



## South Dakota Board of Examiners for Speech-Language Pathology

Mailing Address:  
810 North Main Street, Suite 298  
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: [proflic@rushmore.com](mailto:proflic@rushmore.com)  
Home Page: [speechpath.sd.gov](http://speechpath.sd.gov)

### **DRAFT TELECONFERENCE** **BOARD MEETING AGENDA**

TO: All Board Members

FROM: Carol Tellinghuisen

DATE: February 6, 2020

MEETING DATE: February 21, 2020

LOCATION: Teleconference with public access at:

Board Office	Brittany Schmidt
629 Main St.	1105 W. Russell Street
Spearfish, SD	Sioux Falls, SD 57104
605-642-1600	

Persons interested in joining the meeting may do so by appearing in person for the conference call at the locations listed above or by calling 605-642-1600 by February 20, 2020 to arrange for a dial in number for the teleconference.

MEETING TIME: 9:30AM CST / 8:30AM MST

#### **Agenda Item Number**

1. Call to Order/Welcome and Introductions-Schmidt
2. Roll Call-Schmidt
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public Testimony/Public Comment Period at 9:35 a.m. CST
6. Election of Officers

7. Executive Session Pursuant to SDCL 1-25-2
  - a. Complaints/Investigations
    - i. #100
    - ii. #101
  - b. Executive Secretary Contract
8. Approval of the minutes from November 1, 2019, January 17, 2020
9. FY Financial Update
10. Wallet Card Update
11. NCSB Annual Conference October 22-24, 2020, Santa Fe
12. Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC)
13. SDSLHA communication/collaboration
14. Legislative Update
15. Any other business coming in between date of mailing and date of meeting
16. Schedule next meeting

DRAFT



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### DRAFT OFFICIAL BOARD MINUTES FOR November 1, 2019 TELECONFERENCE

**MEMBERS PRESENT:** Brittany Schmidt, President  
Jane Heinemeyer, Vice-President  
Shirley Hauge, Member  
Jaculin Protexter, Member  
Connie Tucker, Lay Member

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Carol Tellinghuisen, Executive Secretary  
Jill Lesselyoung, Executive Assistant  
Sarah Larson, Assistant Attorney General  
Deb Flynn, MTI  
Dean Kueter

**CALL TO ORDER/WELCOME AND INTRODUCTIONS:** President Schmidt called the meeting to order at 8:32AM MDT. Schmidt welcomed the new legal counsel for the Board, Sarah Larson, Assistant Attorney General and the public members in attendance.

**ROLL CALL:** Schmidt requested Lesselyoung to call the roll. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. A quorum was present.

**CORRECTIONS OR ADDITIONS TO THE AGENDA:** None

**APPROVAL OF THE AGENDA:** Heinemeyer made a motion to approve the agenda. Protexter seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**PUBLIC TESTIMONY/PUBLIC COMMENT PERIOD:** Schmidt call for any public comments. There were no public comments.

**SPEECH LANGUAGE PATHOLOGY-November 1, 2019**  
**Page 2**

**APPROVAL OF THE MINUTES FROM APRIL 26, 2019:** Protexter made a motion to approve the minutes from April 26, 2019. Hauge seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**FY FINANCIAL UPDATE:** Lesselyoung reported fiscal year-end figures as of June 30, 2019: revenue of \$28,717.48, expenditures of \$34,875.99 and cash balance on hand of \$137,172.20 and year to date figures as of September 30, 2019: revenue of \$64,149.41, expenditures of \$11,773.44 and cash balance on hand of \$189,548.17. The Board questioned the cash balance on hand. Tellinghuisen advised they are in a sound position financially and it is good to have a reserve balance for investigation of complaints or if the State may require a new computer system, etc.

**RENEWAL UPDATE:** Lesselyoung advised there are currently 650 licensees and this renewal period 511 licensees were due to renew. Currently, there are 38 non-renewed. The Board office has sent non-renewal notices. The Board discussed and indicated they would like wallet cards issued at the next renewal period. Tellinghuisen advised it should be fairly easy to do so as the Board office has provided this for other boards. Hauge moved and Heinemeyer seconded to approve the issuance of wallet cards with the Board office checking on pricing and final approval by Schmidt. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. Heinemeyer advised she was approached at the convention with questions regarding renewal timelines. Tellinghuisen advised to have any questions come to the Board office in writing for consideration.

