

1 HB92
2 196982-1
3 By Representative Shedd
4 RFD: Boards, Agencies and Commissions
5 First Read: 05-MAR-19

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8 SYNOPSIS: Under existing law, the expenditures of
9 self-sustaining state professional licensing
10 boards, agencies, and commissions are not required
11 to be published on the searchable public Internet
12 database maintained by the Comptroller.

13 This bill would require those
14 self-sustaining state professional licensing
15 boards, agencies, and commissions to either publish
16 their expenditure information on the Internet
17 database maintained by the Comptroller or on the
18 public website of the board, agency, or commission.

19 Also under existing law, the Alabama Sunset
20 Committee is responsible for periodically reviewing
21 state professional licensing boards, agencies, and
22 commissions.

23 This bill would create the Alabama Sunrise
24 Act and would require the Sunset Committee to
25 review proposals for the regulation of additional
26 professions or occupations and the necessity and
27 cost-effectiveness of the proposed regulation to

1 protect the public health, safety, or welfare from
2 significant and discernible harm or damage.

3 This bill would also prohibit any state
4 occupational licensing board, agency, or commission
5 from assessing a monetary fine or penalty against a
6 business entity consumer or individual consumer.

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8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 To amend Section 41-4-65 of the Code of Alabama
13 1975, relating to the online database of state expenditures
14 maintained by the Comptroller; to require each self-sustaining
15 professional licensing board, agency, or commission previously
16 exempted from posting expenditures through the online database
17 to either post the information on the online database of the
18 Comptroller or post the information on the public website of
19 the board, agency, or commission; to add Section 41-20-4.1 to
20 the Code of Alabama 1975, to create the Alabama Sunrise Act;
21 to require the Sunset Committee to review proposals for the
22 regulation of additional professions or occupations and the
23 necessity and cost-effectiveness of the proposed regulation to
24 protect the public health, safety, or welfare from significant
25 and discernible harm or damage; and to add Chapter 9A,
26 commencing with Section 41-9A-1, to Title 41, Code of Alabama
27 1975, relating to general provisions relating to state

1 occupational licensing boards, agencies, and commissions; to
2 prohibit any state occupational licensing board, agency, or
3 commission from assessing a monetary fine or penalty against a
4 business entity consumer or individual consumer.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 41-4-65 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§41-4-65.

9 "(a) In this section, state entity shall mean, the
10 State of Alabama, a political subdivision, an agency, board,
11 commission, or department of the state, the State Board of
12 Education, a public college or trade school, or a public
13 university, except that the term shall not mean a county, a
14 municipal corporation, a county board of education, a city
15 board of education, or, unless otherwise provided in Section 2
16 of the act adding this amendatory language, a professional
17 licensure agency board that is self-sustaining by its own
18 revenues and fees.

19 "(b) The Comptroller shall establish and post on the
20 Internet a database of state expenditures, including contracts
21 and grants, that are electronically searchable by the public,
22 except as provided by subsection (d). The database shall
23 include all of the following:

24 "(1) The amount, date, payor, and payee of
25 expenditures.

26 "(2) A listing of state expenditures by each of the
27 following:

1 "a. The object of the expense with links to the
2 warrant or check register level.

3 "b. To the extent maintained by the state entity
4 accounting systems in a reportable format, class and item
5 levels.

6 "(c) To the extent possible, the Comptroller shall
7 present information in the database established under this
8 section in a manner that is searchable and intuitive to users.
9 The Comptroller shall enhance and organize the presentation of
10 the information through the use of graphical representations,
11 such as pie charts, as the Comptroller considers appropriate.
12 At a minimum, the database shall allow users to:

13 "(1) Search state funding by any element of the
14 information.

15 "(2) Ascertain through a single search the total
16 amount of state funding awarded to a person by a state entity.

17 "(3) Download information yielded by a search of the
18 database.

