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 THE LEGISLATIVE COMMITTEE OF REFERENCE.

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

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

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

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

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

C. Each committee of reference shall hold public hearings for the following purposes:
   1. To determine the actual need of the agency to regulate or direct the particular activity.
   2. To determine the extent to which the statutory requirements of the agency are necessary and are being met.
   3. To receive testimony from the public as to the relationship of the agency with the public.
   4. To receive testimony from the executive director or other head of the agency as to reasons for the continuation of the agency.

D. Each committee of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of each agency:
   1. The objective and purpose in establishing the agency and the extent to which the objective and purpose are met by private enterprises in other states.
   2. The extent to which the agency has met its statutory objective and purpose and the efficiency with which it has operated.
   3. The extent to which the agency serves the entire state rather than specific interests.
   4. The extent to which rules adopted by the agency are consistent with the legislative mandate.
   5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and the expected impact on the public.
   6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.
7. The extent to which the attorney general or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.

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

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

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

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

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

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

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

1. That the state agency be continued.

2. That the state agency be revised or consolidated.

3. That the state agency be terminated pursuant to this chapter.

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

   (a) REPEAL THE OCCUPATIONAL LICENSE.

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

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

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

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

       (iii) REDEFINE THE SCOPE OF PRACTICE IN AN OCCUPATIONAL LICENSE.
F. The final sunset review report by each committee of reference shall also include a written statement prepared by the agency involved that contains:

1. An identification of the problem or the needs that the agency is intended to address.
2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.
3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.
4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.

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

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

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

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

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

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

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

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

4. "LESS RESTRICTIVE REGULATION" MEANS, FROM LEAST TO MOST RESTRICTIVE:
   (a) MARKET COMPETITION.
   (b) THIRD-PARTY OR CONSUMER-CREATED RATINGS AND REVIEWS.
   (c) PRIVATE CERTIFICATION.
   (d) VOLUNTARY BONDING OR INSURANCE.
   (e) SPECIFIC PRIVATE CIVIL CAUSE OF ACTION TO REMEDY CONSUMER HARM.
   (f) DECEPTIVE TRADE PRACTICE LAWS.
   (g) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC GOOD OR SERVICE.
   (h) REGULATION OF THE PROCESS OF PROVIDING THE SPECIFIC GOOD OR SERVICE.
   (i) REGULATION OF THE FACILITY WHERE THE SPECIFIC GOOD OR SERVICE IS SOLD.
   (j) INSPECTION.
   (k) BONDING.
   (l) INSURANCE.
   (m) GOVERNMENT REGISTRATION.
   (n) GOVERNMENT CERTIFICATION.
   (o) OCCUPATIONAL LICENSE.

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

6. "OCCUPATIONAL REGULATION":
   (a) MEANS A STATUTE, RULE, PRACTICE, POLICY OR OTHER STATE LAW THAT ALLOWS AN INDIVIDUAL TO USE AN OCCUPATIONAL TITLE OR WORK IN A LAWFUL OCCUPATION.
   (b) INCLUDES A GOVERNMENT REGISTRATION, A GOVERNMENT CERTIFICATION AND AN OCCUPATIONAL LICENSE.
   (c) DOES NOT INCLUDE A BUSINESS LICENSE, FACILITY LICENSE, BUILDING PERMIT OR ZONING AND LAND USE REGULATION EXCEPT TO THE EXTENT THOSE STATE LAWS REGULATE AN INDIVIDUAL’S PERSONAL QUALIFICATIONS TO PERFORM A LAWFUL OCCUPATION.

7. "PERSONAL QUALIFICATIONS" MEANS CRITERIA THAT ARE RELATED TO AN INDIVIDUAL’S PERSONAL BACKGROUND AND CHARACTERISTICS, INCLUDING COMPLETION OF AN APPROVED EDUCATIONAL PROGRAM, SATISFACTORY PERFORMANCE ON AN EXAMINATION, WORK EXPERIENCE OR OTHER EVIDENCE OF ATTAINMENT OF REQUISITE
SKILLS OR KNOWLEDGE, MORAL CHARACTER, CRIMINAL HISTORY AND COMPLETION OF CONTINUING EDUCATION.