**NCSB ANNUAL CONFERENCE OCTOBER 22-24, 2020, SANTA FE:** The Board agreed to send two members and or staff. Heinemeyer indicated she may be interested. Any members interested will need to contact the Board office.

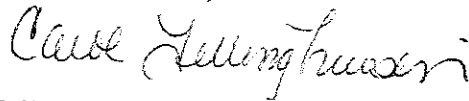
**UPDATE OF ASHA SLPA CERTIFICATION PROGRAM:** Deb Flynn of Mitchell Technical Institute provided information on the ASHA Speech-Language Pathology Assistants Certification Program. The proposed certification exam will be available nationwide in October 2020. There will be several different educational options available. The Board discussed average nationwide SLPA salary which varies in different locales and employment settings.

**ANY OTHER BUSINESS COMING IN BETWEEN DATE OF MAILING AND DATE OF MEETING:** There was no other business. Tellinghuisen advised the Board is not planning any legislation for the upcoming session.

**NEXT MEETING DATE:** The next meeting is set for February 21, 2020 at 8:30AM MST/9:30AM CST.

Tucker moved to adjourn at 9:03AM. Heinemeyer seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

Respectfully submitted,



Carol Tellinghuisen  
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

DRAFT



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### DRAFT OFFICIAL BOARD MINUTES FOR January 17, 2020 TELECONFERENCE

**MEMBERS PRESENT:** Brittany Schmidt, President  
Jane Heinemeyer, Vice-President  
Shirley Hauge, Member  
Jaculin Protexter, Member  
Connie Tucker, Lay Member

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Carol Tellinghuisen, Executive Secretary  
Jill Lesselyoung, Executive Assistant  
Sarah Larson, Assistant Attorney General  
Jennifer Schultz, SDSLHA  
Tiffany Trask, SDSLHA

**CALL TO ORDER/WELCOME AND INTRODUCTIONS:** President Schmidt called the meeting to order at 8:33AM MDT. Schmidt welcomed the new legal counsel for the Board, Sarah Larson, Assistant Attorney General and the public members in attendance.

**ROLL CALL:** Schmidt requested Lesselyoung to call the roll. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. A quorum was present.

**CORRECTIONS OR ADDITIONS TO THE AGENDA:** None

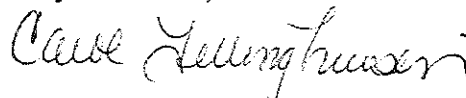
**APPROVAL OF THE AGENDA:** Heinemeyer made a motion to approve the agenda. Hauge seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**PUBLIC TESTIMONY/PUBLIC COMMENT PERIOD:** Schmidt call for any public comments. Public comments are limited to five minutes. Tellinghuisen advised that if most of the participants are attending for agenda item six they could also talk at that time. There were no public comments.

**AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT:** Schmidt advised all members were asked to review the information on the compact. She advised it is designed for ease and portability and the privilege to practice in compact states. Tellinghuisen asked Schultz to go ahead and present to the Board. Schultz advised the association had passed a resolution to introduce legislation this session to pass the compact in SD. The association wants to make sure the efforts are collaborative. She supports SD to be an early adopter which would allow South Dakota to have a voice in drafting the rules, fees and when the background checks have to be completed. She advised Wyoming and Nebraska are introducing legislation this year. Protexter advised she had not been aware of the compact previously and seems like it is moving quickly. Schultz advised the association had sent surveys and posting to the Facebook site. Heinemeyer applauded Schultz for her efforts but feels rushed and even though it seems great was nervous regarding unforeseen consequences. Hauge advises it feels it would benefit the profession and support underserved areas. Schmidt advised she was concerned on the shortage of practitioners as well however questioned how it will assist the shortage as the licensure process in SD is easy. Tellinghuisen advised it is easy to get licensed in SD and questioned if the background checks would slow down the process. We need to see how the background check process works from some of the larger boards and make sure we don't have unintended consequences. Schultz advised most of the practitioners are employed by school systems and have already completed the required background checks. Heinemeyer questioned if the practitioners already licensed could be grandfathered in. Schultz advised it would be up to the commissioners drafting the rules and most states are not currently doing the background checks. Tellinghuisen questioned if we would have to go to the legislature every year to amend rules to be in compliance. Hauge understood that state law would supersede the compact rules. Tellinghuisen and Schmidt voiced concerns on the unknown fees. Tellinghuisen advised it would require legislation to implement a privilege to practice fee. Tellinghuisen advised the current administration is in favor of compacts and asked what we could do to support to make it work. Tucker questioned if we joined and found out later it was too hard with the fees how much work would it be to exit. Tellinghuisen advised it would require legislation to exit. Tellinghuisen advised if the Board votes to accept it will go the DOH for consideration. Schultz advised the unknowns would remain unknown for a period of time and if the Board voted to accept it would be in a holding pattern until ten states have approved. Hauge made a motion to support. Tucker seconded the motion. Discussion was held. Schmidt advised the Board's cash balance could easily be depleted with one difficult complaint and has concerns on the fees to join and maintain. She questioned Schultz on how the fees would work for the smaller states. Schultz advised it is unknown and legislation may dictate that states may charge a fee but doesn't say they have to. Following discussion, Tucker amended her second to table the vote to another meeting. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, no; Hauge, yes; Protexter, yes; Tucker, yes. Another meeting will be set for further discussion and the vote.

