

SUNSET REVIEW

*** BILL NO. ***

INTRODUCED BY *****

BY REQUEST OF THE (AGENCY OR DEPARTMENT)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO OCCUPATIONAL LICENSING REVIEW; ESTABLISHING A PERIODIC REVIEW PROCESS FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS, PROGRAMS, AND LICENSE TYPES; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; ESTABLISHING A PROCESS FOR REVIEW DATA PREPARATION BY A LICENSING BOARD AND THE DEPARTMENT OF LABOR AND INDUSTRY; REQUIRING INTERIM COMMITTEE REVIEW; ESTABLISHING REVIEW CYCLES FOR NEW AND EXISTING OCCUPATIONAL LICENSE REVIEWS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-8-401, 2-8-404, 5-5-223, AND 37-1-106, MCA, AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, professional and occupational licensing may be necessary to protect public health, safety, welfare, and the common good when improper practice creates a substantial risk of harm and consumers cannot reasonably evaluate practitioner competence without state oversight; and

WHEREAS, licensing requirements may create barriers to employment, workforce mobility, market entry, and access to services if requirements are unnecessary, outdated, duplicative, or more restrictive than needed to protect the public; and

WHEREAS, Montana has not recently maintained a comprehensive, recurring statutory process for periodic legislative review of all professional and occupational licensing boards, programs, and license types administered by or attached to the Department of Labor and Industry; and

WHEREAS, the Legislature has already recognized in Title 2, chapter 8, part 4, MCA, that creation of new professional and occupational licensing boards and programs should be justified by public need and measured against costs, competition, and regulatory alternatives; and

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WHEREAS, a predictable review schedule promotes accountability, transparency, legislative education, and practice act modernization while providing stability for licensees, boards, consumers, employers, and the public; and

WHEREAS, newly created license types should receive earlier legislative review so the Legislature may evaluate implementation, demand, public protection, cost, workforce effects, and whether modification or repeal is warranted; and

WHEREAS, more restrictive licensing requirements should require stronger justification, particularly when they affect entry into an occupation, interstate mobility, supervision, examination, education, experience, continuing education, or scope of practice; and

WHEREAS, the purpose of this act is to establish a structured occupational licensing review process that uses existing board reporting where possible, requires standardized information, provides public legislative oversight, and supports informed decisions regarding continuation, modification, consolidation, repeal, rulemaking, or further audit review;

NOW, THEREFORE, the Legislature intends to integrate periodic occupational licensing review into existing Montana statutory structures governing new board creation, interim committee review, economic affairs oversight, and biennial reporting.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-8-401, MCA, is amended to read:

"2-8-401. Purpose. It is the intent of the legislature to:

(1) exercise the police power of the state through the establishment of licensing boards and licensing programs only when regulation of a profession or occupation benefits the public health, safety, welfare, or common good of the state's residents and that benefit outweighs the potential increased cost to the public and limitation on competition;

(2) recognize those professions or occupations that require specialized skill or training; and

(3) provide the public with a means to determine whether practitioners have met competency standards and to complain if the competency is suspect;

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(4) periodically review professional and occupational licensing boards, programs, and license types to determine whether licensure remains justified, effective, and no more restrictive than necessary to protect the public health, safety, welfare, or common good; and
(5) require stronger justification for licensing requirements that more significantly restrict entry, practice, mobility, or competition."

{Internal References to 2-8-401: None}

Section 2. Section 2-8-402, MCA, is amended to read:

"2-8-402. Intent to create new board or licensing program -- report -- 4-year sunset review. (1) A bill draft request to create a department of labor and industry licensing board or licensing program must include a report that addresses:

