

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 824

By Senator Chapman

[Introduced March 20, 2025; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5, and §30-1A-6 of the Code of West
2 Virginia, 1931, as amended, relating to the procedure of review by the Performance
3 Evaluation and Research Division of the Office of the Legislative Auditor for regulating the
4 scope of practice of occupations and professions; modifying the required application to
5 regulate an unregulated profession or occupation; removing the application analysis
6 regarding scope of practice; removing review of scope of practice for existing occupational
7 licenses review; and removing the requirement that consideration of scope of practice be
8 construed narrowly when determining whether an occupation or profession should be
9 regulated.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND
PROFESSIONS.**

**§30-1A-2. Required application for regulation of professional or occupational group;
application and reporting dates.**

1 (a) The Joint Standing Committee on Government Organization is responsible for
2 facilitating the review of all legislation to enact or modify an occupational regulation to ensure
3 compliance with the policy in §30-1A-1 of this code. The Joint Standing Committee on
4 Government Organization shall refer the review of a proposal for regulation of any unregulated
5 profession or occupation to the Performance Evaluation and Research Division of the Office of the
6 Legislative Auditor.

7 (b) Any professional or occupational group or organization, any individual, or any other
8 interested party that proposes the regulation of any unregulated profession or occupation, ~~or who~~
9 ~~proposes to establish, revise, or expand the scope of practice of a regulated profession or~~
10 ~~occupation~~ shall submit an application to the Joint Standing Committee on Government
11 Organization, as set out in this article.

(c) The Joint Standing Committee on Government Organization may only accept an application for regulation of a profession or occupation, ~~or establishment, revision, or expansion of the scope of practice of a regulated profession or occupation,~~ when the party submitting an application files with the committee a statement of support for the proposed regulation that has been signed by at least 10 residents or citizens of the State of West Virginia who are members of the professional or occupational group or organization for which regulation is being sought, ~~or for which establishment, revision, or expansion of the scope of practice of a regulated profession or occupation is being sought.~~

(d) The completed application shall contain:

(1) A description of the occupation or profession for which regulation is proposed, ~~or for which establishment, revision, or expansion of the scope of practice of a regulated profession or occupation is proposed,~~ including a list of associations, organizations, and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

(2) A definition of the problem and the reasons why regulation ~~or establishment, revision, or expansion of the scope of practice~~ is necessary;

(3) The reasons why government certification, government registration, occupational licensure, or other type of regulation is being requested and why that regulatory alternative was chosen over a less restrictive alternative;

(4) A detailed statement of the proposed funding mechanism to pay the administrative costs of the regulation ~~or the establishment, revision, or expansion of the scope of practice,~~ or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in this chapter;

(6) The benefit to the public that would result from the proposed regulation ~~or~~

~~establishment, revision, or expansion of the scope of practice;~~

(7) The cost of the proposed regulation ~~or establishment, revision, or expansion of the~~
~~scope of practice;~~ and

(8) Evidence, if any, of present, significant, and substantiated harms to consumers in the
state.

§30-1A-3. Analysis and evaluation of application.

(a) The Joint Standing Committee on Government Organization shall refer the completed
application of the professional or occupational group or organization to the Performance
Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative
Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation
shall be based upon the criteria listed in subsections (c) through subsection ~~(k)~~ (j) of this section.
The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall
submit a report, and such supporting materials as may be required, to the Joint Standing
Committee on Government Organization, as set out in this section.

(c) The Performance Evaluation and Research Division of the Office of the Legislative
Auditor shall determine if the proposed regulation meets the state's policy as set forth in §30-1A-
1(b) of this code of using the least restrictive regulation necessary to protect consumers from
present, significant, and substantiated harms.

(d) The Performance Evaluation and Research Division of the Office of the Legislative
Auditor's analysis in subsection (c) of this section ~~will~~ shall use a rebuttable presumption that
consumers are sufficiently protected by market competition and private remedies, as listed in §30-
1A-1a(1) through §30-1A-1a(4) of this code. The Joint Standing Committee on Government
Organization ~~will~~ shall consider the use of private certification programs that allow a provider to
give consumers information about the provider's knowledge, skills, and association with a private
certification organization.

(e) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may rebut the presumption in subsection (d) of this section if it finds both credible empirical evidence of present, significant, and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the committee may recommend the least restrictive government regulation to address the harm, as listed in §30-1A-1a(5) through §30-1A-1a(16) of this code.

(f) The Performance Evaluation and Research Division of the Office of the Legislative Auditor ~~will~~ shall use the following guidelines to form its recommendation in subsection (j) or subsection (k) of this section. If the harm arises from:

(1) Contractual disputes, including pricing disputes, the office may recommend enacting a specific civil cause of action in small-claims court or circuit court to remedy consumer harm. This cause of action may provide for reimbursement of attorney's fees or court costs, if a consumer's claim is successful;

(2) Fraud, the office may recommend strengthening powers under the state's deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service or other relevant recommendations;

(3) General health and safety risks, the office may recommend enacting a regulation on the related process or requiring a facility license;

(4) A lack of protection for a person who is not a party to a contract between providers and consumers, the office may recommend requiring the provider have insurance;

(5) A shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), the office may recommend enacting government certification;

(6) An inability to qualify providers of new or highly specialized medical services for reimbursement by the state, the office may recommend enacting a specialty certification solely for medical reimbursement;

(7) A systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, the office may recommend enacting an occupational license; and

(8) The need to address multiple types of harm, the office may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer-created ratings and reviews, or private certification.

