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REVISED FISCAL NOTE

(replaces fiscal note dated March 14, 2018)

Drafting Number: LLS 18-1074 Date: March 27, 2018
Prime Sponsors: Sen. Coram Bill Status: Senate Business
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Bill Topic: LIMIT STATE AGENCY OCCUPATIONAL REGULATIONS

- Summary of Fiscal Impact: State Revenue (potential reduction), TABOR Refund (potential reduction), State Expenditure, Local Government, State Transfer, Statutory Public Entity

This bill requires state agencies to review occupational regulations. It will increase state expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill requires an appropriation of \$2,658,227 to the Departments of Agriculture, Education, Human Services, Public Health and Environment, Regulatory Agencies, and Revenue.

Fiscal Note Status: The revised fiscal note reflects the introduced bill and has been updated to include additional information.

Table 1 State Fiscal Impacts under SB 18-193

Table with 3 columns: Category, FY 2018-19, FY 2019-20. Rows include Revenue, Expenditures (General Fund, Centrally Appropriated, Total), Total FTE, Transfers, and TABOR Refund.

## **Summary of Legislation**

The bill prohibits state agencies from imposing an occupational rule unless it is demonstrably necessary and narrowly tailored to achieve a specific, legitimate public health, safety, or welfare objective. Each state agency must conduct a comprehensive review and analysis of every occupational rule it has promulgated and determine whether each regulation should be repealed or amended. This comprehensive review and analysis must be conducted by July 1, 2019, followed by a report to the General Assembly by January 1, 2020, recommending statutory repeals or amendments where applicable.

As a result of this process, every rule promulgated by an agency must include:

- specific public health, safety, or welfare objectives of the rule;
- the reasons the rule is necessary to meet these specified objectives;
- the rule's impact on opportunities for employment, consumer choices and costs, market competition, governmental costs, and any other significant impact;
- a comparison of the rule to similar rules in other states; and
- if the occupational rule is required by statute, the specific statutory provisions authorizing or requiring the occupational rule.

The bill authorizes a person to file a petition with an agency to request a repeal, amendment, or cessation of the administration of an occupational rule. Within 90 days, the agency must repeal, amend, cease administration of, or issue a statement regarding the rule.

A person may also file a civil action in district court challenging an occupational rule, regardless of whether a petition is filed with the agency. If that person prevails, the court must enforce the rule change with the agency, and must award the plaintiff reasonable attorney fees and costs.

## **State Revenue**

Conditional upon a determination that an occupational rule is not necessary or narrowly tailored to achieve a specific, legitimate public health, safety, or welfare objective, the bill may reduce state cash fund revenue from related occupational fees. This amount has not been determined, and will be addressed during the annual fee setting and budget process. State revenue from fees is subject to TABOR.

## **State Expenditures**

This bill creates two significant expenditure increases for state agencies: rule review in FY 2018-19 and ongoing potential legal costs. The bill may also reduce expenditures in future years to the extent it results in the reduction of the number of occupations that are state regulated.

**Rule review by July 1, 2019.** Agencies that regulate or certify individuals for any aspect of their occupational practice will be required to perform a review of all related rules. The estimated number of occupational rules per agency and assumed FTE requirements are shown in Table 2.

**Assumptions.** The fiscal note assumes that each agency meeting a certain rule threshold will require Policy Advisor V positions in FY 2018-19 to meet the bill's July 1, 2019, deadline. Assuming that each rule will take at least 20 hours to review, the fiscal note has allocated approximately 1.0 FTE per 100 rules. The required report to the General Assembly will be accomplished within these new resources. The fiscal note assumes that these costs will be paid with General Fund and not passed on to licensees, due to the one-time nature of the comprehensive rule review required under the bill. The General Fund paydate shift is reflected, standard operating and capital outlay costs are included, and costs have been prorated for the effective date. If it is specified that licensees will cover the costs, the fiscal impact will include a revenue increase sufficient to cover expenditures.

