

HOUSE BILL No. 2818

By Committee on Federal and State Affairs

Requested by Representative L. Williams

3-5

1 AN ACT concerning the legislature; relating to legislation pertaining to
2 occupational regulation; providing for a review process and evaluation
3 criteria for the legislature when considering bills that propose new or
4 additional occupational regulation; requiring regulatory entities at the
5 direction of the joint committee on administrative rules and regulations
6 to provide a report to the legislature to inform the legislature's
7 consideration of such proposals; authorizing the joint committee to
8 contract for such a report when necessary; amending K.S.A. 2023
9 Supp. 77-436 and repealing the existing section.

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11 *Be it enacted by the Legislature of the State of Kansas:*

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13 New Section 1. (a) It is the intent of the legislature that the general
14 welfare of Kansas residents be promoted by establishing guidelines for
15 legislative consideration of proposals concerning the regulation of
16 occupations and professions not regulated prior to July 1, 2024, and
17 guidelines for proposals to increase regulation of any occupations or
18 professions or combine any additional occupations or professions under a
19 single license regulated by the state prior to July 1, 2024. The legislature
20 further finds that the general welfare will be promoted by providing
21 information for the benefit of the legislature when considering proposals
22 concerning the regulation of occupations and professions.

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24 (b) The purpose of this act is to provide a structure, a process and
25 sufficient information when the legislature considers proposals to increase
26 occupational regulation to further the legislature's intent that all individuals
27 may engage in the occupation of their choice, free from unreasonable
28 government regulation. The state shall not impose a substantial burden on
29 an individual's pursuit of an occupation or profession unless there is a
30 reasonable interest for the state to protect the general welfare. If such an
31 interest exists, the regulation adopted by the state shall be the least
32 restrictive type of occupational regulation that is consistent with the public
33 interest to be protected.

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35 New Sec. 2. For purposes of sections 1 through 5, and amendments
thereto:

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(a) "Certification" means a program whereby the state grants
nontransferable recognition to an individual who meets predetermined

1 qualifications established by statute or by rules and regulations of a
2 regulatory body and applied by the regulatory body. "Certification" entitles
3 the individual to use "certified" as a designated title. "Certification" shall
4 not be synonymous with "occupational license";

5 (b) "general welfare" means the concern of the state for the health,
6 peace, morality and safety of Kansas residents;

7 (c) "lawful occupation" means a course of conduct, pursuit or
8 profession that includes the sale of goods or services that are not
9 themselves illegal to sell whether the individual selling them is or is not
10 subject to an occupational regulation;

11 (d) "least restrictive type of occupational regulation" means the
12 regulation that is least restrictive, pursuant to the following list of
13 regulations provided in order from least to most restrictive:

14 (1) Bonding or insurance;

15 (2) registration;

16 (3) certification; and

17 (4) occupational license;

18 (e) "occupational license" means a nontransferable authorization in
19 law for an individual to perform a lawful occupation for compensation
20 based on meeting personal qualifications established by a regulatory body
21 and that, if not possessed, prohibits the individual from performing the
22 occupation for compensation;

23 (f) "occupational regulation" means, except as provided by section 5,
24 and amendments thereto, a statute, rule and regulation, practice or policy
25 requiring an individual to possess certain personal qualifications to work
26 in a lawful occupation;

27 (g) "personal qualifications" means criteria related to an individual's
28 personal background, including completion of an approved educational
29 program, satisfactory performance on an examination, work experience,
30 criminal history or completion of continuing education;

31 (h) "practitioner" means an individual who has achieved knowledge
32 and skill by practice and is actively engaged in a specified occupation or
33 profession;

34 (i) (1) "registration" means a requirement established by statute or
35 rule and regulation for which an individual:

36 (A) Submits notification to a state agency; and

37 (B) may use "registered" as a designated title.

