

HB345 INTRODUCED



1 7QXTE2-1
2 By Representative Kitchens
3 RFD: Health
4 First Read: 20-Apr-23
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SYNOPSIS:

There is no requirement under existing law for the review in advance of legislative proposals to revise the scope of practice of a health profession that is regulated by an occupational licensing board, nor is there any required review of legislative proposals to establish a scope of practice or licensing requirement for a health profession not currently regulated or licensed.

This bill would establish the Health Professional Scope of Practice Review Commission to review legislative proposals that revise an existing scope of practice for a health profession or that establish a new scope of practice and licensing and regulation scheme for a health profession.

This bill would require the commission to consider legislative proposals to revise or add scope of practice laws and report recommendations to certain members of the Legislature prior to each regular session.

This bill would also require evidence of effectiveness for any legislative proposal to require continuing education for a profession.

A BILL



HB345 INTRODUCED

29 TO BE ENTITLED

30 AN ACT

31
32 Relating to occupational licensing of health
33 professionals; to establish the Health Professional Scope of
34 Practice Review Commission to review and make recommendations
35 to the Legislature regarding legislation revising or creating
36 scope of practice laws for health professions; to provide for
37 membership of the commission; and to provide guidelines for
38 the commission to determine if scope of practice legislation
39 is appropriate.

40 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

41 Section 1. As used in this act, the following terms
42 have the following meanings:

43 (1) CERTIFICATION. A voluntary process by which an
44 occupational licensing board grants recognition to an
45 individual who has met certain prerequisite qualifications
46 specified by that regulatory entity and who may assume or use
47 the word "certified" in a title or designation to perform
48 prescribed health professional tasks.

49 (2) COMMISSION. The Health Professional Scope of
50 Practice Review Commission.

51 (3) GRANDFATHER CLAUSE. A provision applicable to
52 practitioners actively engaged in a regulated health
53 profession before the effective date of an act that exempts
54 the practitioners from meeting the prerequisite qualifications
55 set forth in the act to perform prescribed occupational tasks.

56 (4) HEALTH PROFESSION. A profession that is regulated



HB345 INTRODUCED

57 pursuant to Chapters 5A, 8A, 9, 13A, 17A, 18, 19, 21, 22, 23,
58 24, 25A, 26, 27B, 28A, 29, 34, 34A, 39, 40, or 43 of Title 34.

59 (5) HEALTH PROFESSIONAL GROUP. Any health professional
60 group or organization, any individual, or any other interested
61 party that proposes that any health professional group not
62 presently regulated be regulated or that proposes to increase
63 the scope of practice of a health profession.

64 (6) INCREASE THE SCOPE OF PRACTICE. To engage in
65 conduct beyond the authority granted to a health profession by
66 law.

67 (7) INSPECTION. The periodic examination of
68 practitioners by a state agency in order to ascertain whether
69 the practitioners' occupation is being carried out in a
70 fashion consistent with public health, safety, and welfare.

71 (9) OCCUPATIONAL LICENSING BOARD. Any board, agency,
72 commission, or other entity, issuing licenses or certificates,
73 or both, in order for an individual to practice a health
74 profession in the state.

75 (8) PRACTITIONER. An individual who has achieved
76 knowledge and skill by practice and who is actively engaged in
77 a specified health profession.

78 (9) PUBLIC MEMBER. An individual who is not and who
79 never has been a member or spouse of a member of the health
80 profession being regulated, and who does not have and never
81 has had a material financial interest in either the rendering
82 of the health professional service being regulated or an
83 activity directly related to the profession being regulated.

84 (10) REGISTRATION. The formal notification that a



HB345 INTRODUCED

85 practitioner must submit to a state agency setting forth the
86 name and address of the practitioner, the location, nature,
87 and operation of the health activity to be practiced, and, if
88 required by an occupational licensing board, a description of
89 the service to be provided.

90 (11) STATE AGENCY. Any department, board, commission,
91 or agency of the state.

92 Section 2. This article does not apply to any of the
93 following:

94 (1) Any occupational licensing board, or increase in
95 scope of practice, legislatively established before the
96 effective date of this act, except as otherwise provided in
97 this article.

