

Appendix A: Sunrise Laws

Too Many Licenses? Government “Sunrise” Reviews
Cast Doubt on Barriers to Work

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Appendix A: Sunrise Laws

Our analysis of states' sunrise laws is drawn from state statutes. However, for Vermont and especially Virginia, we also considered administrative regulations or similar sources due to gaps in the statutes. Citations are to the statutes in effect as of summer 2021. In some cases, the law cited differs from the law as it existed when some sunrise reviews included in this study were conducted. Answers in the negative typically reflect an absence of law. Where appropriate, we mention notable practices that deviate or are absent from the law.

Arizona

(health-related occupations)

Ariz. Rev. Stat. Ann. §§ 32-3101 to -3108

<p>Acknowledgment of need to protect open occupational entry?</p> <p>Yes: “Regulation shall not be imposed on any unregulated health profession for the purpose of prohibiting competition, but only for the exclusive purpose of protecting the public interest.” Ariz. Rev. Stat. Ann. § 32-3103(A).</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. The state should only regulate if “[t]here is credible evidence that the unregulated practice of that health profession can clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument.” Ariz. Rev. Stat. Ann. § 32-3103(A)(1).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to workers, consumers and the state; benefits to consumers. Ariz. Rev. Stat. Ann. § 32-3105(1)(b), (4)(b), (5), (8).</p>

List of regulatory options provided?

Yes. Ariz. Rev. Stat. Ann. § 32-3103(B).

Review to consider prior measures to address harm?

Yes. Ariz. Rev. Stat. Ann. § 32-3105(2).

Review to consider whether proposed regulation is narrowly tailored?

Yes. Review may consider “[t]he extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation.” Ariz. Rev. Stat. Ann. § 32-3105(4)(a).

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

Yes. Ariz. Rev. Stat. Ann. § 32-3103(B).

Application required to trigger sunrise process?

Yes, sunrise review is initiated when a health professional group submits a written application to the Legislature requesting regulation of its occupation. There is no application fee. Applications are referred to the Health Committee of the House of Representatives and the Health and Human Services Committee of the Senate for review. Proponents may seek introduction of a regulatory bill in the Legislature whether or not the legislative committees review their applications. Ariz. Rev. Stat. Ann. § 32-3104(A), (B).

Proponents required to provide information demonstrating need for regulation?

Yes, at reviewer’s request. Ariz. Rev. Stat. Ann. § 32-3105.

Report required?

No, reports are produced at reviewer’s discretion. However, reports were required prior to 2018. Ariz. Rev. Stat. Ann. § 32-3104 (amended 2018).

Time allowed for review?

No limit.

Colorado

Colo. Rev. Stat. Ann. § 24-34-104.1

Acknowledgment of need to protect open occupational entry?

Yes: “The general assembly finds that regulation should be imposed on an occupation or profession only when necessary for the protection of the public interest. The general assembly further finds that establishing a system for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation will better enable it to evaluate the need for the regulation and to determine the least restrictive regulatory alternative consistent with the public interest.” Colo. Rev. Stat. Ann. § 24-34-104.1(1).

Level of harm required to justify regulation?

Moderate. Review criteria include “[w]hether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.” Colo. Rev. Stat. Ann. § 24-34-104.1(4)(b)(I).

Evidence of past harm to be considered?

No.

Costs and benefits to be evaluated?

Yes, costs generally and to workers; benefits to consumers. Colo. Rev. Stat. Ann. § 24-34-104.1(4)(b)(II), (III), (IV); *see also* Colo. Rev. Stat. Ann. § 24-34-104.1(2)(a)(V), (VI).

List of regulatory options provided?

No.

Review to consider prior measures to address harm?

No.

Review to consider whether proposed regulation is narrowly tailored?

No.

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

Yes, sunrise review is initiated when “any professional or occupational group or organization, any individual, or other interested party” submits a proposal seeking regulation of an occupation to the Department of Regulatory Agencies’ Office of Policy, Research and Regulatory Reform, along with a statement of support signed by at least 10 individuals. There is no application fee. DORA can decline to conduct a review if it issued a report on the same occupation less than three years prior and finds that the applicant has submitted no new information that would change its previous recommendation. If regulation proponents provide evidence that the unregulated occupation poses an imminent threat to public health, safety or welfare, DORA can conduct an expedited review in consultation with the General Assembly’s Legislative Council. Colo. Rev. Stat. Ann. § 24-34-104.1(2), (3).

Proponents required to provide information demonstrating need for regulation?

Yes. Colo. Rev. Stat. Ann. § 24-34-104.1(2)(a)(II).

Report required?

Yes. Colo. Rev. Stat. Ann. § 24-34-104.1(3)(a).

Time allowed for review?

