

Occupational Rule Defense Act

November 1, 2017

Section 100.01 **Defense.**

Subdivision 1. This act establishes a defense against the enforcement of occupational rules, policies and practices.

Subd. 2. In an administrative or judicial proceeding, an individual may assert this defense against enforcement of a rule, policy or practice promulgated or created by a state agency or occupational licensing board.

Subd. 3. An individual who asserts a defense under this section has the initial burden of proving by clear and convincing evidence that a rule, policy or practice substantially burdens the individual's right to pursue a lawful occupation.

Subd. 4. If the individual meets the burden of proof in subdivision 3, the government must demonstrate by clear and convincing evidence that (1) it has an important interest in protecting against present and recognizable harm to public health or safety, and (2) the rule, policy or practice is substantially related to and the least restrictive regulation required to further the government's interest.

Section 100.02 **Definitions.**

Subdivision 1. "Lawful occupation" means a course of conduct, pursuit or 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.

Subd. 2. "Least restrictive regulation" means, from least to most restrictive,

1. Market competition,
2. Third-party or consumer-created ratings and reviews,
3. Private certification,
4. Voluntary bonding or insurance,
5. Specific private civil cause of action to remedy consumer harm,
6. Deceptive trade practice act,
7. Mandatory disclosure of attributes of the specific good or service,
8. Regulation of the process of providing the specific good or service,
9. Inspection,
10. Bonding,
11. Insurance,
12. Registration,
13. Government certification,
14. Specialty occupational license for medical reimbursement, and
15. Occupational license.

Subd. 3. “Substantial burden” means a requirement in an occupational regulation that imposes significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation. A substantial burden is a burden that is more than incidental.

Section 100.03 **Limits.**

Subdivision 1. Nothing in this chapter shall be construed (1) to create a cause of action against the government or a private party, or (2) to require the government or a private party to contract with an individual who is not licensed, certified or registered with the government.

Subd. 2. This chapter does not apply to an individual who is a government employee or is required to be licensed under state law for the purpose of meeting federal law.

Section 100.04 **Canons of Interpretation of Occupational Regulations.**¹

Subdivision 1. In construing occupational regulations, including an occupational licensing statute, rule, policy or practice, the following canons of interpretation are to govern, unless the regulation is unambiguous:

1. Occupational regulations shall be construed and applied to increase economic opportunities, promote competition and encourage innovation;
2. Any ambiguities in occupational regulations shall be construed in favor of workers and aspiring workers to work; and
3. The scope of practice in occupational regulations shall be construed narrowly so as to avoid its application to individuals who would be burdened by regulatory requirements that are only partially related to the goods and services they provide.

¹ Section 100.04 is optional. It can be included or excluded from the rest of this model legislation. Alternatively, section 100.04 by itself can be a standalone bill.