



Board of Funeral Service

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

Phone: (605) 642-1600 E-Mail: proflic@rushmore.com
Home Page: funeralboard.sd.gov

DRAFT TELECONFERENCE BOARD MEETING AGENDA

TO: Board Members

FROM: Carol Tellinghuisen, Executive Secretary

DATE: February 18, 2020

MEETING DATE: March 3, 2020

MEETING TIME: 4:00 PM CST / 3:00 PM MST

MEETING LOCATION: Teleconference with public access at:
Board Office
629 Main
Spearfish, SD
605-642-1600

Persons interested in joining the meeting may do so by appearing in person for the conference call at the location listed above or by calling 605-642-1600 by March 2, 2020 to arrange for a dial in number for the teleconference.

Agenda Item Number:

1. Call to Order/Welcome and Introductions-Barns
2. Roll Call-Barns
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public Testimony/Public Comment Period at 3:05 p.m. MST-5 minutes for the public to address the Board
6. Approval of the minutes from November 12, 2019
7. FY Financial Update
8. Inspection Update
9. Renewal Update
10. Update on SDFDA Apprenticeship Grant
11. Executive Session-Pursuant to SDCL 1-25-2
 - a. Complaints/Investigations
 - b. Executive Secretary Contract

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SD Board of Funeral Service
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March 3, 2020

12. Legislative Update
13. Schedule next meeting
14. Any other business coming in between date of mailing and date of meeting
15. Adjourn



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DRAFT OFFICIAL BOARD MINUTES FOR November 12, 2019 TELECONFERENCE BOARD MEETING

Members Present: Stuart W. Barns, President
D. Scott Isburg, Vice-President
Randy Brennick, Secretary-Treasurer
James Jones, Member (joined at 3:13PM)
Tony Farnen, Lay Member
Mariah Pokorny, Dept. of Health (Non-voting member)

Members Absent: Chad Osthus, Member

Others Present: Carol Tellinghuisen, Executive Secretary
Jill Lesselyoung, Executive Assistant
John Strohman, Office of the Attorney General

Call to Order/Welcome and Introductions: President Barns called the meeting to order at 3:01 PM MT.

Roll Call: Barns asked Lesselyoung to call the roll. Barns, yes; Isburg, yes; Brennick, yes; Farnen, yes; Pokorny, yes; A quorum was present. Barns thanked David Volk, lay member for his years of service to the Board.

Corrections or additions to the agenda: None

Approval of the agenda: Farnen made a motion to approve the agenda. Isburg seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Isburg, yes; Brennick, yes; Farnen, yes.

Public Comment: Barns called for any comments from the public. There were no public comments.

Approval of the minutes from May 8, 2019: Isburg made a motion to approve the minutes from May 8, 2019. Farnen seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Isburg, yes; Brennick, yes; Farnen, yes.

**South Dakota Board of Funeral Service
Board Meeting Minutes-November 12, 2019**

FY Financial Update: Lesselyoung reported fiscal year-end figures as of June 29, 2019: revenue of \$71,585.24; expenditures of \$76,667.09 and cash balance of \$111,414.33 and year to date figures as of September 30, 2019: revenue of \$10,757.72, expenditures of \$21,618.69 and cash balance of \$100,553.36. Farmen made a motion to accept the financials as presented. Isburg seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Isburg, yes; Brennick, yes; Farmen, yes.

Inspection Update: Lesselyoung advised Sogn had reported there are two homes remaining for inspection which he plans to inspect next week.

ICFSEB Annual Conference February 19-20, 2020-Palm Coast, FL.: Isburg made a motion to send two people, Board members, legal counsel or office staff. Jones seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Isburg, yes; Brennick, yes; Farmen, yes; Jones, yes. Strohman has attended in the past and may be interested if it works for him.

FYI-Labor Department Awarding Youth Apprenticeship Funds: The DOL is awarding four contracts up to \$50,000 each for the Pathway Partnership Initiative. Barns advised the association has made application for the funds and there is no further action needed by the Board.

Executive Session-Pursuant to SDCL 1-25-2: Farmen made a motion to enter executive session at 3:20 PM MT. Isburg seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Isburg, yes; Brennick, yes; Farmen, yes; Jones, yes. Isburg exited the meeting. Farmen made a motion to exit session at 3:51PM MT. **MOTION PASSED** by roll call vote. Barns, yes; Brennick, yes; Farmen, yes; Jones, yes.

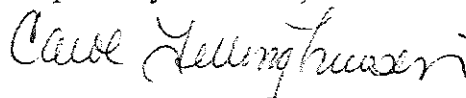
Complaints/Investigations: None pending.

Inspector for Funeral Homes and Crematories 2020: Farmen made a motion to contract with Daryl Isburg for the annual inspections of funeral homes and crematories for calendar year 2020. Jones seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Brennick, yes; Farmen, yes; Jones, yes.