A minimum of 10.5 months, depending on when application is submitted. Colo. Rev. Stat. Ann. § 24-34-104.1(2), (3).

Public input on review encouraged?

No.

Florida

Fla. Stat. Ann. § 11.62

Acknowledgment of need to protect open occupational entry?

Yes: “It is the intent of the Legislature: (a) That no profession or occupation be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state be exercised only to the extent necessary for that purpose; and (b) That no profession or occupation be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.” Fla. Stat. Ann. § 11.62(2).

Level of harm required to justify regulation?

High. Review criteria include “[w]hether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.” Fla. Stat. Ann. § 11.62(3)(a).

Evidence of past harm to be considered?

Yes, at reviewer’s request, regulation proponents must provide documentation of past harm caused by unregulated practice of the occupation, including a description of complaints from the previous three years. Fla. Stat. Ann. § 11.62(4)(c).

Costs and benefits to be evaluated?

Yes, costs to workers, consumers and the state; benefits to consumers. Fla. Stat. Ann. § 11.62(3)(b), (c), (e); (4)(i), (j), (k); (5)(a); (6).

List of regulatory options provided?

No.

Review to consider prior measures to address harm?

Yes. Fla. Stat. Ann. § 11.62(4)(f).

Review to consider whether proposed regulation is narrowly tailored?

No.

Reviewer required to recommend least restrictive regulation?

Yes. Fla. Stat. Ann. § 11.62(6)(b).

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

No, sunrise review is initiated when a bill is introduced in the Legislature. Fla. Stat. Ann. § 11.62(4).

Proponents required to provide information demonstrating need for regulation?

Yes, at reviewer's request. Fla. Stat. Ann. § 11.62(4).

Report required?

No, the legislative committee that conducts a sunrise review is not expressly required to produce a written report.

Time allowed for review?

No limit.

Public input on review encouraged?

No.



Ga. Code Ann. §§ 43-1A-1 to -9

<p>Acknowledgment of need to protect open occupational entry?</p> <p>Yes: “It is the purpose of this chapter to ensure that no programs of licensure and certification shall hereafter be imposed upon any profession or business unless required for the safety and well-being of the citizens of this state.” Ga. Code Ann. § 43-1A-2.</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. Review criteria include “[w]hether the unregulated practice of the occupation may harm or endanger the health, safety, and welfare of citizens of this state and whether the potential for harm is recognizable and not remote.” Ga. Code Ann. § 43-1A-6(1).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs generally and to workers, consumers and the state; benefits to consumers. Ga. Code Ann. §§ 43-1A-6(2), (4); 43-1A-7.</p>
<p>List of regulatory options provided?</p> <p>Yes. Ga. Code Ann. §§ 43-1A-7(3); 43-1A-8.</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Ga. Code Ann. § 43-1A-7(2).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>Yes, “the most appropriate alternative method of regulation should be implemented.” Ga. Code Ann. § 43-1A-8(a).</p>

Reviewer required to recommend least restrictive regulation?

Yes. Ga. Code Ann. § 43-1A-5(b).

Legislature encouraged to enact least restrictive regulation?

Yes. Ga. Code Ann. § 43-1A-8(a).

Application required to trigger sunrise process?

No, sunrise review is initiated when a bill is introduced in the General Assembly. The chairperson of the legislative committee of reference notifies the Georgia Occupational Regulation Review Council that a regulatory bill has been introduced and the Council, a committee of nine members drawn from both the legislative and executive branches, begins its review. Ga. Code Ann. §§ 43-1A-4; 43-1A-5(b).

Proponents required to provide information demonstrating need for regulation?

Yes, at reviewer's request. Ga. Code Ann. § 43-1A-7.

Report required?

Yes. Ga. Code Ann. § 43-1A-5(b).

Time allowed for review?

No more than nine months. Ga. Code Ann. § 43-1A-5(b).

Public input on review encouraged?

Yes. Ga. Code Ann. § 43-1A-7.

Hawaii

Haw. Rev. Stat. §§ 26H-1 to -7

Acknowledgment of need to protect open occupational entry?

Yes: “The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.” Haw. Rev. Stat. § 26H-2.

Level of harm required to justify regulation?

Low: “(1) The regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation; (2) Regulation in the form of full licensure or other restrictions on certain professions or vocations shall be retained or adopted when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider.” Haw. Rev. Stat. § 26H-2(1), (2).

Evidence of past harm to be considered?

Yes: “Evidence of abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable.” Haw. Rev. Stat. §§ 26H-2(3); 26H-6.

Costs and benefits to be evaluated?

Yes, costs to workers, consumers and the state. Haw. Rev. Stat. § 26H-2(4), (7).

List of regulatory options provided?

No.

Review to consider prior measures to address harm?