19 "(d) The Comptroller may not allow public access
20 under this section to a payee's address, except that the
21 Comptroller may allow public access under this section to
22 information identifying the county in which the payee is
23 located. The Comptroller may not allow public access under
24 this section to information that is identified by a state
25 entity as excepted from required disclosure as confidential.
26 The Comptroller, or an officer or employee of the
27 Comptroller's office, shall be immune from any civil liability

1 for posting confidential information under this section if the
2 Comptroller, officer, or employee posted the information in
3 reliance on a determination made by a state entity about the
4 confidentiality of information relating to the expenditures of
5 the agency.

6 "(e) To the extent any information required to be in
7 the database is already being collected or maintained by a
8 state entity, the state entity shall provide that information
9 to the Comptroller for inclusion in the database.

10 "(f) The Comptroller may not charge a fee to the
11 public to access the database.

12 "(g) Except as provided by subsection (h), a state
13 entity shall cooperate with and provide information to the
14 Comptroller as necessary to implement and administer this
15 section.

16 "(h) This section does not require a state entity to
17 record information or expend resources for the purpose of
18 computer programming or other additional actions necessary to
19 make information reportable under this section.

20 "(i) The Alabama Department of Finance, after
21 consultation with the Comptroller, shall prominently include a
22 link to the database established under this section on the
23 public home page of the State of Alabama.

24 "(j) Each state entity that maintains a generally
25 accessible Internet site or for which a generally accessible
26 Internet site is maintained shall include a link on the

1 entity's Internet site to the state expenditure database
2 established by this section.

3 "(k) The Comptroller shall establish procedures and
4 adopt rules to implement and administer this section.

5 "(l) Any vendor, contractor, or other supplier to
6 any state entity may notify the Comptroller in writing that
7 its prices or costs, or both, should be held confidential.
8 Upon receipt of such written notification, the Comptroller
9 shall not post the prices or costs, or both, specified in the
10 notification unless and until the Comptroller shall
11 investigate whether the prices or costs, or both, claimed in
12 the notification to be confidential should be protected from
13 posting. Such investigation shall include a hearing where the
14 vendor, contractor, or other supplier can present
15 justification for holding the information confidential. The
16 Comptroller's ruling on confidentiality shall be based on a
17 standard of reasonableness. The Comptroller's ruling shall be
18 subject to review by the courts."

19 Section 2. (a) For the purposes of this section, a
20 licensing board is a state professional licensing board,
21 agency, or commission that is self-sustaining by its own
22 revenues and fees. The expenditures of each licensing board,
23 at the option of the licensing board, shall either be
24 published on the searchable public Internet database
25 maintained by the Comptroller pursuant to Section 41-4-65,
26 Code of Alabama 1975, or on the website of the licensing board
27 pursuant to subsection (b). The option of the licensing board

1 shall be made annually and entered upon the minutes of the
2 board.

3 (b) (1) In any year that a licensing board does not
4 opt to publish expenditures on the searchable public Internet
5 database maintained by the Comptroller pursuant to Section
6 41-4-65, Code of Alabama 1975, the expenditures, including
7 contracts and grants, of that licensing board shall be
8 published on the website of the licensing board. The published
9 expenditures shall be electronically searchable by the public,
10 except as provided by subdivision (3), and shall include all
11 of the following:

12 a. The amount, date, payor, and payee of
13 expenditures.

14 b. A listing of state expenditures by both of the
15 following:

16 1. The object of the expense with links to the
17 warrant or check register level.

18 2. To the extent maintained by the licensing board
19 accounting systems in a reportable format, class and item
20 levels.

21 (2) To the extent possible, the licensing board
22 shall present expenditure information in a manner that is
23 searchable and intuitive to users and shall enhance and
24 organize the presentation of the information through the use
25 of graphical representations, such as pie charts, as the
26 licensing board considers appropriate.

1 (3) The licensing board may not allow public access
2 under this subsection to the address of a payee, except that
3 the licensing board may allow public access under this
4 subsection to information identifying the county in which the
5 payee is located. The licensing board may not allow public
6 access under this subsection to information that is identified
7 by the licensing board as exempt from required disclosure as
8 confidential. The licensing board, or an officer or employee
9 of the licensing board, shall be immune from any civil
10 liability for posting confidential information under this
11 subsection if the licensing board, or officer or employee of
12 the licensing board, posted the information in reliance on a
13 determination made by the licensing board about the
14 confidentiality of information relating to the expenditures of
15 the licensing board.