- (a) how licensing would protect and benefit the public;
- (b) how the unregulated practice of the profession or occupation would pose a hazard to public health, safety, or welfare and whether the nature of the profession or occupation makes it difficult for the consumer to evaluate the hazard;
- (c) the proposed minimum education, experience, and examination requirements necessary to provide the service, comparative data, and analysis on the licensure of the profession or occupation in other states and whether the proposed requirements are greater, less than, or equal to a national average;
- (d) the proposed scope of practice;
- (e) a description of any overlapping scopes of practice with professions or occupations, whether licensed or not;
- (f) an analysis of the impact licensure would have on the type, cost, and availability of services to consumers, the number of providers currently in the market, and other impacts on market conditions;
- (g) a description of any licensure exceptions;
- (h) existing practitioners and the date by which they would be required to meet proposed qualifications;

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- 1 (i) a list of other states that license the profession or occupation;
2 (j) regulatory alternatives other than licensing that are available to the practitioners of the
3 profession or occupation;
4 (k) previous efforts, if any, to regulate the profession or occupation; and
5 (l) whether the profession or occupation could be regulated by an existing licensing board or
6 licensing program.

7 (2) To estimate initial costs, the report must address:

8 (a) the number of licensees anticipated and a basis for the estimate;

9 (b) if a licensing board is proposed, the proposed makeup of the licensing board
10 membership; and

11 (c) the projected annual licensing fees based on information from the department of labor
12 and industry for all costs associated with a licensing board or licensing program of the projected
13 size.

14 (3) If information is requested of the department of labor and industry in making a report
15 under this section, the department may charge reasonable fees commensurate with the costs of
16 producing the information.

17 (4) A new license type, licensing board, or licensing program administered by, or
18 administratively attached to the department of labor and industry must be reviewed by the
19 economic affairs interim committee in accordance with 2-8-404(2)(b)."

20 {Internal References to 2-8-402: None}
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22 **Section 3.** Section 2-8-404 , MCA, is amended to read:

23 **"2-8-404. Interim committee review of licensing boards ~~and programs, programs, and~~**
24 **license types -- 10-year cycle -- criteria -- ~~repeal -- consolidation~~ review packets --**
25 **committee action. (1) For purposes of this section, the following definition apply:**

26 (a) "Board" means a professional or occupational licensing board that is administratively
27 attached to or administered by the department.

28 (b) "Department" means the department of labor and industry as provided in 2-15-1701.

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1 (c) "License type" means a distinct authorization, license, certificate, permit, endorsement, or
2 registration required by statute or rule as a condition of engaging in a profession, occupation,
3 occupation-specific activity, or scope of practice.

4 (d) "Program" means a professional or occupational licensing program administered by the
5 department, without a licensing board.

6 (e) "Review packet" means the standardized information prepared under subsection (5) for
7 use by the reviewing interim committee.

8 (2) The legislative interim committee responsible for monitoring a board, program, or license
9 type shall review each board, program, and license type:

10 (a) at least once every 10 years for boards, programs, and license types in effect prior to [the
11 effective date of the act]; and

12 (b) within four years from the date of enactment for new boards, programs, and license types
13 created on or after [the effective date of the act].

14 (3) The interim committee shall, to the extent practicable, schedule similar or related boards,
15 programs, or license types for review during the same interim. In determining whether boards,
16 programs, or license types are similar or related, the committee may consider:

17 (a) occupation or industry sector;

18 (b) overlapping scope of practice;

19 (c) shared education, training, examination, supervision, or continuing education
20 requirements;

21 (d) shared board administration or department support;

22 (e) common interstate compact, reciprocity, or license recognition issues;

23 (f) common applicant, consumer, employer, or workforce issues; and

24 (g) any other factor the committee determines relevant.

25 ~~(1)(4) (a)~~ Before January 1 of each even-numbered year, ~~a the~~ legislative interim committee
26 responsible for monitoring licensing boards ~~and~~ programs, and license types shall notify the
27 department ~~to which licensing boards or programs are administratively attached if the committee~~
28 ~~plans to review one or more licensing boards or programs to determine the need for a board or a~~

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~~program and the financial solvency or appropriate administrative attachment of the board or program of the boards, programs, and license types scheduled for review during the interim.~~

~~(b) A review under subsection (1)(a) is separate from a performance audit conducted by the legislative audit committee.~~

(5) The department, in cooperation with each board or program scheduled for review, shall prepare a review packet for each board, program, or license type under review. The department shall use information from the biennial report required under 37-1-106 to the extent practicable and shall include any additional information required by rule.

