

## LEGISLATIVE BILL 299

Approved by the Governor April 23, 2018

Introduced by Ebke, 32; Brewer, 43; McCollister, 20; Wayne, 13; Watermeier, 1; Kolterman, 24; Stinner, 48; Lindstrom, 18; Briese, 41; Lowe, 37.

A BILL FOR AN ACT relating to professions and occupations; to amend section 84-910, Reissue Revised Statutes of Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative Supplement, 2016, and section 84-907.06, Revised Statutes Supplement, 2017; to adopt the Occupational Board Reform Act; to change provisions relating to certain rules and regulations; to harmonize provisions; to provide an operative date; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 16 of this act shall be known and may be cited as the Occupational Board Reform Act.

Sec. 2. For purposes of the Occupational Board Reform Act, the definitions in sections 3 to 12 of this act apply.

Sec. 3. Government certification means a nontransferable recognition granted to an individual by an occupational board through a voluntary program in which the individual meets personal qualifications established by the Legislature. Government certification allows the certified individual to use a designated title. For purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of certification in section 71-6206 applies.

Sec. 4. Lawful occupation means a course of conduct, a pursuit, or a profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Sec. 5. Least restrictive regulation means one of the following types of regulation, listed from least restrictive to most restrictive, consistent with the health, safety, and welfare of the public:

- (1) Market competition;
- (2) Third-party or consumer-created ratings and reviews;
- (3) Private certification;
- (4) Specific private civil cause of action to remedy consumer harm;
- (5) Deceptive trade practices under the Uniform Deceptive Trade Practices

Act;

- (6) Mandatory disclosure of attributes of the specific goods or services;
- (7) Regulation of the process of providing the specific goods or services

to consumers;

- (8) Inspection;
- (9) Bonding or insurance;
- (10) Registration;
- (11) Government certification; and
- (12) Occupational license.

Sec. 6. Occupational board means a board, commission, department, or other entity created by state law which regulates providers through occupational regulations.

Sec. 7. Occupational license means a nontransferable authorization in law (1) for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the Legislature and (2) which is required in order to legally perform the lawful occupation for compensation.

Sec. 8. (1) Occupational regulation means a statute, rule, regulation, practice, policy, or other state law requiring an individual to possess certain personal qualifications or to comply with registration requirements to use an occupational title or work in a lawful occupation.

(2) Occupational regulation includes any government certification, registration, and occupational license.

(3) Occupational regulation does not include (a) business licensure, facility licensure, building permit requirements, or zoning and land-use regulation except to the extent that the same state laws that require a business license, a facility license, a building permit, or zoning and land-use regulation also regulate an individual's personal qualifications to perform a lawful occupation or (b) an occupational license administered by the Supreme Court.

Sec. 9. Personal qualifications means criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

Sec. 10. Private certification means a nontransferable recognition granted to an individual by a private organization through a voluntary program in which the individual meets personal qualifications established by the private organization.

Sec. 11. Provider means an individual provider of goods or services engaged in a lawful occupation.

Sec. 12. (1) Registration means a nontransferable registration granted to an individual under which (a) the individual is required to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides, (b) upon receipt of the notice by the government, the individual may use the term registered as a designated title to engage in a lawful occupation, and (c) such notice is required to engage in the lawful occupation for compensation and is required in order to use the term registered as a designated title to engage in the lawful occupation.

(2) Registration may require a bond or insurance.

(3) For purposes of the Occupational Board Reform Act, in analyzing health professions which are subject to the Nebraska Regulation of Health Professions Act, the definition of registration in section 71-6217 applies.

Sec. 13. For purposes of the Occupational Board Reform Act:

(1) Government certification and registration are not synonymous with occupational license;

(2) Except as provided in section 3 of this act, when the terms certification and certified are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license; and

(3) Except as provided in section 12 of this act, when the terms registration and registered are used outside of the Occupational Board Reform Act to mean a requirement that an individual meet certain personal qualifications to work legally, those terms in that context shall be interpreted for purposes of the Occupational Board Reform Act as requiring an individual to meet the requirements for an occupational license.

Sec. 14. It is the policy of the State of Nebraska:

(1) To protect the fundamental right of an individual to pursue a lawful occupation;

(2) To use the least restrictive regulation which is necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest;

(3) To enforce an occupational regulation against an individual only to the extent that the individual sells goods or services that are included explicitly in the statutes that govern the occupation;

(4) To construe and apply occupational regulations to increase opportunities, promote competition, and encourage innovation;

(5) To use the least restrictive method of regulation as set out in section 71-6222 for lawful occupations subject to the Nebraska Regulation of Health Professions Act; and

(6) To provide ongoing legislative review of occupational regulations.

