

# Occupational Licensing Review Act.

## AN ACT

RELATING TO OCCUPATIONAL LICENSING REFORM; AMENDING CHAPTER 94, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-9408, IDAHO CODE, TO PROVIDE FOR THE CREATION OF AN OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW PILOT COMMITTEE; AMENDING CHAPTER 94, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-9409, IDAHO CODE, TO PROVIDE FOR UNIVERSAL LICENSURE; AND AMENDING CHAPTER 94, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-9410, IDAHO CODE, TO PROVIDE A PROCESS FOR CERTAIN PREQUALIFICATION REQUESTS.

Be It Enacted by the Legislature of the State of Idaho:

### SUNRISE AND SUNSET REVIEW

SECTION 1. That Chapter 94, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-9408, Idaho Code, and to read as follows:

67-9408. OCCUPATIONAL AND PROFESSIONAL LICENSURE REVIEW PILOT COMMITTEE.

- (1) For occupational regulations and their boards, it is the policy of the state that:
  - (a) The right of an individual to pursue a lawful occupation is a fundamental right.
  - (b) Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten the health or safety of the public.
- (2) In order to establish oversight of occupational and professional licensure and related issues in Idaho, there is hereby established an occupational and professional licensure review pilot committee.
- (3) The committee shall consist of eight (8) members, with four (4) members from the senate and four (4) members from the house of representatives. No more than three (3) members from the senate and no more than three (3) members from the house of representatives shall be from the same political party. Appointments to the committee shall be for the term of office of the member appointed. Any vacancy shall be filled in a manner consistent with the appointment procedure set forth in this subsection, except the appointment shall be for the remainder of the unexpired term. A committee member may be reappointed to the committee. Two cochair shall be appointed by the committee from the committee membership, with one (1) cochair from the senate and the other from the house of representatives. The committee shall receive staff assistance from the legislative

services office and an appropriation shall be made to the legislative services office for the purpose of covering additional staffing costs.

(4) Definitions.

(a) Scope. For the purposes of this chapter, the words defined in this section have the meaning given.

(b) "Government certification" means a voluntary, government-granted, and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not synonymous with "occupational license." It also is not intended to include 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.

(c) "Government registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Government registration" does not include personal qualifications and is not transferable but it may require a bond or insurance. Upon the government's receipt of notice, the individual may use "government registered" as a title. A non-registered individual may not perform the occupation for compensation or use "government registered" as a title. In this chapter, "government registration" is not intended to be synonymous with "occupational license." It also is not intended to include credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.

(d) "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 an occupational regulation.

(e) "Least restrictive regulation" means, from least to most restrictive,

- (i) market competition,
- (ii) third-party or consumer-created ratings and reviews,
- (iii) private certification,
- (iv) voluntary bonding or insurance,
- (v) specific private civil cause of action to remedy consumer harm,
- (vi) deceptive trade practice act,
- (vii) mandatory disclosure of attributes of the specific good or service,
- (viii) regulation of the process of providing the specific good or service,

- (ix) regulation of the facility where the specific good or service is sold,
- (x) inspection,
- (xi) bonding,
- (xii) insurance,
- (xiii) government registration,
- (xiv) government certification,
- (xv) specialty occupational certification solely for medical reimbursement, and
- (xvi) occupational license.

(f) "Occupational license" is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the legislature. 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.

(g) "Occupational regulation" 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. It includes government registration, government certification, and occupational license. It excludes 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.

(h) "Personal qualifications" are criteria related to an individual's personal background and characteristics. They may include one or more of the following: completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite knowledge and skills, passing a review of the individual's criminal record, and completion of continuing education.

(i) "Private certification" is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of "certified" or other title conferred by the private organization.

(j) "Specialty occupational certification solely for medical reimbursement" means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of new or niche medical services based on meeting personal qualifications established by the legislature. A private health insurance company or other private company may recognize this credential. Notwithstanding this specialty certification, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty certification to provide the identified medical services for compensation, but the non-certified individual will not qualify for payment or reimbursement from a government agency.

(5) The committee shall have as a primary duty and responsibility the task of conducting a sunrise review upon request that a lawful profession that is not licensed by the state become licensed.

(a) If a government requestor or a representative of a lawful occupation that is not licensed by the state proposes that the state license or newly regulate a lawful occupation, the requestor or representative shall, prior to the introduction of any proposed legislation, submit an application for sunrise review to the legislative services office in a form approved by the committee. An application shall be submitted by June 1 for review and processing prior to the next regular legislative session.