38 (2) For purposes of this subsection, "notification" includes the
39 individual's name and address, the individual's agent for service of process,
40 the location of the activity to be performed or a description of the service
41 that the individual provides. "Registration" includes a requirement to post
42 a bond but does not include education or experience requirements. If the
43 requirement of "registration" is not met, the individual is prohibited from

1 performing the occupation for compensation or using "registered" as a
2 designated title. "Registration" is not synonymous with "occupational
3 license";

4 (j) "regulatory body" means any office, department, board,
5 commission, state agency, division or other unit or subunit of the executive
6 branch of the state that regulates one or more professions, occupations,
7 industries or businesses in this state. "Regulatory body" does not include
8 any unit or subunit of the judicial or legislative branches of government or
9 cities, counties, townships, school districts or any other local unit of
10 government;

11 (k) "state agency" means every state office, department, board,
12 commission, regulatory entity or agency of the executive branch of the
13 state; and

14 (l) "substantial burden" means a requirement in an occupational
15 regulation that imposes significant difficulty or cost on an individual
16 seeking to enter or continue in a lawful occupation and is more than an
17 incidental burden.

18 New Sec. 3. (a) To achieve the intent of the legislature set forth in
19 section 1, and amendments thereto, and except as provided by section 5,
20 and amendments thereto, all bills introduced in the legislature proposing to
21 regulate an occupation or profession not previously regulated by law prior to
22 July 1, 2024, shall be reviewed by the legislature according to the
23 following criteria. An occupation or profession not previously regulated by
24 law shall not be regulated by the state unless the legislature determines
25 that:

26 (1) Unregulated practice could cause harm and endanger the general
27 welfare, and the potential for further harm and endangerment is
28 recognizable and significant;

29 (2) the public can reasonably be expected to benefit significantly
30 from an assurance of personal qualifications; and

31 (3) the general welfare cannot be sufficiently protected by any other
32 means.

33 (b) After evaluating the criteria in subsection (a) and considering
34 governmental, economic and societal costs and benefits, if the legislature
35 determines that the state has a strong interest in regulating an occupation
36 or profession not previously regulated by law, the most efficient form of
37 regulation shall be implemented consistent with the need to protect the
38 general welfare, as follows:

39 (1) If the threat to the general welfare resulting from the practitioner's
40 services is easily predictable, the regulation shall implement a system of
41 insurance, bonding or registration;

42 (2) if the consumer has challenges accessing credentialing
43 information or possesses significantly less information on how to report

1 abuses such that the practitioner puts the consumer in a disadvantageous
2 position relative to the practitioner to judge the quality of the practitioner's
3 services, the regulation shall implement a system of certification; and

4 (3) if other regulatory structures, such as bonding, insurance,
5 registration or certification insufficiently protect the general welfare from
6 recognizable harm, the regulation shall implement a system of licensing.

7 New Sec. 4. (a) During each regular or special session of the
8 legislature, the joint committee on administrative rules and regulations
9 shall review bills introduced in the legislature that pertain to the regulation
10 of a profession or occupation, except as provided in section 5, and
11 amendments thereto. There shall be no requirement for bills to be referred
12 to the joint committee for such review. The joint committee shall have
13 authority to consider and make such determinations and communicate with
14 regulatory bodies on behalf of the legislature as provided in this act.

15 (b) Upon review as provided by subsection (a), if the joint committee
16 on administrative rules and regulations determines that a bill proposes
17 stronger or additional regulation of a profession or occupation currently
18 regulated by a regulatory body or proposes regulation of an industry or
19 occupation that is not currently regulated but is within the scope of
20 expertise of a regulatory body or bodies, as determined by the joint
21 committee, the joint committee shall notify the relevant regulatory body or
22 bodies of such bill introduction. Within 10 business days after such
23 notification by the joint committee, the relevant regulatory body or bodies
24 shall prepare a report on the bill as provided by this subsection. All state
25 agencies shall cooperate with a regulatory body or bodies in the
26 preparation of a report when and to the extent requested by a regulatory
27 body preparing such report. The report shall be provided in electronic
28 format to the joint committee on administrative rules and regulations, the
29 chairperson, vice chairperson and ranking minority member of the
30 committee to which the bill under consideration has been assigned, the
31 speaker of the house, minority leader of the house, president of the senate
32 and minority leader of the senate. The report shall contain the following
33 information:

34 (1) A description of the professional or occupational group proposed
35 for expansion of regulation, including the number of individuals or
36 business entities that would be subject to regulation to the extent that such
37 information is available, the names and addresses of associations,
38 organizations and other groups representing the practitioners and an
39 estimate of the number of practitioners in each group;

40 (2) whether practice of the profession or occupation proposed for
41 expansion of regulation requires a specialized skill, such that the public is
42 not qualified to select a competent practitioner without assurances that
43 minimum qualifications have been met;

1 (3) the nature and extent of potential harm to the public if the
2 profession or occupation is not regulated as described in the bill, including
3 the production of evidence of potential harm, a description of any
4 complaints filed with state law enforcement authorities, courts,
5 departmental agencies, professional or occupational boards and
6 professional and occupational associations that have been lodged against
7 practitioners of the profession or occupation in this state within the past
8 five years. Notwithstanding the provisions of any other law to the contrary,
9 the relevant regulatory body shall provide in such report any information
10 relating to such complaints even if the information is considered a closed
11 record or otherwise confidential, except that the regulatory body shall
12 redact from the information the names of individuals, other personally
13 identifiable information, including, but not limited to, addresses, birth
14 dates, tax identification numbers, social security numbers or license or
15 registration numbers, the names of businesses and information that would
16 specifically identify such businesses, information that would make an
17 individual or business identifiable when combined with other publicly
18 available information and any information that is confidential under
19 federal law;

20 (4) a description of the voluntary efforts made by practitioners of the
21 profession or occupation to protect the public through self-regulation,
22 private certifications, membership in professional or occupational
23 associations or academic credentials and a statement discussing why such
24 efforts are inadequate to protect the public;

25 (5) the extent to which expansion of regulation of the profession or
26 occupation will increase the cost of goods or services provided by
27 practitioners and the overall cost-effectiveness and economic impact of the
28 proposed regulation, including the direct cost to the government and the
29 indirect costs to consumers;

30 (6) the extent to which expansion of regulation of the profession or
31 occupation would increase or decrease the availability of services to the
32 public;

33 (7) the extent to which existing legal remedies are inadequate to
34 prevent or redress the kinds of harm potentially resulting from the lack of
35 the requirements outlined in the bill;

36 (8) why the bonding and insurance, registration, certification,
37 occupational license to practice or other type of regulation is being
38 proposed, why that regulatory alternative was chosen and whether the
39 proposed method of regulation is appropriate;

40 (9) a list of other states that regulate the profession or occupation, the
41 type of regulation, copies of other states' laws and available evidence of
42 the effect of regulation on the profession or occupation in terms of a
43 before-and-after analysis from such states;

1 (10) the details of any previous efforts in this state to implement
2 regulation of the profession or occupation;

3 (11) whether the proposed requirements for regulation exceed the
4 national industry standards of minimal competence and what such
5 standards are, if such standards exist; and

6 (12) the method proposed to finance the proposed regulation and
7 financial data pertaining to whether the proposed regulation can be
8 reasonably financed by current or proposed licensees through dedicated
9 revenue mechanisms.