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

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

41-3502. Regulating nonhealth professions and occupations;
criteria

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

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

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

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

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

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

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

C. D. After evaluating the criteria prescribed in subsection B, the legislative committee of reference shall examine data from multiple sources and look for evidence of actual harm to the public related to the industry being considered for regulation. The evidence may include industry association data, federal, state and local government data, business reports, complaints to the respective state law enforcement or consumer affairs divisions or the better business bureau and data from reciprocal agencies in other states with and without similar laws and rules.
D. If the legislative committee of reference finds that C OF THIS SECTION, IF it is necessary to regulate a profession or occupation not previously regulated by law, the regulation shall be in the least restrictive manner and shall not be imposed to protect a discrete interest group from economic competition AS PRESCRIBED BY THIS ARTICLE.

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

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

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

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

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

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

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

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

Applicant groups shall submit a written report explaining the factors prescribed in section 32-4403 41-3504 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 president of the senate or the speaker of the house of representatives shall assign the written report to the appropriate legislative committee of reference. The legislative committee of reference shall study 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 entity on or before the third Friday in January of the year following the year in which the report is submitted. Legislative committees of reference may hold hearings as they deem necessary.
Sec. 7. Title 41, chapter 33, article 1, Arizona Revised Statutes, as transferred and renumbered, is amended by adding section 41-3506, to read:

41-3506. Use of title
A. ON RECEIVING INITIAL AND CONTINUING APPROVAL FROM THE GOVERNMENT, AN INDIVIDUAL MAY USE THE TITLE "GOVERNMENT CERTIFIED" OR "STATE CERTIFIED". A NONCERTIFIED INDIVIDUAL MAY PERFORM THE LAWFUL OCCUPATION FOR COMPENSATION BUT MAY NOT USE THE TITLE "GOVERNMENT CERTIFIED" OR "STATE CERTIFIED".

B. FOR THE PURPOSES OF THIS CHAPTER:
1. GOVERNMENT CERTIFICATION IS NOT SYNONYMOUS WITH OCCUPATIONAL LICENSE AND DOES NOT REFLECT CREDENTIALS, SUCH AS THOSE USED FOR MEDICAL BOARD CERTIFICATION OR HELD BY A CERTIFIED PUBLIC ACCOUNTANT, THAT ARE PREREQUISITES TO WORKING LAWFULLY IN AN OCCUPATION.
2. GOVERNMENT REGISTRATION DOES NOT IMPLY PERSONAL QUALIFICATIONS, IS NOT TRANSFERABLE BUT MAY REQUIRE A BOND OR INSURANCE. ON THE GOVERNMENT'S RECEIPT OF NOTICE, THE INDIVIDUAL MAY USE THE TITLE "GOVERNMENT REGISTERED". A NONREGISTERED INDIVIDUAL MAY NOT PERFORM THE OCCUPATION FOR COMPENSATION OR USE THE TITLE "GOVERNMENT REGISTERED". GOVERNMENT REGISTRATION IS NOT SYNONYMOUS WITH OCCUPATIONAL LICENSE AND DOES NOT REFLECT CREDENTIALS, SUCH AS THOSE HELD BY A REGISTERED NURSE, THAT ARE PREREQUISITES TO WORKING LAWFULLY IN AN OCCUPATION.
3. IN AN OCCUPATION FOR WHICH A LICENSE IS REQUIRED, IT IS ILLEGAL FOR AN INDIVIDUAL WHO DOES NOT POSSESS A VALID OCCUPATIONAL LICENSE TO PERFORM THE OCCUPATION FOR COMPENSATION.
4. AN INDIVIDUAL MAY USE THE TITLE "CERTIFIED" AS ALLOWED BY A PRIVATE ORGANIZATION THAT GRANTS PRIVATE CERTIFICATION.