c) An applicant's social security number is a private record under Subsection 63G-2-302(1)(i).

(2) (a) The division shall issue a license to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) The division shall provide a written notice of additional proceedings to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon the applicant's qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) The division shall provide a written notice of denial of licensure to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) The division shall provide a written notice of incomplete application and conditional denial of licensure to an applicant who submits an incomplete application, which notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

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(3) The division may only issue a license to an applicant under this title if the applicant meets the requirements for that license as established under this title and by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) If an applicant meets all requirements for a specific license, the division shall issue the license to the applicant.

(5) (a) As used in this Subsection (5):

(i) (A) "Competency-based licensing requirement" means a practical assessment of knowledge and skills that clearly demonstrate a person is prepared to engage in an occupation or profession regulated by this title, and which the director determines is at least as effective as a time-based licensing requirement at demonstrating proficiency and protecting the health and safety of the public.

(B) "Competency-based licensing requirement" may include any combination of training, experience, testing, or observation.

(ii) (A) "Time-based licensing requirement" means a specific number of hours, weeks, months, or years of education, training, supervised training, or other experience that an applicant for licensure under this title is required to complete before receiving a license under this title.

(B) "Time-based licensing requirement" does not include an associate degree, a bachelor's degree, or a graduate degree from an accredited institution of higher education.

(b) Subject to Subsection (5)(c), for an occupation or profession regulated by this title that has a time-based licensing requirement, the director, after consultation with the appropriate board, may by division rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement.

(c) If a time-based licensing requirement involves a program that must be approved or accredited by a specific entity or board, the director may only allow an applicant to complete a competency-based licensing requirement as an alternative to completing the time-based licensing requirement under Subsection (5)(b) if the competency-based requirement is approved or accredited by the specific entity or board as a replacement or alternative to the time-based licensing requirement.

~~(d) By October 1 of each year, the director shall provide a written report to the~~

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~~Occupational and Professional Licensure Review Committee describing any competency-based licensing requirements implemented under this Subsection (5).]~~

Section 11. Section 58-55-201 is amended to read:

58-55-201. Boards created -- Duties.

(1) There is created the Plumbers Licensing Board consisting of seven members as follows:

(a) three members shall be licensed from among the license classifications of master or journeyman plumber, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation;

(b) three members shall be licensed plumbing contractors, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation; and

(c) one member shall be from the public at large with no history of involvement in the construction trades.

(2) (a) There is created the Alarm System Security and Licensing Board consisting of five members as follows:

- (i) three individuals who are officers or owners of a licensed alarm business;
- (ii) one individual from among nominees of the Utah Peace Officers Association; and
- (iii) one individual representing the general public.

(b) The Alarm System Security and Licensing Board shall designate one of its members on a permanent or rotating basis to:

(i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensee; and

(ii) advise the division in its investigation of these complaints.

(c) A board member who has, under this Subsection (2)(c), reviewed a complaint or advised in its investigation is disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

(3) There is created the Electricians Licensing Board consisting of seven members as follows:

(a) three members shall be licensed from among the license classifications of master or journeyman electrician, of whom at least one shall represent a union organization and at least

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one shall be selected having no union affiliation;

(b) three members shall be licensed electrical contractors, of whom at least one shall represent a union organization and at least one shall be selected having no union affiliation; and

(c) one member shall be from the public at large with no history of involvement in the construction trades or union affiliation.

(4) The duties, functions, and responsibilities of each board described in Subsections (1) through (3) include the following:

(a) recommending to the commission appropriate rules;

(b) recommending to the commission policy and budgetary matters;

(c) approving and establishing a passing score for applicant examinations;

(d) overseeing the screening of applicants for licensing, renewal, reinstatement, and relicensure;

(e) assisting the commission in establishing standards of supervision for students or persons in training to become qualified to obtain a license in the occupation or profession the board represents; and

(f) acting as presiding officer in conducting hearings associated with the adjudicative proceedings and in issuing recommended orders when so authorized by the commission.

~~[(5) The division, in collaboration with the Plumbers Licensing Board and the Electricians Licensing Board, shall provide a preliminary report on or before October 1, 2019, and a final written report on or before June 1, 2020, to the Business and Labor Interim Committee and the Occupational and Professional Licensure Review Committee that provides recommendations for consistent educational and training standards for plumber and electrician apprentice programs in the state, including recommendations for education and training provided by all providers, including institutions of higher education and technical colleges.]~~

Section ~~{10}~~12. Section **63I-1-213** is amended to read:

63I-1-213. Repeal dates, Title 13.

(1) Title 13, Chapter 1b, Office of Professional Licensure Review, is repealed July 1, 2034.

~~[(1)]~~ (2) Section 13-32a-112, which creates the Pawnshop and Secondhand Merchandise Advisory Board, is repealed July 1, 2027.

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[(2)] (3) Section 13-35-103, which creates the Powersport Motor Vehicle Franchise Advisory Board, is repealed July 1, 2022.

[(3)] (4) Section 13-43-202, which creates the Land Use and Eminent Domain Advisory Board, is repealed July 1, 2026.

Section ~~{11}~~13. **Repealer.**

This bill repeals:

Section **36-23-101, Title.**

Section **36-23-101.5, Definitions.**

Section **36-23-102, Occupational and Professional Licensure Review Committee.**

Section **36-23-103, Committee terms -- Vacancies.**

Section **36-23-104, Committee meetings -- Compensation -- Quorum -- Legislative rules.**

Section **36-23-105, Applications -- Fees.**

Section **36-23-106, Duties -- Reporting.**

Section **36-23-107, Sunrise or sunset review -- Criteria.**

Section **36-23-108, Staff support.**

Section **36-23-109, Review of state regulation of occupations.**

Section **58-1-110, Legislative review in Title 58, Occupations and Professions.**