

nonhealth professions; occupations; regulations.

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 176
SENATE BILL 1218

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; RELATING TO THE 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
16 ~~F~~ G 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 **AND THE ABILITY OF THE**
44 **AGENCY TO TIMELY INVESTIGATE AND RESOLVE COMPLAINTS WITHIN ITS**
45 **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.

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

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

22 E. EACH COMMITTEE OF REFERENCE THAT REVIEWS AN AGENCY THAT
23 ADMINISTERS AN OCCUPATIONAL REGULATION AS DEFINED IN SECTION 41-3501 SHALL
24 CONSIDER BUT NOT BE LIMITED TO THE FOLLOWING FACTORS IN DETERMINING THE
25 NEED FOR CONTINUATION OR TERMINATION OF EACH AGENCY:

26 1. THE EXTENT TO WHICH THE OCCUPATIONAL REGULATION MEETS THE
27 REQUIREMENTS OF SECTION 41-3502.

28 2. THE EXTENT TO WHICH FAILURE TO REGULATE A PROFESSION OR
29 OCCUPATION WILL RESULT IN:

30 (a) THE LOSS OF INSURANCE.

31 (b) AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS
32 REQUIRED BY FEDERAL LAW.

33 (c) AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE
34 FEDERAL GOVERNMENT.

35 (d) THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES.

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

41 1. That the state agency be continued.

42 2. That the state agency be revised or consolidated.

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

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

- 1 (a) REPEAL THE OCCUPATIONAL OR PROFESSIONAL LICENSE.
2 (b) CONVERT THE OCCUPATIONAL OR PROFESSIONAL LICENSE TO A LESS
3 RESTRICTIVE REGULATION AS DEFINED IN SECTION 41-3501.
4 (c) INSTRUCT THE STATE AGENCY TO SEEK LEGISLATION OR ADOPT RULES TO
5 REFLECT THE COMMITTEE OF REFERENCE'S RECOMMENDATION TO:
6 (i) IMPOSE LESS RESTRICTIVE REGULATIONS THAN OCCUPATIONAL OR
7 PROFESSIONAL LICENSES, AS DEFINED IN SECTION 41-3501.
8 (ii) CHANGE THE REQUISITE PERSONAL QUALIFICATIONS OF AN
9 OCCUPATIONAL OR PROFESSIONAL LICENSE.
10 (iii) REDEFINE THE SCOPE OF PRACTICE IN AN OCCUPATIONAL OR
11 PROFESSIONAL LICENSE.
12 ~~F.~~ G. The final sunset review report by each committee of
13 reference shall also include a written statement prepared by the agency
14 involved that contains:
15 1. An identification of the problem or the needs that the agency is
16 intended to address.
17 2. A statement, to the extent practicable, in quantitative and
18 qualitative terms, of the objectives of such agency and its anticipated
19 accomplishments.
20 3. An identification of any other agencies having similar,
21 conflicting or duplicate objectives, and an explanation of the manner in
22 which the agency avoids duplication or conflict with other such agencies.
23 4. An assessment of the consequences of eliminating the agency or
24 of consolidating it with another agency.
25 ~~G.~~ H. Each committee of reference shall oversee the preparation of
26 any proposed legislation to implement the recommendations of that
27 committee of reference and is responsible for the introduction of such
28 legislation.
29 ~~H.~~ I. If an agency is continued, it is not necessary to reappoint
30 any member of the governing board or commission of the agency. Such
31 members are eligible to complete their original terms without
32 reappointment or reconfirmation.
33 ~~I.~~ J. Each committee of reference shall have the power of
34 legislative subpoena pursuant to chapter 7, article 4 of this title.
35 Sec. 2. Repeal
36 Title 41, chapter 33, Arizona Revised Statutes, is repealed.
37 Sec. 3. Transfer and renumber
38 Title 32, chapter 44, Arizona Revised Statutes, is transferred and
39 renumbered for placement in title 41, Arizona Revised Statutes, as a new
40 chapter 33. Title 32, chapter 44, article 1, Arizona Revised Statutes, is
41 transferred and renumbered for placement in title 41, chapter 33, Arizona
42 Revised Statutes, as added by this act, as a new article 1. The following
43 sections are transferred and renumbered for placement in title 41, chapter
44 33, article 1, Arizona Revised Statutes:

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

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

9 41-3501. Definitions

10 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

11 1. "GOVERNMENT CERTIFICATION" MEANS A VOLUNTARY PROGRAM IN WHICH
12 THIS STATE GRANTS NONTRANSFERABLE RECOGNITION TO AN INDIVIDUAL WHO MEETS
13 PERSONAL QUALIFICATIONS THAT ARE ESTABLISHED BY LAW.

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

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

22 4. "LESS RESTRICTIVE REGULATION" MEANS, FROM LEAST TO MOST
23 RESTRICTIVE:

24 (a) NONGOVERNMENT REGULATION, INCLUDING:

25 (i) PRIVATE CERTIFICATION.

26 (ii) DECEPTIVE TRADE PRACTICE LAWS.

