

BILL ANALYSIS

C.S.H.B. 1618
By: Callegari
Government Efficiency & Reform
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During a recent interim, the House Committee on Government Reform evaluated policy implications of the widespread licensing and regulation of professionals in Texas and found that occupational licensing programs administered by the State of Texas have grown to affect a significant portion of the state's workforce. Currently, Texas regulates hundreds of types of occupations, representing the jobs held by nearly one-third of the state workforce, according to some estimates. There is concern that, in comparison to the national average, Texas regulates a greater proportion of its workforce.

While some occupational licensing programs serve a compelling public interest, the committee found that the state's policy emphasis in favor of greater occupational regulation can have negative implications for the state's workforce and consumers. In particular, occupational licensing programs can restrict an individual's entry into regulated occupations, limiting the many opportunities of individuals to exercise their right to work. Furthermore, occupational licensing programs sometimes can protect licensees from additional competition, limiting consumers' choices while increasing the prices for services rendered. It was also found that new occupational licensing programs risk expanding state government size, spending, and regulatory control over certain segments of the state's job market.

In light of the broad policy concerns regarding the state's proliferation of occupational licensing programs and the projected trend toward more occupational regulation in Texas, two recommendations were identified: amend the Texas Sunset Act to enhance the Sunset Advisory Commission's reviews of existing occupational licensing programs administered by the state; and establish a sunrise process to evaluate the merits and need for new, proposed occupational licensing programs. C.S.H.B. 1618 implements these recommendations.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1618 amends the Government Code to require the Sunset Advisory Commission and its staff to consider the following criteria in an assessment of an agency that licenses an occupation or profession:

- whether the occupational licensing program serves a meaningful, defined public interest, and provides the least restrictive form of regulation that will adequately protect that interest;
- the extent to which the regulatory objective of the occupational licensing program may be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other law;
- the extent to which licensing criteria, if applicable, ensure that applicants have

occupational skill sets or competencies that correlate with a public interest and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation or profession; and

- the economic impact of the regulation, including the extent to which the program stimulates or restricts competition and affects consumer choice and the cost of services.

C.S.H.B. 1618 defines "license," "public interest," and "welfare" for purposes of the bill's provisions relating to criteria for review of certain agencies.

C.S.H.B. 1618 authorizes a member of the legislature to submit, not later than December 31 of an odd-numbered year, proposed legislation that would create an occupational licensing program or significantly affect an existing occupational licensing program to the commission for review and analysis. The bill authorizes the commission's chair, on the executive director's recommendation, to deny a request for review. The bill requires the commission, if the commission reviews and analyzes legislation proposing the regulation of an occupation, to submit a report to the legislature before the start of the next legislative session regarding the commission's findings on the need for regulating the occupation and the type of regulation recommended, if any. The bill requires the commission, in analyzing legislation proposing the creation of an occupational licensing program, to determine whether the unregulated practice of the occupation would be inconsistent with the public interest as defined under the bill's provisions; the public can reasonably be expected to benefit from an assurance of initial and continuing professional skill sets or competencies; and the public can be more effectively protected by means other than state regulation. The bill requires the commission, if the commission reviews and analyzes proposed legislation amending an existing occupational licensing program, to submit a report to the legislature before the start of the next legislative session regarding the commission's findings on the need for the proposed legislation.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1618 differs from the original by adding provisions to the Texas Sunset Act, whereas the original amends existing provisions of the act.

C.S.H.B. 1618 contains a provision not included in the original defining "public interest."

C.S.H.B. 1618 omits a provision contained in the original, in a provision requiring the Sunset Advisory Commission and its staff to consider whether an occupational licensing program serves a meaningful, defined public interest, specifying that such a consideration is to be made particularly with regard to protecting public health, safety, and welfare.

C.S.H.B. 1618 omits provisions contained in the original, requiring the commission and its staff to consider whether the conditions that led to the initial regulation have changed in a way that would warrant more, less, or the same degree of regulation; whether the composition of the agency's board or commission adequately represents the public interest; whether the agency encourages public participation in its decision or limits participation to people regulated by the agency; whether complaint, investigation, and disciplinary procedures adequately protect the public; and whether final dispositions of complaints are made in the public interest or are self-serving to the occupation or profession.

C.S.H.B. 1618 differs from the original by requiring the commission and its staff to consider the extent to which licensing criteria ensure that applicants have occupational skill sets or competencies that correlate with a public interest and the impact that those criteria have on

applicants, particularly those with moderate or low incomes, seeking to enter the occupation or profession, whereas the original requires the commission and its staff to consider the extent to which licensing criteria ensures that applicants with occupational skill sets or competencies that correlate with a public interest obtain a license and the impact that those criteria have on individuals, particularly those with moderate or low incomes, seeking to enter the occupation or profession. The substitute differs from the original by requiring consideration of the regulation's impact, whereas the original requires consideration of the economic impact of regulation.

C.S.H.B. 1618 differs from the original by authorizing a member of the legislature to submit proposed legislation that would create an occupational licensing program or significantly affect an existing occupational licensing program to the commission for review and analysis, whereas the original authorizes a person to make such submission. The substitute contains provisions not included in the original, in that provision, requiring such a request to be submitted not later than December 31 of an odd-numbered year and authorizing the commission's chair, on the executive director's recommendation, to deny a request for review.

C.S.H.B. 1618 differs from the original by requiring the commission, in analyzing the proposed legislation, to determine whether the unregulated practice of the occupation would be inconsistent with the public interest as defined by the substitute's provisions, whereas the original requires the commission to determine whether the unregulated practice of the occupation would clearly harm or endanger the health, safety, or welfare of the public. The substitute differs from the original, by requiring the commission to determine whether the public can reasonably be expected to benefit from an assurance of initial and continuing professional skill sets or competencies, whereas the original requires the commission to determine whether the public can reasonably be expected to benefit from an assurance of initial and continuing professional liability. The substitute differs from the original in nonsubstantive ways.