

Senate Bill 148

By: Senators Shafer of the 48th, Pearson of the 51st, Hamrick of the 30th, Hill of the 32nd,
Wiles of the 37th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 business, so as to provide for review of existing regulatory entities to determine the need for
3 change to their current regulations; to provide for the evaluation of the regulations of existing
4 regulatory entities; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
9 is amended by revising Chapter 1A, relating to occupational regulation legislation review,
10 as follows:

11 "CHAPTER 1A

12 43-1A-1.

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

15 43-1A-2.

16 The General Assembly finds that the need for and the effectiveness of establishing
17 occupational licensure and certification in this state has not been systematically evaluated.
18 It is the purpose of this chapter to ensure that no programs of licensure and certification
19 shall hereafter be imposed upon any profession or business unless required for the safety
20 and well-being of the citizens of ~~the~~ this state. It is the further purpose of this chapter to
21 authorize the periodic review of existing regulatory entities to ensure that the authority of
22 such regulatory entities is applicable and necessary with relation to the current professional

23 and business conditions of this state. Any actions of the council pursuant to this chapter
 24 are solely recommendations and shall be nonbinding.

25 43-1A-3.

26 As used in this chapter, the term:

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

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

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

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

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

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

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

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

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

54 43-1A-4.

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

56 (b) The council shall consist of ten members:

57 (1) The Comptroller General or his or her designee;

- 58 (2) The Secretary of State or his or her designee;
- 59 (3) The commissioner of human resources or his or her designee;
- 60 (4) The director of the Office of Planning and Budget or his or her designee;
- 61 (5) The commissioner of natural resources or his or her designee;
- 62 (6) The state revenue commissioner or his or her designee;
- 63 (7) The Commissioner of Agriculture or his or her designee;
- 64 (8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;
- 65 (9) The chairperson of the legislative committee of reference or that person's designee
- 66 from that committee, but only when legislation referred by such committee is being
- 67 considered by the council; and
- 68 (10) The chairperson of that standing committee of the General Assembly appointed by
- 69 the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that
- 70 chairperson's designee from that committee, but only when legislation of which that
- 71 presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being
- 72 considered by the council.
- 73 (c) The director of the Office of Planning and Budget or his or her designee shall serve as
- 74 chairperson of the council.
- 75 (d) Legislative members of the council appointed thereto pursuant to paragraphs (9) and
- 76 (10) of subsection (b) of this Code section shall receive for their attendance of meetings of
- 77 the council the same expense and mileage allowance authorized for legislative members
- 78 of interim legislative committees.

79 43-1A-5.

- 80 (a) It shall be the duty of the council to:
- 81 (1) Review ~~review~~ all bills introduced in the General Assembly to license or certify a
- 82 profession or business, which is not currently licensed or certified by the state, based on
- 83 the criteria outlined in Code Section 43-1A-6-; and
- 84 (2) Review each existing regulatory entity that is currently regulated pursuant to this title
- 85 to determine the applicability and necessity of such regulatory entity's authority with
- 86 relation to the current professional and business conditions of this state. The council shall
- 87 conduct such review a minimum of once every seven years. All council meetings relating
- 88 to a review of an existing regulatory entity pursuant to this paragraph shall be conducted
- 89 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'
- 90 (b) The chairperson of the legislative committee of reference shall provide written
- 91 notification to the council of any proposed legislation introduced in that house of the
- 92 General Assembly of which that committee is a standing committee if that legislation
- 93 provides for the licensure or certification of a business or profession not currently licensed

