

AMENDMENTS TO LB299

(Amendments to Standing Committee amendments, AM1665)

Introduced by Ebke, 32.

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

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

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

7 Sec. 3. Government certification means a nontransferable
8 recognition granted to an individual by an occupational board through a
9 voluntary program in which the individual meets personal qualifications
10 established by the Legislature. Government certification allows the
11 certified individual to use a designated title. An individual who is not
12 certified may engage in the lawful occupation but is not allowed to use
13 the designated title.

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

18 Sec. 5. Least restrictive regulation means one of the following
19 types of regulation, listed from least restrictive to most restrictive:

- 20 (1) Market competition;
21 (2) Third-party or consumer-created ratings and reviews;
22 (3) Private certification;
23 (4) Specific private civil cause of action to remedy consumer harm;
24 (5) Deceptive trade practices under the Uniform Deceptive Trade
25 Practices Act;
26 (6) Mandatory disclosure of attributes of the specific goods or

1 services;

2 (7) Regulation of the process of providing the specific goods or
3 services to consumers;

4 (8) Inspection;

5 (9) Bonding or insurance;

6 (10) Registration;

7 (11) Government certification; and

8 (12) Occupational license.

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

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

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

21 (2) Occupational regulation includes government certification,
22 registration, and occupational licensure.

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

30 Sec. 9. Personal qualifications means criteria related to an
31 individual's personal background and characteristics, including

1 completion of an approved educational program, satisfactory performance
2 on an examination, work experience, other evidence of attainment of
3 requisite skills or knowledge, moral standing, criminal history, and
4 completion of continuing education.

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

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

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

22 (2) Registration does not include any requirements to show personal
23 qualifications but may require a bond or insurance.

24 (3) Registration is not transferable.

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

26 (1) Government certification and registration are not synonymous
27 with occupational licensure;

28 (2) When the terms certification and certified are used outside of
29 the Occupational Board Reform Act to mean a requirement that an
30 individual meet certain personal qualifications to work legally, those
31 terms in that context shall be interpreted for purposes of the

1 Occupational Board Reform Act as requiring an individual to meet the
2 requirements for an occupational license; and

3 (3) When the terms registration and registered are used outside of
4 the Occupational Board Reform Act to mean a requirement that an
5 individual meet certain personal qualifications to work legally, those
6 terms in that context shall be interpreted for purposes of the
7 Occupational Board Reform Act as requiring an individual to meet the
8 requirements for an occupational license.

9 Sec. 14. (1) Occupational regulations shall be construed and
10 applied to increase economic opportunities, promote competition, and
11 encourage innovation.

12 (2) It is the policy of the State of Nebraska:

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

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

20 (c) To enforce an occupational regulation against an individual only
21 to the extent that the individual sells goods and services that are
22 included explicitly in the statute that governs the lawful occupation's
23 scope of practice; and

24 (d) To provide ongoing legislative review of occupational
25 regulations and related legislation.

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

30 (2)(a) An individual who has a criminal conviction may petition the
31 appropriate occupational board at any time, including prior to obtaining

1 required education or paying any fee, for a determination as to whether
2 the individual's criminal conviction would disqualify the individual from
3 obtaining an occupational license, government certification, or state
4 recognition of the individual's personal qualifications from that
5 occupational board.

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

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

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

29 (5) The individual may appeal the determination of the occupational
30 board. The appeal shall be in accordance with the Administrative
31 Procedure Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (4) Each committee shall also analyze, and include in its report,
20 whether the occupational regulations meet the policies stated in section
21 14 of this act according to the following recommended courses of action
22 for meeting such policies:

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

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

30 (c) If the need is to protect consumers against potential damages
31 from failure by providers to complete a contract fully or up to

1 standards, the likely recommendation will be to require that providers be
2 bonded;

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

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

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

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

20 (5) In developing recommendations under this section, the committee
21 shall review any report issued to the Legislature pursuant to the
22 Nebraska Regulation of Health Professions Act, if applicable, and
23 consider any findings or recommendations of such report related to the
24 occupational regulations under review.

25 (6) If the Legislature finds that it is necessary to regulate an
26 occupation or change occupational regulations, the Legislature shall
27 enact the least restrictive regulation consistent with the public
28 interest and the policies in this section and section 14 of this act.

29 Sec. 17. Section 84-901.02, Revised Statutes Cumulative Supplement,
30 2016, is amended to read:

31 84-901.02 The Legislature finds that:

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

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

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

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

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

16 84-907.06 Whenever an agency proposes to adopt, amend, or repeal a
17 rule or regulation, the agency shall (1) at least thirty days before the
18 public hearing, when notice of a proposed rule or regulation is sent out,
19 or (2) at the same time the agency requests approval from the Governor
20 for an emergency rule or regulation under section 84-901.04, ~~the agency~~
21 ~~shall~~ send to the Executive Board of the Legislative Council for purposes
22 of section 84-907.07 if applicable, to the Executive Board of the
23 Legislative Council to be forwarded to the relevant standing committee of
24 the Legislature for purposes of the Occupational Board Reform Act if
25 applicable, and to the Secretary of State to be made available to the
26 public by means which include, but are not limited to, publication on the
27 Secretary of State's web site, if applicable, the following information:
28 A ~~(a)~~ a copy of the hearing notice required by section 84-907; ~~;~~ ~~(b)~~ a
29 draft copy of the rule or regulation; ~~;~~ ~~and~~ ~~(c)~~ the information provided
30 to the Governor pursuant to section 84-907.09.

31 Sec. 19. Section 84-910, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 84-910 On or before July 1 of each year, each agency shall notify
3 the Legislative Performance Audit Committee and the Executive Board of
4 the Legislative Council for purposes of the Occupational Board Reform
5 Act, if applicable, of the status of all rules and regulations pending
6 before the agency which have not been adopted and promulgated. If the
7 executive board receives a notification pursuant to this section, the
8 executive board shall forward the notification to the standing committee
9 of the Legislature with jurisdiction over the rules and regulations. If
10 an additional appropriation was made with respect to legislation enacted
11 to provide funding for or additional staff to implement a program for
12 which rules and regulations are required to be adopted, the notification
13 shall include what the funding has been used for and what functions the
14 staff have been performing while such rules and regulations are pending.
15 The format of the notification shall be established by the Legislative
16 Performance Audit Committee ~~committee no later than June 1, 2011,~~ and
17 shall be updated periodically thereafter.

18 Sec. 20. Section 84-920, Revised Statutes Cumulative Supplement,
19 2016, is amended to read:

20 84-920 Sections 84-901 to 84-920 and the Occupational Board Reform
21 Act shall be known and may be cited as the Administrative Procedure Act.

22 Sec. 21. This act becomes operative on January 1, 2019.

23 Sec. 22. Original section 84-910, Reissue Revised Statutes of
24 Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative
25 Supplement, 2016, and section 84-907.06, Revised Statutes Supplement,
26 2017, are repealed.