

By Senator Perry

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1 A bill to be entitled
2 An act relating to legislative review of proposed
3 regulation of unregulated functions; amending s.
4 11.62, F.S.; defining terms; providing that certain
5 requirements must be met before the adoption of a
6 regulation of an unregulated profession or occupation
7 or the substantial expansion of regulation of a
8 regulated profession or occupation; requiring the
9 proponents of legislation that proposes such
10 regulation to provide certain information to the state
11 agency proposed to have jurisdiction over the
12 regulation and the Legislature by a certain date;
13 requiring such state agency to provide certain
14 information to the Legislature within a certain time
15 period; providing an exception; revising information
16 that a legislative committee must consider when
17 determining whether a regulation is justified;
18 providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Section 11.62, Florida Statutes, is amended to
23 read:

24 11.62 Legislative review of proposed regulation of
25 unregulated functions.—

26 (1) This section may be cited as the "Sunrise Act."

27 (2) It is the intent of the Legislature:

28 (a) That no profession or occupation be subject to
29 regulation by the state unless the regulation is necessary to

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30 protect the public health, safety, or welfare from significant
31 and discernible harm or damage and that the police power of the
32 state be exercised only to the extent necessary for that
33 purpose; and

34 (b) That no profession or occupation be regulated by the
35 state in a manner that unnecessarily restricts entry into the
36 practice of the profession or occupation or adversely affects
37 the availability of the professional or occupational services to
38 the public.

39 (3) As used in this section, the term:

40 (a) "Substantial expansion of regulation" means to expand
41 the scope of practice for current practitioners of a profession
42 or occupation by regulating an activity that is not regulated by
43 the state.

44 (b) "Transactional costs" means direct costs that are
45 ascertainable based upon standard business practices, including
46 filing fees, license fees, regulatory compliance costs,
47 operating costs, monitoring and reporting costs, and any other
48 costs necessary to comply with the proposed regulation.

49 (4) In determining whether to regulate a profession or
50 occupation, the Legislature shall consider the following
51 factors:

52 (a) Whether the unregulated practice of the profession or
53 occupation will substantially harm or endanger the public
54 health, safety, or welfare, and whether the potential for harm
55 is recognizable and not remote;

56 (b) Whether the practice of the profession or occupation
57 requires specialized skill or training, and whether that skill
58 or training is readily measurable or quantifiable so that

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59 examination or training requirements would reasonably assure
60 initial and continuing professional or occupational ability;

61 (c) Whether the regulation will have an unreasonable effect
62 on job creation or job retention in the state or will place
63 unreasonable restrictions on the ability of individuals who seek
64 to practice or who are practicing a given profession or
65 occupation to find employment;

66 (d) Whether the public is or can be effectively protected
67 by other means; and

68 (e) Whether the overall cost-effectiveness and economic
69 impact of the proposed regulation, including the indirect costs
70 to consumers, will be favorable.

71 (5) The requirements in this section must be met before the
72 adoption of a regulation of a profession or occupation not
73 already expressly subject to state regulation or the substantial
74 expansion of regulation of a regulated profession or occupation
75 in order to determine whether such regulation is necessary to
76 protect the public and is the least restrictive regulatory
77 alternative consistent with the public interest.

78 (6)(4) The proponents of legislation, including any
79 individual, group, or entity, that proposes ~~provides for~~ the
80 regulation of an unregulated profession or occupation or the
81 substantial expansion of regulation of a regulated profession or
82 occupation ~~a profession or occupation not already expressly~~
83 subject to state regulation shall provide, upon request, the
84 following information in writing to the state agency that is
85 proposed to have jurisdiction over the regulation, the President
86 of the Senate, and the Speaker of the House of Representatives
87 at least 30 days before the regular session of the Legislature

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88 in which the legislation is to be filed and ~~to the legislative~~
89 ~~committees to which the legislation is referred:~~

90 (a) A copy of the draft legislation proposing to regulate
91 an unregulated profession or occupation or the substantial
92 expansion of regulation of a regulated profession or occupation;

93 (b)~~(a)~~ The number of individuals or businesses that would
94 be subject to the regulation;

95 (c)~~(b)~~ The name of each association that represents members
96 of the profession or occupation, together with a copy of its
97 codes of ethics or conduct;

98 (d)~~(e)~~ Documentation of the nature and extent of the harm
99 to the public caused by the unregulated practice of the
100 profession or occupation, including a description of any
101 complaints that have been lodged against persons who have
102 practiced the profession or occupation in this state during the
103 preceding 3 years;

