

REFERENCE TITLE: nonhealth professions; occupations; regulations

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

HB 2231

Introduced by
Representative Kern

AN ACT

AMENDING SECTION 41-2954, ARIZONA REVISED STATUTES; REPEALING TITLE 41, CHAPTER 33, ARIZONA REVISED STATUTES; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING TITLE 41, CHAPTER 33, ARTICLE 1, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED, BY ADDING SECTION 41-3501; AMENDING SECTIONS 41-3502 AND 41-3503, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 41, CHAPTER 33, ARTICLE 1, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED, BY ADDING SECTION 41-3506; RELATING TO LEGISLATIVE COMMITTEE OF REFERENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-2954, Arizona Revised Statutes, is amended to
3 read:

4 41-2954. Committees of reference; performance review reports;
5 hearings; recommendations; subpoena powers

6 A. Each standing committee of both legislative houses shall
7 constitute a committee of reference in the committee's respective subject
8 matter areas and the committee's respective house.

9 B. After receipt of the preliminary sunset review report, each
10 committee of reference or each committee of reference meeting jointly
11 shall hold at least one public hearing when the legislature is not in
12 session or before the third Friday in January to receive testimony from
13 the public and from the officials of the agency involved. The agency
14 involved shall prepare a presentation for the first public meeting that
15 addresses the elements of the written statement required by subsection F
16 of this section.

17 C. Each committee of reference shall hold public hearings for the
18 following purposes:

19 1. To determine the actual need of the agency to regulate or direct
20 the particular activity.

21 2. To determine the extent to which the statutory requirements of
22 the agency are necessary and are being met.

23 3. To receive testimony from the public as to the relationship of
24 the agency with the public.

25 4. To receive testimony from the executive director or other head
26 of the agency as to reasons for the continuation of the agency.

27 D. Each committee of reference shall consider but not be limited to
28 the following factors in determining the need for continuation or
29 termination of each agency:

30 1. The objective and purpose in establishing the agency and the
31 extent to which the objective and purpose are met by private enterprises
32 in other states.

33 2. The extent to which the agency has met its statutory objective
34 and purpose and the efficiency with which it has operated.

35 3. The extent to which the agency serves the entire state rather
36 than specific interests.

37 4. The extent to which rules adopted by the agency are consistent
38 with the legislative mandate.

39 5. The extent to which the agency has encouraged input from the
40 public before adopting its rules and the extent to which it has informed
41 the public as to its actions and the expected impact on the public.

42 6. The extent to which the agency has been able to investigate and
43 resolve complaints that are within its jurisdiction.

1 7. The extent to which the attorney general or any other applicable
2 agency of state government has the authority to prosecute actions under
3 the enabling legislation.

4 8. The extent to which agencies have addressed deficiencies in
5 their enabling statutes that prevent them from fulfilling their statutory
6 mandate.

7 9. The extent to which changes are necessary in the laws of the
8 agency to adequately comply with the factors listed in this subsection.

9 10. The extent to which the termination of the agency would
10 significantly affect the public health, safety or welfare.

11 11. The extent to which the level of regulation exercised by the
12 agency compares to other states and is appropriate and whether less or
13 more stringent levels of regulation would be appropriate **AND, IF THE**
14 **AGENCY ADMINISTERS AN OCCUPATIONAL REGULATION AS DEFINED IN SECTION**
15 **41-3501, THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE**
16 **REQUIREMENTS OF SECTION 41-3502.**

17 12. The extent to which the agency has used private contractors in
18 the performance of its duties as compared to other states and how more
19 effective use of private contractors could be accomplished.

20 13. The extent to which the agency potentially creates unexpected
21 negative consequences that might require additional review by the
22 committee of reference, including increasing the price of goods, affecting
23 the availability of services, limiting the abilities of individuals and
24 businesses to operate efficiently and increasing the cost of government.

25 E. The committee of reference shall deliver the final sunset review
26 report of its recommendations to the president of the senate, the speaker
27 of the house of representatives, the governor, the auditor general and the
28 affected agency on or before the third Friday in January. ~~Such~~ **THE**
29 recommendations shall include one **OR MORE** of the following:

- 30 1. That the state agency be continued.
31 2. That the state agency be revised or consolidated.
32 3. That the state agency be terminated pursuant to this chapter.