Sec. 15. (1) The fundamental right of an individual to pursue an occupation includes the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications.

(2)(a) An individual who has a criminal conviction may submit to the appropriate occupational board a preliminary application for an occupational license, government certification, or state recognition of the individual's personal qualifications for a determination as to whether the individual's criminal conviction would disqualify the individual from obtaining the occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board. The preliminary application may be submitted at any time, including prior to obtaining required education or paying any fee, other than the fee for the preliminary application under subsection (7) of this section.

(b) The individual may include with the preliminary application additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, and employment aspirations.

(3) Upon receipt of a preliminary application under subsection (2) of this section and a fee if required under subsection (7) of this section, the appropriate occupational board shall make a determination of whether the individual's criminal conviction would disqualify the individual from obtaining an occupational license, government certification, or state recognition of the individual's personal qualifications from that occupational board.

(4) The occupational board shall issue its determination in writing within ninety days after receiving a preliminary application under subsection (2) of this section. The determination shall include findings of fact and conclusions of law. If the occupational board determines that the individual's criminal conviction would disqualify the individual, the occupational board may advise the individual of any action the individual may take to remedy the disqualification. If the occupational board finds that the individual has been convicted of a subsequent criminal conviction, the occupational board may rescind a determination upon finding that the subsequent criminal conviction would be disqualifying under subsection (3) of this section.

(5) The individual may appeal the determination of the occupational board.

The appeal shall be in accordance with the Administrative Procedure Act.

(6) An individual shall not file another preliminary application under this section with the same occupational board within two years after the final decision on the previous preliminary application, except that if the individual has taken action to remedy the disqualification as advised by the occupational board, the individual may file another preliminary application under this section with the same occupational board six months after the final decision on the previous preliminary application.

(7) An occupational board may charge a fee not to exceed one hundred dollars for each preliminary application filed pursuant to this section. The fee is intended to offset the administrative costs incurred under this section.

Sec. 16. (1) Beginning in 2019, each standing committee of the Legislature shall annually review and analyze approximately twenty percent of the occupational regulations within the jurisdiction of the committee and prepare and submit an annual report electronically to the Clerk of the Legislature by December 15 of each year as provided in this section. Each committee shall complete this process for all occupational regulations within its jurisdiction within five years and every five years thereafter. Each report shall include the committee's recommendations regarding whether the occupational regulations should be terminated, continued, or modified.

(2) Each committee may require the submission of information by the affected occupational board and other affected or interested parties.

(3) A committee's report shall include, but not be limited to, the following:

(a) The title of the regulated occupation and the name of the occupational board responsible for enforcement of the occupational regulations;

(b) The statutory citation or other authorization for the creation of the occupational regulations and occupational board;

(c) The number of members of the occupational board and how the members are appointed;

(d) The qualifications for membership on the occupational board;

(e) The number of times the occupational board is required to meet during the year and the number of times it actually met;

(f) Annual budget information for the occupational board for the five most recently completed fiscal years;

(g) For the immediately preceding five calendar years, or for the period of time less than five years for which the information is practically available, the number of government certifications, occupational licenses, and registrations the occupational board has issued, revoked, denied, or assessed penalties against, listed anonymously and separately per type of credential, and the reasons for such revocations, denials, and other penalties;

(h) A review of the basic assumptions underlying the creation of the occupational regulations;

(i) A statement from the occupational board on the effectiveness of the occupational regulations; and

(j) A comparison of whether and how other states regulate the occupation.

(4) Subject to subsection (5) of this section, each committee shall also analyze, and include in its report, whether the occupational regulations meet the policies stated in section 14 of this act considering the following recommended courses of action for meeting such policies:

(a) If the need is to protect consumers against fraud, the likely recommendation will be to strengthen powers under the Uniform Deceptive Trade Practices Act or require disclosures that will reduce misleading attributes of the specific goods or services;

(b) If the need is to protect consumers against unclean facilities or to promote general health and safety, the likely recommendation will be to require periodic inspections of such facilities;

(c) If the need is to protect consumers against potential damages from failure by providers to complete a contract fully or up to standards, the likely recommendation will be to require that providers be bonded;