16 (4) To the extent any information required to be
17 published on the website is already being collected or
18 maintained by the licensing board, the licensing board shall
19 include that information on the website.

20 (5) The licensing board may not charge a fee to the
21 public to access any information required to be published on
22 the licensing board website pursuant to this subsection.

23 (6) The Alabama Department of Finance, after
24 consultation with each licensing board, shall prominently
25 include a link to that portion of the website of each
26 licensing board, that includes the expenditure information

1 required to be published by this subsection on the public home
2 page of the State of Alabama.

3 (7) The home page of the website of each licensing
4 board shall include a prominent link to the expenditure
5 information required to be published by this subsection.

6 (8) Each licensing board may adopt rules to
7 implement and administer this subsection.

8 (9) Any vendor, contractor, or other supplier to any
9 licensing board may notify the licensing board in writing that
10 its prices or costs, or both, should be held confidential.
11 Upon receipt of such written notification, the licensing board
12 may not post the prices or costs, or both, specified in the
13 notification unless and until the licensing board investigates
14 whether the prices or costs, or both, claimed in the
15 notification to be confidential should be protected from
16 posting. The investigation shall include a hearing where the
17 vendor, contractor, or other supplier may present
18 justification for holding the information confidential. The
19 ruling of the licensing board on confidentiality shall be
20 based on a standard of reasonableness and shall be subject to
21 review by the courts.

22 Section 3. Section 41-20-4.1 is added to the Code of
23 Alabama 1975, to read as follows:

24 §41-20-4.1.

25 (a) This section shall be known and may be cited as
26 the Alabama Sunrise Act.

1 (b) The Legislature finds and declares all of the
2 following:

3 (1) That no profession or occupation be subject to
4 regulation by the state unless the regulation is necessary to
5 protect the public health, safety, or welfare from significant
6 and discernible harm or damage and that the police power of
7 the state be exercised only to the extent necessary for that
8 purpose.

9 (2) That no profession or occupation be regulated by
10 the state in a manner that unnecessarily restricts entry into
11 the practice of the profession or occupation or adversely
12 affects the availability of the professional or occupational
13 services to the public.

14 (c) In determining whether to regulate a profession
15 or occupation, the Legislature shall consider all of the
16 following factors:

17 (1) Whether the unregulated practice of the
18 profession or occupation will substantially harm or endanger
19 the public health, safety, or welfare, and whether the
20 potential for harm is recognizable and not remote.

21 (2) Whether the practice of the profession or
22 occupation requires specialized skill or training, and whether
23 that skill or training is readily measurable or quantifiable
24 so that examination or training requirements would reasonably
25 assure initial and continuing professional or occupational
26 ability.

1 (3) Whether the regulation will have an unreasonable
2 effect on job creation or job retention in the state or will
3 place unreasonable restrictions on the ability of individuals
4 who seek to practice or who are practicing a given profession
5 or occupation to find employment.

6 (4) Whether the public is or can be effectively
7 protected by other means.

8 (5) Whether the overall cost-effectiveness and
9 economic impact of the proposed regulation, including the
10 indirect costs to consumers, will be favorable.

11 (d) The proponents of legislation that provides for
12 the regulation of a profession or occupation not already
13 expressly subject to state regulation, upon request, shall
14 provide all of the following information in writing to the
15 Sunset Committee:

16 (1) The number of individuals or businesses that
17 would be subject to the regulation.

18 (2) The name of each association that represents
19 members of the profession or occupation, together with a copy
20 of its code of ethics or conduct.

21 (3) Documentation of the nature and extent of the
22 harm to the public caused by the unregulated practice of the
23 profession or occupation, including a description of any
24 complaints that have been lodged against persons who have
25 practiced the profession or occupation in this state during
26 the preceding three years.

1 (4) A list of states that regulate the profession or
2 occupation, and the dates of enactment of each law providing
3 for that regulation and a copy of each law.