10 (c) Upon review as provided in subsection (a), if the joint committee
11 on administrative rules and regulations determines that a bill proposes new
12 regulation of a profession or occupation that is not regulated in this state
13 and further determines that no existing regulatory body regulates or has the
14 expertise to regulate such occupation or profession, then the joint
15 committee may contract with consultants, experts or professionals in the
16 applicable field or with appropriate faculty of Kansas institutions of higher
17 learning to prepare and make available to the legislature a report as
18 provided by this subsection. The contract shall require that such report be
19 provided within 10 business days after the contract's execution. The
20 director of legislative administrative services shall secure, prepare and
21 administer such contract as directed by the joint committee, and provide
22 copies of draft contracts and communications pertaining to the contract
23 with the joint committee to the chairperson and vice chairperson of the
24 legislative coordinating council. The contract may be approved by the
25 chairperson or vice chairperson of the legislative coordinating council, and
26 such approval may be given while the legislature is in session. The
27 chairperson of the joint committee may sign such contract on behalf of the
28 legislature as so approved. All state agencies shall cooperate with the joint
29 committee and any person contracted by the joint committee in the
30 preparation of such report when and to the extent requested by the joint
31 committee. The report shall be provided in electronic format to any
32 regulatory body discussed or that participated in the report, the joint
33 committee, the chairperson, vice chairperson and ranking minority
34 member of the committee to which the bill under consideration has been
35 assigned, the speaker of the house, minority leader of the house, president
36 of the senate and minority leader of the senate. The report shall contain the
37 following information:

38 (1) A description of the professional or occupational group proposed
39 for regulation, including the number of individuals or business entities that
40 would be subject to regulation to the extent that such information is
41 available, the names and addresses of associations, organizations, and
42 other groups representing the practitioners and an estimate of the number
43 of practitioners in each group;

1 (2) the nature and extent of potential harm to the public if the
2 profession or occupation is not regulated, including the production of
3 evidence of potential harm, a description of any complaints filed with state
4 law enforcement authorities, courts, departmental agencies, professional or
5 occupational boards and professional and occupational associations that
6 have been lodged against practitioners of the profession or occupation in
7 this state within the past five years. Notwithstanding the provisions of any
8 other state law to the contrary, information relating to such complaints
9 shall be provided by any such entity upon the request of the joint
10 committee on administrative rules and regulations for purposes of the
11 report even if the information is considered a closed record or otherwise
12 confidential, except that the providing entity shall redact from the
13 information individual names or business names, other personally
14 identifiable information, including, but not limited to, addresses, birth
15 dates, tax identification numbers, social security numbers or license or
16 registration numbers, information that would make an individual or
17 business identifiable if combined with other publicly available information
18 and any information that is confidential under federal law;

19 (3) a list of other states that regulate the profession or occupation, the
20 type of regulation, copies of other states' laws and available evidence such
21 of the effect of regulation on the profession or occupation in terms of a
22 before-and-after analysis from such states;

23 (4) the details of any previous efforts in this state to implement
24 regulation of the profession or occupation; and

25 (5) whether the proposed requirements for regulation exceed the
26 national industry standards of minimal competence and what such
27 standards are, if such standards exist.

28 New Sec. 5. (a) (1) The provisions of this act shall not apply to
29 regulation or credentialing or any proposed regulation or credentialing of
30 any occupation or profession that is subject to the provisions of the Kansas
31 act on credentialing, K.S.A. 65-5001 et seq., and amendments thereto.

32 (2) For purposes of this subsection "credentialing" means the same as
33 defined in K.S.A. 65-5001, and amendments thereto.

34 (b) Nothing in this act shall be construed to change any requirement
35 for an individual to hold a current private certification as a condition of
36 licensure or renewal of licensure. This act shall not require a private
37 certification organization to grant or deny private certification to any
38 individual.

39 Sec. 6. K.S.A. 2023 Supp. 77-436 is hereby amended to read as
40 follows: 77-436. (a) There is hereby established a joint committee on
41 administrative rules and regulations consisting of five senators and seven
42 members of the house of representatives.

43 (1) The five senator members shall be appointed as follows:

1 (A) Three by the committee on organization, calendar and rules; and

2 (B) two by the minority leader of the senate.

3 (2) The seven representative members shall be appointed as follows:

4 (A) Four by the speaker of the house of representatives; and

5 (B) three by the minority leader of the house of representatives.

6 (b) The committee on organization, calendar and rules shall designate
7 a senator member to be chairperson or ~~vice-chairperson~~ *vice chairperson*
8 of the joint committee as provided in this section. The speaker of the house
9 of representatives shall designate a representative member to be
10 chairperson or ~~vice-chairperson~~ *vice chairperson* of the joint committee as
11 provided in this section. The minority leader of the senate shall designate a
12 senator member to be the ranking minority member of the joint committee
13 as provided in this section. The minority leader of the house of
14 representatives shall designate a representative member to be the ranking
15 minority member of the joint committee as provided in this section.