(b) Along with any other information requested by the committee, the application shall include a description of:

- (i) Why licensing or other regulation of the lawful occupation is required to protect against present, significant and substantiated harm to the health or safety of the public; and
- (ii) The least restrictive regulation of the lawful occupation that would protect against present, significant and substantiated harm to the health or safety of the public.

(c) If an application is submitted by a representative of a lawful occupation, the application shall include a nonrefundable fee of five hundred dollars (\$500)

(d) All application fees shall be deposited into the general fund.

(e) The committee also may request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor-market economics, or other factors, costs and benefits.

(6) The committee shall meet as often as may be necessary for the proper performance of its duties upon the call of the cochairst.

(7) The sunrise review process shall be as follows:

(a) The committee will determine if the proposed regulation meets the state's policy in paragraph (1) of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms.

(b) The committee's analysis in (a) will employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in paragraph 4(e)(i)-(iv) The committee will give added consideration to the use of private certification programs that allow a provider to give consumers information about the provider's knowledge, skills and association with a private certification organization.

(c) The committee may rebut the presumption in (b) if it finds both credible empirical evidence of present, significant and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committee will recommend the least restrictive government regulation to address the harm, as listed in paragraph 4(e) (v)-(xvi)

(d) The committee may use the following guidelines to form its recommendation in (c) If the harm arises from:

- (i) contractual disputes, including pricing disputes, the committee may recommend enacting a specific civil cause of action in small-claims court or district court to remedy consumer harm. This cause of action may provide for reimbursement of the attorney's fees or court costs, if a consumer's claim is successful;
- (ii) fraud, the committee may recommend strengthening powers under the state's deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service;
- (iii) general health and safety risks, the committee may recommend enacting a regulation on the related process or requiring a facility license;
- (iv) unclean facilities, the committee may recommend requiring periodic facility inspections;
- (v) a provider's failure to complete a contract fully or to standards, the committee may recommend requiring the provider to be bonded;
- (vi) a lack of protection for a person who is not a party to a contract between providers and consumers, the committee may recommend requiring the provider have insurance;
- (vii) transactions with transient, out-of-state, or fly-by-night providers, the committee may recommend requiring the provider register its business with the secretary of state;
- (viii) a shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), the committee may recommend enacting government certification;
- (ix) an inability to qualify providers of new or highly specialized medical services for reimbursement by the state, the committee may recommend enacting a specialty certification solely for medical reimbursement;

- (x) a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, the committee may recommend enacting an occupational license; and
- (xi) the need to address multiple types of harm, the committee may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer-created ratings and reviews, or private certification.

(e) The committee's analysis of the need for regulation in (d) will include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(f) The committee's analysis of the need for regulation in (d) also will compare the legislation to whether and how other states regulate the occupation, including the occupation's scope of practice that other states use, and the personal qualifications other states require.

(g) The committee will report its findings and recommendations to the initial and subsequent committees that will hear the legislation. The report will include recommendations addressing:

- (i) the type of regulation, if any;
- (ii) the requisite personal qualifications, if any; and
- (iii) the scope of practice, if applicable.

(h) The committee also may comment on whether and how much responsibility the legislation delegates to a licensing board to promulgate administrative rules, particularly rules relating to establishing (a) the occupation's scope of practice or (b) the personal qualifications required to work in the occupation. The comment may make legislators aware of exposure to antitrust litigation that the legislation may cause because of excessive or ambiguous delegation of authority to licensing boards to engage in administrative rulemaking.

(i) The committee shall submit its report to the chair of each relevant committee no less than seven months after the committee receives the request for analysis.

(j) The committee will make its report publicly available and post it on the legislature's website.

(8) The House of Representatives and the Senate will each adopt a rule requiring a committee considering legislation to enact or modify an occupational regulation to receive

the committee's analysis and recommendations in paragraph (7) prior to voting on the legislation.

(9) Nothing in this chapter shall be construed to preempt federal regulation or to require a private certification organization to grant or deny private certification to any individual.

(10) In addition to the sunrise process, the committee shall study and review occupational licensing and certification laws in general in order to determine, as applicable, how the legislature may be able to ease occupational licensing barriers while still protecting the public health and safety.

(a) The committee will use the criteria in paragraph 7 paragraphs (a)-(f) to analyze existing occupational licenses and perform sunset reviews. The committee also may consider research or other credible evidence whether an existing regulation directly helps consumers to avoid present, significant and recognizable harm.

(b) In its report, the committee will recommend the legislature enact new legislation that:

- (i) repeals the occupational licenses,
- (ii) converts the occupational licenses to less restrictive regulations in paragraph 4(e),
- (iii) instructs the relevant licensing board or agency to promulgate revised regulations reflecting the legislature's decision to use a less restrictive alternatives to occupational licenses;
- (iv) changes the requisite personal qualifications of an occupational license;
- (v) redefines the scope of practice in an occupational license; or
- (vi) reflects other recommendations to the legislature.

