

# Occupational Regulation Defense Act

October 23, 2018

## Section 100.01 **Defense.**

Subdivision 1. This act establishes a defense against the enforcement of any occupational license, rule, policy or practice (hereafter, “occupational regulation”).

Subd. 2. An individual may assert this defense against enforcement of an occupational regulation in an administrative or judicial proceeding.

Subd. 3. An individual who asserts this defense has the initial burden of proving by clear and convincing evidence that an occupational regulation 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 occupational regulation 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. Government 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 **Limitations.** Nothing in this chapter shall be construed to:

- (1) create a cause of action against a government or a private party,
- (2) require the government or a private party to contract with an individual who is not licensed by the government, does not hold a government certification, or is not registered with the government,
- (3) apply to an individual who is a government employee,
- (4) apply to an individual who is required to be licensed under state law for the purpose of meeting federal law; or
- (5) require a private certification organization to grant or deny private certification to any individual.

Section 100.04 **Canons of Interpretation of Occupational Regulations.**<sup>1</sup> In construing any governmental regulation of occupations, 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 will be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
- (2) any ambiguities in occupational regulations will be construed in favor of workers and aspiring workers to work; and
- (3) the scope of practice in occupational regulations is to be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.

For more information, please contact the Institute for Justice.

Meagan Forbes  
Director of Legislation and Senior Legislative Counsel  
mforbes@ij.org

---

<sup>1</sup> 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.