33 **4. IF THE STATE AGENCY ADMINISTERS AN OCCUPATIONAL REGULATION AS**
34 **DEFINED IN SECTION 41-3501, THAT THE LEGISLATURE:**

35 **(a) REPEAL THE OCCUPATIONAL LICENSE.**

36 **(b) CONVERT THE OCCUPATIONAL LICENSE TO A LESS RESTRICTIVE**
37 **REGULATION AS DEFINED IN SECTION 41-3501.**

38 **(c) INSTRUCT THE STATE AGENCY TO SEEK LEGISLATION OR ADOPT RULES TO**
39 **REFLECT THE COMMITTEE OF REFERENCE'S RECOMMENDATION TO:**

40 **(i) IMPOSE LESS RESTRICTIVE REGULATIONS THAN OCCUPATIONAL LICENSES,**
41 **AS DEFINED IN SECTION 41-3501.**

42 **(ii) CHANGE THE REQUISITE PERSONAL QUALIFICATIONS OF AN**
43 **OCCUPATIONAL LICENSE.**

44 **(iii) REDEFINE THE SCOPE OF PRACTICE IN AN OCCUPATIONAL LICENSE.**

1 F. The final sunset review report by each committee of reference
2 shall also include a written statement prepared by the agency involved
3 that contains:

4 1. An identification of the problem or the needs that the agency is
5 intended to address.

6 2. A statement, to the extent practicable, in quantitative and
7 qualitative terms, of the objectives of such agency and its anticipated
8 accomplishments.

9 3. An identification of any other agencies having similar,
10 conflicting or duplicate objectives, and an explanation of the manner in
11 which the agency avoids duplication or conflict with other such agencies.

12 4. An assessment of the consequences of eliminating the agency or
13 of consolidating it with another agency.

14 G. Each committee of reference shall oversee the preparation of any
15 proposed legislation to implement the recommendations of that committee of
16 reference and is responsible for the introduction of such legislation.

17 H. If an agency is continued, it is not necessary to reappoint any
18 member of the governing board or commission of the agency. Such members
19 are eligible to complete their original terms without reappointment or
20 reconfirmation.

21 I. Each committee of reference shall have the power of legislative
22 subpoena pursuant to chapter 7, article 4 of this title.

23 Sec. 2. Repeal
24 Title 41, chapter 33, Arizona Revised Statutes, is repealed.

25 Sec. 3. Transfer and renumber
26 Title 32, chapter 44, Arizona Revised Statutes, is transferred and
27 renumbered for placement in title 41, Arizona Revised Statutes, as a new
28 chapter 33. Title 32, chapter 44, article 1, Arizona Revised Statutes, is
29 transferred and renumbered for placement in title 41, chapter 33, Arizona
30 Revised Statutes, as added by this act, as a new article 1. The following
31 sections are transferred and renumbered for placement in title 41, chapter
32 33, article 1:

<u>Former Sections</u>	<u>New Sections</u>
34 32-4401	41-3502
35 32-4402	41-3503
36 32-4403	41-3504
37 32-4404	41-3505

38 Sec. 4. Title 41, chapter 33, article 1, Arizona Revised Statutes,
39 as transferred and renumbered, is amended by adding section 41-3501, to
40 read:

41 41-3501. Definitions
42 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:
43 1. "GOVERNMENT CERTIFICATION" MEANS A VOLUNTARY PROGRAM IN WHICH
44 THIS STATE GRANTS NONTRANSFERABLE RECOGNITION TO AN INDIVIDUAL WHO MEETS
45 PERSONAL QUALIFICATIONS THAT ARE ESTABLISHED BY LAW.

1 2. "GOVERNMENT REGISTRATION" MEANS A REQUIREMENT TO GIVE NOTICE TO
2 THE GOVERNMENT, WHICH MAY INCLUDE THE INDIVIDUAL'S NAME AND ADDRESS, THE
3 INDIVIDUAL'S AGENT FOR SERVICE OF PROCESS, THE LOCATION OF THE ACTIVITY TO
4 BE PERFORMED AND A DESCRIPTION OF THE SERVICE THE INDIVIDUAL PROVIDES.