No.

Review to consider whether proposed regulation is narrowly tailored?

No.

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

No, sunrise review is initiated when a bill is introduced in the Legislature. The bill is referred to the Office of the Auditor for analysis by concurrent resolution that identifies a specific bill to be evaluated. Haw. Rev. Stat. § 26H-6.

Proponents required to provide information demonstrating need for regulation?

No.

Report required?

Yes. Haw. Rev. Stat. § 26H-6.

Time allowed for review?

No limit.

Public input on review encouraged?

No.

Kansas

(health-related occupations)

Kan. Stat. Ann. §§ 65-5001 to -5011

<p>Acknowledgment of need to protect open occupational entry?</p> <p>No.</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. Review criteria include whether “[t]he unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public and the potential for such harm is recognizable and not remote.” Kan. Stat. Ann. § 65-5006(a)(1).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to consumers; benefits to consumers. Kan. Stat. Ann. § 65-5006(a)(2), (5), (6).</p>
<p>List of regulatory options provided?</p> <p>Yes. Kan. Stat. Ann. § 65-5007.</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Kan. Stat. Ann. § 65-5006(a)(3).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>No.</p>
<p>Reviewer required to recommend least restrictive regulation?</p> <p>Yes. Kan. Stat. Ann. §§ 65-5003(b); 65-5005(b); 65-5007(a).</p>

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

Yes, sunrise review is initiated when health care practitioners submit an application to the secretary of the Department of Health and Environment requesting regulation of their occupation. Applicants must prove by clear and convincing evidence that the occupation should be regulated and provide the signatures of 100 or more Kansas residents in favor of the proposed regulation. There is a \$1,000 application fee. Kan. Stat. Ann. §§ 65-5002(a); 65-5003(d).

Proponents required to provide information demonstrating need for regulation?

Yes. Kan. Stat. Ann. §§ 65-5002(a); 65-5003(c), (d).

Report required?

Yes, the technical committee (which is appointed by the secretary and is composed of three members who are currently credentialed health care practitioners and four members of the public) is required to detail its findings in a report filed with the secretary. The secretary, a member of the executive branch, then prepares a report, which may or may not adopt the same conclusions as the technical committee, for review by the Legislature. Kan. Stat. Ann. §§ 65-5001(h); 65-5003(a),(d); 65-5005(a).

Time allowed for review?

Four months for the secretary's report. The secretary must submit his or her report to the Legislature within 120 days of receiving the technical committee's report. Kan. Stat. Ann. § 65-5005(a).

Public input on review encouraged?

Yes. Kan. Stat. Ann. § 65-5003(c).

Maine

Me. Stat. tit. 5, § 12015; Me. Stat. tit. 32, § 60-J, -K, -L

<p>Acknowledgment of need to protect open occupational entry?</p> <p>No.</p>
<p>Level of harm required to justify regulation?</p> <p>Low. Review criteria include “the nature and extent of potential harm to the public if the profession or occupation is not regulated.” Me. Stat. tit. 32, § 60-J(3).</p>
<p>Evidence of past harm to be considered?</p> <p>Yes. Review criteria include “a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years.” Me. Stat. tit. 32, §§ 60-J(3); 60-K(2); 60-L(4).</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs generally and to consumers and the state; benefits to consumers. Me. Stat. tit. 32, §§ 60-J(2), (5), (13); 60-K(2); 60-L(4).</p>
<p>List of regulatory options provided?</p> <p>Yes. Me. Stat. tit. 32, §§ 60-J(8); 60-K(2); 60-L(4).</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Me. Stat. tit. 32, §§ 60-J(4), (10); 60-K(2); 60-L(4).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>No.</p>
<p>Reviewer required to recommend least restrictive regulation?</p> <p>Yes. Me. Stat. tit. 32, §§ 60-L(4); 60-K(3).</p>

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

Yes, when a regulatory bill is introduced in the Legislature, regulation proponents must submit a proposal for regulation with information pertaining to the evaluation criteria. This proposal is effectively an application (the law refers to proponents as “the applicant group”), and the review apparently cannot proceed until it is received. The application fee is up to \$500 if the commissioner of the Department of Professional and Financial Regulation is conducting the review (called an “independent assessment”) and up to \$1,000 if a technical committee is conducting the review. The commissioner can waive the fee if he or she determines it is in the public’s interest to do so. Me. Stat. tit. 5, § 12015(3); Me. Stat. tit. 32, §§ 60-J; 60-K(1); 60-L(1).

Proponents required to provide information demonstrating need for regulation?

Yes. Me. Stat. tit. 32, § 60-J.

Report required?

Yes. Me. Stat. tit. 32, §§ 60-K(3); 60-L(4), (5).

Time allowed for review?