98 (2) Any remedial or technical amendments to any
99 legislation or law existing before the effective date of this
100 act.

101 Section 3. (a) The Health Professional Scope of
102 Practice Review Commission is established. The commission
103 shall consist of the following members:

104 (1) Two members representing medical teaching
105 institutions in the state with an understanding and ability to
106 review curricula taught to students studying a health care
107 profession, one of which is appointed by the Governor with an
108 initial term of two years and one of which is appointed by the
109 Lieutenant Governor with an initial term of four years.

110 (2) One non-voting member representing a health
111 insurance provider in the state who shall provide information
112 to the commission as requested, appointed by the Governor with



HB345 INTRODUCED

113 an initial term of two years.

114 (3) Three licensed physicians practicing in the state,
115 one of which is appointed by the Lieutenant Governor with an
116 initial term of four years, one of which is appointed by the
117 President Pro Tempore of the Senate with an initial term of
118 two years, and one of which is appointed by the Speaker of the
119 House of Representatives with an initial term of four years.

120 (4) Three licensed health care professionals other than
121 physicians, in good standing and practicing in the state, one
122 of which is appointed by the Governor with an initial term of
123 two years, one of which is appointed by the President Pro
124 Tempore of the Senate with an initial term of four years, and
125 one of which is appointed by the Speaker of the House of
126 Representatives with an initial term of two years.

127 (5) Two at-large members, one of which is appointed by
128 the Lieutenant Governor with an initial term of four years and
129 one of which is appointed by the Governor with an initial term
130 of two years.

131 (6) Two temporary ad-hoc members as provided in Section
132 4.

133 (b) The appointing authorities shall coordinate their
134 appointments to assure the commission membership is inclusive
135 and reflects the racial, gender, geographic, urban, rural, and
136 economic diversity of the state.

137 (c) After initial appointments, each member shall serve
138 a term of four years, but may be reappointed for one
139 additional term. Any vacancy occurring other than before the
140 expiration of the term shall be filled by appointment by the



HB345 INTRODUCED

141 respective appointing authority to serve for the remainder of
142 the term.

143 (d) The commission shall elect from the membership a
144 chair, a vice chair, and a secretary-treasurer. The commission
145 shall meet as necessary, at the call of the chair or by a
146 majority of the members, to complete the business required.
147 Members may participate by telephone, video conference, or by
148 similar communications equipment so that all individuals
149 participating in the meeting may hear each other at the same
150 time. Participating by such means shall constitute presence in
151 person at a meeting for all purposes. A majority of members of
152 the commission shall constitute a quorum.

153 (e) While serving on business of the commission,
154 members shall receive the same per diem and travel allowance
155 as prescribed by law for state employees for each day of
156 attendance of commission business.

157 (f) The purpose of the commission is to review
158 legislative proposals that would increase the scope of
159 practice of a health profession or practitioner, in advance of
160 a legislative session, in order to provide guidance to the
161 Legislature to make more informed decisions on these
162 legislative proposals. To accomplish this, the commission
163 shall meet no later than November 1 of each year to consider
164 legislative proposals to increase the scope of practice of a
165 health profession or to regulate a health profession for the
166 first time in this state and to report its findings and
167 recommendations, as further provided in this article.

168 Section 4. Upon receiving a legislative proposal



HB345 INTRODUCED

169 pursuant to Section 5(a) or 6(a), the commission shall
170 immediately request the Board of Medical Examiners and either
171 the occupational licensing board or the health professional
172 group seeking the legislation to each respectively appoint one
173 temporary ad-hoc member to the commission. It is the intent of
174 this section to ensure that for each legislative proposal
175 brought before the commission, there are two members with
176 opposing interests each with personal knowledge of the
177 specific health profession under consideration in the
178 legislative proposal. The temporary ad-hoc members so
179 appointed shall be participating, voting members of the
180 commission, but only on legislative proposals relating to
181 their respective health profession.