(d) If the need is to protect a person who is not party to a contract between the provider and consumer, the likely recommendation will be to require that the provider have insurance;

(e) If the need is to protect consumers against potential damages by transient providers, the likely recommendation will be to require that providers register their businesses with the Secretary of State;

(f) If the need is to protect consumers against a shortfall or imbalance of knowledge about the goods or services relative to the providers' knowledge, the likely recommendation will be to enact government certification; and

(g) If the need is to address a systematic information shortfall such that a reasonable consumer is unable to distinguish between the quality of providers, there is an absence of institutions that provide adequate guidance to the consumer, and the consumer's inability to distinguish between providers and the lack of adequate guidance allows for undue risk of present, significant, and substantiated harms, the likely recommendation will be to enact an occupational license.

(5) If a lawful occupation is subject to the Nebraska Regulation of Health Professions Act, the analysis under subsection (4) of this section shall be made using the least restrictive method of regulation as set out in section 71-6222.

(6) In developing recommendations under this section, the committee shall review any report issued to the Legislature pursuant to the Nebraska Regulation of Health Professions Act, if applicable, and consider any findings or

recommendations of such report related to the occupational regulations under review.

(7) If the committee finds that it is necessary to change occupational regulations, the committee shall recommend the least restrictive regulation consistent with the public interest and the policies in this section and section 14 of this act.

Sec. 17. Section 84-901.02, Revised Statutes Cumulative Supplement, 2016, is amended to read:

84-901.02 The Legislature finds that:

(1) The regulatory authority given to agencies has a significant impact on the people of the state;

(2) When agencies create substantive standards by which Nebraskans are expected to abide, it is essential that those standards be adopted through the rules and regulations process to enable the public to be aware of the standards and have an opportunity to participate in the approval or repeal process; ~~and~~

(3) Agencies should be encouraged to advise the public of current opinions, interpretations, approaches, and likely courses of action by means of guidance documents; ~~and -~~

(4) Oversight of the regulatory authority over occupations and professions given to agencies is required to ensure respect for the fundamental right of an individual to pursue an occupation.

Sec. 18. Section 84-907.06, Revised Statutes Supplement, 2017, is amended to read:

84-907.06 Whenever an agency proposes to adopt, amend, or repeal a rule or regulation, the agency shall (1) at least thirty days before the public hearing, when notice of a proposed rule or regulation is sent out, or (2) at the same time the agency requests approval from the Governor for an emergency rule or regulation under section 84-901.04, ~~the agency shall~~ send to the Executive Board of the Legislative Council for purposes of section 84-907.07 if applicable, to the Executive Board of the Legislative Council to be forwarded to the relevant standing committee of the Legislature for purposes of the Occupational Board Reform Act if applicable, and to the Secretary of State to be made available to the public by means which include, but are not limited to, publication on the Secretary of State's web site, if applicable, the following information: A (a) a copy of the hearing notice required by section 84-907. ~~(b)~~ a draft copy of the rule or regulation; ~~(c)~~ and ~~(e)~~ the information provided to the Governor pursuant to section 84-907.09.

Sec. 19. Section 84-910, Reissue Revised Statutes of Nebraska, is amended to read:

84-910 (1) On or before July 1 of each year, each agency shall notify the Legislative Performance Audit Committee of the status of all rules and regulations pending before the agency which have not been adopted and promulgated. If an additional appropriation was made with respect to legislation enacted to provide funding for or additional staff to implement a program for which rules and regulations are required to be adopted, the notification shall include what the funding has been used for and what functions the staff have been performing while such rules and regulations are pending. The format of the notification shall be established by the committee no later than June 1, 2011, and shall be updated periodically thereafter.

(2) On or before July 1 of each year, each agency shall, for purposes of the Occupational Board Reform Act, notify the Executive Board of the Legislative Council of the status of all rules and regulations pending before the agency which have not been adopted and promulgated. The executive board shall forward any notification received pursuant to this subsection to the standing committee of the Legislature with jurisdiction over the rules and regulations.

Sec. 20. Section 84-920, Revised Statutes Cumulative Supplement, 2016, is amended to read:

84-920 Sections 84-901 to 84-920 and the Occupational Board Reform Act shall be known and may be cited as the Administrative Procedure Act.

Sec. 21. This act becomes operative on July 1, 2019.

Sec. 22. Original section 84-910, Reissue Revised Statutes of Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative Supplement, 2016, and section 84-907.06, Revised Statutes Supplement, 2017, are repealed.