No limit for the commissioner’s independent assessments. Where a technical committee is conducting the review, it must report its findings to the commissioner within six months of when the committee was established. The commissioner must submit his or her final report to the legislative committee within nine months of the proposal’s submission to the technical committee. Me. Stat. tit. 5 § 60-K; Me. Stat. tit. 5, § 12015(3)(C); Me. Stat. tit. 32, § 60-L(5).

Public input on review encouraged?

Yes. Me. Stat. tit. 32, § 12015(3)(A); Me. Stat. tit. 32, § 60-J.

Minnesota

(health-related occupations)

Minn. Stat. Ann. §§ 214.001 to -.002

<p>Acknowledgment of need to protect open occupational entry?</p> <p>Yes: “The legislature declares that no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state.” Minn. Stat. Ann. § 214.001, subd. 2.</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. Review criteria include “whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote.” Minn. Stat. Ann. § 214.001, subd. 2(1).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to workers and consumers; benefits to consumers. Minn. Stat. Ann. §§ 214.001, subd. 2(2), (4); 214.002, subd. 2(9), (11).</p>
<p>List of regulatory options provided?</p> <p>Yes. Minn. Stat. Ann. § 214.001, subd. 3.</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Minn. Stat. Ann. § 214.002, subd. 2(2); subd. 3(2).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>Yes, applications must address “why the proposed level of regulation is being proposed and why, if there is a lesser degree of regulation, it was not selected.” Minn. Stat. Ann. § 214.002, subd. 2(3).</p>

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

No, sunrise review is initiated when a bill is introduced in the Legislature. However, within 15 days of a bill's introduction, regulation proponents must submit a "report" to the standing committees to which the bill was referred and to the Council of Health Boards. Minn. Stat. Ann. § 214.002, subd. 1.

Proponents required to provide information demonstrating need for regulation?

Yes. Minn. Stat. Ann. § 214.002, subd. 2.

Report required?

No, the Council of Health Boards produces written reports at the request of the legislative committees reviewing proposed regulations. Minn. Stat. Ann. § 214.001 subd. 4.

Time allowed for review?

No limit.

Public input on review encouraged?

No.

Nebraska

(health-related occupations)

Neb. Rev. Stat. Ann. §§ 71-6201 to -6229

<p>Acknowledgment of need to protect open occupational entry?</p> <p>Yes: “The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the public from harm.” Neb. Rev. Stat. Ann. § 71-6202.</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. The state should only regulate if “[u]nregulated practice can clearly harm or endanger the health, safety, or welfare of the public.” Neb. Rev. Stat. Ann. § 71-6221.</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to workers, consumers and the state; benefits to consumers. Neb. Rev. Stat. Ann. §§ 71-6221(1)(b), (c); 71-6223(3)(c), (i); 71-6224(4); 71-6225; 71-6226(1).</p>
<p>List of regulatory options provided?</p> <p>Yes. Neb. Rev. Stat. Ann. §§ 71-6222; 71-6224(4); 71-6225; 71-6226(1).</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Neb. Rev. Stat. Ann. § 71-6223(3)(e).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>No.</p>

Reviewer required to recommend least restrictive regulation?

Yes. Neb. Rev. Stat. Ann. §§ 71-6224(4); 71-6225; 71-6226(1).

Legislature encouraged to enact least restrictive regulation?

Yes. Neb. Rev. Stat. Ann. § 71-6222.

Application required to trigger sunrise process?

Yes, sunrise review is initiated when “any health professional group or organization, any individual, or any other interested party” submits to the director of public health of the Department of Health and Human Services a letter of intent to file an application requesting regulation of an occupation. If the director deems the proposed regulation eligible for review, the applicant group can submit its application. There is a \$500 application fee, though this fee can be waived. Since 1993, there has also been the option for a “directed review,” where the director and the chairperson of the Legislature’s Health and Human Services Committee, or the chairperson in consultation with the Committee, initiate a review without the involvement of an applicant group. Neb. Rev. Stat. Ann. §§ 71-6204; 71-6223; 71-6223.01; 71-6223.02.

Proponents required to provide information demonstrating need for regulation?

Yes, if sunrise review is initiated by an applicant group. Neb. Rev. Stat. Ann. §§ 71-6223; 71-6224(3).

Report required?

Yes. The state has a three-step process that sees a technical committee, the Board of Health and the director of public health each review the proposed regulation. Neb. Rev. Stat. Ann. §§ 71-6224(4); 71-6225; 71-6226(1).

Time allowed for review?

Twelve months. Neb. Rev. Stat. Ann. §§ 71-6226(1).

Public input on review encouraged?

Yes. Neb. Rev. Stat. Ann. §§ 71-6224(2); 71-6223.02.

