

# ACT No. 583

HOUSE BILL NO. 1062 (Substitute for House Bill No. 597 Representative Freeman)

BY REPRESENTATIVES FREEMAN, BEAULLIEU, COUSSAN, DUPLESSIS, EDMONSTON, EMERSON, FRIEMAN, GLOVER, HARRIS, HORTON, JEFFERSON, JENKINS, TRAVIS JOHNSON, LAFLEUR, LARVADAIN, LYONS, GREGORY MILLER, NEWELL, CHARLES OWEN, PIERRE, SCHAMERHORN, AND SEABAUGH

1 AN ACT

2 To amend and reenact R.S. 37:43 and to enact R.S. 49:953(C)(3) and 963(F) and (G),  
3 relative to occupational licensing; to allow an interested person to request review of  
4 a regulation issued by an occupational licensing board; to provide definitions; to  
5 allow for petition; to provide for procedure; to provide for judicial review; and to  
6 provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:43 is hereby amended and reenacted to read as follows:

9 §43. Definitions

10 For purposes of this Chapter, the following words have the meaning herein  
11 ascribed to them, unless the context clearly indicates otherwise:

12 (1) "Active market participant" means an individual or entity that is any of  
13 the following:

14 (a) Licensed by an occupational licensing board.

15 (b) A provider of any service subject to the regulatory authority of an  
16 occupational licensing board.

17 (c) Subject to the jurisdiction of an occupational licensing board.

18 (2) "Active supervision" includes but is not limited to the Occupational  
19 Licensing Review Commission's responsibilities to do all of the following:

1 (a) Review the substance of an occupational regulation proposed by any  
 2 occupational licensing board.

3 (b) Approve or disapprove with suggested amendments, or allow an  
 4 occupational licensing board to withdraw for revision an occupational regulation to  
 5 ensure compliance with state policy.

6 (3) "Commission" means the Occupational Licensing Review Commission  
 7 as provided for in R.S. 37:45.

8 (4) "Fiduciary" has the same meaning as that term is defined in R.S. 9:3801.

9 (5) "Least restrictive regulation" means, from least to most restrictive, all of  
 10 the following:

11 (a) Market competition.

12 (b) Third-party or consumer-created ratings and reviews.

13 (c) Specific private civil cause of action to remedy consumer harm as  
 14 provided in the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401  
 15 et seq.

16 (d) Regulation of the process of providing the specific goods or services to  
 17 consumers.

18 (e) Inspection.

19 (f) Bonding or insurance.

20 (g) Registration.

21 (h) Occupational license.

22 ~~(5)~~ (6) "Occupational license" means a nontransferable authorization granted  
 23 by an occupational licensing board for an individual or entity meeting ~~certain~~  
 24 ~~qualifications or personal qualifications, as that term is defined in Paragraph (1) of~~  
 25 this Section, in order to fulfill a legitimate fiduciary, public health, safety, or welfare  
 26 objective. ~~In an occupation for which a license is required, it is unlawful for an~~  
 27 ~~individual or entity that does not possess a valid occupational license to perform the~~  
 28 ~~occupation for compensation.~~

1                   ~~(6)~~ (7) "Occupational licensing board" means any state executive branch  
 2 board, commission, department, or other agency that is all of the following:

3                   (a) Regulates the entry of persons into, or regulating the conduct of persons  
 4 within, a particular profession or occupation.

5                   (b) Authorized to issue and revoke occupational licenses or registrations.

6                   (c) Controlled by active market participants.

7                   ~~(7)~~ (8) "Occupational regulation" means a rule, regulation, restraint, practice,  
 8 or policy allowing an individual to use an occupational title or work in a lawful  
 9 occupation, including but not limited to registrations and occupational licenses in  
 10 order to fulfill a legitimate fiduciary, public health, safety, or welfare objective or a  
 11 financial, tax, or accounting objective. "Occupational regulation" excludes any  
 12 license, permit, or regulation established by a parish or municipality.

13                   ~~(8)~~ (9) "Personal qualifications" means the criteria related to an individual's  
 14 personal background and characteristics, including completion of an approved  
 15 educational program, satisfactory performance on an examination or other  
 16 assessment, work experience, other evidence of attainment of requisite skills or  
 17 knowledge, moral standing, criminal history, and completion of continuing  
 18 education.

19                   ~~(9)~~ "Qualifications" means the criteria related to an entity's background and  
 20 characteristics, including but not limited to the personal qualifications of certain  
 21 persons associated with the entity, including but not limited to that or those of an  
 22 individual's personal background and characteristics, including completion of an  
 23 approved educational program, satisfactory performance on an examination or  
 24 assessment, work experience, other evidence of attainment of requisite skills or  
 25 knowledge, moral standing, criminal history, and completion of continuing  
 26 education.

27                   ~~(10)~~ "Registration" means a requirement to give notice to the state that may  
 28 include the individual's or entity's name and address, the individual's or entity's agent  
 29 for service of process, the location of the activity to be performed, and a description

1 ~~of the service the individual or entity provides. "Registration" does not include~~  
2 ~~qualifications or personal qualifications but may require a bond or insurance. Upon~~  
3 ~~the state's receipt of notice, the individual or entity may use "registered" as a~~  
4 ~~designated title. "Registration" is not transferable.~~

5 (11) ~~"State policy" means the policy described in R.S. 37:44.~~

6 Section 2. R.S. 49:953(C)(3) and 963(F) and (G) are hereby enacted to read as  
7 follows:

8 §953. Procedure for adoption of rules; agency rule review

9 \* \* \*

10 C.

11 \* \* \*

12 (3) Any interested person may request review of an occupational regulation  
13 by submitting a petition to the occupational licensing board that issued the  
14 regulation. An occupational licensing board shall review a regulation provided for  
15 in the petition for full compliance with the least restrictive regulation as set forth in  
16 R.S. 37:43 or R.S. 49:260, as applicable.

17 \* \* \*

18 §963. Judicial review of validity or applicability of rules

19 \* \* \*

20 F. With respect to the challenge of an occupational regulation, the plaintiff  
21 shall prevail if the court finds by a preponderance of evidence that the challenged  
22 occupational regulation on its face or in its effect burdens entry into a profession,  
23 trade, or occupation, and that an agency has failed to prove by a preponderance of  
24 evidence that the challenged occupational regulation is demonstrated to be necessary  
25 and narrowly tailored to fulfill legitimate fiduciary, public health, safety, or welfare  
26 objectives. Upon a finding for the plaintiff, the court shall enjoin further enforcement  
27 of the challenged occupational regulation and shall award reasonable attorney fees  
28 and costs to the plaintiff, except in the case of a challenged occupational regulation

1           promulgated by an occupational licensing board that participates in the Department  
2           of Justice Occupational Licensing Review Program pursuant to R.S. 49:260.

3           G. The provisions of this Chapter shall not apply to administrative rules  
4           promulgated pursuant to the Human Life Protection Act, R.S. 40:1061 et seq.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_