5 3. "LAWFUL OCCUPATION" MEANS A COURSE OF CONDUCT, PURSUIT OR
6 PROFESSION THAT INCLUDES THE SALE OF GOODS OR SERVICES THAT ARE NOT
7 THEMSELVES ILLEGAL TO SELL, IRRESPECTIVE OF WHETHER THE INDIVIDUAL SELLING
8 THEM IS SUBJECT TO OCCUPATIONAL REGULATION.

9 4. "LESS RESTRICTIVE REGULATION" MEANS, FROM LEAST TO MOST
10 RESTRICTIVE:

11 (a) MARKET COMPETITION.

12 (b) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS.

13 (c) PRIVATE CERTIFICATION.

14 (d) VOLUNTARY BONDING OR INSURANCE.

15 (e) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY CONSUMER HARM.

16 (f) DECEPTIVE TRADE PRACTICE LAWS.

17 (g) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC GOOD OR
18 SERVICE.

19 (h) REGULATION OF THE PROCESS OF PROVIDING THE SPECIFIC GOOD OR
20 SERVICE.

21 (i) REGULATION OF THE FACILITY WHERE THE SPECIFIC GOOD OR SERVICE
22 IS SOLD.

23 (j) INSPECTION.

24 (k) BONDING.

25 (l) INSURANCE.

26 (m) GOVERNMENT REGISTRATION.

27 (n) GOVERNMENT CERTIFICATION.

28 (o) OCCUPATIONAL LICENSE.

29 5. "OCCUPATIONAL LICENSE" MEANS A NONTRANSFERABLE AUTHORIZATION FOR
30 AN INDIVIDUAL TO PERFORM EXCLUSIVELY A LAWFUL OCCUPATION FOR COMPENSATION
31 BASED ON MEETING PERSONAL QUALIFICATIONS THAT ARE ESTABLISHED BY LAW.

32 6. "OCCUPATIONAL REGULATION":

33 (a) MEANS A STATUTE, RULE, PRACTICE, POLICY OR OTHER STATE LAW THAT
34 ALLOWS AN INDIVIDUAL TO USE AN OCCUPATIONAL TITLE OR WORK IN A LAWFUL
35 OCCUPATION.

36 (b) INCLUDES A GOVERNMENT REGISTRATION, A GOVERNMENT CERTIFICATION
37 AND AN OCCUPATIONAL LICENSE.

38 (c) DOES NOT INCLUDE A BUSINESS LICENSE, FACILITY LICENSE, BUILDING
39 PERMIT OR ZONING AND LAND USE REGULATION EXCEPT TO THE EXTENT THOSE STATE
40 LAWS REGULATE AN INDIVIDUAL'S PERSONAL QUALIFICATIONS TO PERFORM A LAWFUL
41 OCCUPATION.

42 7. "PERSONAL QUALIFICATIONS" MEANS CRITERIA THAT ARE RELATED TO AN
43 INDIVIDUAL'S PERSONAL BACKGROUND AND CHARACTERISTICS, INCLUDING COMPLETION
44 OF AN APPROVED EDUCATIONAL PROGRAM, SATISFACTORY PERFORMANCE ON AN
45 EXAMINATION, WORK EXPERIENCE OR OTHER EVIDENCE OF ATTAINMENT OF REQUISITE

1 SKILLS OR KNOWLEDGE, MORAL CHARACTER, CRIMINAL HISTORY AND COMPLETION OF
2 CONTINUING EDUCATION.

3 8. "PRIVATE CERTIFICATION" MEANS A VOLUNTARY PROGRAM IN WHICH A
4 PRIVATE ORGANIZATION GRANTS NONTRANSFERABLE RECOGNITION TO AN INDIVIDUAL
5 WHO MEETS PERSONAL QUALIFICATIONS THAT ARE ESTABLISHED BY THE PRIVATE
6 ORGANIZATION.