South Carolina

S.C. Code Ann. §§ 1-18-10 to -70

<p>Acknowledgment of need to protect open occupational entry?</p> <p>No.</p>
<p>Level of harm required to justify regulation?</p> <p>Moderate. Review criteria include whether “the unregulated practice of an occupation presents a clear and recognizable danger to the health, safety, or welfare of the public.” S.C. Code Ann. § 1-18-40(1).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to consumers; benefits to consumers. S.C. Code Ann. § 1-18-40(2), (6), (7), (8).</p>
<p>List of regulatory options provided?</p> <p>Yes. S.C. Code Ann. § 1-18-50(A).</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. S.C. Code Ann. § 1-18-40(4).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>No.</p>
<p>Reviewer required to recommend least restrictive regulation?</p> <p>Yes. S.C. Code Ann. § 1-18-40.</p>
<p>Legislature encouraged to enact least restrictive regulation?</p> <p>No.</p>

Application required to trigger sunrise process?

No, sunrise review is initiated when a bill is introduced in the General Assembly. S.C. Code Ann. § 1-18-20.

Proponents required to provide information demonstrating need for regulation?

No.

Report required?

Yes. If the legislative subcommittee to which a regulatory bill has been referred has asked the State Reorganization Commission to conduct the review, SRC must submit a written report to the subcommittee, as well as to the president of the Senate, the speaker of the House and the governor. It must also mail the report to anyone who made a request concerning the proposed regulation. S.C. Code Ann. § 1-18-70.

Time allowed for review?

No limit.

Public input on review encouraged?

Yes. S.C. Code Ann. §§ 1-18-20; 1-18-30; 1-18-70.



Utah Code Ann. §§ 36-23-101 to -109

<p>Acknowledgment of need to protect open occupational entry?</p> <p>No.</p>
<p>Level of harm required to justify regulation?</p> <p>High. Review criteria include “whether state regulation of the lawful occupation is necessary to address a compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public.” Utah Code Ann. § 36-23-107(2)(a).</p>
<p>Evidence of past harm to be considered?</p> <p>No.</p>
<p>Costs and benefits to be evaluated?</p> <p>Yes, costs to workers and consumers. Utah Code Ann. § 36-23-107(2)(b), (3)(d).</p>
<p>List of regulatory options provided?</p> <p>Yes. Utah Code Ann. § 36-23-109(1).</p>
<p>Review to consider prior measures to address harm?</p> <p>Yes. Utah Code Ann. § 36-23-107(3)(g).</p>
<p>Review to consider whether proposed regulation is narrowly tailored?</p> <p>Yes, the committee is required to consider whether the proposed regulation is “narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public.” The committee may also consider whether the regulation would significantly diminish the identified risk. Utah Code Ann. § 36-23-107(2)(d), (3)(c).</p>
<p>Reviewer required to recommend least restrictive regulation?</p> <p>Yes. Utah Code Ann. § 36-23-109(1).</p>

Legislature encouraged to enact least restrictive regulation?

No.

Application required to trigger sunrise process?

Yes, sunrise review is initiated when an occupational representative submits an application requesting regulation of an occupation. A government representative may also submit an application. There is a \$500 fee for applications submitted by occupational representatives. An application must be submitted before a regulatory bill can be introduced in the Legislature. Utah Code Ann. § 36-23-105.

Proponents required to provide information demonstrating need for regulation?

Yes. Utah Code Ann. § 36-23-105(2).

Report required?

Yes, the Occupational and Professional Licensure Review Committee is required to file an annual report, which includes its findings and recommendations on all sunrise reviews for the year. The Committee has nine members, six of whom are members of the two chambers of the Legislature and three of whom are members of the public appointed by the Legislature. One House member and one Senate member serve as co-chairs. Utah Code Ann. § 36-23-106(3), -102.

Time allowed for review?

A minimum of four months depending on when applications are submitted. Utah Code Ann. § 36-23-106(1).

Public input on review encouraged?

Yes. Utah Code Ann. § 36-23-107(1).

Vermont

Vt. Stat. Ann. tit. 26, §§ 3101 to -3107; 04-030 Vt. Code R. §§ 3-1.1 to 3-2.3

Acknowledgment of need to protect open occupational entry?

Yes: “It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation.” Vt. Stat. Ann. tit. 26, § 3101(a).

Level of harm required to justify regulation?

Moderate. The state should only regulate if “the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative.” Vt. Stat. Ann. tit. 26, § 3105(a)(1).

Evidence of past harm to be considered?

Yes, at the request of the legislative committees reviewing proposed regulation, proponents must provide “specific examples of the harm or threat identified.” Vt. Stat. Ann. tit. 26, § 3107(1)(B).

Costs and benefits to be evaluated?