~~(2)(6)~~ The focus of a review under ~~subsection (1)(a)~~ is this section is to address, at a minimum, the following core review questions:

(a) to determine whether a board or program continues to be needed to protect public health, safety, or welfare or the common good by addressing the following questions:

(i) does the improper practice of the profession or occupation pose a physical, financial, or emotional threat to public health, safety, or welfare and is there evidence of harm from improper practice; and

(ii) does the practice of the profession or occupation require specific training or skills that make evaluation of competency difficult for the consumer; or

(b) to assess the financial solvency of the board or program and the impact on consumers and on licensees if higher fees are projected for the next biennium;

(c) whether the license type, board, or program is more restrictive than necessary to protect the public;

(d) whether more restrictive licensing requirements are supported by stronger justification, including justification for education, experience, examination, supervision, scope-of-practice, continuing education, criminal history, moral character, or similar requirements;

(e) whether the board, program, or license type is operating efficiently and effectively;

(f) whether licensing requirements affect workforce availability, interstate mobility, access to services, applicants, consumers, employers, or licensees;

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(g) whether complaint, investigation, discipline, and ethics-related information indicates issues requiring statutory, rule, administrative, or audit review;
(h) whether the practice act or governing statutes contain outdated, duplicative, inconsistent, unnecessary, or overly burdensome provisions; and
(i) whether continuation, modification, consolidation, repeal, rulemaking, or further review is appropriate.

~~(3)(7)~~ After the review, the legislative interim committee may draft legislation to:

(a) repeal the board or program if the board or program is no longer needed for public health, safety, or welfare or the common good; or

(b) combine a board with other licensing boards if a board meets the criteria in subsection (2)(a) but has one of the following criteria:

(i) is expected to have higher fees than if the board operates in combination with another board with similar interests;

(ii) has fewer than 200 licensees; or

(iii) has no or a limited number of complaints each year;

(c) modify, continue, consolidate, repeal, sunset, or terminate a board, program, or license type;

(d) recommend changes to statute or rule;

(e) request audit review or other further independent review;

(f) request additional information from the department, board, program, or stakeholders; or

(g) make any other recommendation within the committee's authority.

~~(4)(8)~~ The legislative interim committee, after a review of the administrative attachment of a board or program, may propose legislation to administratively attach the board or program to a department that has responsibilities related to the board or program.

(9) A review under this section is separate from a performance audit conducted by the legislative audit committee or the legislative auditor. Nothing in this section limits the authority of the legislative audit committee, the legislative audit division, or the legislative auditor under Title 5, chapter 13.

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(10) The department shall adopt rules to implement the review packet requirements of this section. Prior to the publication of a notice of proposed rulemaking related to this section, the department shall provide the legislative interim committee a reasonable opportunity to review and comment on the proposed rules. The rules may include:

(a) standardized forms, metrics, and reporting periods;

(b) additional information required for review packets;

(c) procedures for board or program responses;

(d) procedures for collecting stakeholder comments;

(e) methods for using existing biennial report data required by 37-1-106;

(f) procedures for reporting information by board, program, or license type; and

(g) any other procedure necessary to provide consistent, comparable, and useful information to the reviewing interim committee.

(11) The department shall present the review packet to the reviewing interim committee. The board or program under review may provide a written response, appear before the committee, and recommend continuation, modification, consolidation, repeal, rulemaking, or further review."

{Internal References to 2-8-404: None}

NEW SECTION. Section 4. Initial review schedule. (1) Before September 1, 2027, the economic affairs interim committee, in consultation with the department of labor and industry, shall adopt an initial 10-year review schedule for professional and occupational licensing boards, programs, and license types administered by or administratively attached to the department.