182 Section 5. (a) A health professional group or
183 occupational licensing board that is seeking an increased
184 scope of practice may submit, no later than October 1, its
185 legislative proposal along with information required under
186 this section and other relevant information to the commission
187 for its consideration.

188 (b) The health professional group or occupational
189 licensing board shall include, in addition to the legislative
190 proposal, an explanation of each of the following factors:

191 (1) Why an increased scope of practice is beneficial,
192 including the extent to which health care consumers need and
193 will benefit from safe, quality care from practitioners with
194 this scope of practice.

195 (2) Whether those health professionals seeking an
196 increased scope of practice currently have or will be required



HB345 INTRODUCED

197 to have didactic and clinical education from accredited
198 professional schools or training from recognized programs that
199 prepare them to perform the proposed scope of practice and
200 details on what that education or training includes for that
201 proposed scope of practice.

202 (3) Whether the subject matter of the proposed
203 increased scope of practice is currently tested by nationally
204 recognized and accepted examinations for applicants for
205 professional licensure and the details of the examination
206 relating to the increased scope of practice.

207 (4) The extent to which the proposed increased scope of
208 practice will impact the practice of those who are currently
209 licensed in this state or the entry into practice of those
210 individuals who have relocated from other states with
211 substantially equivalent requirements for registration,
212 certification, or licensure as this state.

213 (5) The extent to which implementing the proposed
214 increased scope of practice may result in savings or a cost to
215 this state and to the public.

216 (6) The relevant health profession licensure laws, if
217 any, in this or other states.

218 (7) Recommendations, if any, from the applicable
219 occupational licensing board or boards and from accredited
220 educational or training programs.

221 (c) The commission shall review any legislation to
222 increase the scope of practice according to all of the
223 following criteria:

224 (1) Any limit on a health profession's scope of



HB345 INTRODUCED

225 practice shall be only for the purpose of protecting the
226 public from a specific harm or danger.

227 (2) Whether the addition of adequately trained health
228 professionals providing an expanded range of professional
229 health care services will have a beneficial effect to the
230 public and increase access to safe, quality care.

231 (3) Whether any changes in the health profession's
232 regulatory entity are necessary to adequately protect the
233 public.

234 (d) The commission shall not consider either of the
235 following in its review of legislation to increase the scope
236 of practice:

237 (1) Competition from or with other licensed
238 professions.

239 (2) The ability or inability to obtain health insurance
240 coverage for the proposed increased scope of practice.

241 (e) A health professional group or occupational
242 licensing board may request informational hearings pursuant to
243 this section.

244 (f) When making findings and recommendations, the
245 commission may consider the time frame when certain health
246 practitioners or licensees of an occupational licensing board
247 received training and may include in its recommendations a
248 requirement that certain health practitioners or licensees who
249 were credentialed before a certain date receive continuing
250 education in order to be granted the increased or new scope of
251 practice.

252 Section 6. (a) A health professional group that is



HB345 INTRODUCED

253 seeking regulation of an unregulated health profession may
254 submit, no later than October 1, its legislative proposal
255 along with information required under this section and other
256 relevant information to the commission for its consideration.
257 Regulation shall not be imposed on any unregulated health
258 profession for the purpose of prohibiting competition, but
259 only for the exclusive purpose of protecting the public
260 interest.

261 (b) A health professional group seeking regulation of a
262 health profession shall explain each of the following factors
263 to the extent requested by the commission:

264 (1) Why regulation is necessary, including all of the
265 following:

266 a. The nature of the potential harm to the public if
267 the health profession is not regulated and the extent to which
268 there is a threat to public health and safety.

269 b. The extent to which consumers need and will benefit
270 from a method of regulation, identifying competent
271 practitioners and indicating typical employers, if any, of
272 practitioners in that health profession.

273 c. The extent of autonomy a practitioner has, as
274 indicated by all of the following:

275 1. The extent to which the health profession calls for
276 independent judgment and the extent of skill or experience
277 required in making the independent judgment.

278 2. The extent to which practitioners are supervised.

