

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Committee Substitute for Senate Bill No. 836,
2 Page 3, Section 191.1150, Line 82, by inserting immediately after all of said section and line the
3 following:
4

5 "324.004. 1. (1) The purpose of this section is to promote the general welfare by
6 establishing guidelines for the regulation of occupations and professions not regulated prior to
7 January 1, 2017.

8 (2) All individuals may engage in the occupation of their choice, free from unreasonable
9 government regulation. The state shall not impose a substantial burden on an individual's pursuit of
10 his or her occupation or profession unless there is an important governmental interest for the state to
11 protect the general welfare. If such an interest exists, the regulation adopted by the state shall be the
12 least restrictive type of occupational regulation consistent with the public interest to be protected.

13 (3) All bills introduced in the legislature to regulate an occupation or profession for the first
14 time shall be reviewed according to the following criteria. An occupation or profession shall be
15 regulated by the state only if:

16 (a) Unregulated practice has caused significant harm and endangered the general welfare
17 and the potential for further harm and endangerment is easily recognizable and not remote or
18 dependent upon tenuous argument;

19 (b) The public needs and can reasonably be expected to benefit from an assurance of initial
20 personal qualifications; and

21 (c) The general welfare cannot be effectively protected by other means.

22 (4) After evaluating the criteria in subdivision (3) of this subsection and considering
23 governmental, economic, and societal costs and benefits, if the legislature finds that the state has an
24 important interest in regulating an occupation or profession not previously regulated by law, the
25 least restrictive type of occupational regulation shall be implemented, consistent with the need to
26 protect the general welfare and this section. If:

27 (a) Market competition, common law, statutory civil actions, and criminal prohibitions are
28 insufficient to eradicate actual harm, the regulation shall provide for stricter civil actions and
29 criminal prosecutions;

30 (b) A service is being performed for individuals involving a hazard to the general welfare,
31 the regulation shall impose inspection requirements and enable an appropriate state agency to
32 enforce violations by injunctive relief in court including, but not limited to, regulation of the
33 business activity providing the service rather than practitioners;

34 (c) The threat to the general welfare resulting from the practitioner's services is relatively
35 small, easily identifiable, or predictable, the regulation shall implement a system of insurance,
36 bonding, or registration;

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1 (d) The consumer possesses significantly less information so that the practitioner puts the
2 consumer in a disadvantageous position relative to the practitioner to judge the quality of the
3 practitioner's services, the regulation shall implement a voluntary system of certification; or

4 (e) There is no other type of regulation that will protect the general welfare other than
5 licensing, the regulation shall implement a system of licensing.

6 2. For the purposes of this section, the following terms mean:

7 (1) "Applicant group", any occupational or professional group or organization, any
8 individual, or any other interested party that proposes that any occupation or profession not
9 presently regulated be regulated;

10 (2) "Certification", a voluntary program in which the government grants nontransferable
11 recognition to an individual who meets personal qualifications established by a legislative body.
12 Upon approval, the individual may use "certified" as a designated title. Someone who has not been
13 recognized as certified may perform the occupation for compensation lawfully, but shall not use the
14 title "certified". This term shall not be synonymous with an occupational license or prohibit the use
15 of private certification;

16 (3) "General welfare", the concern of the government for the health, peace, morality, and
17 safety of its citizens;

18 (4) "Grandfather clause", a provision in a regulatory statute applicable to practitioners
19 actively engaged in the regulated occupation or profession prior to the effective date of the
20 regulatory statute which exempts the practitioners from meeting the personal qualifications set forth
21 in the regulatory statute to perform prescribed occupational tasks;

22 (5) "Inspection", the periodic examination of practitioners by a state agency in order to
23 ascertain whether the practitioners' activities are being carried out in a fashion consistent with the
24 requisite level of cleanliness necessary to protect the general welfare;

25 (6) "Lawful occupation", a course of conduct, pursuit, or profession that includes the sale of
26 goods or services that are not themselves illegal to sell irrespective of whether the individual selling
27 them is subject to an occupational regulation;

28 (7) "Least restrictive type of occupational regulations", in order from least to most
29 restrictive;

30 (a) Market competition;

31 (b) A provision for private civil action to remedy consumer harm;

32 (c) Criminal sanction;

33 (d) Regulation of the business activity providing the service rather than the practitioner;

34 (e) Inspection;

35 (f) Bonding or insurance;

36 (g) Registration;

37 (h) Certification;

38 (i) Occupational license;

39 (8) "Legislative committees of reference", the standing legislative committees designated by
40 the respective rules committees of the senate and house of representatives to consider proposed
41 legislation to regulate occupations, or professions not previously regulated;

42 (9) "Occupational license", a nontransferable authorization in law for an individual to
43 perform a lawful occupation for compensation based on meeting personal qualifications established
44 by a legislative body. It shall be prohibited for an individual who does not possess an occupational
45 license to perform the occupation for compensation;

46 (10) "Occupational regulation", a statute, ordinance, rule, practice, policy, or other law
47 requiring an individual to possess certain personal qualifications to work in a lawful occupation;

