

House Bill 628 (FLOOR SUBSTITUTE)

By: Representatives Powell of the 23rd, Boggs of the 145th, and Hugley of the 113th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1A of Title 43 of the Official Code of Georgia Annotated, relating to
2 occupational regulation legislation review, so as to change the provisions relating to
3 occupational regulation legislation review; to provide for evaluation of businesses and
4 professions; to change the composition of the Georgia Occupational Regulation Review
5 Council; to change the provisions relating to referral of a bill to the council; to change the
6 provisions relating to review of legislation and appropriate reports; to provide for the
7 council's authority to request information; to remove the requirements designating the
8 circumstances in which regulation should be implemented; to provide for related matters; to
9 repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1A of Title 43 of the Official Code of Georgia Annotated, relating to occupational
13 regulation legislation review, is amended by striking said chapter and inserting in its place
14 the following:

15 "CHAPTER 1A

16 43-1A-1.

17 This chapter shall be known and may be cited as the 'Georgia Occupational Regulation
18 Review Law.'

19 43-1A-2.

20 ~~The General Assembly finds that the need for and the effectiveness of establishing~~
21 ~~occupational licensure and certification in this state has not been systematically evaluated.~~
22 ~~It is the purpose of this chapter to ensure that no programs of licensure and certification~~
23 ~~shall hereafter be imposed upon any profession or business unless required for the safety~~

1 ~~and well-being of the citizens of the state~~ to provide for a systematic evaluation of
 2 businesses and professions not previously regulated by law in this state.

3 43-1A-3.

4 As used in this chapter, the term:

5 (1) 'Applicant group' means any business or professional group or organization, any
 6 individual, or any other interested party which proposes that any business or professional
 7 group not presently regulated be regulated by the state.

8 (2) 'Certificate' or 'certification' means a voluntary process by which a statutory
 9 regulatory entity grants recognition to an individual who has met certain prerequisite
 10 qualifications specified by that regulatory entity and who may assume or use 'certified'
 11 in the title or designation to perform prescribed occupational tasks.

12 (3) 'Council' means the Georgia Occupational Regulation Review Council.

13 ~~(4) 'Grandfather clause' means a provision in a regulatory statute applicable to~~
 14 ~~individuals engaged in the regulated business or profession prior to the effective date of~~
 15 ~~the regulatory statute which exempts the individuals from meeting prerequisite~~
 16 ~~qualifications set forth in the regulatory statute to perform prescribed occupational tasks.~~

17 (4) 'Healthcare professional' means any individual who practices or operates in the
 18 healthcare field in the state of Georgia and who is not otherwise licensed or certified to
 19 do so by the state.

20 (5) 'Legislative committee of reference' means the standing legislative committee
 21 designated by the Speaker of the House of Representatives or the President of the Senate
 22 to consider proposed legislation introduced in their respective houses of the General
 23 Assembly to regulate any business or occupation not previously regulated.

24 (6) 'License,' 'licensing,' or 'licensure' means authorization to engage in a business or
 25 profession which would otherwise be unlawful in the state in the absence of
 26 authorization. A license is granted to those individuals who meet prerequisite
 27 qualifications to perform prescribed business or professional tasks, who use a particular
 28 title, or who perform those tasks and use a particular title.

29 (7) 'Regulate' or 'regulation' means the process of licensure or certification as defined in
 30 this Code section.

31 ~~(8) 'Regulatory entity' means any state agency which regulates one or more professions,~~
 32 ~~occupations, industries, businesses, or other endeavors in this state.~~

33 ~~(9) 'State agency' means each state board, bureau, commission, department, division,~~
 34 ~~office, or other separate unit of state government created or established by law.~~

1 43-1A-4.

2 (a) There is created the Georgia Occupational Regulation Review Council.