94 or certified by the state. That chairperson at the same time shall provide written notification
 95 of that legislation to the presiding officer of the house of the General Assembly in which
 96 that legislation was not introduced, and that presiding officer shall then appoint the
 97 chairperson of a standing committee of that house to serve as a member of the council for
 98 the purpose of considering that legislation, except that the chairperson so appointed may
 99 instead designate another member of that standing committee to serve as a member of the
 100 council for that purpose. Within a period of time not to exceed nine months from the date
 101 of such notification to the council, but in no event later than the convening date of the next
 102 succeeding regular session of the General Assembly, the council shall provide a formal
 103 report evaluating the need to regulate the business or profession based on the factors and
 104 information provided under Code Section 43-1A-7 to the chairperson of the legislative
 105 committee of reference, the committee chairperson appointed to the council pursuant to
 106 paragraph (10) of subsection (b) of Code Section 43-1A-4, the presiding officers of the
 107 House of Representatives and the Senate, and the legislative counsel. If, subsequent to a
 108 review pursuant to paragraph (2) of subsection (a) of this Code section, the council
 109 concludes changes are needed to the regulations of an existing regulatory entity, or that a
 110 regulatory entity's existence is no longer necessary or in the interests of the state, a formal
 111 report recommending such changes shall be completed and distributed in the same manner
 112 described previously herein. If the council determines a need for regulation, the report
 113 shall recommend an appropriate type of regulation and an appropriate state agency to
 114 oversee the regulation.

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

117 (d) The head of a regulatory entity subject to review pursuant to paragraph (2) of
 118 subsection (a) of this Code section shall have the right to testify to the council to contribute
 119 its perspective and recommendations regarding potential changes to how such regulatory
 120 entity is regulated.

121 43-1A-6.

122 All bills introduced in the General Assembly to newly regulate a profession or business
 123 ~~should~~ and all reviews of existing regulatory entities pursuant to paragraph (2) of
 124 subsection (a) of Code Section 43-1A-5 shall be reviewed according to the following
 125 criteria. In evaluating how or whether a profession or business shall hereafter be regulated,
 126 the following factors shall be considered:

127 (1) Whether the unregulated practice of ~~an~~ the occupation may harm or endanger the
 128 health, safety, and welfare of citizens of ~~the~~ this state and whether the potential for harm
 129 is recognizable and not remote;

- 130 (2) Whether the practice of ~~an~~ the occupation requires specialized skill or training and
 131 whether the public needs and will benefit by assurances of initial and continuing
 132 occupational ability;
- 133 (3) Whether the citizens of this state are or may be effectively protected by other means;
 134 ~~and~~
- 135 (4) Whether the overall cost effectiveness and economic impact would be positive for
 136 citizens of ~~the state~~ this state; and
- 137 (5) Whether there are means other than state regulation to protect the interests of the
 138 state.

139 43-1A-7.

140 ~~After July 1, 1986, applicant~~ Applicant groups and other interested parties shall explain in
 141 writing each of the following factors to the extent requested by the council and the
 142 legislative committee of reference:

- 143 (1) A definition of the problem and why regulation is necessary:
- 144 (A) The nature of the potential harm to the public if the business or profession is not
 145 regulated, and the extent to which there is a threat to public health and safety; and
 146 (B) The extent to which consumers need and will benefit from a method of regulation
 147 identifying competent individuals engaged in the business or profession;
- 148 (2) The efforts made to address the problem:
- 149 (A) Voluntary efforts, if any, by members of the business or profession to establish a
 150 code of ethics or help resolve disputes between the business or professional group and
 151 consumers; and
 152 (B) Recourse to and the extent of use of applicable law and whether it could be
 153 strengthened to control the problem;
- 154 (3) The alternatives considered:
- 155 (A) Regulation of business or professional employers rather than employees;
 156 (B) Regulation of the program or service rather than the individuals;
 157 (C) Registration of all individuals;
 158 (D) Certification of all individuals;
 159 (E) Other alternatives;
 160 (F) Why the use of the alternatives specified in this paragraph would not be adequate
 161 to protect the public interest; and
 162 (G) Why licensure would serve to protect the public interest;
- 163 (4) The benefit to the public if regulation is granted:
- 164 (A) The extent to which the incidence of specific problems present in the unregulated
 165 business or profession can reasonably be expected to be reduced by regulation;