The meeting was adjourned 9:45AM.

Respectfully submitted,



Carol Tellinghuisen  
Executive Secretary

within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

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STATE OF SOUTH DAKOTA  
 REVENUE SUMMARY BY BUDGET UNIT  
 FOR PERIOD ENDING: 06/30/2019

AGENCY	BUDGET UNIT	09	HEALTH	BOARD OF SPEECH-LANGUAGE PATHOLOGY				
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE			
COMPANY NO	6503		PROFESSIONAL & LICENSING BOARDS					
COMPANY NAME								
092120068622	6503	4293201	INITIAL APPLICATION FEE	700.00	4,170.00			
092120068622	6503	4293202	LICENSE FEE	900.00	4,330.00			
092120068622	6503	4293203	RENEWAL FEE	1,940.00	18,610.00			
ACCT: 4293			BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	3,540.00	27,110.00	*		
ACCT: 42			LICENSES, PERMITS & FEES	3,540.00	27,110.00	**		
092120068622	6503	4599205	MISC INCOME	.00	20.00			
ACCT: 4599			OTHER CHARGES (NON-GOVERNMENTAL)	.00	20.00	*		
ACCT: 45			CHARGES FOR SALES & SERVICES	.00	20.00	**		
092120068622	6503	4920045	NONOPERATING REVENUES	.00	1,587.48			
ACCT: 4920			NONOPERATING REVENUE	.00	1,587.48	*		
ACCT: 49			OTHER REVENUE	.00	1,587.48	**		
CNTR: 092120068622				3,540.00	28,717.48	***		
CNTR: 092120068				3,540.00	28,717.48	****		
CNTR: 0921200				3,540.00	28,717.48	*****		
COMP: 6503				3,540.00	28,717.48	*****		
B UNIT: 09212				3,540.00	28,717.48	*****		

BA0215V1 06/29/2019

STATE OF SOUTH DAKOTA  
 MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
 FOR PERIOD ENDING: 06/30/2019

AGENCY BUDGET UNIT CENTER-5	09 09212	HEALTH BOARD OF SPEECH-LANGUAGE PATHOLOGY						
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE			
COMPANY NO	6503		PROFESSIONAL & LICENSING BOARDS					
COMPANY NAME								
092120068622	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00	450.00	*		
092120068622	6503	520409000000000000	MANAGEMENT CONSULTANT	208.37	33,807.03			
092120068622	6503	520418000000000000	COMPUTER SERVICES-STATE	.00	10.82			
092120068622	6503	520420000000000000	CENTRAL SERVICES	.00	437.24			
092120068622	6503	520451000000000000	RENTS-OTHER	.00	28.72			
092120068622	6503	520458000000000000	TRUCK-DRAYAGE & FREIGHT	.00	18.14			
ACCT: 5204			CONTRACTUAL SERVICES					
092120068622	6503	520502000000000080	OFFICE SUPPLIES	208.37	34,751.95	*		
092120068622	6503	520532000000000080	PRINTING-COMMERCIAL	.00	108.12			
092120068622	6503	520535000000000000	POSTAGE	.00	3.50			
ACCT: 5205			SUPPLIES & MATERIALS					
ACCT: 52			OPERATING EXPENSES	208.37	124.04	*		
COMP: 6503			PROFESSIONAL & LICENSING BOARDS	208.37	34,875.99	***		
CENTER: 092120068622				208.37	34,875.99	****		
B UNIT: 09212				208.37	34,875.99	*****		