3 (b) The council shall consist of ~~ten~~ at least 13 members:

4 (1) The ~~Comptroller General~~ Commissioner of Insurance or his or her designee;

5 (2) The Secretary of State or his or her designee;

6 (3) The commissioner of human resources or his or her designee;

7 (4) The director of the Office of Planning and Budget or his or her designee;

8 (5) The commissioner of natural resources or his or her designee;

9 (6) The state revenue commissioner or his or her designee;

10 (7) The Commissioner of Agriculture or his or her designee;

11 (8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;

12 (9) The commissioner of community health or his or her designee;

13 ~~(9)~~(10) The chairperson of the legislative committee of reference or that person's
14 designee from that committee, but only when legislation referred by such committee is
15 being considered by the council; and

16 ~~(10) The chairperson of that standing committee of the General Assembly appointed by~~
17 ~~the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that~~
18 ~~chairperson's designee from that committee, but only when legislation of which that~~
19 ~~presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being~~
20 ~~considered by the council.~~

21 (11) Two members of the House of Representatives to be appointed by the presiding
22 officer of the House of Representatives and two members of the Senate to be appointed
23 by the presiding officer of the Senate.

24 (c) The director of the Office of Planning and Budget or his or her designee shall serve as
25 chairperson of the council.

26 (d) Legislative members of the council appointed thereto pursuant to paragraphs ~~(9)~~ and
27 ~~(10)~~ and (11) of subsection (b) of this Code section shall receive for their attendance of
28 meetings of the council the same expense and mileage allowance authorized for legislative
29 members of interim legislative committees.

30 (e) When a bill is referred to the council, the director of the Office of Planning and Budget
31 or his or her designee shall designate a panel of five nonlegislative members and two
32 legislative members to review the bill.

33 43-1A-5.

34 (a) The chairperson of the legislative committee of reference may refer a bill to license or
35 certify a profession or business to the council, but is not required to do so.
36 Notwithstanding the foregoing, when a bill relates to the licensing or certification of a

1 healthcare professional the chairperson of the legislative committee shall refer the bill to
 2 the council. It shall be the duty of the council to review all bills ~~introduced in~~ referred by
 3 the General Assembly to license or certify a profession or business, which is not currently
 4 licensed or certified by the state, based on the criteria outlined in Code Section 43-1A-6.

5 (b) If a bill is referred to the council, the ~~The~~ chairperson of the legislative committee of
 6 reference shall provide written notification to the council of any proposed legislation
 7 introduced in that house of the General Assembly of which that committee is a standing
 8 committee if that legislation provides for the licensure or certification of a business or
 9 profession not currently licensed or certified by the state. That chairperson at the same time
 10 shall provide written notification of that legislation to the presiding officer of the house of
 11 the General Assembly in which that legislation was not introduced, and that presiding
 12 officer shall then appoint the chairperson of a standing committee of that house to serve as
 13 a member of the council for the purpose of considering that legislation, except that the
 14 chairperson so appointed may instead designate another member of that standing
 15 committee to serve as a member of the council for that purpose. Within a period of time not
 16 to exceed nine months from the date of such notification to the council, but in no event
 17 later than the convening date of the next succeeding regular session of the General
 18 Assembly, the council shall ~~provide a formal report evaluating~~ conduct an evaluation of the
 19 need to regulate the business or profession based on the factors and information provided
 20 under Code Section 43-1A-7 and shall make a formal report outlining appropriate action
 21 based on such evaluation to the chairperson of the legislative committee of reference, ~~the~~
 22 ~~committee chairperson appointed to the council pursuant to paragraph (10) of subsection~~
 23 ~~(b) of Code Section 43-1A-4,~~ the presiding officers of the House of Representatives and
 24 the Senate, and the legislative counsel. If the council determines a need for regulation, the
 25 report shall recommend an appropriate type of regulation and an appropriate state agency
 26 to oversee the regulation.

27 (c) The council shall work with the applicant group, the legislative committee of reference,
 28 and other interested parties in formulating its formal report.

29 43-1A-6.

