SENATE BILL 1470

AN ACT

AMENDING SECTIONS 32-3101, 32-3103, 32-3104, 32-3105 AND 32-3106, ARIZONA REVISED STATUTES; RELATING TO THE REGULATION OF HEALTH PROFESSIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-3101, Arizona Revised Statutes, is amended to read:

32-3101. Definitions
In this chapter, unless the context otherwise requires:
1. "Certification" means a voluntary process by which a regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by that regulatory entity and who may assume or use the word "certified" in a title or designation to perform prescribed health professional tasks.
2. "Grandfather clause" means a provision applicable to practitioners actively engaged in the regulated health profession before the effective date of a law that exempts the practitioners from meeting the prerequisite qualifications set forth in the law to perform prescribed occupational tasks.
3. "Applicant HEALTH PROFESSIONAL group" means any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated or that proposes to increase the scope of practice of a health profession.
4. "Health professions" means professions THAT ARE regulated pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39 or 41 of this title, title 36, chapter 6, article 7 or title 36, chapter 17.
5. "Increase the scope of practice" means to engage in conduct beyond the authority granted to a health profession by law.
6. "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety and welfare.
7. "Legislative committees of reference" means joint subcommittees composed of the members of the appropriate standing committees of the house of representatives and senate appointed pursuant to section 41-2954.
8. "Licensure" or "license" means an individual, nontransferable authorization to carry on a health activity that would otherwise be unlawful in this state in the absence of the permission, and that is based on qualifications that include graduation from an accredited or approved program and acceptable performance on a qualifying examination or a series of examinations.
9. "Practitioner" means an individual who has achieved knowledge and skill by practice and who is actively engaged in a specified health profession.
9. “Public member” means an individual who is not and never has been a member or spouse of a member of the health profession being regulated and who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

10. “Registration” means the formal notification that, before rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner, the location, nature and operation of the health activity to be practiced and, if required by a regulatory entity, a description of the service to be provided.

11. “Regulatory entity” means any board, commission, agency or department of this state that regulates one or more health professions in this state.

12. “State agency” means any department, board, commission or agency of this state.

Sec. 2. Section 32-3103, Arizona Revised Statutes, is amended to read:

32-3103. Regulation of health professions; legislation; criteria

A. Regulation shall not be imposed on any unregulated health profession except for the exclusive purpose of protecting the public interest. IT IS NOT A LEGITIMATE USE OF STATE POWER TO PROTECT EXISTING BUSINESSES AND AGENCIES, WHETHER PUBLICLY OR PRIVATELY OWNED, AGAINST COMPETITION. All proposed legislation to regulate a health profession for the first time shall be reviewed according to the following criteria, and the health profession shall be regulated by this state only if:

1. THERE IS CREDIBLE EVIDENCE THAT THE unregulated practice can clearly harm or endanger OF THAT HEALTH PROFESSION POSES A SPECIFIC HARM OR DANGER TO the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

2. The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

3. The public cannot be effectively protected by other means in a more cost-beneficial manner.

B. BEFORE THE LEGISLATURE ENACTS LEGISLATION THAT AFFECTS ANY SPECIFIC OCCUPATION, PRACTICE OR ACT OF A HEALTH PROFESSION THAT HAS NOT PREVIOUSLY BEEN REGULATED AND after evaluating the criteria prescribed in subsection A OF THIS SECTION and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, THE LEGISLATURE SHALL IMPLEMENT the least restrictive alternative method of regulation to ADDRESS THE SPECIFIC HARM OR DANGER IDENTIFIED, consistent with the public interest and the following:
1. If existing common law and statutory civil actions and criminal
prohibitions are not sufficient to eradicate existing harm, the regulation
shall provide for stricter civil actions and criminal prohibitions.

2. If a service is being performed for individuals which THAT
involves a hazard to the public health, safety or welfare, the regulation
shall impose inspection requirements and enable an appropriate state
agency to enforce violations by injunctive relief in court.

3. If the threat to the public health, safety or economic
well-being is relatively small as a result of the operation of the health
profession, the regulation shall implement a system of registration.

4. If the consumer may have a substantial basis for relying on the
services of a practitioner, the regulation shall implement a system of
certification.

5. If it is apparent that adequate regulation cannot be achieved by
means other than licensing, the regulation shall implement a system of
licensing.

6. IF A LESS RESTRICTIVE REGULATION CANNOT ADDRESS A SPECIFIC HARM
OR DANGER IDENTIFIED IN SUBSECTION B OF THIS SECTION, THE REGULATION MAY
INCLUDE LICENSURE BY THIS STATE.

C. AN INDIVIDUAL WHO IS LICENSED OR CERTIFIED IN ANOTHER STATE OR
JURISDICTION OF THE UNITED STATES IS NOT SUBJECT TO ANY ADDITIONAL
REGULATORY REQUIREMENT TO BECOME LICENSED OR CERTIFIED IN THIS STATE,
EXCEPT TO ADDRESS A SPECIFIC HARM OR DANGER THAT IS UNIQUE TO THIS STATE.