AGENCY: 09 HEALTH  
BUDGET UNIT: 09212 BOARD OF SPEECH-LANGUAGE PATHOLOGY

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100068622	1140000	137,172.20	DR	BD OF EXAMINERS FOR SPEECH-LANGUAGE PATH
COMPANY/SOURCE TOTAL 6503			686		
COMP/BUDG UNIT TOTAL 6503 09212			137,172.20	DR *	
BUDGET UNIT TOTAL 09212			137,172.20	DR **	
				DR ***	

AGENCY: 09 HEALTH  
BUDGET UNIT: 09212 BOARD OF SPEECH-LANGUAGE PATHOLOGY

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100068622	1140000	192,320.52	DR	BD OF EXAMINERS FOR SPEECH-LANGUAGE PATH
COMPANY/SOURCE TOTAL 6503 686			192,320.52	DR *	
COMP/BUDG UNIT TOTAL 6503 09212			192,320.52	DR **	
BUDGET UNIT TOTAL 09212			192,320.52	DR ***	

STATE OF SOUTH DAKOTA  
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
FOR PERIOD ENDING: 01/31/2020

AGENCY BUDGET CENTER	UNIT	HEALTH BOARD OF SPEECH-LANGUAGE PATHOLOGY	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
09	09212	09212	BOARD OF SPEECH-LANGUAGE PATHOLOGY			
09212	09212		BOARD OF SPEECH-LANGUAGE PATHOLOGY			
COMPANY NO	6503		PROFESSIONAL & LICENSING BOARDS			
COMPANY NAME	6503		PROFESSIONAL & LICENSING BOARDS			
092120068622	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00	450.00	*
092120068622	6503	520409000000000000	MANAGEMENT CONSULTANT	2,918.15	23,105.23	
092120068622	6503	520420000000000000	CENTRAL SERVICES	.00	246.34	
092120068622	6503	520420200000000000	PROPERTY MANAGEMENT	.00	.58	
092120068622	6503	520451000000000000	RENTS-OTHER	.00	11.96	
ACCT: 5204			CONTRACTUAL SERVICES			
092120068622	6503	520502000000000000	OFFICE SUPPLIES	2,918.15	23,814.11	*
092120068622	6503	520531000000000000	PRINTING-STATE	.00	111.71	
092120068622	6503	520532000000000000	PRINTING-COMMERCIAL	.00	266.00	
092120068622	6503	520535000000000000	POSTAGE	.00	3.50	
ACCT: 5205			SUPPLIES & MATERIALS			
ACCT: 52			OPERATING EXPENSES	2,918.15	396.98	*
COMP: 6503			PROFESSIONAL & LICENSING BOARDS			
CENTER: 092120068622				2,918.15	24,211.09	***
B UNIT: 09212				2,918.15	24,211.09	****
					24,211.09	*****

STATE OF SOUTH DAKOTA  
 REVENUE SUMMARY BY BUDGET UNIT  
 FOR PERIOD ENDING: 01/31/2020

AGENCY	09	HEALTH					
BUDGET UNIT	09212	BOARD OF SPEECH-LANGUAGE PATHOLOGY					
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE		
COMPANY NO		6503					
COMPANY NAME		PROFESSIONAL & LICENSING BOARDS					
092120068622	6503	4293201	INITIAL APPLICATION FEE	100.00	600.00		
092120068622	6503	4293202	LICENSE FEE	100.00	450.00		
092120068622	6503	4293203	RENEWAL FEE	520.00	75,350.00		
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	720.00	76,400.00	*	
ACCT:	42		LICENSES, PERMITS & FEES	720.00	76,400.00	**	
092120068622	6503	4920045	NONOPERATING REVENUES	.00	2,959.41	*	
ACCT:	4920		NONOPERATING REVENUE	.00	2,959.41	*	
ACCT:	49		OTHER REVENUE	.00	2,959.41	**	
CNTR:	092120068622			720.00	79,359.41	***	
CNTR:	092120068			720.00	79,359.41	****	
CNTR:	0921200			720.00	79,359.41	*****	
COMP:	6503			720.00	79,359.41	*****	
B UNIT:	09212			720.00	79,359.41	*****	