30 ~~All bills introduced in the General Assembly to newly regulate a profession or business~~
 31 ~~should be reviewed according to the following criteria. In evaluating whether a profession~~
 32 ~~or business shall hereafter be regulated, the following factors shall be considered~~
 33 Legislation referred to the council shall be reviewed based on certain factors, including but
 34 not limited to the following:

- 35 (1) Whether ~~the unregulated practice of an occupation may~~ an unregulated business or
 36 profession poses a potential economic, physical, or other type of harm or endanger to the

1 health, safety, and welfare of citizens of the state ~~and whether the potential for harm is~~
 2 ~~recognizable and not remote;~~

3 (2) ~~Whether the practice of an occupation~~ business or profession requires specialized
 4 skill or training ~~and whether the public needs and will benefit by assurances of initial and~~
 5 ~~continuing occupational ability;~~

6 (3) ~~Whether the citizens of this state are or may be effectively protected by other means;~~
 7 ~~and~~ there is a benefit accruing to the public to have such a business or profession
 8 demonstrate initial or continuing occupational ability;

9 (4) Whether there are means other than regulation to protect the interests of the citizens
 10 of the state;

11 (5) Whether the regulation of the business or profession would have a positive impact
 12 on the lives of the citizens of the state; and

13 ~~(4)(6)~~ (6) Whether the overall cost effectiveness and economic impact would be positive for
 14 citizens of the state.

15 43-1A-7.

16 ~~After July 1, 1986, applicant groups and other interested parties shall explain in writing~~
 17 ~~each of the following factors to the extent requested by the council and the legislative~~
 18 ~~committee of reference~~ The council has the authority to request information as it deems
 19 necessary to assist in its evaluation of the subject legislation, including, but not limited to,
 20 the following:

21 (1) ~~A definition of the problem and why~~ The reasons why regulation is necessary:

22 (A) ~~The nature of the potential harm to the public if the business or profession is not~~
 23 ~~regulated, and the extent to which there is a threat to public health and safety; and~~

24 (B) ~~The extent to which consumers need and will benefit from a method of regulation~~
 25 ~~identifying competent individuals engaged in the business or profession;~~

26 (2) ~~The efforts made to address the problem:~~

27 (A) ~~Voluntary efforts, if any, by members of the business or profession to establish a~~
 28 ~~code of ethics or help resolve disputes between the business or professional group and~~
 29 ~~consumers; and~~

30 (B) ~~Recourse to and the extent of use of applicable law and whether it could be~~
 31 ~~strengthened to control the problem~~ A description of the group proposed for regulation,
 32 including a list of associations, organizations, and other groups representing the
 33 business or profession in this state, an estimate of the number of individuals in each
 34 group, and whether the group represents different levels of business or professional
 35 activity;

36 (3) ~~The~~ Information demonstrating that alternatives to regulation have been considered;

1 ~~(A) Regulation of business or professional employers rather than employees;~~

2 ~~(B) Regulation of the program or service rather than the individuals;~~

3 ~~(C) Registration of all individuals;~~

4 ~~(D) Certification of all individuals;~~

5 ~~(E) Other alternatives;~~

6 ~~(F) Why the use of the alternatives specified in this paragraph would not be adequate~~
7 ~~to protect the public interest; and~~

8 ~~(G) Why licensure would serve to protect the public interest;~~

9 ~~(4) The benefit to the public if regulation is granted:~~

10 ~~(A) The extent to which the incidence of specific problems present in the unregulated~~
11 ~~business or profession can reasonably be expected to be reduced by regulation;~~

12 ~~(B) Whether the public can identify qualified individuals;~~

13 ~~(C) The extent to which the public can be confident that regulated individuals are~~
14 ~~competent:~~

15 ~~(i) Whether the proposed regulatory entity would be a board composed of members~~
16 ~~of the profession and public members, or a state agency, or both and, if appropriate,~~
17 ~~their respective responsibilities in administering the system of certification or~~
18 ~~licensure, including the composition of the board, the powers and duties of the board~~
19 ~~or state agency regarding examinations, investigations, and the disciplining of~~
20 ~~certified or licensed individuals; the promulgation of rules and a code of ethics; and~~
21 ~~how fees would be levied and collected to cover the expenses of administering and~~
22 ~~operating the regulatory system;~~