Yes, costs generally and to workers, consumers and the state; benefits generally and to consumers. Vt. Stat. Ann. tit. 26, §§ 3105(a)(2), (b); 3107(7)(A), (10).

List of regulatory options provided?

Yes. Vt. Stat. Ann. tit. 26, § 3105(b).

Review to consider prior measures to address harm?

Yes. Vt. Stat. Ann. tit. 26, § 3107(3).

Review to consider whether proposed regulation is narrowly tailored?

Yes, at the request of the legislative committees reviewing proposed regulation, proponents must provide information about how the regulation will reduce or eliminate the harms or threats identified. Vt. Stat. Ann. tit. 26, § 3107(5)(A).

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

Yes. Vt. Stat. Ann. tit. 26, § 3105(b).

Application required to trigger sunrise process?

Yes. Administrative regulations indicate that regulation proponents must file an application, which triggers the Office of Professional Regulation’s preliminary assessment (i.e., sunrise review). There is no application fee. The Office can decline to conduct an assessment if the proposed regulation appears to affect fewer than 250 individuals, the Office already conducted an assessment and no new information has been presented since then, or the proposal would, in the opinion of the Office’s director, require the unwarranted expenditure of state resources. 04-030 Vt. Code R. § 3-2.3; Vt. Stat. Ann. tit. 26, § 3105(d), (e).

Proponents required to provide information demonstrating need for regulation?

Yes, at reviewer’s request. Vt. Stat. Ann. tit. 26, § 3107.

Report required?

Yes. Vt. Stat. Ann. tit. 26, § 3105(d).

Time allowed for review?

A minimum of four months depending on when applications are submitted. 04-030 Vt. Code R. §§ 3-2.1; 3-2.3.

Public input on review encouraged?

Yes. 04-030 Vt. Code R. § 3-2.3.

Virginia

Health-related occupations: Va. Code Ann. §§ 54.1-2510; 54.1-100; *Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions*, Guidance Document No. 75-2, revised February 25, 2019, available at https://www.dhp.virginia.gov/bhp/bhp_guidelines.htm.

Non-health-related occupations: Va. Code Ann. §§ 54.1-100; -.300; -.310; -.310.1; -.311

Acknowledgment of need to protect open occupational entry?

Yes: “The right of every person to engage in any lawful profession, trade, or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare.” Va. Code Ann. § 54.1-100.

Level of harm required to justify regulation?

Moderate. The state should only regulate if “[t]he unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument.” Va. Code Ann. § 54.1-100(1).

Evidence of past harm to be considered?

Health: Yes. The Board of Health Professions’ *Policies and Procedures* document indicates that the Board looks for evidence of past complaints. It further notes that in 1998 the Board began to evaluate malpractice insurance information and job analyses to aid its evaluation of past harm. *Policies and Procedures*, pp. 3, 9.

Non-health: No.

Costs and benefits to be evaluated?

Health: Yes, costs to consumers and the state; benefits to consumers. Va. Code Ann. § 54.1-100(3).

Non-health: Yes, costs generally; benefits to consumers. Va. Code Ann §§ 54.1-310.1(C)(4), (5); 54.1-100(3).

List of regulatory options provided?

Yes. Health: *Policies and Procedures*, p. 7; non-health: Va. Code Ann. § 54.1-311.

Review to consider prior measures to address harm?

Health: Yes, the Board’s *Policies and Procedures* document states that the Board should consider the factors set out by the General Assembly in Va. Code Ann. § 54.1-311, which govern sunrise reviews of commercial occupations. *Policies and Procedures*, p. 5. These factors include “[w]hether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous or irresponsible members of the profession or occupation” and “[w]hether current laws which pertain to public health, safety and welfare generally are ineffective or inadequate.” Va. Code Ann § 54.1-311(B)(7), (8).

Non-health: Yes. Va. Code Ann. § 54.1-311(B)(7), (8).

Review to consider whether proposed regulation is narrowly tailored?

Health: Yes. The Board’s *Policies and Procedures* document provides “examples of methods of addressing the risk for public harm that do not require regulation of the occupation or profession.” Further, it says that regulation is permitted if “[t]here are no alternatives to State regulation of the occupation which adequately protect the public.” *Policies and Procedures*, p. 6.

Non-health: Yes, “[t]he Board shall regulate only to the degree necessary to fulfill the need for regulation and only upon approval by the General Assembly.” Va. Code Ann. § 54.1-311(A).

Reviewer required to recommend least restrictive regulation?