## 2020 South Dakota Legislature

# House Bill 1276

Introduced by: *Representative Latterell*

1 **An Act to provide for a review of occupational regulation.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **36-39-1. Definitions.**

5 Terms as used in this chapter mean:

- 6 (1) "Agency," any state governmental agency, board, commission, committee, council,  
 7 or department;
- 8 (2) "Certification," a voluntary, nontransferable recognition granted by this state to a  
 9 person for the purpose of acknowledging that the person evidences qualifications  
 10 related to a lawful occupation. The term does not extend to occupational licensure  
 11 and does not include credentials that are prerequisites to working lawfully in an  
 12 occupation;
- 13 (3) "Lawful occupation," a course of conduct, a pursuit, or a profession, that includes  
 14 the sale of goods or services that are not themselves illegal to sell, irrespective of  
 15 whether the person selling the goods or services is subject to an occupational  
 16 regulation;
- 17 (4) "Private certification," a voluntary program in which a private organization grants  
 18 nontransferable recognition to a person who evidences qualifications and meets  
 19 standards relevant to performing the occupation, as determined by the private  
 20 organization;
- 21 (5) "Occupational licensure," a nontransferable legal authorization for a person to  
 22 engage in a lawful occupation, for compensation, based on the person evidencing  
 23 the qualifications established by law;
- 24 (6) "Occupational regulation," a rule, practice, or policy, that allows a person to use  
 25 an occupational title or to work in a lawful occupation. The term includes  
 26 registration, certification, and occupational licensure but not a business license,

1 facility license, building permit, or a zoning and land use regulation, except to the  
2 extent that state law regulates a person's qualifications to perform a lawful  
3 occupation;

4 (7) "Personal qualifications," the criteria related to a person's background and  
5 characteristics. The term includes the completion of an approved educational  
6 program, satisfactory performance on an examination, work experience, an  
7 apprenticeship, other evidence of having attained requisite knowledge and skills,  
8 passing a review of the person's criminal record, and the completion of continuing  
9 education; and

10 (8) "Registration," a process by which a person provides to this state information that  
11 includes the person's name and address, the person's agent for service of process,  
12 a description of the service that the person intends to provide, and the location at  
13 which the service is to be performed, if:

14 (a) Registration does not include personal qualifications;

15 (b) Registration is not transferable;

16 (c) Registration may require a bond or insurance;

17 (d) Only a person who has engaged in registration may use the title registered;

18 (e) A person who has not engaged in registration may not perform the  
19 occupation for compensation;

20 (f) Registration does not mean occupational licensure; and

21 (g) Registration does not include credentials that are prerequisites to working  
22 lawfully in an occupation.

23 **Section 2.** That a NEW SECTION be added:

24 **36-39-2. Department of Labor and Regulation--Review of occupational**  
25 **regulation.**

26 Before an agency may be authorized to regulate entry into an occupation and  
27 before an agency's regulation of entry into an occupation may be modified, the  
28 Department of Labor and Regulation shall conduct a review to ensure that the regulation  
29 or modification being proposed is the least restrictive option for ensuring that consumers  
30 are protected from present, significant, and substantiated harms. The department may  
31 require that proponents submit to the department evidence of present, significant, and  
32 substantiated harms to consumers in the state, and may request information from state  
33 agencies that contract with persons in regulated occupations and from others who are



1 knowledgeable about the occupation, labor-market economics, and other factors including  
2 costs and benefits.

3 For purposes of this chapter, the rank order of options for ensuring consumer  
4 protection, from the least restrictive to the most restrictive, are as follows:

5 (1) Market competition;

6 (2) Third-party or consumer-created ratings and reviews;

7 (3) Private certification;

8 (4) Voluntary bonding or insurance;

9 (5) Specific private civil cause of action to remedy consumer harm;

10 (6) Deceptive trade practices act;

11 (7) Mandatory disclosure regarding attributes of the specific good or service;

12 (8) Regulation regarding the process of providing the specific good or service;

13 (9) Regulation of the facility in which the specific good or service is sold;

14 (10) Inspection;

15 (11) Bonding;

16 (12) Insurance;

17 (13) Registration;

18 (14) Certification;

19 (15) Specialty occupational certification solely for medical reimbursement; and

20 (16) Occupational licensure.