(2) The initial schedule must:

(a) provide for each board, program, and license type to be reviewed at least once during the 10-year period;

(b) group similar or related boards, programs, and license types in the same review cycle when practicable;

(c) account for committee workload and department capacity;

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- 1 (d) identify the boards, programs, and license types scheduled for review during each
2 interim; and
- 3 (f) consider whether a board, program, license type, or practice act has recently undergone
4 substantial statutory review or modernization.
- 5 (3) The committee, in consultation with the department of labor and industry, must adjust the
6 schedule to include the 4-year review for a new board, program, or license type in accordance
7 with 2-8-402(4) and 2-8-404(2)(b).

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9 **Section 5.** Section 5-5-223 , MCA, is amended to read:

10 **"5-5-223. Economic affairs interim committee.** (1) The economic affairs interim committee
11 has administrative rule review, draft legislation review, program evaluation, ~~and~~ licensing review,
12 and monitoring functions for the following executive branch agencies and the entities attached to
13 agencies for administrative purposes:

- 14 (a) department of agriculture;
- 15 (b) department of commerce;
- 16 (c) department of labor and industry;
- 17 (d) department of livestock;
- 18 (e) office of the state auditor and insurance commissioner;
- 19 (f) office of economic development;
- 20 (g) the state compensation insurance fund provided for in 39-71-2313, including the board of
21 directors of the state compensation insurance fund established in 2-15-1019;
- 22 (h) the division of banking and financial institutions provided for in 32-1-211; and
- 23 (i) the divisions of the department of revenue that administer the Montana Alcoholic
24 Beverage Code and the Montana Marijuana Regulation and Taxation Act.

25 (2) The state compensation insurance fund shall annually provide to the committee a report
26 in accordance with 5-11-210 on its budget as approved by the state compensation insurance fund
27 board of directors.

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(3) The economic affairs interim committee is the reviewing interim committee for professional and occupational licensing boards, programs, and license types administered by or administratively attached to the department of labor and industry under 2-8-402 and 2-8-404, and [section 4], unless another interim committee is designated by law."

*{Internal References to 5-5-223:
2-15-1019 5-11-222 33-22-1308 90-1-503}*

Section 6. Section 37-1-106 , MCA, is amended to read:

"37-1-106. Biennial report -- use in licensing review. (1) The department, in cooperation with each licensing board and program, shall prepare a biennial report. The biennial report of the department must contain for each board or program:

- (a) a summary of the board's or program's activities;
- (b) the board's or program's goals and objectives;
- (c) a detailed breakdown of board or program revenues and expenditures;
- (d) statistics illustrating board or program activities concerning licensing;
- (e) a summary of complaints received and their disposition;
- (f) the number of licenses revoked or suspended;
- (g) legislative or court action affecting the board or program;
- (h) the number of board members appointed pursuant to 37-1-123 who are still serving following the expiration of their appointed term;

(i) information necessary to support the periodic licensing review required under 2-8-404, to the extent the board, program, or license type is scheduled for review during the biennium; and
~~(+)(i)~~ any other information the department or board considers relevant.

(2) The department shall submit the report to the economic affairs interim committee, in accordance with 5-11-210, and the office of budget and program planning as a part of the information required by 17-7-111.

(3) The department may use the information prepared under this section to satisfy all or part of the review packet required under 2-8-404."

*{Internal References to 37-1-106:
5-11-222}*

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NEW SECTION. **Section 7. {standard} Codification.** [Section 4] is intended to be codified as an integral part of Title 2, chapter 8, part 4, and the provisions of Title 2, chapter 8, part 4, apply to [section 4].

NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective July 1, 2027.

NEW SECTION. **Section 9. Applicability.** (1) [This act] applies to professional and occupational licensing boards, programs, and license types administered by or administratively attached to the department of labor and industry on or after [the effective date of this act].

(2) The 10-year review cycle applies to established boards, programs, and license types in existence on [the effective date of this act].

(3) The 4-year review or sunset requirement in 2-8-402 applies to license types, licensing boards, and licensing programs created on or after [the effective date of this act].

-END-