104 (e)~~(d)~~ A list of states that regulate the profession or
105 occupation, and the dates of enactment of each law providing for
106 such regulation and a copy of each law;

107 (f)~~(e)~~ A list and description of state and federal laws
108 that have been enacted to protect the public with respect to the
109 profession or occupation and a statement of the reasons why
110 these laws have not proven adequate to protect the public;

111 (g)~~(f)~~ A description of the voluntary efforts made by
112 members of the profession or occupation to protect the public
113 and a statement of the reasons why these efforts have not proven
114 ~~are not~~ adequate to protect the public;

115 (h)~~(g)~~ A copy of any federal legislation mandating
116 regulation;

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117 (i)~~(h)~~ An explanation of the reasons why other types of
118 less restrictive regulation would not effectively protect the
119 public;

120 (j)~~(i)~~ The cost, availability, and appropriateness of
121 training and examination requirements;

122 (k)~~(j)~~ The cost of regulation, including the indirect cost
123 to consumers, and the method proposed to finance the regulation;

124 (l)~~(k)~~ The cost imposed on applicants or practitioners or
125 on employers of applicants or practitioners as a result of the
126 regulation;

127 (m)~~(l)~~ The details of any previous efforts in this state to
128 implement regulation of the profession or occupation, including
129 a summary of bills filed in the Legislature on the same subject
130 in the preceding 5 years; and

131 (n)~~(m)~~ Any other information the proponents of the
132 legislation consider agency or the committee considers relevant
133 to the analysis of the proposed legislation.

134 (7)~~(5)~~ The state agency proposed to have jurisdiction over
135 the regulation shall provide the President of the Senate and the
136 Speaker of the House of Representatives with the following
137 information within 25 days after the proponents of the
138 legislation submit the draft legislation to the state agency in
139 accordance with subsection (6) The agency shall provide the
140 Legislature with information concerning the effect of proposed
141 legislation that provides for new regulation of a profession or
142 occupation regarding:

143 (a) The departmental resources necessary to implement and
144 enforce the proposed regulation, including, but not limited to,
145 the anticipated costs to implement and enforce the proposed

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146 regulation and any anticipated license fees necessary to cover
147 the anticipated costs.~~†~~

148 (b) Whether additional statutory or rulemaking authority is
149 necessary to implement and enforce the proposed regulation.

150 (c) A comparison of similarly situated professions and
151 occupations regulated by the state agency.

152 (d) The anticipated impact on small businesses as defined
153 in s. 288.703 and small counties and small cities as defined in
154 s. 120.52.

155 (e) The anticipated impact on business competitiveness,
156 including the ability of persons doing business in the state to
157 compete with persons doing business in other states or domestic
158 markets.

159 (f) The anticipated impact on economic growth and private
160 sector job creation or employment.

161 (g) The technical sufficiency of the proposal for
162 regulation, including its consistency with the regulation of
163 other professions and occupations under existing law.~~†~~ and

164 (h)~~(e)~~ If applicable, any alternatives to the proposed
165 regulation which may result in a less restrictive or more cost-
166 effective regulatory scheme.

167 (i) A good faith estimate of the number of individuals or
168 businesses that would be subject to the proposed regulation.

169 (j) A good faith estimate of the transactional costs likely
170 to be incurred by individuals and entities, including local
171 government entities, that would be required to comply with the
172 proposed regulation.

173 (k) Any other information the state agency determines
174 relevant to the analysis of the proposed regulation.

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175 (8) If the state agency that is proposed to have
176 jurisdiction over the regulation is unable to provide the
177 information required by subsection (7), such state agency shall
178 notify the proponents of the legislation, the President of the
179 Senate, and the Speaker of the House of Representatives that the
180 agency was unable to acquire sufficient information to comply
181 with that subsection.

182 (9)~~(6)~~ When making a recommendation concerning proposed
183 legislation providing for new regulation of a profession or
184 occupation, a legislative committee shall determine:

185 (a) Whether the regulation is justified based on the
186 ~~criteria specified in subsection (3), the information submitted~~
187 ~~pursuant to request under subsection (4), and the information~~
188 ~~provided under subsections (4), (6), and (7) subsection (5);~~

189 (b) The least restrictive and most cost-effective
190 regulatory scheme that will adequately protect the public; and

191 (c) The technical sufficiency of the proposed legislation,
192 including its consistency with the regulation of other
193 professions and occupations under existing law.

194 Section 2. This act shall take effect July 1, 2019.