279 (2) The efforts made to address the problem, including
280 both of the following:



HB345 INTRODUCED

281 a. Voluntary efforts, if any, by members of the health
282 profession to either:

283 1. Establish a code of ethics.

284 2. Help resolve disputes between health practitioners
285 and consumers.

286 b. Recourse to and the extent of use of applicable law
287 and whether it could be amended to control the problem.

288 (3) The alternatives considered, including all of the
289 following:

290 a. Regulation of business employers or practitioners
291 rather than employee practitioners.

292 b. Regulation of the program or service rather than the
293 individual practitioners.

294 c. Registration of all practitioners.

295 d. Certification of all practitioners.

296 e. Other alternatives.

297 f. Why the use of the alternatives specified in this
298 subdivision would not be adequate to protect the public
299 interest.

300 g. Why licensing would serve to protect the public
301 interest.

302 (4) The benefit to the public if regulation is granted,
303 including all of the following:

304 a. The extent to which the incidence of specific
305 problems present in the unregulated health profession may
306 reasonably be expected to be reduced by regulation.

307 b. Whether members of the public are able to identify
308 qualified practitioners.



HB345 INTRODUCED

309 c. The extent to which the public is confident that
310 qualified practitioners are competent, including:

311 1. Whether the proposed occupational licensing board
312 would be a board composed of members of the profession or
313 public members, or both, and, if appropriate, the board's
314 responsibilities in administering the system of registration,
315 certification, or licensure, including the composition of the
316 board and the number of public members, if any, the powers and
317 duties of the board regarding examinations and for cause
318 revocation, suspension, and nonrenewal of registrations,
319 certificates, or licenses, the adoption of rules and canons of
320 ethics, the conduct of inspections, the receipt of complaints,
321 disciplinary action taken against practitioners, and how fees
322 would be levied and collected to pay for the expenses of
323 administering and operating the regulatory system.

324 2. If there is a grandfather clause, whether
325 grandfathered practitioners would be required to meet the
326 prerequisite qualifications established by the occupational
327 licensing board at a later date.

328 3. The nature of the standards proposed for
329 registration, certification, or licensure as compared with the
330 standards of other jurisdictions.

331 4. Whether the occupational licensing board would be
332 authorized to enter into reciprocity agreements with other
333 jurisdictions.

334 5. The nature and duration of any training, including
335 whether the training includes a substantial amount of
336 supervised field experience, whether training programs exist



HB345 INTRODUCED

337 in this state, if there will be an experience requirement,
338 whether the experience must be acquired under a registered,
339 certified, or licensed practitioner, whether there are
340 alternative routes of entry or methods of meeting the
341 prerequisite qualifications, whether all applicants will be
342 required to pass an examination, and if an examination is
343 required, by whom it will be developed and how the costs of
344 development will be met.

345 d. Assurance to the public that practitioners have
346 maintained their competence, including:

347 1. Whether the registration, certification, or
348 licensure will carry an expiration date.

349 2. Whether renewal will be based only on payment of a
350 fee or whether renewal will involve reexamination, peer
351 review, or other requirements.

352 (5) The extent to which regulation might harm the
353 public, including all of the following:

354 a. The extent to which regulation may restrict entry
355 into the health profession, including:

356 1. Whether the proposed standards are more restrictive
357 than necessary to ensure safe and effective performance.

358 2. Whether the proposed legislation requires
359 registered, certified, or licensed practitioners in other
360 jurisdictions who relocate to this state to qualify in the
361 same manner as state applicants for registration,
362 certification, and licensure if the other jurisdiction has
363 substantially equivalent requirements for registration,
364 certification, or licensure as those in this state.



HB345 INTRODUCED

365 b. Whether there are professions similar to that of the
366 health professional group that should be included in, or
367 portions of the health professional group that should be
368 excluded from, the proposed legislation.

369 (6) The maintenance of standards, including both of the
370 following:

371 a. Whether effective quality assurance standards exist
372 in the health profession, including legal requirements
373 associated with specific programs that define or enforce
374 standards or a code of ethics.