Sec. 3. Section 32-3104, Arizona Revised Statutes, is amended to
read:

32-3104. Health professional groups; written report;
applicants legislative committees; hearings

Applicant HEALTH PROFESSIONAL groups shall submit a written report
explaining the factors prescribed in section 32-3105 or 32-3106 to the
president of the senate and the speaker of the house of
representatives. The report shall be submitted on or before September 1
before the start of the legislative session for which the legislation is
proposed. THE HOUSE OF REPRESENTATIVES AND THE SENATE BY RULE MAY SET AN
EARLIER REPORT DEADLINE. The president of the senate or AND the speaker
of the house of representatives shall assign the written report to the
appropriate legislative committee of reference COMMITTEES. The
legislative committee of reference COMMITTEES shall study CONSIDER the
written report and deliver the report of its recommendations to the
speaker of the house of representatives, the president of the senate, the
governor and, if appropriate, the regulatory board of the health
profession on or before December 1 of the year in which the report is
submitted. Legislative committees of reference may hold hearings as they
decide necessary. IN CONNECTION WITH ANY LEGISLATION TO INITIALLY LICENSE A
HEALTH PROFESSIONAL OR TO EXPAND THE SCOPE OF PRACTICE OF A HEALTH
PROFESSION. If a health professional group proposes to increase the scope
of practice of its profession, copies of the written report shall be sent
to the regulatory board of the health profession for review and comment.
If applicable, the regulatory board of the health profession shall make
recommendations based on the report submitted by applicant HEALTH
PROFESSIONAL groups to the extent requested by the legislative committees
of reference. THE HEALTH COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND
THE HEALTH AND HUMAN SERVICES COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR
COMMITTEES, MAY CONDUCT HEARINGS ON THE WRITTEN REPORT BEFORE THE
LEGISLATIVE SESSION CONvenes.

Sec. 4. Section 32-3105, Arizona Revised Statutes, is amended to
read:

32-3105. Applicants for regulation; factors
Applicant HEALTH PROFESSIONAL groups for regulation shall explain
each of the following factors to the extent requested by the legislative
committees of reference:
1. A definition of the problem and Why regulation is necessary,
   including:
   (a) The nature of the potential harm to the public if the health
   profession is not regulated and the extent to which there is a threat to
   public health and safety.
   (b) The extent to which consumers need and will benefit from a
   method of regulation identifying competent practitioners and indicating
   typical employers, if any, of practitioners in the health profession.
   (c) The extent of autonomy a practitioner has, as indicated by the
   following:
       (i) The extent to which the health profession calls for independent
       judgment and the extent of skill or experience required in making the
       independent judgment.
       (ii) The extent to which practitioners are supervised.
2. The efforts made to address the problem, including:
   (a) Voluntary efforts, if any, by members of the health profession
   to either:
       (i) Establish a code of ethics.
       (ii) Help resolve disputes between health practitioners and
       consumers.
   (b) Recourse to and the extent of use of applicable law and whether
   it could be amended to control the problem.
3. The alternatives considered, including:
   (a) Regulation of business employers or practitioners rather than
   employee practitioners.
   (b) Regulation of the program or service rather than the individual
   practitioners.
   (c) Registration of all practitioners.
   (d) Certification of all practitioners.
   (e) Other alternatives.
(f) Why the use of the alternatives specified in this paragraph would not be adequate to protect the public interest.

(g) Why licensing would serve to protect the public interest.

4. The benefit to the public if regulation is granted, including:
   (a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation.
   (b) Whether the public can identify qualified practitioners.
   (c) The extent to which the public can be confident that qualified practitioners are competent, including:
      (i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification or licensure, including the composition of the board and the number of public members, if any, the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension and nonrenewal of registrations, certificates or licenses, the adoption of rules and canons of ethics, the conduct of inspections, the receipt of complaints and disciplinary action taken against practitioners and how fees would be levied and collected to pay for the expenses of administering and operating the regulatory system.
      (ii) If there is a grandfather clause, whether grandfathered practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date.
      (iii) The nature of the standards proposed for registration, certification or licensure as compared with the standards of other jurisdictions.
      (iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions.
   (v) The nature and duration of any training, including whether the training includes a substantial amount of supervised field experience, whether training programs exist in this state, if there will be an experience requirement, whether the experience must be acquired under a registered, certified or licensed practitioner, whether there are alternative routes of entry or methods of meeting the prerequisite qualifications, whether all applicants will be required to pass an examination, and if an examination is required, by whom it will be developed and how the costs of development will be met.
   (d) Assurance of the public that practitioners have maintained their competence, including:
      (i) Whether the registration, certification or licensure will carry an expiration date.
(ii) Whether renewal will be based only on payment of a fee or
whether renewal will involve reexamination, peer review or other
enforcement.

