

Legislative Analysis



REQUIRE MICHIGAN LAW REVIEW COMMISSION TO REVIEW OCCUPATIONAL REGULATIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6114 as introduced
Sponsor: Rep. Lana Theis
Committee: Regulatory Reform
Complete to 9-26-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The Michigan Law Revision Commission was created in the Legislative Council to “examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.” The Commission is required to submit an annual report to the Legislative Council.

House Bill 6114 would require the Michigan Law Revision Commission, in addition to its other duties under the Legislative Council Act, to review all introduced bills that enact or amend an occupational regulation to determine whether the legislation meets a policy of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety.

“Least restrictive regulation” would be defined to mean any of the following, listed from least to most restrictive:

- Market competition.
- Third-party or consumer-created ratings and reviews.
- Private certification.
- A specific private civil cause of action to remedy consumer harm.
- An action that is a deceptive trade practice.
- A regulation of the process of providing specific goods or services to consumers.
- Inspection.
- Bonding or insurance.
- Registration.
- Government certification.
- A specialty occupational license for medical reimbursement.
- An occupational license.

Review of new legislation

In reviewing pending legislation, the Commission:

- Could require the legislation’s proponents to submit evidence of present, significant, and substantiated harms to consumers, information from other individuals knowledgeable about the occupation, or other relevant factors;
- Would be required to evaluate effects of the legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, and governmental costs, as well as other effects of the legislation if enacted;
- Would be required to compare the way in which the occupation would be regulated by the legislation with the ways in which other states do or do not regulate it; **and**

- Would be required to complete the review, prepare a written report of the results, and submit the report to the committee to which the legislation was referred, on a timely basis. [The bill does not address whether the Commission would be required to update its review if the bill were amended or substituted during the legislative process.]

Current occupational regulations

Beginning January 1, 2019, the Commission would have to review—each year—approximately 20% of the occupations subject to state regulation. Over each five-year period, the Commission would have to review all occupational regulations subject to state regulation (some regulations may be federal requirements), and evaluate whether those regulations are consistent with the policy of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms that threaten public health and safety. For purposes of the review, the Commission could require that an occupational board, its members, and other persons submit information.

Rebuttable presumption

In its analysis of pending legislation and current regulations, the Commission would be required to employ *a rebuttable presumption that market competition and private remedies are sufficient to protect consumers*. If this presumption is rebutted, where appropriate, state regulations should be tailored to protect consumers from one or more of the following by addressing specific market failures identified by the Commission, as appropriate:

- For fraud, by strengthening powers under the Michigan Consumer Protection Act and other state deceptive trade practices statutes.
- For unsanitary facilities and general health and safety concerns, by periodic inspections.
- For potential damages to a buyer or to a third party that is not a party to a contract between a seller and buyer, and from other types of externalities, by bonding or insurance.
- For potential damages by transient or fly-by-night providers, by requiring registration with the Secretary of State.
- For asymmetrical information between a seller and buyer, by voluntary certification.
- For governmental reimbursement for providing medical services for new or highly specialized medical provisions, by a specialty license for medical reimbursement.

Annual report

By January 31, 2020 and by each subsequent January 31, the Commission would have to submit an annual report of the findings of its reviews of current occupational regulations in the preceding calendar year to the Speaker of the House of Representatives, Senate Majority Leader, and attorney general. In the report about an occupational regulation, the Commission would have to do one of the following:

- Recommend—if the review concludes that the occupational regulation does not reflect the policy described above—that the legislature enact new legislation doing one or more of the following:
 - Repealing or rescinding the occupational regulation.
 - Converting the occupational regulation to a less restrictive regulation reflecting the policy.

- Instructing the relevant licensing board or agency to promulgate a revised occupational regulation.
- Reflecting any other recommendations of the Commission.
- Recommend that the legislature not enact new legislation if the Commission concludes that the review does reflect the policy.

Definitions

The bill would define “occupational regulation” to mean a statute, rule, practice, policy, or other state law requiring a person to possess certain personal qualifications to use an occupational title or work in a lawful occupation. The term would include registration, certification, and occupational license. It would not include a business license, facility license, building permit, or zoning and land use regulation established under state law, except to the extent that state law regulates an individual’s personal qualifications to perform a lawful occupation.

Numerous other terms would be defined, including: “certification,” “lawful occupation,” “personal qualifications,” “registration,” and “specialty occupational license for medical reimbursement.”

The bill would take effect 90 days after enactment.

Proposed MCL 4.1404

FISCAL IMPACT:

House Bill 6114 would increase operational costs for the Michigan Law Revision Commission, located in the Legislative Council, by an unknown amount. Any increase in costs would be directly related to the scope and frequency of reviews conducted by the Michigan Law Revision Commission. It is unknown whether current Michigan Law Revision Commission appropriation levels would be sufficient to accommodate the additional responsibilities imposed under HB 6114.

The provisions of the bill would have no impact on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.