Health: Yes, the Board of Health Professions has the authority to determine whether regulation is necessary and to recommend a “regulatory system to establish the appropriate degree of regulation.” Va. Code Ann. § 54.1-2510(2). Further, the law’s preamble says that any abridgment of the right to work in a chosen occupation may be regulated to an extent “no greater than necessary to protect or preserve the public health, safety, and welfare.” Va. Code Ann. § 54.1-100. Read together, this means the Board must recommend the least restrictive measure. This is confirmed by the Board’s *Policies and Procedures* document, which states: “When it is determined that the State regulation of the occupation or profession is necessary, the least restrictive level of occupational regulation consistent with public protection will be recommended to the Governor, the General Assembly and the Director of the Department of Health Professions.” *Policies and Procedures*, p. 6.

Non-health: No.

Legislature encouraged to enact least restrictive regulation?

Yes. Health: Va. Code Ann. § 54.1-100; non-health: Va. Code Ann. §§ 54.1-100; 54.1-311(A).

Application required to trigger sunrise process?

Health: Yes, when an occupational organization or an individual requests sunrise review, it must file a formal letter of intent, which is effectively an application. There is no application fee. The General Assembly, the governor, the director of the Department of Health Professions and concerned members of the public can also request review. *Policies and Procedures*, p. 8.

Non-health: Yes, when a non-governmental party requests sunrise review. Since 2016, any interested party can request review, provided its application is accompanied by a statement of support signed by at least 10 individuals. There is no application fee. The Board for Professional and Occupational Regulation can decline to conduct a review requested by an occupational group if it issued a report on the same occupation within the past three years and finds that the group has submitted no new information. Va. Code Ann. § 54.1-310.1(A), (B), (E). In practice, the General Assembly can also request sunrise review.

Proponents required to provide information demonstrating need for regulation?

Health: Yes, at reviewer’s request. *Policies and Procedures*, p. 8.

Non-health: Yes. Va. Code Ann. § 54.1-310.1(C).

Report required?

Health: Yes. If the Board of Health Professions decides a review can go forward, it refers the request to the Regulatory Research Committee, which “conducts the study and prepares a report with recommendations for the full Board’s review and final recommendations.” *Policies and Procedures*, p. 9.

Non-health: Yes. The Board for Professional and Occupational Regulation is required to submit a report on its findings to the House Committee on General Laws, the Senate Committee on General Laws and Technology, and the Joint Commission on Administrative Rules. Va. Code Ann. § 54.1-310.1(F).

Time allowed for review?

Health: No limit. The Board of Health Professions’ *Policies and Procedures* document indicates that reviews can take over a year, from request to report. The Board recommends that requests for reviews be made by December 1 for consideration during the following year. *Policies and Procedures*, p. 8.

Non-health: A minimum of 11 months, depending on when applications are submitted. Va. Code Ann. § 54.1-310.1(A),(F).

Public input on review encouraged?

Health: Yes. *Policies and Procedures*, p. 9.

Non-health: No.

Washington

Health-related occupations: Wash. Rev. Code Ann. §§ 18.120.010 to -.040

Non-health-related occupations: Wash. Rev. Code Ann. §§ 18.118.005 to -.040

Acknowledgment of need to protect open occupational entry?

Health: Yes: “The legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession.” Wash. Rev. Code Ann. § 18.120.010(1).

Non-health: Yes: “The legislature believes that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession.” Wash. Rev. Code Ann. § 18.118.010(1).

Level of harm required to justify regulation?

Moderate. The state should only regulate if “[u]nregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.” Health: Wash. Rev. Code Ann. § 18.120.010(2)(a); non-health: Wash. Rev. Code Ann. § 18.118.010(2)(a).

Evidence of past harm to be considered?

No.

Costs and benefits to be evaluated?

Yes, costs to workers, consumers and the state; benefits to consumers. Health: Wash. Rev. Code Ann. §§ 18.120.010(2)(c); 18.120.030(1)(b), (5)(a), (8)(a), (b); non-health: Wash. Rev. Code Ann. §§ 18.118.010(2)(c), (3); 18.118.030(1)(b), (5)(a), (8)(a), (b).

List of regulatory options provided?

Yes. Health: Wash. Rev. Code Ann. § 18.120.010(3); non-health: Wash. Rev. Code Ann. § 18.118.010(3).

Review to consider prior measures to address harm?

Yes. Health: Wash. Rev. Code Ann. § 18.120.030(2); non-health: Wash. Rev. Code Ann. § 18.118.030(2).

Review to consider whether proposed regulation is narrowly tailored?

Yes, at the request of the legislative committee to which a regulatory bill was referred, regulation proponents must explain the extent to which the specific problem can reasonably be expected to be reduced by regulation. Health: Wash. Rev. Code Ann. § 18.120.030(4)(a); non-health: Rev. Code Ann. § 18.118.030(4)(a).

Reviewer required to recommend least restrictive regulation?

No.

Legislature encouraged to enact least restrictive regulation?