27 (iii) MANDATORY DISCLOSURE OF ATTRIBUTES OF THE SPECIFIC GOOD OR
28 SERVICE.

29 (b) REGULATION OF THE PROCESS OF PROVIDING THE SPECIFIC GOOD OR
30 SERVICE.

31 (c) REGULATION OF THE FACILITY WHERE THE SPECIFIC GOOD OR SERVICE
32 IS SOLD.

33 (d) INSPECTION REGULATIONS.

34 (e) BONDING REQUIREMENTS.

35 (f) INSURANCE REQUIREMENTS.

36 (g) GOVERNMENT REGISTRATION.

37 (h) GOVERNMENT CERTIFICATION.

38 (i) OCCUPATIONAL OR PROFESSIONAL LICENSE.

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

1 6. "OCCUPATIONAL REGULATION":

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

5 (b) INCLUDES A GOVERNMENT REGISTRATION, A GOVERNMENT CERTIFICATION
6 AND AN OCCUPATIONAL OR PROFESSIONAL LICENSE.

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

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

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

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

23 41-3502. Regulating nonhealth professions and occupations:
24 criteria

25 A. A profession or occupation shall not be regulated except for the
26 exclusive purpose of protecting the public interest. ~~REGULATION SHALL NOT~~
27 ~~BE IMPOSED FOR THE EXCLUSIVE PURPOSE OF PROTECTING A PROFESSION OR~~
28 ~~OCCUPATION FROM ECONOMIC COMPETITION.~~ Except as provided in TITLE 32,
29 chapter 31 ~~of this title~~, all ~~proposed legislation to regulate~~ REGULATION
30 OF a profession or occupation for the first time shall be reviewed
31 according to the criteria prescribed in subsection B OF THIS SECTION.

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

34 1. ~~Am~~ THERE IS CREDIBLE EVIDENCE OF HARM THAT THE unregulated
35 practice ~~can clearly harm or endanger~~ THREATENS the public health, safety
36 or welfare IN THIS STATE.

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

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

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

1 C. After evaluating the criteria prescribed in subsection ~~B~~, the
2 ~~legislative committee of reference shall examine data from multiple~~
3 ~~sources and look for evidence of actual harm to the public related to the~~
4 ~~industry being considered for regulation. The evidence may include~~
5 ~~industry association data, federal, state and local government data,~~
6 ~~business reports, complaints to the respective state law enforcement or~~
7 ~~consumer affairs divisions or the better business bureau and data from~~
8 ~~reciprocal agencies in other states with and without similar laws and~~
9 ~~rules.~~

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

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

21 E. THE LEGISLATIVE COMMITTEE OF REFERENCE SHALL PROVIDE THE
22 FINDINGS AND RECOMMENDATIONS TO THE STANDING COMMITTEE TO WHICH THE
23 PROPOSED LEGISLATION IS ASSIGNED. THE STANDING COMMITTEE SHALL ADDRESS
24 ALL OF THE FOLLOWING:

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

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

30 3. THE EXTENT TO WHICH FAILURE TO REGULATE A PROFESSION OR
31 OCCUPATION WILL RESULT IN:

32 (a) THE LOSS OF INSURANCE.

33 (b) AN IMPACT TO THE ABILITY TO PRACTICE IN OTHER STATES OR AS
34 REQUIRED BY FEDERAL LAW.

35 (c) AN IMPACT TO THE REQUIRED LICENSURE OR REGISTRATION WITH THE
36 FEDERAL GOVERNMENT.

37 (d) THE LOSS OF CONSTITUTIONALLY AFFORDED PRACTICES.

38 F. Notwithstanding any other law, an agency that issues new
39 ~~professional or occupational~~ OCCUPATIONAL OR PROFESSIONAL licenses,
40 registrations or certificates shall not hinder the regulated industry
41 through the delayed awarding of a license, registration or certificate.

42 G. SUBSECTIONS B AND C OF THIS SECTION DO NOT PREEMPT FEDERAL
43 REGULATIONS OR REQUIRE A PRIVATE CERTIFICATION ORGANIZATION TO GRANT OR
44 DENY PRIVATE CERTIFICATION TO AN INDIVIDUAL.

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

3 41-3503. Applicant groups; nonhealth professions and
4 occupations; written report

5 Applicant groups shall submit a written report explaining the
6 factors prescribed in section ~~32-4403~~ 41-3504 to the president of the
7 senate and the speaker of the house of representatives. The report shall
8 be submitted on or before September 1 before the start of the legislative
9 session for which the legislation is proposed. The president of the
10 senate or the speaker of the house of representatives shall assign the
11 written report to the appropriate legislative committee of reference. The
12 legislative committee of reference shall study the written report and
13 deliver the report of its recommendations to the speaker of the house of
14 representatives, the president of the senate, the governor and, if
15 appropriate, the regulatory entity on or before the third Friday in
16 January of the year following the year in which the report is submitted.
17 Legislative committees of reference may hold hearings as they deem
18 necessary.

APPROVED BY THE GOVERNOR APRIL 5, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2021.