(g) The Performance Evaluation and Research Division and other relevant divisions of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section shall include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The Performance Evaluation and Research Division of the Office of the Legislative Auditor's analysis of the need for regulation in subsection (e) of this section ~~should~~ shall include comparisons of the legislation to whether and how other states regulate the occupation, ~~including the occupation's scope of practice that other states use,~~ and the personal qualifications other states require.

(i) The Performance Evaluation and Research Division of the Office of the Legislative Auditor may also request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor market economics, or other factors, including costs and benefits, a professional who works in the profession, a board member who regulates the profession, and any other interested party.

(j) For an application proposing the regulation of an unregulated profession or occupation, the Performance Evaluation and Research Division of the Office of the Legislative Auditor's report shall include evaluation, analysis, and findings as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and any evidence of present, significant, and

73 substantiated harms to consumers in the state;

74 (2) The requisite personal qualifications, if any;

75 (3) The scope of practice, if applicable;

76 (4) If regulation is required to address evidence of harm to consumers in the state, the least
77 restrictive regulation of the occupation or profession; and

78 (5) Whether the professional or occupational group or organization should be regulated as
79 proposed in the application.

80 ~~(k) For an application proposing the establishment, revision, or expansion of the scope of~~
81 ~~practice of a regulated profession or occupation, the report shall include the evaluation, analysis,~~
82 ~~and findings as set forth in subsection (j) of this section inasmuch as applicable, and a clear~~
83 ~~recommendation as to whether the scope of practice should be established, revised, or expanded~~
84 ~~as proposed in the application.~~

85 ~~(j)-(k)~~ The Performance Evaluation and Research Division of the Office of the Legislative
86 Auditor shall submit its report to the Joint Standing Committee on Government Organization no
87 later than nine months after receiving the application for analysis.

§30-1A-5. Review of existing occupational licenses.

1 (a) Starting on July 1, 2021, the Performance Evaluation and Research Division of the
2 Office of the Legislative Auditor is responsible for annually reviewing those current occupational
3 licenses that the committee chairs select.

4 (b) The Performance Evaluation and Research Division of the Office of the Legislative
5 Auditor shall review all occupational licenses within the subsequent eight years and shall repeat
6 such review processes in each eight-year period thereafter.

7 (c) The Performance Evaluation and Research Division of the Office of the Legislative
8 Auditor shall use the criteria set forth in §30-1A-3(c) through §30-1A-3(i) of this code to analyze all
9 existing occupational licenses. The office also may consider research or other credible evidence
10 regarding whether an existing regulation directly helps consumers to avoid present, significant,

and recognizable harm.

(d)(1) Starting on July 1, 2022, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall report the findings of its reviews to the Joint Standing Committee on Government Organization. In its report, the Performance Evaluation and Research Division of the Office of the Legislative Auditor may make recommendations to the committee that the Legislature enact new legislation that:

(A) Repeals the occupational licenses;

(B) Converts the occupational licenses to less restrictive regulation as set forth in the definition of "least restrictive regulation" in §30-1A-1a of this code;

(C) Changes the requisite personal qualifications of an occupational license; or

(D) ~~Redefines the scope of practice in an occupational license; or~~

~~(E) Reflects other recommendations to the Legislature.~~

(2) The Performance Evaluation and Research Division of the Office of the Legislative Auditor also may recommend that no new legislation is enacted.

(3) Nothing in this article ~~shall~~ may be construed to authorize the office to review the means that a private certification organization uses to issue, deny, or revoke a private certification to any individual, or to require a private certification organization to grant or deny private certification to any individual.

§30-1A-6. Article construction.

(a) Nothing in this article ~~shall~~ may be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing department or agency.

(b) Notwithstanding the provisions of subsection (a) of this section, the recommendations of the Joint Standing Committee on Government Organization ~~are to~~ shall be given considerable weight in determining if a profession or occupation should be regulated, ~~or if the scope of practice~~

8 ~~of a regulated profession or occupation should be established, revised, or expanded.~~

9 (c) In construing any governmental regulation of occupations, including an occupational
10 licensing statute, rule, policy, or practice, the following interpretations are to govern, unless the
11 regulation is unambiguous:

12 (1) Occupational regulations ~~should~~ shall be construed and applied to increase economic
13 opportunities, promote competition, and encourage innovation; and

14 (2) Any ambiguities in occupational regulations should be construed in favor of workers
15 and aspiring workers to work; ~~and~~

16 ~~(3) The scope of practice in occupational regulations should be construed narrowly to~~
17 ~~avoid burdening individuals with regulatory requirements that only have an attenuated relationship~~
18 ~~to the goods and services they provide.~~

NOTE: The purpose of this bill is to amend the process by the Performance Evaluation and Research Division of the Office of the Legislative Auditor relating to the enactment or modification of an occupational or professional regulation; it undertakes to determine if the scope of practice of a regulated profession should be established, revised, or expanded; and removes language requiring that the scope of practice in occupational regulations be construed narrowly.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.