Any other business coming in between date of mailing and date of meeting: There was no other business. The next meeting date is set for March 3, 2020 at 3:00MT/4:00CT via teleconference.

Farmen made a motion to adjourn at 3:58PM MT. Jones seconded the motion. **MOTION PASSED** by roll call vote. Barns, yes; Brennick, yes; Farmen, yes; Jones, yes.

Respectfully submitted,



Carol Tellinghuisen
Executive Secretary

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

AGENCY BUDGET UNIT	09 09204	HEALTH BOARD OF FUNERAL SERVICE				
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO	6503					
COMPANY NAME			PROFESSIONAL & LICENSING BOARDS			
092040061812	6503	4293955	FUNERAL LICENSE FEE	50.00	70,085.00	
ACCT: 4293			BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	50.00	70,085.00	*
ACCT: 42			LICENSES, PERMITS & FEES	50.00	70,085.00	**
092040061812	6503	4920045	NONOPERATING REVENUES	.00	1,500.24	
ACCT: 4920			NONOPERATING REVENUE	.00	1,500.24	*
ACCT: 49			OTHER REVENUE	.00	1,500.24	**
CNTR: 092040061812				50.00	71,585.24	***
CNTR: 092040061				50.00	71,585.24	****
CNTR: 0920400				50.00	71,585.24	*****
COMP: 6503				50.00	71,585.24	*****
B UNIT: 09204				50.00	71,585.24	*****

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

AGENCY BUDGET CENTER	UNIT	COMP	HEALTH BOARD OF FUNERAL SERVICE	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
092040061812	09204	6503	BOARD OF FUNERAL SERVICE	BOARD & COMM MERS FEES	.00	420.00	
COMPANY NO 6503 PROFESSIONAL & LICENSING BOARDS							
092040061812	09204	6503	EMPLOYEE SALARIES	OAS-EMPLOYER'S SHARE	.00	420.00	*
ACCT: 5101 EMPLOYEE SALARIES							
092040061812	09204	6503	EMPLOYEE BENEFITS	PERSONAL SERVICES	3.67	35.80	*
ACCT: 5102 EMPLOYEE BENEFITS PERSONAL SERVICES							
092040061812	6503	520303000000000000	AUTO-PRIV (IN-ST) H/RTE		903.42	903.42	
092040061812	6503	520310000000000000	LODGING/IN-STATE		125.76	125.76	
092040061812	6503	520314000000000000	TAXABLE MEALS/IN-STATE		48.00	48.00	
092040061812	6503	520315000000000000	NON-TAXABLE MEALS/IN-ST		69.00	69.00	
092040061812	6503	520326000000000000	AIR-COMM-OUT-OF-STATE		.00	719.00	
092040061812	6503	520328000000000000	OTHER-PUBLIC-OUT-OF-STATE		.00	19.95	
092040061812	6503	520330000000000000	LODGING/OUT-OF-STATE		.00	571.38	
092040061812	6503	520332000000000000	INCIDENTALS-OUT-OF-STATE		.00	100.00	
092040061812	6503	520335000000000000	NON-TAXABLE MEALS/OUT-ST		.00	142.00	
ACCT: 5203 TRAVEL							
092040061812	6503	520402000000000000	DUES & MEMBERSHIP FEES		1,146.18	2,698.51	*
092040061812	6503	520409000000000000	MANAGEMENT CONSULTANT		.00	250.00	
092040061812	6503	520413000000000000	OTHER CONSULTING		171.78	53,035.57	
092040061812	6503	520416000000000000	WORKSHOP REGISTRATION FEE		1,036.45	16,010.33	
092040061812	6503	520418000000000000	COMPUTER SERVICES-STATE		.00	495.56	
092040061812	6503	520420000000000000	CENTRAL SERVICES		24.75	307.83	
092040061812	6503	520422000000000000	RECORDS MGMT SERVICES		.00	889.23	
092040061812	6503	520420700000000000	HUMAN RESOURCES SERVICES		.00	234.76	
092040061812	6503	520451000000000000	RENTS-OTHER		140.20	140.20	
092040061812	6503	520458000000000000	TRUCK-DRAYAGE & FREIGHT		.00	28.72	
092040061812	6503	520459000000000000	INS PREMIUMS & SURETY BDS		.00	45.05	
ACCT: 5204 CONTRACTUAL SERVICES							
092040061812	6503	520502000000000000	OFFICE SUPPLIES		1,373.18	72,877.25	*
092040061812	6503	520531000000000000	PRINTING-STATE		.00	32.00	
092040061812	6503	520532000000000000	PRINTING-COMMERCIAL		.00	244.56	
092040061812	6503	520535000000000000	POSTAGE		76.13	113.07	
ACCT: 5205 SUPPLIES & MATERIALS							
092040061812	6503	520535000000000000	OPERATING EXPENSES		76.13	635.53	*
ACCT: 52							
092040061812	6503	6503	PROFESSIONAL & LICENSING BOARDS		2,599.16	76,667.09	***
COMP: 6503 PROFESSIONAL & LICENSING BOARDS							
CENTER: 092040061812							
B UNIT: 09204							