(c) The committee also may recommend that no new legislation is enacted.

(d) The committee will make its report publicly available and post it on a state website.

(11) Nothing in paragraph (10) shall be construed (a) to preempt federal regulation, (b) to authorize the committee to review the means that a private certification organization uses to issue, deny or revoke a private certification to any individual, or (c) to require a private certification organization to grant or deny private certification to any individual.

(12) The committee shall operate on a pilot basis for two (2) years and shall cease to exist following its report to the second regular session of the sixty-sixth Idaho legislature in 2022 unless legislative action is taken to extend the duration of the pilot committee or to make it permanent.

## UNIVERSAL LICENSURE

SECTION 2. That Chapter 94, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-9409, Idaho Code, and to read as follows:

### 67-9409. UNIVERSAL LICENSURE.

- (1) Definitions: The words defined in this section have the meanings given them for purposes of this chapter unless the context clearly requires otherwise.
  - (a) "Board" means a government agency, board, department licensing authority or other state agency that regulates a lawful occupation and issues an occupational license or government certification to an individual.
  - (b) "Government certification" means a voluntary, government-granted and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not synonymous with "occupational license." It also is not intended to include 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.
  - (c) "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 an occupational license.
  - (d) "Other state" or "another state" means any U.S. territory or state in the United States other than this state.
  - (e) "Private certification" is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use the designated title of "certified," as permitted by the private organization.
- (f) "Scope of practice" means the procedures, actions, processes and work that a person may perform under an occupational license or government certification issued in this state.

- (2) Notwithstanding any other law, the board shall issue an occupational license or government certification to a person upon application, if all the following apply:
- (a) The person holds a current and valid **occupational license or government certification** in another state in a lawful occupation with a similar scope of practice, as determined by the board in this state;
  - (b) The person has held the occupational license or government certification in the other state for at least one year;
  - (c) The board in the other state required the person pass an examination, or to meet education, training or experience standards;
  - (d) The board in the other state holds the person in good standing;
  - (e) The person does not have a disqualifying criminal record as determined by the board in this state under state law;
  - (f) No board in another state revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation;
  - (g) The person did not surrender an occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation in another state;
  - (h) The person does not have a complaint, allegation or investigation pending before a board in another state which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation or investigation pending, the board in this state shall not issue or deny an occupational license or government certification to the person until the complaint, allegation or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of the board in this state; and
  - (i) The person pays all applicable fees in this state.
- (3) If another state issued the person a government certification but this state requires an occupational license to work, the board in this state shall issue an occupational license to the person if the person otherwise satisfies paragraph 2.
- (4) Notwithstanding any other law, the board shall issue an occupational license or government certification to a person upon application based on **work experience** in another state, if all the following apply:

- (a) The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
  - (b) The person worked for at least three years in the lawful occupation; and
  - (c) The person satisfies paragraph 2 (e)-(i)
- (5) Notwithstanding any other law, the board shall issue an occupational license or government certification to a person based on holding a **private certification and work experience** in another state, if all the following apply:
- (a) The person holds a private certification and worked in a state that does not use an occupational license or government certification to regulate a lawful occupation, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board;
  - (b) The person holds a current and valid private certification in the lawful occupation;
  - (c) The person holds a current and valid private certification in the lawful occupation;
  - (d) The private certification organization holds the person in good standing; and
  - (e) The person satisfies paragraph 2 (e)-(i)
- (6) A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or government certification in this state requires a person to pass a jurisprudential examination specific to relevant state statutes and administrative rules that regulate the occupation.
- (7) The board will provide the person with a written decision regarding the application within 60 days after receiving a complete application.
- (8) The board will provide the person with a written decision regarding the application within 60 days after receiving a complete application.

- (9) The person may appeal the board's decision to a court of general jurisdiction. The person may appeal the board's:
- (a) denial of an occupational license or government certification;
  - (b) determination of the occupation;
  - (c) determination of the similarity of the scope of practice of the occupational license or government certification issued; or
  - (d) other determinations under this chapter.
- (10) A person who obtains an occupational license or government certification pursuant to this chapter is subject to the laws regulating the occupation in this state; and the jurisdiction of the board in this state.
- (11) This chapter does not apply to an occupation regulated by the state supreme court.
- (12) An occupational license or government certification issued pursuant to this chapter is valid only in this state. It does not make the person eligible to be work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.
- (13) Nothing in this chapter shall be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, foreign province or foreign country.
- (14) Nothing in this chapter shall be construed to prevent this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization or other entity.
- (15) Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.
- (16) The board may charge a fee to the person to recoup its costs not to exceed \$100 for each application.
- (17) This chapter preempts laws by township, municipal, county and other governments in the state which regulate occupational licenses and government certification.