**Table 2**  
**State Departments' Estimated Number of Occupational Rules Subject to SB 18-193**  
**and Policy Advisor FTE Allocation**

| Department                 | Individual Occupations Regulated   | No. of Rules | FTE Required    | Direct Cost        | Central Cost    |
|----------------------------|--|--------------|-----------------|--------------------|-----------------|
| <b>Agriculture</b>         | Animal protection agents, brand inspectors, pesticide applicators, and pet groomers                              | 74           | 0.4 FTE         | \$40,415           | \$14,906        |
| <b>Education</b>           | Educator licensing   | 145          | 0.8 FTE         | \$76,887           | \$12,668        |
| <b>Higher Education</b>    | Staff requirements for private occupational schools  | 9            | -               | -                  | -               |
| <b>Human Services</b>      | Child care staff requirements and state rules for county social services employees                               | 61           | 0.4 FTE         | \$40,415           | \$6,297         |
| <b>Judicial</b>            | Attorneys  | 9            | -               | -                  | -               |
| <b>Labor</b>               | Operators of amusement rides, conveyances, and   | 30           | -               | -                  | -               |
| <b>Law</b>                 | Payday lenders and debt collection agents  | 12           | -               | -                  | -               |
| <b>Public Health</b>       | Emergency medical technicians, body artists, tanning facility operators, and residential care facility employees | 46           | 0.4 FTE         | \$40,415           | \$9,688         |
| <b>Natural Resources</b>   | River outfitters, well construction contractors, and pump installer contractors                                  | 23           | -               | -                  | -               |
| <b>Regulatory Agencies</b> | Large majority of professions and occupations, real estate professionals, and insurance agents                   | 2,378        | 20.0 FTE        | \$2,306,226        | *               |
| <b>Revenue</b>             | Vehicle salespersons, and individual liquor, marijuana, and racing licensees                                     | 219          | 1.7 FTE         | \$153,869          | \$37,054        |
| <b>State</b>               | Notaries public, bingo-raffle licensees, and professional lobbyists  | 39           | -               | -                  | -               |
| <b>TOTALS</b>              |  | <b>3,045</b> | <b>23.7 FTE</b> | <b>\$2,658,227</b> | <b>\$80,613</b> |

\* Pursuant to LCS Fiscal Note common policies, centrally appropriated costs resulting from 20 FTE or more are included as direct costs.

**Legal costs.** The bill creates a cause of action against state agencies and does not allow the state to recoup attorney fees and costs. When litigation occurs, appropriations will be requested through the annual budget process by the relevant state agency and reappropriated to the Department of Law. The Department of Personnel and Administration may also request resources through the annual budget for the Risk Management Fund. These costs will be ongoing.

**Judicial Department.** This bill allows an individual, regardless of whether a petition is filed with the relevant state department, to file a civil action in district court challenging the promulgation or application of any occupational regulation. As a result, the bill may increase workload in the Judicial Department to hear challenges to state rules that would be otherwise unchallenged under current law. This increase in workload is not expected to require additional appropriations, but if additional appropriations are required, they will be requested through the annual budget process.

**Future cost reductions.** If the bill results in changes that limit state regulations over certain occupations, costs will be reduced. These have not been estimated and will be addressed during the annual budget process.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance, supplemental employee retirement payments, and, where applicable, indirect costs and leased space, are reflected in the last column of Table 2. DORA's centrally appropriated costs have been reflected as direct costs pursuant to the fiscal notes common policies for appropriations for 20 FTE or more.

### **Effective Date**

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

### **State Appropriations**

The bill will require a General Fund appropriation of \$2,658,227 and 23.7 FTE to the Departments of Agriculture, Education, Human Services, Public Health and Environment, Regulatory Agencies, and Revenue. Per agency amounts are shown in Table 2.

### **State and Local Government Contacts**

All State Agencies