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STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 06/30/2019

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AGENCY: 09 HEALTH
BUDGET UNIT: 09204 BOARD OF FUNERAL SERVICE

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061812	1140000	111,414.33	DR	BOARD OF FUNERAL SERVICES
COMPANY/SOURCE TOTAL 6503 618			111,414.33	DR *	
COMP/BUDG UNIT TOTAL 6503 09204			111,414.33	DR **	
BUDGET UNIT TOTAL 09204			111,414.33	DR ***	

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

AGENCY	09	HEALTH						
BUDGET UNIT	09204	BOARD OF FUNERAL SERVICE						
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE			
	COMPANY NO	6503						
	COMPANY NAME	PROFESSIONAL & LICENSING BOARDS						
092040061812	6503	4293955	FUNERAL LICENSE FEE	5,660.00	66,630.00			
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	5,660.00	66,630.00	*		
ACCT:	42		LICENSES, PERMITS & FEES	5,660.00	66,630.00	**		
092040061812	6503	4920045	NONOPERATING REVENUES	.00	2,557.72			
ACCT:	4920		NONOPERATING REVENUE	.00	2,557.72	*		
ACCT:	49		OTHER REVENUE	.00	2,557.72	**		
CNTR:	092040061812			5,660.00	69,187.72	***		
CNTR:	092040061			5,660.00	69,187.72	****		
CNTR:	0920400			5,660.00	69,187.72	*****		
COMP:	6503			5,660.00	69,187.72	*****		
B UNIT:	09204			5,660.00	69,187.72	*****		

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

AGENCY BUDGET CENTER	UNIT	HEALTH BOARD OF FUNERAL SERVICE	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE	
09	09204	09204	BOARD OF FUNERAL SERVICE			
092040061812	6503	510103000000000000	BOARD & COMM MBR'S FEES	.00	360.00	*
ACCT: 5101			EMPLOYEE SALARIES	.00	360.00	*
092040061812	6503	510201000000000000	OASI-EMPLOYER'S SHARE	.00	28.61	*
ACCT: 5102			EMPLOYEE BENEFITS	.00	28.61	*
092040061812	6503	520303000000000000	AUTO-PRIV (IN-ST) H/RTE	.00	96.60	*
ACCT: 51			PERSONAL SERVICES	.00	272.42	**
092040061812	6503	520313000000000000	NON-EMPLOY. TRAVEL-IN ST.	.00	14.00	**
092040061812	6503	520314000000000000	TAXABLE MEALS/IN-STATE	.00	14.00	**
ACCT: 5203			TRAVEL	.00	383.02	*
092040061812	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00	250.00	*
092040061812	6503	520409000000000000	MANAGEMENT CONSULTANT	4,581.12	35,833.51	*
092040061812	6503	520413000000000000	OTHER CONSULTING	.00	6,218.75	*
092040061812	6503	520418000000000000	COMPUTER SERVICES-STATE	.00	144.00	*
092040061812	6503	520420000000000000	CENTRAL SERVICES	.00	513.22	*
092040061812	6503	520420400000000000	RECORDS MGMT SERVICES	70.55	203.92	*
092040061812	6503	520420700000000000	HUMAN RESOURCES SERVICES	.00	133.61	*
ACCT: 5204			CONTRACTUAL SERVICES	4,651.67	43,297.01	*
092040061812	6503	520502000000000000	OFFICE SUPPLIES	.00	22.90	*
092040061812	6503	520531000000000000	PRINTING-STATE	.00	175.26	*
092040061812	6503	520535000000000000	POSTAGE	.00	70.92	*
ACCT: 5205			SUPPLIES & MATERIALS	.00	269.08	*
ACCT: 52			OPERATING EXPENSES	4,651.67	43,949.11	**
COMP: 6503			PROFESSIONAL & LICENSING BOARDS	4,651.67	44,337.72	***
CENTER: 092040061812				4,651.67	44,337.72	****
B UNIT: 09204				4,651.67	44,337.72	*****

AGENCY: 09 HEALTH
BUDGET UNIT: 09204 BOARD OF FUNERAL SERVICE

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061812	1140000	136,264.33	DR	BOARD OF FUNERAL SERVICES
COMPANY/SOURCE TOTAL 6503 618			136,264.33	DR *	
COMP/BUDG UNIT TOTAL 6503 09204			136,264.33	DR **	
BUDGET UNIT TOTAL 09204			136,264.33	DR ***	



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.