

AMENDMENTS TO LB299

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. For purposes of the
12 Occupational Board Reform Act, in analyzing health professions which are
13 subject to the Nebraska Regulation of Health Professions Act, the
14 definition of certification in section 71-6206 applies.

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

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

22 (1) Market competition;

23 (2) Third-party or consumer-created ratings and reviews;

24 (3) Private certification;

25 (4) Specific private civil cause of action to remedy consumer harm;

26 (5) Deceptive trade practices under the Uniform Deceptive Trade
27 Practices Act;

1 (6) Mandatory disclosure of attributes of the specific goods or
2 services;

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

5 (8) Inspection;

6 (9) Bonding or insurance;

7 (10) Registration;

8 (11) Government certification; and

9 (12) Occupational license.

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

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

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

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

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

31 Sec. 9. Personal qualifications means criteria related to an

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

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

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

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

23 (2) Registration may require a bond or insurance.

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

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

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

31 (2) Except as provided in section 3 of this act, when the terms

1 certification and certified are used outside of the Occupational Board
2 Reform Act to mean a requirement that an individual meet certain personal
3 qualifications to work legally, those terms in that context shall be
4 interpreted for purposes of the Occupational Board Reform Act as
5 requiring an individual to meet the requirements for an occupational
6 license; and

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

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

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

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

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

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

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

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

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

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

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

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

28 (4) The occupational board shall issue its determination in writing
29 within ninety days after receiving a preliminary application under
30 subsection (2) of this section. The determination shall include findings
31 of fact and conclusions of law. If the occupational board determines that

1 the individual's criminal conviction would disqualify the individual, the
2 occupational board may advise the individual of any action the individual
3 may take to remedy the disqualification. If the occupational board finds
4 that the individual has been convicted of a subsequent criminal
5 conviction, the occupational board may rescind a determination upon
6 finding that the subsequent criminal conviction would be disqualifying
7 under subsection (3) of this section.

8 (5) The individual may appeal the determination of the occupational
9 board. The appeal shall be in accordance with the Administrative
10 Procedure Act.

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

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

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

1 terminated, continued, or modified.

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) Subject to subsection (5) of this section, each committee shall

1 also analyze, and include in its report, whether the occupational
2 regulations meet the policies stated in section 14 of this act
3 considering the following recommended courses of action for meeting such
4 policies:

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

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

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

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

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

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

26 (g) If the need is to address a systematic information shortfall
27 such that a reasonable consumer is unable to distinguish between the
28 quality of providers, there is an absence of institutions that provide
29 adequate guidance to the consumer, and the consumer's inability to
30 distinguish between providers and the lack of adequate guidance allows
31 for undue risk of present, significant, and substantiated harms, the

1 likely recommendation will be to enact an occupational license.

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

6 (6) In developing recommendations under this section, the committee
7 shall review any report issued to the Legislature pursuant to the
8 Nebraska Regulation of Health Professions Act, if applicable, and
9 consider any findings or recommendations of such report related to the
10 occupational regulations under review.

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

15 Sec. 17. Section 84-901.02, Revised Statutes Cumulative Supplement,
16 2016, is amended to read:

17 84-901.02 The Legislature finds that:

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

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

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

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

31 Sec. 18. Section 84-907.06, Revised Statutes Supplement, 2017, is

1 amended to read:

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

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

19 84-910 (1) On or before July 1 of each year, each agency shall
20 notify the Legislative Performance Audit Committee of the status of all
21 rules and regulations pending before the agency which have not been
22 adopted and promulgated. If an additional appropriation was made with
23 respect to legislation enacted to provide funding for or additional staff
24 to implement a program for which rules and regulations are required to be
25 adopted, the notification shall include what the funding has been used
26 for and what functions the staff have been performing while such rules
27 and regulations are pending. The format of the notification shall be
28 established by the committee ~~no later than June 1, 2011,~~ and shall be
29 updated periodically thereafter.

30 (2) On or before July 1 of each year, each agency shall, for
31 purposes of the Occupational Board Reform Act, notify the Executive Board

1 of the Legislative Council of the status of all rules and regulations
2 pending before the agency which have not been adopted and promulgated.
3 The executive board shall forward any notification received pursuant to
4 this subsection to the standing committee of the Legislature with
5 jurisdiction over the rules and regulations.

6 Sec. 20. Section 84-920, Revised Statutes Cumulative Supplement,
7 2016, is amended to read:

8 84-920 Sections 84-901 to 84-920 and the Occupational Board Reform
9 Act shall be known and may be cited as the Administrative Procedure Act.

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

11 Sec. 22. Original section 84-910, Reissue Revised Statutes of
12 Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative
13 Supplement, 2016, and section 84-907.06, Revised Statutes Supplement,
14 2017, are repealed.