23 ~~(ii) If there is a grandfather clause, whether such individuals will be required to meet~~
24 ~~the prerequisite qualifications established by the regulatory entity at a later date;~~

25 ~~(iii) The nature of the standards proposed for certification or licensure as compared~~
26 ~~with the standards of other jurisdictions;~~

27 ~~(iv) Whether the regulatory entity would be authorized to enter into reciprocity~~
28 ~~agreements with other jurisdictions; and~~

29 ~~(v) The nature and duration of any training and whether applicants will be required~~
30 ~~to pass an examination; and, if an examination is required, by whom it will be~~
31 ~~developed and how the cost of development will be met; and~~

32 ~~(D) Assurance to the public that regulated individuals have maintained their~~
33 ~~competence:~~

34 ~~(i) Whether the certification or license will carry an expiration date; and~~

35 ~~(ii) Whether renewal will be based only upon payment of a fee or whether renewal~~
36 ~~will involve reexamination, satisfactory completion of continuing education, peer~~
37 ~~review, or other enforcement;~~

1 ~~(5) The extent to which regulation might harm the public:~~

2 ~~(A) The extent to which regulation might restrict entry into the business or profession~~
 3 ~~and whether the proposed standards are more restrictive than necessary to ensure safe~~
 4 ~~and effective performance; and~~

5 ~~(B) Whether there are similar professions to that of the applicant group which should~~
 6 ~~be included in, or portions of the applicant group which should be excluded from, the~~
 7 ~~proposed legislation;~~

8 ~~(6) A description of the group proposed for regulation, including a list of associations,~~
 9 ~~organizations, and other groups representing the business or profession in this state, an~~
 10 ~~estimate of the number of individuals in each group, and whether the groups represent~~
 11 ~~different levels of business or professional activity;~~

12 ~~(7) The expected cost of regulation:~~

13 ~~(A) The impact regulation might have on the costs of service to the public;~~

14 ~~(B) The impact regulation might have on various types of insurance; and~~

15 ~~(C) The initial and long-term cost to the state and to the general public of~~
 16 ~~implementing the proposed legislation; and~~

17 (4) Information as to how the business or profession is regulated in other states. If the
 18 business or profession is regulated by more than half of the states, this shall be considered
 19 as a factor in determining that the business or profession poses a potential economic,
 20 physical, or other type of harm to the health, safety, and welfare of the citizens of the
 21 state; and

22 ~~(8)(5) Any additional information requested by the council or the legislative committee~~
 23 ~~of reference.~~

24 43-1A-8.

25 ~~After evaluating the report of the council and any other desired information based on the~~
 26 ~~criteria outlined in Code Section 43-1A-6 and considering governmental and societal costs~~
 27 ~~and benefits, if the General Assembly finds that it is necessary to regulate a business or~~
 28 ~~profession not previously regulated by law, the most appropriate alternative method of~~
 29 ~~regulation should be implemented, consistent with the public interest and this Code section:~~

30 ~~(1) Where the consumer may have a substantial basis for relying on the services of a~~
 31 ~~profession or business, a system of certification should be implemented;~~

32 ~~(2) Where apparent that adequate regulation cannot be achieved by means other than~~
 33 ~~licensing, a system of licensing should be implemented; or~~

34 ~~(3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary~~
 35 ~~to protect the public health and welfare, a less restrictive means of ensuring public~~

1 ~~protection, including but not limited to stricter civil action or criminal penalties,~~
2 ~~inspection requirements, or a system of registration, may be considered.~~

3 ~~43-1A-9.~~

4 Nothing in this chapter shall be construed to limit the authority of the General Assembly
5 to legislate as authorized by the Constitution."

6 **SECTION 2.**

7 All laws and parts of laws in conflict with this Act are repealed.