## REVIEW OF CRIMINAL RECORDS

SECTION 3. That Chapter 94, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-9410 and Section 67-9411, Idaho Code, and to read as follows:

### **67-9410. Review of a Criminal Record.**

(1) Notwithstanding any other law, an agency, board, department, licensing authority or other state agency (hereafter "board") will use only this chapter to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition because of a criminal conviction.

(2) A board will not automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration.

(3) A board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.

(4) A board will not consider:

(a) a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;

(b) a conviction for which no sentence of incarceration can be imposed;

(c) a conviction that has been sealed, annulled, dismissed, expunged or pardoned;

(d) a juvenile adjudication;

(e) a non-violent misdemeanor; or

(f) a conviction for which the individual's incarceration ended more than two years before the date of the board's consideration except for a conviction of:

(i) a felony crime of violence;

(ii) a felony related to a criminal sexual actor

(iii) a felony related to a criminal fraud or embezzlement.

(5) Any ambiguity in an occupational regulation relating to a board's use of an individual's criminal record will be resolved in favor of the individual.

(6) The board will not use a vague term in its consideration and decision including:

- (a) good moral character;
- (b) moral turpitude; or
- (c) character and fitness

(7) The board will consider the individual's current circumstances including:

- (a) the age of the individual when the individual committed the offense;
- (b) the time since the offense;
- (c) the completion of the criminal sentence;
- (d) a certificate of rehabilitation or good conduct;
- (e) completion of, or active participation in, rehabilitative drug or alcohol treatment;
- (f) testimonials and recommendations including a progress report from the individual's probation or parole officer;
- (g) other evidence of rehabilitation;
- (h) education and training;
- (i) employment history;
- (j) employment aspirations;
- (k) the individual's current family responsibilities;
- (l) whether the individual will be bonded in the occupation; and
- (m) other information that the individual submitted to the board.

(8) The board will hold a public hearing, should the individual request one, pursuant to the state's administrative procedure act.

(9) The board may deny, diminish, suspend, revoke, withhold or otherwise limit state recognition only if the board determines:

- a. the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual's non-excluded criminal record as mitigated by the individual's current circumstances in subdivision 7, and
- b. the state's interest outweighs the individual's fundamental right to pursue a lawful occupation.

(10) The board has the burden of making its decision by clear and convincing evidence.

(11) The individual may appeal the board's decision as provided for in the state's administrative procedure act.

#### **Section 67-9411 Petition for Board Determination Prior to Obtaining Personal Qualifications.**

(1) An individual with a criminal record may petition a board, agency, department, licensing authority or other state agency (hereafter "board") at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition.

(2) The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

(3) The board will make its decision using the criteria and process in section 67-9410

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(4) The board will issue its decision no later than 60 days after the board receives the petition or no later than 90 days after the board receives the petition if a hearing is held. The decision will be in writing and include the criminal record, findings of fact and conclusions of law.

(5) A decision concluding that state recognition should be granted or granted under certain conditions is binding on the board in any later ruling on state recognition of the petitioner unless there is a relevant, material and adverse change in the petitioner's criminal record.

(6) If the board decides that state recognition should not be granted, the board may advise the petitioners of actions the petitioner may take to remedy the disqualification.

(7) The petitioner may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisor decision.

(8) The petitioner may appeal the board's decision as provided for in the state's administrative procedure act.

(9) The petitioner may submit a new petition to the board not before one year following a final judgment on the initial petition or upon obtaining the required personal qualifications, whichever is earlier.

(10) The board may charge a fee to the petitioner to recoup its costs not to exceed \$25 for each petition.

(11) The board will establish an annual reporting requirement of the:

- (a) number of times that each board acted to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction under Section 67-9410;
  - (b) offenses for which each board acted in under Section 67-9410;
  - (c) number of applicants petitioning each board under Section 67-9411,
  - (d) numbers of each board's approvals and denials under Section 67-9411,
  - (e) offenses for which each board approved or denied petitions under Section 67-9411, and
6. other data the board determines.

(b) The board will compile and publish annually a report on a searchable public website.

(12) Nothing in this chapter shall be construed to change a board's authority to enforce other conditions of state recognition, including the personal qualifications required to obtain recognition or compliance with other regulations.

(13) Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