- 166 (B) Whether the public can identify qualified individuals;
- 167 (C) The extent to which the public can be confident that regulated individuals are
168 competent:
- 169 (i) Whether the proposed regulatory entity would be a board composed of members
170 of the profession and public members, or a state agency, or both and, if appropriate,
171 their respective responsibilities in administering the system of certification or
172 licensure, including the composition of the board; the powers and duties of the board
173 or state agency regarding examinations, investigations, and the disciplining of
174 certified or licensed individuals; the promulgation of rules and a code of ethics; and
175 how fees would be levied and collected to cover the expenses of administering and
176 operating the regulatory system;
- 177 (ii) If there is a grandfather clause, whether such individuals will be required to meet
178 the prerequisite qualifications established by the regulatory entity at a later date;
- 179 (iii) The nature of the standards proposed for certification or licensure as compared
180 with the standards of other jurisdictions;
- 181 (iv) Whether the regulatory entity would be authorized to enter into reciprocity
182 agreements with other jurisdictions; and
- 183 (v) The nature and duration of any training and whether applicants will be required
184 to pass an examination; and, if an examination is required, by whom it will be
185 developed and how the cost of development will be met; and
- 186 (D) Assurance to the public that regulated individuals have maintained their
187 competence:
- 188 (i) Whether the certification or license will carry an expiration date; and
- 189 (ii) Whether renewal will be based only upon payment of a fee or whether renewal
190 will involve reexamination, satisfactory completion of continuing education, peer
191 review, or other enforcement;
- 192 (5) The extent to which regulation might harm the public:
- 193 (A) The extent to which regulation might restrict entry into the business or profession
194 and whether the proposed standards are more restrictive than necessary to ensure safe
195 and effective performance; and
- 196 (B) Whether there are similar professions to that of the applicant group which should
197 be included in, or portions of the applicant group which should be excluded from, the
198 proposed legislation;
- 199 (6) A description of the group proposed for regulation, including a list of associations,
200 organizations, and other groups representing the business or profession in this state, an
201 estimate of the number of individuals in each group, and whether the groups represent
202 different levels of business or professional activity;

- 203 (7) The expected cost of regulation:
- 204 (A) The impact regulation might have on the costs of service to the public;
- 205 (B) The impact regulation might have on various types of insurance; and
- 206 (C) The initial and long-term cost to the state and to the general public of
- 207 implementing the proposed legislation; and
- 208 (8) Any additional information requested by the council or the legislative committee of
- 209 reference.

210 43-1A-8.

211 (a) After evaluating the report of the council and any other desired information based on

212 the criteria outlined in Code Section 43-1A-6 and considering governmental and societal

213 costs and benefits, if the General Assembly finds that it is necessary to regulate a business

214 or profession not previously regulated by law, the most appropriate alternative method of

215 regulation should be implemented, consistent with the public interest and this Code section:

- 216 (1) Where the consumer may have a substantial basis for relying on the services of a
- 217 profession or business, a system of certification should be implemented;
- 218 (2) Where apparent that adequate regulation cannot be achieved by means other than
- 219 licensing, a system of licensing should be implemented; or
- 220 (3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary
- 221 to protect the public health and welfare, a less restrictive means of ensuring public
- 222 protection, including, but not limited to, stricter civil action or criminal penalties,
- 223 inspection requirements, or a system of registration, may be considered.

224 (b) With regard to an existing regulatory entity, after evaluating the report of the council

225 and any other desired information based on the criteria outlined in Code Section 43-1A-6

226 and considering governmental and societal costs and benefits, the General Assembly shall:

- 227 (1) Take no action if it has determined that such existing regulatory agency is efficiently
- 228 regulated and that no action is necessary in the interests of the state;
- 229 (2) Amend the enabling legislation of such existing regulatory entity if it has determined
- 230 that making such amendments shall more efficiently regulate such regulatory entity in a
- 231 manner that is in the best interests of the state; or
- 232 (3) Repeal the enabling legislation of such existing regulatory entity if it has determined
- 233 that the continuing regulation of such regulatory entity is no longer in the interests of the
- 234 state.

235 43-1A-9.

236 Nothing in this chapter shall be construed to limit the authority of the General Assembly

237 to legislate as authorized by the Constitution."

238

SECTION 2.

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