48 (11) "Personal qualifications", criteria related to an individual's personal background

1 including completion of an approved educational program, satisfactory performance on an
 2 examination, work experience, criminal history, moral standing, and completion of continuing
 3 education;

4 (12) "Practitioner", an individual who has achieved knowledge and skill by practice and is
 5 actively engaged in a specified occupation or profession;

6 (13) "Public member", an individual who is not currently, and has never been in the past, a
 7 member or spouse of a member of the occupation or profession being regulated or an individual
 8 who does not currently have and has never in the past had a material financial interest in either the
 9 rendering of the occupation or professional service being regulated or an activity directly related to
 10 the occupation or profession being regulated;

11 (14) "Registration", a requirement established by the legislature in which a person submits
 12 notification to a state agency and may use "registered" as a designated title. Notification may
 13 include the person's name and address, the person's agent for service of process, the location of the
 14 activity to be performed, and a description of the service the person provides. Registration may
 15 include a requirement to post a bond, but does not include education or experience requirements.
 16 Nonregistered persons may not perform the occupation for compensation or use "registered" as a
 17 designated title. The term registration shall not be synonymous with an occupational license and
 18 does not refer to or prohibit the use of private registration;

19 (15) "Regulatory entity", any board, commission, agency, division, or other unit or subunit
 20 of state government which regulates one or more professions, occupations, industries, businesses, or
 21 other endeavors in this state;

22 (16) "State agency", every state office, department, board, commission, regulatory entity,
 23 and agency of the state, and, if provided by law, programs and activities involving less than the full
 24 responsibility of a state agency;

25 (17) "Substantial burden", a requirement in an occupational regulation that imposes
 26 significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation
 27 and is more than an incidental burden.

28 3. The general assembly shall not pass any laws regulating an occupation or profession for
 29 the first time except by bill, as defined in section 21.600, which has been referred to the legislative
 30 committees of reference in both houses, reviewed in accordance with this section by each
 31 committee, and voted upon in favor by a majority of committee members as required by rule of the
 32 respective house. Any amendment containing language to regulate an occupation or profession for
 33 the first time shall not be adopted onto a bill in either house, unless such language is identical to a
 34 bill which has been heard and voted on in favor by a legislative committee of reference in the house
 35 where the amendment is being proposed.

36 4. After January 1, 2017, applicant groups shall submit a written report explaining each of
 37 the following factors to the legislative committees of reference prior to the bill, containing the
 38 proposed regulation, being heard before the committee in each house:

39 (1) A definition of the problem and why regulation is necessary including, but not limited
 40 to:

41 (a) The description and quantification of the actual harm to the general public due to the
 42 fact that the occupation or profession is not regulated;

43 (b) The extent to which the actual harm could be avoided;

44 (c) A description of how consumers will benefit in the future from the proposed type of
 45 regulation; and

46 (d) The extent of autonomy a practitioner has, as indicated by:

47 a. The extent to which the occupation or profession calls for independent judgment and the
 48 extent of skill or experience required in making the independent judgment; and

- 1 b. The extent to which practitioners are supervised;
- 2 (2) The efforts made to address the actual harm caused:
- 3 (a) Voluntary efforts, if any, by members of the occupation or profession to:
- 4 a. Establish a code of ethics; or
- 5 b. Help resolve disputes between practitioners and consumers; and
- 6 (b) Recourse to and the extent of use of applicable law and whether it could be strengthened
- 7 to control the problem;
- 8 (3) The alternatives considered including, but not limited to:
- 9 (a) Increased civil or criminal sanctions;
- 10 (b) Regulation of businesses rather than practitioners;
- 11 (c) Regulation of the service or training program rather than the individual practitioners;
- 12 (d) Inspections;
- 13 (e) Bonding or insurance;
- 14 (f) Registration of all practitioners;
- 15 (g) Certification of all practitioners;
- 16 (h) Other alternatives;
- 17 (i) Why the use of the alternatives specified in this subsection would not be adequate to
- 18 protect the general welfare; and
- 19 (j) Why licensing would serve to protect the general welfare;
- 20 (4) The benefit to the public if regulation is granted;
- 21 (5) The extent to which the incidences of specific problems present in the unregulated
- 22 occupation or profession can reasonably be expected to be reduced by proposed regulation;
- 23 (6) Whether the public can identify qualified practitioners;
- 24 (7) The extent to which the public can be confident that qualified practitioners are
- 25 competent:
- 26 (a) Whether the proposed regulatory entity would be a board composed of members of the
- 27 profession and public members, a state agency, or both, and, if appropriate, their respective
- 28 responsibilities in administering the system of inspections, bonding, insurance, registration,
- 29 certification, or licensure, including the composition of the board and the number of public
- 30 members, if any; the powers and duties of the board or state agency regarding examinations and for
- 31 cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the
- 32 promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and
- 33 disciplinary action taken against practitioners; and how fees would be levied and collected to cover
- 34 the expenses of administering and operating the regulatory system;
- 35 (b) If there is a grandfather clause, how consumers will be protected from the harm caused
- 36 by current practitioners that is the basis for advocating for the enactment of the proposed regulation;
- 37 (c) If there is a grandfather clause, if current practitioners will be required to meet the
- 38 prerequisite qualifications established by the regulatory entity at a later date and if not, why not;
- 39 (d) Whether the regulatory entity would be authorized to enter into reciprocity agreements
- 40 with other jurisdictions;
- 41 (e) The nature and duration of any training including, but not limited to, whether the
- 42 training includes a substantial amount of supervised field experience; whether training programs
- 43 exist in this state; if there will be an experience requirement; whether the experience shall be
- 44 acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of
- 45 entry or methods of meeting the prerequisite qualifications; whether all applicants will be required
- 46 to pass an examination; and, if an examination is required, by whom it will be developed and how
- 47 the costs of development will be met; and
- 48 (f) What additional training programs are anticipated to be necessary to assure training is