7 Sec. 5. Section 41-3502, Arizona Revised Statutes, as transferred
8 and renumbered, is amended to read:

9 41-3502. Regulating nonhealth professions and occupations;
10 criteria

11 A. A profession or occupation shall not be regulated except for the
12 exclusive purpose of protecting the public interest. REGULATION SHALL NOT
13 BE IMPOSED TO PROTECT A DISCRETE INTEREST GROUP FROM ECONOMIC COMPETITION.
14 Except as provided in TITLE 32, chapter 31 ~~of this title~~, all ~~proposed~~
15 ~~legislation to regulate~~ REGULATION OF a profession or occupation for the
16 first time shall be reviewed according to the criteria prescribed in
17 ~~subsection~~ SUBSECTIONS B AND C OF THIS SECTION.

18 B. THERE IS A REBUTTABLE PRESUMPTION THAT THE PUBLIC IS
19 SUFFICIENTLY PROTECTED FROM UNREGULATED PRACTICE BY MARKET COMPETITION AND
20 PRIVATE REMEDIES, INCLUDING THIRD-PARTY OR CONSUMER-CREATED RATINGS AND
21 REVIEWS AND PRIVATE CERTIFICATION.

22 ~~B.~~ C. THIS STATE SHALL REGULATE a profession or occupation ~~shall~~
23 ~~be regulated by this state~~ only if all of the following apply:

24 1. ~~Am~~ THERE IS CREDIBLE EMPIRICAL EVIDENCE OF PRESENT, SIGNIFICANT
25 AND SUBSTANTIATED HARM THAT THE unregulated practice ~~can clearly harm or~~
26 ~~endanger~~ THREATENS the public health, safety or welfare IN THIS STATE.

27 2. The actual or anticipated public benefit of the regulation
28 clearly exceeds the costs imposed on consumers, businesses and
29 individuals.

30 3. The public needs and can reasonably be expected to benefit from
31 ~~an assurance of initial and continuing professional ability~~ GOVERNMENT
32 REGULATION.

33 4. The public cannot be effectively protected by ~~private~~
34 ~~certification or other alternatives~~ LESS RESTRICTIVE REGULATIONS.

35 ~~C.~~ D. After evaluating the criteria prescribed in subsection ~~B,~~
36 ~~the legislative committee of reference shall examine data from multiple~~
37 ~~sources and look for evidence of actual harm to the public related to the~~
38 ~~industry being considered for regulation. The evidence may include~~
39 ~~industry association data, federal, state and local government data,~~
40 ~~business reports, complaints to the respective state law enforcement or~~
41 ~~consumer affairs divisions or the better business bureau and data from~~
42 ~~reciprocal agencies in other states with and without similar laws and~~
43 ~~rules.~~

1 ~~D. If the legislative committee of reference finds that~~ C OF THIS
2 SECTION, IF it is necessary to regulate a profession or occupation not
3 previously regulated by law, the regulation shall be in the least
4 restrictive manner ~~and shall not be imposed to protect a discrete interest~~
5 ~~group from economic competition~~ AS PRESCRIBED BY THIS ARTICLE.

6 E. The legislative committee of reference may hold hearings to
7 evaluate the criteria ~~and examine the data and evidence~~ prescribed in
8 ~~subsections B and~~ SUBSECTION C OF THIS SECTION. THE LEGISLATIVE COMMITTEE
9 OF REFERENCE MAY REQUEST INFORMATION FROM STATE AGENCIES THAT CONTRACT
10 WITH INDIVIDUALS IN REGULATED OCCUPATIONS AND OTHERS WITH KNOWLEDGE OF THE
11 OCCUPATION, LABOR-MARKET ECONOMICS OR OTHER FACTORS.

12 F. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL PROVIDE THE
13 FINDINGS AND RECOMMENDATIONS TO THE STANDING COMMITTEE TO WHICH THE
14 PROPOSED LEGISLATION IS ASSIGNED. THE STANDING COMMITTEE SHALL ADDRESS
15 BOTH OF THE FOLLOWING:

16 1. THE TYPE OF REGULATIONS, IF ANY, THAT ARE APPROPRIATE PURSUANT
17 TO SUBSECTIONS B, C AND D OF THIS SECTION.

18 2 IF APPLICABLE, THE SCOPE OF PRACTICE AND REQUISITE PERSONAL
19 QUALIFICATIONS THAT ARE APPROPRIATE FOR A GOVERNMENT CERTIFICATION OR
20 OCCUPATIONAL LICENSE.