5. The extent to which regulation might harm the public, including:
   (a) The extent to which regulation will restrict entry into the
       health profession, including:
   (i) Whether the proposed standards are more restrictive than
       necessary to ensure safe and effective performance.
   (ii) Whether the proposed legislation requires registered,
       certified or licensed practitioners in other jurisdictions who migrate to
       this state to qualify in the same manner as state applicants for
       registration, certification and licensure if the other jurisdiction has
       substantially equivalent requirements for registration, certification or
       licensure as those in this state.
   (b) Whether there are professions similar to that of the applicant
       HEALTH PROFESSIONAL group which THAT should be included in, or portions of
       the applicant HEALTH PROFESSIONAL group which THAT should be excluded
       from, the proposed legislation.

6. The maintenance of standards including:
   (a) Whether effective quality assurance standards exist in the
       health profession, such as legal requirements associated with specific
       programs that define or enforce standards or a code of ethics.
   (b) How the proposed legislation will assure quality, including:
       (i) The extent to which a code of ethics, if any, will be adopted.
       (ii) The grounds for suspension or revocation of registration, certification or
           licensure.

7. A description of the group proposed for regulation, including a
list of associations, organizations and other groups representing the
practitioners in this state, an estimate of the number of practitioners in
each group and whether the groups represent different levels of practice.

8. The expected costs of regulation, including:
   (a) The impact registration, certification or licensure will
       have on the costs of the services to the public.
   (b) The cost to this state and to the general public of
       implementing the proposed legislation.

Sec. 5. Section 32-3106, Arizona Revised Statutes, is amended to
read:

32-3106. Applicants for increase in scope of practice;
legislation; criteria

A. Applicant HEALTH PROFESSIONAL groups for SEEKING AN increased
scope of practice shall explain each of the following factors to the
extent requested by the legislative committee of reference COMMITTEES:
1. A definition of the problem and Why a change in scope of
   practice is necessary BENEFICIAL, including the extent to which HEALTH
CARE consumers need and will benefit from practitioners with this scope of practice.

2. The extent to which the public can be confident that qualified practitioners are competent including:
   (a) Evidence that the profession's regulatory board has functioned adequately in protecting the public.
   (b) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or endorse standards or a code of ethics.
   (c) Evidence that state approved educational programs provide or are willing to provide core curriculum adequate to prepare practitioners at the proposed level.

2. WHETHER THE PROPOSED SCOPE OF PRACTICE IS TAUGHT IN ACCREDITED PROFESSIONAL SCHOOLS FOR THE PROFESSION, IN POSTGRADUATE TRAINING PROGRAMS OR IN CONTINUING EDUCATION PROGRAMS.

3. WHETHER THE PROPOSED SCOPE OF PRACTICE IS TESTED ON NATIONAL BOARD EXAMINATIONS FOR APPLICANTS FOR PROFESSIONAL LICENSURE.

3. 4. The extent to which an increase in the scope of practice may harm the public including the extent to which, IF ANY, an increased scope of practice will restrict entry into practice OF ANY OTHER INDIVIDUALS and whether the proposed legislation requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure if the other jurisdiction has substantially equivalent requirements for registration, certification or licensure as those in this state.

4. The cost to this state and to the general public of implementing the proposed increase in scope of practice.

5. THE RELEVANT HEALTH PROFESSIONAL LICENSURE LAWS, IF ANY, IN OTHER STATES.

6. RECOMMENDATIONS, IF ANY, FROM THE APPLICABLE LICENSING BOARD AND FROM PROFESSIONAL DEGREE AND TRAINING PROGRAMS IN THIS STATE.

B. THE LEGISLATURE SHALL REVIEW ANY LEGISLATION TO INCREASE A SCOPE OF PRACTICE ACCORDING TO THE FOLLOWING CRITERIA:

1. AN INDIVIDUAL WHO GRADUATES FROM AN ACCREDITED HEALTH PROFESSIONAL TRAINING PROGRAM, PASSES THE REQUIRED NATIONAL BOARD EXAMINATIONS AND BECOMES LICENSED IN THIS STATE IS PRESUMED TO BE FULLY QUALIFIED TO PROVIDE THE FULL SCOPE OF PROFESSIONAL SERVICES FOR WHICH THE INDIVIDUAL IS TRAINED.

2. ANY LIMIT ON A HEALTH PROFESSION SCOPE OF PRACTICE MUST BE ONLY FOR THE EXCLUSIVE PURPOSE OF PROTECTING THE PUBLIC INTEREST FROM A CLEAR AND IDENTIFIED SPECIFIC HARM.
3. ANY PROPOSED INCREASE IN A SCOPE OF PRACTICE THAT WILL RESTRICT
OTHER INDIVIDUALS FROM ENGAGING IN THE HEALTH PROFESSION TO A GREATER
DEGREE THAN IN CURRENT LAW MUST HAVE CREDIBLE EVIDENCE THAT THE PROPOSED
CHANGE IS REQUIRED.

4. THERE IS A PRESUMPTION THAT HAVING ADDITIONALLY TRAINED HEALTH
PROFESSIONALS PROVIDING AN EXPANDED RANGE OF PROFESSIONAL HEALTH CARE
SERVICES WILL HAVE A BENEFICIAL EFFECT FOR A COMMUNITY AND SHOULD BE
ENCOURAGED AND SUPPORTED.