

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 the first legislative committee to which
14 such legislation is referred to evaluate the
15 legislation and make certain determinations; providing
16 an exception; requiring such state agency to provide
17 certain information to the Legislature within a
18 certain time period; providing an exception; revising
19 information that such committee must consider when
20 determining whether a regulation is justified;
21 providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:
24

25 Section 1. Section 11.62, Florida Statutes, is amended to

26 read:

27 11.62 Legislative review of proposed regulation of
 28 unregulated functions.—

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

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

31 (a) That no profession or occupation be subject to
 32 regulation by the state unless the regulation is necessary to
 33 protect the public health, safety, or welfare from significant
 34 and discernible harm or damage and that the police power of the
 35 state be exercised only to the extent necessary for that
 36 purpose; and

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

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

43 (a) "Substantial expansion of regulation" means to add a
 44 new regulatory category to, or expand the scope of practice for
 45 current practitioners of, a profession or occupation.

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

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

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

58 (b) Whether the practice of the profession or occupation
 59 requires specialized skill or training, and whether that skill
 60 or training is readily measurable or quantifiable so that
 61 examination or training requirements would reasonably assure
 62 initial and continuing professional or occupational ability;

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

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

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

73 (5) The requirements in this section must be met before
 74 the adoption of a regulation of a profession or occupation not
 75 already expressly subject to state regulation or the substantial

76 expansion of regulation of a regulated profession or occupation
77 in order to determine whether such regulation is necessary to
78 protect the public and is the least restrictive regulatory
79 alternative consistent with the public interest.

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

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

95 (b)(a) The number of individuals or businesses that would
96 be subject to the regulation;

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

100 (d)(e) Documentation of the nature and extent of the harm

101 to the public caused by the unregulated practice of the
102 profession or occupation, including a description of any
103 complaints that have been lodged against persons who have
104 practiced the profession or occupation in this state during the
105 preceding 3 years;

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

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

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

117 (h)~~(g)~~ A copy of any federal legislation mandating
118 regulation;

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

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

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

126 (1) ~~(k)~~ The cost imposed on applicants or practitioners or
 127 on employers of applicants or practitioners as a result of the
 128 regulation;

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

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

136 (7) (a) The first legislative committee to which
 137 legislation subject to this section is referred shall evaluate
 138 the proposed legislation, determine whether the requirements in
 139 this section have been met, and, except as provided in paragraph
 140 (b), determine whether the proposed regulation meets the
 141 criteria in this section. The committee may request from the
 142 proponents of the legislation or the state agency that is
 143 proposed to have jurisdiction over the regulation any other
 144 information it considers relevant to the evaluation of the
 145 proposed regulation.

146 (b) The committee may decline to evaluate and determine
 147 whether the proposed regulation meets the criteria in this
 148 section if:

149 1. Such committee has conducted an evaluation of and made
 150 a determination regarding the proposed regulation in the

151 preceding 3 years; and

152 2. No new information was submitted that would alter or
153 modify the committee's previous determination.

154 (8)-(5) The state agency proposed to have jurisdiction over
155 the regulation shall provide the President of the Senate and the
156 Speaker of the House of Representatives with the following
157 information within 25 days after the proponents of the
158 legislation submit the draft legislation to the state agency in
159 accordance with subsection (6) The agency shall provide the
160 Legislature with information concerning the effect of proposed
161 legislation that provides for new regulation of a profession or
162 occupation regarding:

163 (a) The departmental resources necessary to implement and
164 enforce the proposed regulation, including, but not limited to,
165 the anticipated costs to implement and enforce the proposed
166 regulation and any anticipated license fees necessary to cover
167 the anticipated costs.

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

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

172 (d) The anticipated impact on small businesses as defined
173 in s. 288.703 and small counties and small cities as defined in
174 s. 120.52.

175 (e) The anticipated impact on business competitiveness,

176 including the ability of persons doing business in the state to
177 compete with persons doing business in other states or domestic
178 markets.

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

181 (g) The technical sufficiency of the proposal for
182 regulation, including its consistency with the regulation of
183 other professions and occupations under existing law, ~~and~~

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

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

189 (j) A good faith estimate of the transactional costs
190 likely to be incurred by individuals and entities, including
191 local government entities, that would be required to comply with
192 the proposed regulation.

193 (k) Any other information the state agency determines
194 relevant to the evaluation of the proposed regulation.

195 (9) If the state agency that is proposed to have
196 jurisdiction over the regulation is unable to provide the
197 information required by subsection (8), such state agency shall
198 notify the proponents of the legislation, the President of the
199 Senate, and the Speaker of the House of Representatives that the
200 agency was unable to acquire sufficient information to comply

201 with that subsection.

202 (10)~~(6)~~ When making a recommendation concerning proposed
203 legislation providing for new regulation of a profession or
204 occupation, the ~~a~~ legislative committee shall determine:

205 (a) Whether the regulation is justified based on the
206 criteria ~~specified in subsection (3), the information submitted~~
207 ~~pursuant to request under subsection (4), and the information~~
208 provided under subsections (4), (6), and (8) ~~subsection (5);~~

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

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

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