1 accessible statewide; the anticipated time required to establish the additional training programs; the
 2 types of institutions capable of providing the training; a description of how training programs will
 3 meet the needs of the expected workforce, including reentry workers, minorities, placebound
 4 students, and others;

5 (8) Assurance of the public that practitioners have maintained their competence:

6 (a) Whether the registration, certification, or licensure will carry an expiration date; and

7 (b) Whether renewal will be based only upon payment of a fee, or whether renewal will
 8 involve reexamination, peer review, or other enforcement;

9 (9) The extent to which regulation might harm the public;

10 (10) The extent to which regulation will restrict entry into the occupation or profession:

11 (a) Whether the proposed personal qualifications are more restrictive than necessary to
 12 insure safe and effective performance;

13 (b) How the proposed personal qualifications compare to other regulations in the state
 14 which may involve greater risks to the general welfare; and

15 (c) The number of other states that regulate the same occupation or profession and how the
 16 proposed personal qualifications compare to required personal qualifications in other states that
 17 regulate the same occupation or profession;

18 (11) Whether there are similar professions to that of the applicant group which shall be
 19 included in or portions of the applicant group which shall be excluded from the proposed
 20 legislation;

21 (12) The maintenance of personal qualifications;

22 (13) Whether effective quality assurance standards exist in the occupation or profession,
 23 such as legal requirements associated with specific programs that define or enforce professional
 24 standards, or a code of ethics;

25 (14) How the proposed legislation will assure:

26 (a) The extent to which a code of ethics, if any, will be adopted; and

27 (b) Grounds for suspension or revocation of registration, certification, or licensure;

28 (15) A description of the group proposed for regulation, including a list of associations,
 29 organizations, and other groups representing the practitioners in this state, an estimate of the number
 30 of practitioners in each group, and whether the groups represent different levels of practice; and

31 (16) The expected costs of regulation including, but not limited to:

32 (a) The impact registration, certification, or licensure will have on the costs of the services
 33 to the public;

34 (b) The cost to the state and to the general public of implementing the proposed legislation;
 35 and

36 (c) The cost to the state and the members of the group proposed for regulation for the
 37 required education, including projected tuition and expenses and expected increases in training
 38 programs, staffing, and enrollments at state training institutions.

39 5. A legislative proposal which contains a continuing education requirement shall be
 40 accompanied by a detailed explanation of how such requirement could be effective for the
 41 profession addressed in the legislation.

42 6. Nothing in this section shall be construed to create a right of action against a private party
 43 or to require a private party to do business with an individual who is not licensed, certified, or
 44 registered with the government or to create a right of action against the state, county, municipal, or
 45 other level of government in the state."; and

46
 47 Further amend said bill, Page 19, Section 336.020, Line 9, by inserting immediately after all of said
 48 section and line the following:

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2 "621.280. 1. For any new board or commission created after July 1, 2016, and charged with
3 regulating or licensing an occupation or profession, those practitioners actively engaged in the
4 newly regulated occupation or profession for at least one year prior to the effective date of the
5 regulatory statute shall have a property right in their continued legal ability to engage in their
6 occupation or profession.

7 2. Any decision of a newly created board or commission to refuse licensure to a preexisting
8 practitioner shall be in writing, shall inform the preexisting practitioner of the specific reasons for
9 the denial, and shall inform the preexisting practitioner of their right to appeal before a neutral
10 decision-maker at the administrative hearing commission. Any preexisting practitioner denied
11 licensure shall have the right to file an appeal to the administrative hearing commission on their
12 license denial within thirty days after the decision of the newly created board or commission. If the
13 preexisting practitioner does not timely appeal, their right to continue practicing the occupation or
14 profession shall extinguish immediately. In the event of a timely appeal, the preexisting
15 practitioner's right to practice their occupation or profession shall continue until a final decision of
16 the administrative hearing commission. The burden of proof in any hearing under this section shall
17 be on the new board or commission to show that the preexisting practitioner does not meet the
18 requirements of the new regulatory regime."; and

19
20 Further amend said bill by amending the title, enacting clause, and intersectional references
21 accordingly.