4 (5) A list and description of state and federal laws
5 that have been enacted to protect the public with respect to
6 the profession or occupation and a statement of the reasons
7 why these laws have not proven adequate to protect the public.

8 (6) A description of the voluntary efforts made by
9 members of the profession or occupation to protect the public
10 and a statement of the reasons why these efforts are not
11 adequate to protect the public.

12 (7) A copy of any federal legislation mandating
13 regulation.

14 (8) An explanation of the reasons why other types of
15 less restrictive regulation would not effectively protect the
16 public.

17 (9) The cost, availability, and appropriateness of
18 training and examination requirements.

19 (10) The cost of regulation, including the indirect
20 cost to consumers, and the method proposed to finance the
21 regulation.

22 (11) The cost imposed on applicants or practitioners
23 or on employers of applicants or practitioners as a result of
24 the regulation.

25 (12) The details of any previous efforts in this
26 state to implement regulation of the profession or occupation.

1 (13) Any other information the Sunset Committee
2 considers relevant to the analysis of the proposed
3 legislation.

4 (e) The Sunset Committee shall provide the
5 Legislature with information concerning the effect of proposed
6 legislation that provides for new regulation of a profession
7 or occupation regarding all of the following:

8 (1) The departmental resources necessary to
9 implement and enforce the proposed regulation.

10 (2) The technical sufficiency of the proposal for
11 regulation, including its consistency with the regulation of
12 other professions and occupations under existing law.

13 (3) If applicable, any alternatives to the proposed
14 regulation which may result in a less restrictive or more
15 cost-effective regulatory scheme.

16 (f) When making a recommendation concerning proposed
17 legislation providing for new regulation of a profession or
18 occupation, the Sunset Committee shall determine all of the
19 following:

20 (1) Whether the regulation is justified based on the
21 criteria specified in subsection (c), the information
22 submitted pursuant to request under subsection (d), and the
23 information provided under subsection (e).

24 (2) The least restrictive and most cost-effective
25 regulatory scheme that will adequately protect the public.

1 (3) The technical sufficiency of the proposed
2 legislation, including its consistency with the regulation of
3 other professions and occupations under existing law.

4 (g) The Department of Examiners of Public Accounts
5 and the Legal and Fiscal Divisions of the Legislative Services
6 Agency shall provide assistance to the Sunset Committee in
7 completing the sunrise process specified in this section.

8 Section 4. Chapter 9A, commencing with Section
9 41-9A-1, is added to Title 41 of the Code of Alabama 1975, to
10 read as follows:

11 §41-9A-1.

12 For the purposes of this chapter, the following
13 terms shall have the following meanings:

14 (1) CONSUMER. A business entity or individual who
15 obtains information, advice, or services from an individual
16 believed by the business entity or individual to be
17 appropriately licensed by the occupational licensing board
18 that regulates the profession providing the information,
19 advice, or services provided.

20 (2) LICENSE. Any license, certificate, or other
21 evidence of qualification that an individual is required to
22 obtain before engaging in or representing himself or herself
23 to be a member of a particular profession or occupation, or a
24 business entity is required to obtain before operating a
25 business where individuals engage in a particular profession
26 or occupation.

1 (3) OCCUPATIONAL LICENSING BOARD. Any state board,
2 agency, commission, or other entity in Alabama that is
3 established for the primary purpose of regulating the entry of
4 individuals into, or the conduct of individuals within, or
5 both, a particular profession or occupation, and that is
6 authorized to issue licenses. The term does not include state
7 agencies, staffed by full-time state employees, which as a
8 part of their regular functions, may issue licenses.

9 §41-9A-2.

10 (a) Commencing on January 1, 2020, no occupational
11 licensing board may assesses a monetary fine or penalty
12 against a consumer.

13 (b) Nothing in this section shall be interpreted as
14 affecting the authority of an occupational licensing board to
15 assess a monetary fine or penalty against any person who
16 undertakes or attempts to undertake the practice of an
17 occupation for remuneration among consumers without first
18 having procured a valid license or permit, or who knowingly
19 presents or files false information with the occupational
20 licensing board for the purpose of obtaining a license.

21 Section 5. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.