21 **Section 3.** That a NEW SECTION be added:

22 **36-39-3. Review of occupational regulation--Scope--Recommendations--**  
23 **Report.**

24 In conducting the review required by § 36-16-02, the Department of Labor and  
25 Regulation shall presume that consumers are sufficiently protected by market competition  
26 and by private remedies. The department shall consider the existence of private  
27 certification programs that allow consumers to obtain information about a provider's  
28 knowledge and skills.

29 The presumption set forth in this section is rebuttable if the department  
30 determines, through the use of credible, empirical evidence that significant and  
31 substantiated harm to consumers is occurring and determines that consumers do not have  
32 the information or the means to protect themselves against such harm.

1           If the department finds evidence of such harm, the department shall recommend  
2 the least restrictive option for occupational regulation in order to address the harm. The  
3 department shall use the following guidelines in forming a recommendation:

4       (1) If the department determines that the harm arises from contractual disputes,  
5 including pricing disputes, the department shall consider recommending the  
6 enactment of a specific civil cause of action to remedy the consumer harm and  
7 may also recommend providing for the reimbursement of attorney's fees and court  
8 costs;

9       (2) If the department determines that the harm arises from fraud, the department  
10 shall consider recommending that the state's deceptive trade practices act, as set  
11 forth in chapter 37-24, be amended or that additional provisions be instituted to  
12 reduce the dissemination of misleading information regarding the attributes of a  
13 specific good or service;

14       (3) If the department determines that the harm involves health or safety, the  
15 department shall consider recommending regulation of the production or service  
16 process, or licensure of a facility;

17       (4) If the department determines that the harm arises from unclean facilities, the  
18 department shall consider recommending periodic facility inspections;

19       (5) If the department determines that the harm arises from a provider's failure to  
20 complete a contract or to meet the terms of a contract, the department shall  
21 consider recommending that the provider be bonded;

22       (6) If the department determines that the harm arises from a lack of protection for a  
23 person who is not a party to a contract that is entered into by a provider and a  
24 consumer, the department shall consider recommending that the provider be  
25 insured;

26       (7) If the department determines that the harm arises from transactions with  
27 transient, out-of-state, or fly-by-night providers, the department shall consider  
28 recommending a registration procedure for the provider;

29       (8) If the department determines that the harm arises from a shortfall or imbalance in  
30 the consumer's knowledge about the good or service relative to the provider's  
31 knowledge, the department shall consider recommending certification;

32       (9) If the department determines that the harm arises from an inability to qualify  
33 providers of new or highly-specialized medical services for reimbursement by the  
34 state, the department shall consider recommending the enactment of a specialty  
35 occupational certification solely for the purpose of medical reimbursement, which:

1           (a) Means a nontransferable legal authorization for a person to qualify for  
 2           payment or reimbursement from a governmental agency for the  
 3           nonexclusive provision of new or niche-medical services, based on the  
 4           person meeting personal qualifications established in law; and

5           (b) May be recognized by a private health insurance company or other private  
 6           company;

7           (10) If the department determines that the harm arises from a systematic shortage of  
 8           information necessary for a reasonable consumer to distinguish between the  
 9           quality of providers, and if the department determines that there is an absence of  
 10           institutions able and willing to provide guidance to consumers, the department  
 11           shall consider recommending occupational licensure; and

12           (11) If the department determines that there are multiple types of harm, the  
 13           department shall consider recommending a combination of responses.

14           The department shall include information regarding the potential impact of each  
 15           recommendation made under this section on opportunities for workers, consumer choice  
 16           and costs, general employment, market competition, and governmental costs, and  
 17           information regarding the manner in which other states regulate the occupation.

18           The department shall report its findings and recommendations to the Executive  
 19           Board of the Legislative Research Council, at the time and in the manner requested by the  
 20           board.

21   **Section 4.** That a NEW SECTION be added:

22           **36-39-4. Department of Labor and Regulation--Review of existing**  
 23           **occupational regulation.**

24           On or about May first of each year, the Executive Board of the Legislative Research  
 25           Council shall designate various occupations to be reviewed and analyzed by the  
 26           Department of Labor and Regulation, with respect to the manner in which admissions into  
 27           the occupations are regulated. The department shall consider:

28           (1) The justification for occupational licensure;

29           (2) Less restrictive alternatives to occupational licensure;

30           (3) Personal qualifications necessary for occupational licensure; and

31           (5) The scope of practice.

32           The department shall provide its findings and recommendations to the board on or  
 33           about December first of each year.