16 ~~(b)~~(c) A quorum of the joint committee on administrative rules and
17 regulations shall be seven. All actions of the committee may be taken by a
18 majority of those present when there is a quorum. In odd-numbered years
19 the chairperson and the ranking minority member of the joint committee
20 shall be the designated members of the house of representatives from the
21 convening of the regular session in that year until the convening of the
22 regular session in the next ensuing year. In even-numbered years the
23 chairperson and the ranking minority member of the joint committee shall
24 be the designated members of the senate from the convening of the regular
25 session of that year until the convening of the regular session of the next
26 ensuing year. The vice-chairperson shall exercise all of the powers of the
27 chairperson in the absence of the chairperson.

28 ~~(e)~~(d) Except for rules and regulations revoked pursuant to K.S.A.
29 77-426(d), and amendments thereto, all proposed rules and regulations
30 shall be reviewed by the joint committee on administrative rules and
31 regulations during the public comment period required by K.S.A. 77-421,
32 and amendments thereto. The committee may introduce such legislation as
33 it deems necessary in performing ~~its~~ *such committee's* functions of
34 reviewing administrative rules and regulations.

35 ~~(d)~~(e) The committee shall issue a report to the legislature following
36 each meeting making comments and recommendations and indicating
37 concerns about any proposed rule and regulation. Such report shall be
38 made available to each agency that had proposed rules and regulations
39 reviewed at such meeting during the agency's public comment period for
40 such proposed rules and regulations *as* required by K.S.A. 77-421, and
41 amendments thereto. If having a final report completed by the public
42 hearing *as* required by K.S.A. 77-421, and amendments thereto, is
43 impractical, a preliminary report shall be made available to the agency

1 containing the committee's comments. The preliminary report shall be
2 incorporated into the final report and made available to each agency.

3 ~~(e)~~(f) Except for rules and regulations revoked pursuant to K.S.A. 77-
4 426(d), and amendments thereto, all rules and regulations filed each year
5 in the office of secretary of state shall be subject to review by the joint
6 committee. The committee may introduce such legislation as it deems
7 necessary in performing—its *such committee's* functions of reviewing
8 administrative rules and regulations.

9 ~~(f)~~(g) The joint committee shall meet—~~on~~ *upon the* call of the
10 chairperson as authorized by the legislative coordinating council. All such
11 meetings shall be held in Topeka, unless authorized to be held in a
12 different place by the legislative coordinating council. Members of the
13 joint committee shall receive compensation, travel expenses and
14 subsistence expenses or allowances as provided in K.S.A. 75-3212, and
15 amendments thereto, when attending meetings of such committee
16 authorized by the legislative coordinating council.

17 ~~(g)~~(h) *The joint committee shall review bills pertaining to*
18 *occupational regulation introduced in the legislature during regular or*
19 *special sessions of the legislature, make determinations and cause reports*
20 *on such bills to be prepared as provided by sections 1 through 5, and*
21 *amendments thereto. The joint committee is authorized to act on behalf of*
22 *the legislature and enter into contracts pursuant to the provisions of*
23 *sections 1 through 5, and amendments thereto.*

24 (i) Amounts paid under authority of this section, *including amounts*
25 *paid under the authority of subsection (g) and sections 1 through 5, and*
26 *amendments thereto*, shall be paid from appropriations for legislative
27 expense, and vouchers therefor shall be prepared by the director of
28 legislative administrative services and approved by the chairperson or
29 ~~vice chairperson~~ *vice chairperson* of the legislative coordinating council.

30 Sec. 7. K.S.A. 2023 Supp. 77-436 is hereby repealed.

31 Sec. 8. This act shall take effect and be in force from and after its
32 publication in the statute book.