

SENATE BILL NO. 40

January 22, 2019, Introduced by Senator THEIS and referred to the Committee on Regulatory Reform.

A bill to amend 1986 PA 268, entitled
"Legislative council act,"
(MCL 4.1101 to 4.1901) by adding section 404.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 404. (1) In addition to its duties under section 403,**
2 **after a bill that enacts or amends an occupational regulation is**
3 **introduced, the Michigan law revision commission shall review the**
4 **legislation to determine whether the legislation meets the policy**

1 of using the least restrictive regulation necessary to protect
2 consumers from present, significant, and substantiated harms that
3 threaten public health and safety. All of the following apply to
4 the review of pending legislation under this subsection:

5 (a) The commission may require the legislation's proponents to
6 submit evidence of present, significant, and substantiated harms to
7 consumers in the state. The commission also may require information
8 from other individuals who are knowledgeable about the occupation,
9 labor economics, or other relevant factors.

10 (b) The commission shall evaluate the effects of the
11 legislation on opportunities for workers, consumer choices and
12 costs, general unemployment, market competition, and governmental
13 costs and any other effects of the legislation if enacted.

14 (c) The commission shall compare the manner in which the
15 legislation would regulate an occupation if enacted to whether or
16 how other states regulate the occupation.

17 (d) The commission shall complete the review, prepare a
18 written report of the results of the review, and submit the report
19 to the committee to which the legislation was referred, on a timely
20 basis.

21 (2) Beginning January 1, 2020, the commission shall review
22 annually the occupational regulations of approximately 20% of the
23 occupations that are subject to state regulation, and over each 5-
24 year period review all occupational regulations that are subject to
25 state regulation, and shall evaluate whether those regulations are
26 consistent with the policy of using the least restrictive
27 regulation necessary to protect consumers from present,
28 significant, and substantiated harms that threaten public health
29 and safety. For purposes of its review under this subsection, the

1 commission may require that an occupational board, its members, and
2 other persons submit information to the commission.

3 (3) In its analysis under subsections (1) and (2), the
4 commission shall employ a rebuttable presumption that market
5 competition and private remedies are sufficient to protect
6 consumers; and if that presumption is rebutted, where appropriate,
7 state regulations should be tailored to address specific market
8 failures identified by the commission to protect consumers from 1
9 or more of the following, as appropriate:

10 (a) Fraud, by strengthening powers under the Michigan consumer
11 protection act, 1976 PA 331, MCL 445.901 to 445.922, and other
12 deceptive trade practices statutes in this state.

13 (b) Unsanitary facilities and general health and safety
14 concerns, by periodic inspections.

15 (c) Potential damages to the buyer or to third parties that
16 are not a party to a contract between a seller and buyer, and from
17 other types of externalities by bonding or insurance.

18 (d) Potential damages by transient or fly-by-night providers
19 by requiring registration with the secretary of state.

20 (e) Asymmetrical information between a seller and buyer, by
21 voluntary certification.

22 (f) Governmental reimbursement for providing medical services
23 for new or highly specialized medical provisions by a specialty
24 license for medical reimbursement.

25 (4) By January 31, 2021, and by each subsequent January 31,
26 the commission shall submit an annual report of the findings of its
27 reviews under subsection (2) in the preceding calendar year to the
28 speaker of the house of representatives, the senate majority
29 leader, and the attorney general. In the report about an

1 occupational regulation, the commission shall do 1 of the
2 following:

3 (a) If the commission concludes as a result of the review that
4 the occupational regulation does not reflect the policy described
5 in subsection (2), recommend that the legislature enact new
6 legislation that does 1 or more of the following:

7 (i) Repeals or rescinds the occupational regulation.

8 (ii) Converts the occupational regulation to a less restrictive
9 regulation that reflects the policy described in subsection (2).

10 (iii) Instructs the relevant licensing board or agency to
11 promulgate a revised occupational regulation.

12 (iv) Reflects any other recommendations of the commission.

13 (b) If the commission concludes as a result of the review that
14 the occupational regulation does reflect the policy described in
15 subsection (2), recommend that the legislature not enact new
16 legislation.