21 ~~F.~~ G. Notwithstanding any other law, an agency that issues new
22 professional or occupational licenses, registrations or certificates shall
23 not hinder the regulated industry through the delayed awarding of a
24 license, registration or certificate.

25 H. SECTIONS B, C AND D OF THIS SECTION DO NOT PREEMPT FEDERAL
26 REGULATIONS OR REQUIRE A PRIVATE CERTIFICATION ORGANIZATION TO GRANT OR
27 DENY PRIVATE CERTIFICATION TO AN INDIVIDUAL.

28 Sec. 6. Section 41-3503, Arizona Revised Statutes, as transferred
29 and renumbered, is amended to read:

30 41-3503. Applicant groups; nonhealth professions and
31 occupations; written report

32 Applicant groups shall submit a written report explaining the
33 factors prescribed in section ~~32-4403~~ 41-3504 to the president of the
34 senate and the speaker of the house of representatives. The report shall
35 be submitted on or before September 1 before the start of the legislative
36 session for which the legislation is proposed. The president of the
37 senate or the speaker of the house of representatives shall assign the
38 written report to the appropriate legislative committee of reference. The
39 legislative committee of reference shall study the written report and
40 deliver the report of its recommendations to the speaker of the house of
41 representatives, the president of the senate, the governor and, if
42 appropriate, the regulatory entity on or before the third Friday in
43 January of the year following the year in which the report is submitted.
44 Legislative committees of reference may hold hearings as they deem
45 necessary.

1 Sec. 7. Title 41, chapter 33, article 1, Arizona Revised Statutes,
2 as transferred and renumbered, is amended by adding section 41-3506, to
3 read:

4 41-3506. Use of title

5 A. ON RECEIVING INITIAL AND CONTINUING APPROVAL FROM THE
6 GOVERNMENT, AN INDIVIDUAL MAY USE THE TITLE "GOVERNMENT CERTIFIED" OR
7 "STATE CERTIFIED". A NONCERTIFIED INDIVIDUAL MAY PERFORM THE LAWFUL
8 OCCUPATION FOR COMPENSATION BUT MAY NOT USE THE TITLE "GOVERNMENT
9 CERTIFIED" OR "STATE CERTIFIED".

10 B. FOR THE PURPOSES OF THIS CHAPTER:

11 1. GOVERNMENT CERTIFICATION IS NOT SYNONYMOUS WITH OCCUPATIONAL
12 LICENSE AND DOES NOT REFLECT CREDENTIALS, SUCH AS THOSE USED FOR MEDICAL
13 BOARD CERTIFICATION OR HELD BY A CERTIFIED PUBLIC ACCOUNTANT, THAT ARE
14 PREREQUISITES TO WORKING LAWFULLY IN AN OCCUPATION.

15 2. GOVERNMENT REGISTRATION DOES NOT IMPLY PERSONAL QUALIFICATIONS,
16 IS NOT TRANSFERABLE BUT MAY REQUIRE A BOND OR INSURANCE. ON THE
17 GOVERNMENT'S RECEIPT OF NOTICE, THE INDIVIDUAL MAY USE THE TITLE
18 "GOVERNMENT REGISTERED". A NONREGISTERED INDIVIDUAL MAY NOT PERFORM THE
19 OCCUPATION FOR COMPENSATION OR USE THE TITLE "GOVERNMENT REGISTERED".
20 GOVERNMENT REGISTRATION IS NOT SYNONYMOUS WITH OCCUPATIONAL LICENSE AND
21 DOES NOT REFLECT CREDENTIALS, SUCH AS THOSE HELD BY A REGISTERED NURSE,
22 THAT ARE PREREQUISITES TO WORKING LAWFULLY IN AN OCCUPATION.

23 C. IN AN OCCUPATION FOR WHICH A LICENSE IS REQUIRED, IT IS ILLEGAL
24 FOR AN INDIVIDUAL WHO DOES NOT POSSESS A VALID OCCUPATIONAL LICENSE TO
25 PERFORM THE OCCUPATION FOR COMPENSATION.

26 D. AN INDIVIDUAL MAY USE THE TITLE "CERTIFIED" AS ALLOWED BY A
27 PRIVATE ORGANIZATION THAT GRANTS PRIVATE CERTIFICATION.