

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 467

*An Act to amend and reenact § 54.1-100 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 54.1-310.1, relating to professions and occupations; standards for regulation.*

[H 499]

Approved March 25, 2016

**Be it enacted by the General Assembly of Virginia:**

**1. That § 54.1-100 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 54.1-310.1, as follows:**

**§ 54.1-100. Regulations of professions and occupations.**

The right of every person to engage in any lawful profession, trade, or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) *any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare.*

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;

2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;

3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and

4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

**§ 54.1-310.1. Petitions for regulation; review by Board; report.**

A. *Any professional or occupational group or organization, any person, or any other interested party that proposes the regulation of any unregulated professional or occupational group shall submit a request to the Board no later than December 1 of any year for analysis and evaluation during the following year.*

B. *The Board shall review the request only when filed with a statement of support for the proposed regulation signed by at least 10 members of the professional or occupational group for which regulation is being sought or at least 10 individuals who are not members of the professional or occupational group.*

C. *The request shall include, at a minimum, the following information:*

1. *A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in the Commonwealth, and an estimate of the number of practitioners in each group;*

2. *A definition of the problems to be solved by regulation and the reasons why regulation is necessary;*

3. *The reasons why registration, certification, licensure, or other type of regulation is being proposed and why that regulatory alternative was chosen;*

4. *The benefit to the public that would result from the proposed regulation;*

5. *The cost of the proposed regulation; and*

6. *A description of any anticipated disqualifications on an applicant for certification, licensure, or renewal and how such disqualifications serve public safety or commercial or consumer protection interests.*

D. *Upon receipt of a request submitted in accordance with the requirements of subsection C, the Board shall conduct an analysis and evaluation of any proposed regulation based on the criteria enumerated in § 54.1-311.*

E. *The Board may decline to conduct a review only if it:*

1. *Previously conducted an analysis and evaluation of the proposed regulation of the same professional or occupational group;*

2. *Issued a report not more than three years prior to the submission of the current proposal to regulate the same professional or occupational group; and*

3. *Finds that no new information has been submitted in the request that would cause the Board to alter or modify the recommendations made in its earlier report on the proposed regulation of the professional or occupational group.*

*F. The Board shall submit a report with its findings on whether the public interest requires the requested professional or occupational group be regulated to the House Committee on General Laws, the Senate Committee on General Laws and Technology, and the Joint Commission on Administrative Rules no later than November 1 of the year following the request submission.*