17 (5) As used in this section:

18 (a) "Certification" means a voluntary program in which a
19 private organization or the government of this state grants
20 nontransferable recognition to an individual who meets personal
21 qualifications established by the private organization or the
22 government of this state. All of the following apply for purposes
23 of the interpretation of certification:

24 (i) Certification includes the authority to use "certified" as
25 a designated title if certification is granted.

26 (ii) A program of certification does not prevent a noncertified
27 individual from performing the lawful occupation of an individual
28 who holds a certification for compensation, but that individual may
29 not use the title "certified".

1 (iii) Certification is not synonymous with the term occupational
2 license.

3 (iv) The use of the word "certification" or "certified" in
4 other statutes of this state to mean requiring an individual to
5 meet certain personal qualifications to work legally, such as
6 requiring a certified public accountant to become certified before
7 working legally, shall be interpreted for the purposes of this
8 section as requiring an individual to meet the requirements of an
9 occupational license.

10 (b) "Lawful occupation" means a course of conduct, pursuit, or
11 profession that includes the sale of goods or services that are not
12 themselves illegal to sell, whether or not the individual who is
13 selling them is subject to an occupational regulation.

14 (c) "Least restrictive regulation" means any of the following,
15 from least to most restrictive:

16 (i) Market competition.

17 (ii) Third-party or consumer-created ratings and reviews.

18 (iii) Private certification.

19 (iv) A specific private civil cause of action to remedy
20 consumer harm.

21 (v) An action that is a deceptive trade practice.

22 (vi) A regulation of the process of providing specific goods or
23 services to consumers.

24 (vii) Inspection.

25 (viii) Bonding or insurance.

26 (ix) Registration.

27 (x) Government certification.

28 (xi) A specialty occupational license for medical

1 reimbursement.

2 (xii) An occupational license.

3 (d) "Occupational license" means a nontransferable
4 authorization in law that meets both of the following:

5 (i) Allows an individual to perform a lawful occupation for
6 compensation if he or she meets personal qualifications established
7 by law.

8 (ii) Prohibits an individual who does not possess a valid
9 occupational license from performing the occupation for
10 compensation.

11 (e) "Occupational regulation" means a statute, rule, practice,
12 policy, or other state law that requires an individual to possess
13 certain personal qualifications to use an occupational title or
14 work in a lawful occupation. The term includes registration,
15 certification, and occupational license. The term does not include
16 a business license, facility license, building permit, or zoning
17 and land use regulation established under state law, except to the
18 extent that state law regulates an individual's personal
19 qualifications to perform a lawful occupation.

20 (f) "Personal qualifications" means criteria that are related
21 to an individual's personal background and characteristics,
22 including, but not limited to, completion of an approved
23 educational program, satisfactory performance on an examination,
24 work experience, moral standing, criminal history, and completion
25 of continuing education.

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

1 service that the individual provides. All of the following apply
2 for purposes of the interpretation of registration:

3 (i) Registration does not include personal qualifications but
4 may require a bond or insurance.

5 (ii) When the government receives notice described in this
6 subdivision, the individual who gave notice may use "registered" as
7 a designated title. A nonregistered individual may not perform the
8 occupation for compensation or use "registered" as a designated
9 title.

10 (iii) Registration is not transferable.

11 (iv) Registration is not synonymous with an occupational
12 license.

13 (v) The use of the words "registration" and "registered" in
14 other statutes of this state to mean requiring an individual to
15 meet certain personal qualifications to work legally, such as
16 requiring a nurse aide to become registered before working legally,
17 is considered for the purposes of this section as requiring an
18 individual to meet the requirements of an occupational license.

19 (h) "Specialty occupational license for medical reimbursement"
20 means a nontransferable authorization in law for an individual to
21 qualify for payment or reimbursement from a government agency for
22 the nonexclusive provision of medical services based on meeting
23 personal qualifications established by the legislature. All of the
24 following apply to a specialty occupational license for medical
25 reimbursement:

26 (i) A private company may recognize this credential.

27 (ii) An individual who is regulated under another occupational
28 regulation to provide similar services as defined in that
29 regulation for compensation and reimbursement may provide those

1 services without a specialty occupational license for medical
2 reimbursement.

3 (iii) An individual who does not possess a specialty
4 occupational license for medical reimbursement may provide similar
5 services for compensation if he or she does not qualify for payment
6 or reimbursement from a government agency.

7 Enacting section 1. This amendatory act takes effect 90 days
8 after the date it is enacted into law.