1 **Section 5.** That a NEW SECTION be added:

2 **36-39-5. Review of Criminal Record--Exclusions.**

3 No agency may automatically bar a person from obtaining or retaining an  
 4 occupational license, certification, or registration, because of a criminal conviction. The  
 5 agency shall provide personalized consideration for each application and in so-doing may  
 6 consider only a conviction of a crime that is a felony or a violent misdemeanor and that is  
 7 not excluded by this section.

8 In reviewing the application for an occupational license, certification, or  
 9 registration, submitted by a person having a criminal conviction, an agency may not  
 10 consider:

11 (1) Nonconviction information from the criminal justice system, including information  
 12 related to a deferred adjudication, participation in a diversion program, or an arrest  
 13 not followed by a conviction;

14 (2) A conviction for which no sentence of incarceration may be imposed;

15 (3) A conviction that has been sealed, dismissed, expunged, or pardoned;

16 (4) A juvenile adjudication;

17 (5) A nonviolent misdemeanor; or

18 (6) A conviction that occurred more than three years before the date of the agency's  
 19 consideration, unless the conviction pertained to a felony crime of violence, a felony  
 20 related to a criminal sexual act, or a felony related to criminal fraud or  
 21 embezzlement.

22 **Section 6.** That a NEW SECTION be added:

23 **36-39-6. Review of criminal record--Permissible considerations.**

24 In reviewing the application for an occupational license, certification, or  
 25 registration, submitted by a person having a criminal conviction, an agency may consider:

26 (1) The age of the person at the time the person committed the offense;

27 (2) The length of time since the offense;

28 (3) The completion of the criminal sentence;

29 (4) The attainment of a certificate of rehabilitation or good conduct;

30 (5) The completion of, or active participation in, rehabilitative drug or alcohol  
 31 treatment;

32 (6) A testimonial or recommendation, including a progress report, from the person's  
 33 probation or parole officer;

1 (7) Evidence of rehabilitation;

2 (8) Education and training;

3 (9) Employment history;

4 (10) Employment aspirations;

5 (11) The person's current family responsibilities; and

6 (12) Any other relevant information submitted by the person.

7 An agency may deny, revoke, suspend, or limit a person's state recognition only if  
 8 the agency determines that the state's interest in regulating a lawful occupation would be  
 9 directly, substantially, and adversely impaired by the person's nonexcluded criminal  
 10 record, as mitigated by the person's current circumstances.

11 **Section 7.** That a NEW SECTION be added:

12 **36-39-7. Petition--Advisory determination--Personal Qualifications.**

13 A person with a criminal record may, at any time, including before the person  
 14 obtains any required personal qualifications, petition an agency for an advisory  
 15 determination regarding the person's ability to receive state recognition in light of the  
 16 person's criminal record. A petition under this section must include the person's criminal  
 17 record or an authorization for the agency to obtain the person's criminal record.

18 The agency's determination shall be based on the criteria set forth in § 36-16-06  
 19 and issued no later than sixty days after the agency receives the petition. If the agency  
 20 determines that the person is eligible to receive state recognition or that the person is  
 21 eligible to receive state recognition under certain prescribed conditions, the determination  
 22 is binding on the agency, unless there is a relevant, material, and adverse change in the  
 23 person's criminal record.

24 If the agency determines that the person does not meet the requirements for state  
 25 recognition, the agency may advise the person of actions that the person may take to  
 26 remedy the disqualification. Upon taking the actions, the person may petition the agency  
 27 for a re-determination.

28 An agency may charge a fee in an amount not exceeding one hundred dollars for  
 29 an initial advisory determination under this section.

30 **Section 8.** That a NEW SECTION be added:

31 **36-39-8. Annual report--Compilation--Publication.**

32 Each agency that provides for the issuance of an occupational license, certification,  
 33 or registration shall provide an annual report to the Department of Labor and Regulation

1 at the time and in the manner directed by the department. The agency shall include in the  
2 report:

3 (1) The number of times that the agency denied, suspended, or revoked a state  
4 recognition because of a criminal conviction;

5 (2) The nature of the criminal offense that resulted in the denial, suspension, or  
6 revocation; and

7 (3) The number of persons who petitioned the agency under § 36-16-07 for an  
8 advisory determination and the agency's response.

9 The department shall annually compile and publish the information on the  
10 searchable internet website provided for by § 1-27-45.