Yes. Health: Wash. Rev. Code Ann. § 18.120.010(1), (3); non-health: Wash. Rev. Code Ann. § 18.118.010(1), (3).

Application required to trigger sunrise process?

Health: No, sunrise review is initiated when a bill is introduced in the Legislature. To the extent requested by the legislative committee to which the regulatory bill was referred, proponents must provide information on the need to regulate. The committee may then ask the Board of Health and the Department of Health to conduct the review. Wash. Rev. Code Ann. §§ 18.120.010(2); 18.120.040.

Non-health: No, sunrise review is initiated when a bill is introduced in the Legislature. Regulation proponents must submit a report on the need to regulate to the legislative committee to which the bill was referred. The committee may then ask the Department of Licensing’s policy and research staff to conduct the review. Wash. Rev. Code Ann. §§ 18.118.005; 18.118.010(2). In practice, the Legislature or a legislative committee sometimes requests sunrise review without requiring regulation proponents to submit a report.

Proponents required to provide information demonstrating need for regulation?

Yes, at reviewer’s request. Health: Wash. Rev. Code Ann. §§ 18.120.030; 18.120.040; non-health: Wash. Rev. Code Ann. § 18.118.030; 18.118.040.

Report required?

Health: No. The Board of Health and the Department of Health are required to make recommendations on a proposed regulation to the extent requested by the legislative committee to which the bill was referred. This gives the legislative committee discretion on whether to ask for a written report. Wash. Rev. Code Ann. § 18.120.040.

Non-health: No. Wash. Rev. Code Ann. § 18.118.040.

Time allowed for review?

No limit.

Public input on review encouraged?

No.

West Virginia

W. Va. Code Ann. §§ 30-1A-1 to -6

Acknowledgment of need to protect open occupational entry?

Yes: “(a) The Legislature finds that regulation should be imposed on an occupation or profession only when necessary for the protection of public health and safety. The Legislature further finds that establishing a procedure for reviewing the necessity of regulating an occupation or profession prior to enacting laws for such regulation . . . will better enable it to evaluate the need for the regulation and to determine the least restrictive regulation consistent with public health and safety.

(b) For occupational regulations and the boards of this state, it is the policy of this state that: (1) The right of an individual to pursue a lawful occupation is a fundamental right; (2) Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety.” W. Va. Code Ann. §§ 30-1A-1.

“(1) Occupational regulations should be construed and applied to increase economic opportunities, promote competition, and encourage innovation; (2) Any ambiguities in occupational regulations should be construed in favor of workers and aspiring workers to work; and (3) The scope of practice in occupational regulations should be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.” W. Va. Code Ann. § 30-1A-6(c).

Level of harm required to justify regulation?

High. Review criteria include whether there is “credible empirical evidence of present, significant, and substantiated harm.” W. Va. Code Ann. § 30-1A-3(e), (j)(1).

Evidence of past harm to be considered?

Yes. W. Va. Code Ann. §§ 30-1A-3(e); 30-1A-2(d)(8).

Costs and benefits to be evaluated?

Yes, costs to workers, consumers and the state; benefits to consumers. W. Va. Code Ann. §§ 30-1A-3(g); 30-1A-2(d)(4), (6), (7).

List of regulatory options provided?

Yes. W. Va. Code Ann. §§ 30-1A-1a; 30-1A-3(e), (f).

Review to consider prior measures to address harm?

No.

Review to consider whether proposed regulation is narrowly tailored?

Yes, the law provides suggestions for appropriate regulation tailored to address different kinds of harm. W. Va. Code Ann. § 30-1A-3(f).

Reviewer required to recommend least restrictive regulation?

Yes. W. Va. Code Ann. § 30-1A-3(e), (j)(4).

Legislature encouraged to enact least restrictive regulation?

Yes. W. Va. Code Ann. § 30-1A-1(a).

Application required to trigger sunrise process?

Yes, sunrise review is initiated when any occupational group or organization or any other individual or interested party submits an application seeking regulation of an occupation to the Joint Standing Committee on Government Organization. An application must be accompanied by a statement of support signed by at least 10 residents or citizens of West Virginia who are members of the occupation. There is no application fee. W. Va. Code Ann. § 30-1A-2(b), (c).

Proponents required to provide information demonstrating need for regulation?

Yes. W. Va. Code Ann. § 30-1A-2(d)(2).

Report required?

Yes, the Office of the Legislative Auditor's Performance Evaluation and Research Division is required to evaluate proposed regulations and submit a report to the Joint Standing Committee on Government Organization. W. Va. Code Ann. § 30-1A-3(b).

Time allowed for review?

Nine months. W. Va. Code Ann. § 30-1A-3(l).

Public input on review encouraged?

Yes. W. Va. Code Ann. § 30-1A-3(i).