375 b. How the proposed legislation will ensure quality,
376 including:

377 1. The extent to which a code of ethics, if any, will
378 be adopted.

379 2. The grounds for suspension or revocation of
380 registration, certification, or licensure.

381 (7) A description of the group proposed for regulation,
382 including a list of associations, organizations, and other
383 groups representing the practitioners in this state, an
384 estimate of the number of practitioners in each group, and
385 whether the groups represent different levels of practice.

386 (8) The expected costs of regulation, including both of
387 the following:

388 a. The impact that registration, certification, or
389 licensure will have on the costs of the services to the
390 public.

391 b. The cost to this state and to the public of
392 implementing the proposed legislation.



HB345 INTRODUCED

393 (c) A health profession may be newly regulated by this
394 state only if all of the following criteria are met:

395 (1) There is credible evidence that the unregulated
396 practice of the health profession may clearly harm or endanger
397 public health, safety, or welfare and the potential for harm
398 is easily recognizable and not remote or dependent on tenuous
399 argument.

400 (2) The public may reasonably be expected to benefit
401 from an assurance of initial and continuing professional
402 ability.

403 (3) The public cannot be effectively protected by other
404 means in a more cost-beneficial manner.

405 (d) After evaluating the criteria prescribed in
406 subsection (c), and considering governmental and societal
407 costs and benefits, if the commission finds that it is
408 necessary to regulate a health profession not previously
409 regulated by law, the commission shall recommend that the
410 regulation be implemented by the least restrictive alternative
411 method of regulation to address the specific harm or danger
412 identified, consistent with public interest and all of the
413 following:

414 (1) If existing common law and statutory civil actions
415 and criminal prohibitions are not sufficient to eradicate the
416 existing harm, the regulation shall provide for stricter civil
417 actions and criminal prohibitions.

418 (2) If a service is being performed for individuals
419 that involves a hazard to public health, safety, or welfare,
420 the regulation shall impose inspection requirements and enable



HB345 INTRODUCED

421 an appropriate state agency to enforce violations by
422 injunctive relief in court.

423 (3) If the threat to public health, safety, or economic
424 well-being is relatively small as a result of the operation of
425 the health profession, the regulation shall implement a system
426 of registration.

427 (4) If the consumer may have a substantial basis for
428 relying on the services of a practitioner, the regulation
429 shall implement a system of certification.

430 (5) If it is apparent that adequate regulation cannot
431 be achieved by means other than licensing, the regulation
432 shall implement a system of licensing.

433 (e) A health professional group or occupational
434 licensing board may request informational hearings pursuant to
435 this section.

436 Section 7. (a) Based on the commission's findings as
437 further provided in Sections 5 or 6, the commission shall
438 issue a report of its recommendations to the Pro Tempore of
439 the Senate, the Speaker of the House of Representatives, the
440 Chair of the Senate Healthcare Committee, and the Chair of the
441 House Health Committee no later than 20 days before the start
442 of the regular legislative session for which the legislation
443 is proposed. The report shall include the official vote of the
444 commission members on each legislative proposal, including the
445 vote of the temporary ad-hoc members appointed pursuant to
446 Section 4.

447 (b) The Legislature is not bound by any recommendation
448 rendered by the commission; provided, however, the Senate



HB345 INTRODUCED

449 Healthcare Committee, the House Health Committee, and any
450 other standing committee that considers legislation that
451 relates to the scope of practice of a health care professional
452 shall consider the recommendations of the commission, if they
453 exist.

454 Section 8. A health professional group or occupational
455 licensing board may seek to have legislation introduced in the
456 legislative session regardless of whether the legislation was
457 submitted to the commission for review pursuant to Sections 5
458 and 6. The lack of input from the commission may not be
459 considered as either support or rejection of the proposed
460 legislation.

461 Section 9. Any legislative proposal submitted to the
462 commission for review which contains a continuing education
463 requirement for a health profession shall be accompanied by
464 evidence that the requirement has been proven effective for
465 the health profession.

466 Section 10. This act shall become effective on the
467 first day of the third month following its passage and
468 approval by the Governor, or its otherwise becoming law.