

The Occupational Licensing Relief and Job Creation Act

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100.01 Purpose. Individuals possess the fundamental right to engage in the occupation of their choice free from unreasonable government regulation. Barriers to entry, like occupational licenses, make it difficult for individuals to provide for themselves and their families, to innovate, and to create employment opportunities. To encourage the creation of new jobs and support economic development, this act recognizes this fundamental right to engage in an occupation, limits occupational regulations to the protection of public health and safety, and provides a mechanism by which unreasonable occupational regulations may be challenged.

100.02 Definitions.

Subdivision 1. **Scope.** For the purposes of this act, the words defined in this section have the following meanings.

Subd. 2. **Certification.** “Certification” is a voluntary program in which the government grants nontransferable recognition to an individual based on meeting certain personal qualifications. Upon approval, the individual may use “certified” as a designated title or as part of a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title “certified.” The term certification is not synonymous with an “occupational license” in this act. The term certification does not refer to or prohibit the use of private certification.

Subd. 3. **Certified.** “Certified” is a designated title an individual may use if the individual meets the personal qualifications for certification established by the government or a private certifying organization.

Subd. 4. **Court.** “Court” means any court, administrative tribunal or other government agency acting in a judicial or quasi-judicial capacity.

Subd. 5. **Government.** “Government” means the government of this state or any of its political subdivisions.

Subd. 6. **Lawful occupation.** “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 an occupational regulation.

Subd. 7. **Least restrictive means of furthering a compelling governmental interest.** “The least restrictive means of furthering a compelling governmental interest” means, from least to most restrictive:

- (1) market competition;
- (2) a provision for private civil action in small-claims or district court to remedy consumer harm;
- (3) inspection;
- (4) bonding or insurance;
- (5) registration;
- (6) certification; or
- (7) occupational license.

Subd. 8. **Occupational license.** “Occupational license” is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

Subd. 9. **Occupational regulation.** “Occupational regulation” means a statute, ordinance, rule, practice, policy or other requirement in law that an individual possess certain personal qualifications to work in a lawful occupation.

Subd. 10. **Personal qualifications.** “Personal qualifications” are criteria related to an individual’s personal background including, but not limited to, completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing and completion of continuing education.

Subd. 11. **Registered.** “Registered” is a designated title an individual may use if the individual meets the personal qualifications for registration established by the government or a private registration organization.

Sub. 12. **Registration.** “Registration” means a requirement in law that an individual 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. “Registration” is not transferable and does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use “registered” as a designated title or as part of a designated title. A non-registered individual may not perform the occupation for compensation or use “registered” as a designated title. The term registration is not synonymous with an “occupational license” in this act. The term registration does not refer to or prohibit the use of private registration.

Subd. 13. **Substantial burden.** “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.

100.03 Right to engage in a lawful occupation.

Subdivision 1. **Statutory right.** An individual has a right to engage in a lawful occupation free from any substantial burden in an occupational regulation unless the government demonstrates (a) it has a compelling interest in protecting against present and recognizable harm to the public health or safety, and (b) the occupational regulation is the least restrictive means of furthering that compelling governmental interest.

Subd. 2. **Defense and relief.** (a) An individual may assert as a defense the right to engage in a lawful occupation in any judicial or administrative proceeding brought by the government to enforce an occupational regulation that violates subdivision 1.

(b) An individual may bring an action for declaratory judgment or injunctive or other equitable relief against the government for a violation of subdivision 1, without regard to the exhaustion of administrative remedies.

(c) An individual may assert the right in subdivision 1 as a defense or bring an action against the enforceability of an occupational regulation, pursuant to subsections (a) and (b), which is:

(1) in law at the effective date of this act; or

(2) enacted, adopted or amended after the effective date of this act and does not include in state statute an explicit exemption from this act.

(d) An individual who asserts a defense or brings an action under this section has the initial burden of proof that an occupational regulation substantially burdens the individual's right to engage in a lawful occupation.

(e) If the individual meets the burden of proof under subsection (d), the government must demonstrate by clear and convincing evidence that the government has a compelling interest in protecting against present and recognizable harm to the public health or safety, and the occupational regulation is the least restrictive means of furthering that compelling governmental interest.

(f) An employer or potential employer may assert the right of an employee or potential employee recognized in subdivision 1 by bringing a defense or action under this subdivision.

Subd. 3. **Judicial determination.** A court shall liberally construe this act to protect the right in subdivision 1. A court shall make its own findings of fact and conclusions of law. It shall not grant any presumption to legislative or administrative determinations of harm to the public health or safety, or that the regulation is the least restrictive means of furthering a compelling governmental interest.

Subd. 4. **Limitation.** Nothing in this section shall be construed to create a right of action against a private party or to require a private party to do business with an individual who is not licensed, certified or registered with the government.

100.04 Federal use of state occupational regulations. Nothing in this section shall be construed to create a right of action against the federal government.

100.05 Severability clause [as appropriate].

100.06 Repealer clause [as appropriate].

100.07 Effective date.