

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 299

FINAL READING

Introduced by Ebke, 32; Brewer, 43; McCollister, 20; Wayne, 13;
Watermeier, 1; Kolterman, 24; Stinner, 48; Lindstrom, 18;
Briese, 41; Lowe, 37.

Read first time January 12, 2017

Committee: Government, Military and Veterans Affairs

- 1 A BILL FOR AN ACT relating to professions and occupations; to amend
- 2 section 84-910, Reissue Revised Statutes of Nebraska, sections
- 3 84-901.02 and 84-920, Revised Statutes Cumulative Supplement, 2016,
- 4 and section 84-907.06, Revised Statutes Supplement, 2017; to adopt
- 5 the Occupational Board Reform Act; to change provisions relating to
- 6 certain rules and regulations; to harmonize provisions; to provide
- 7 an operative date; and to repeal the original sections.
- 8 Be it enacted by the people of the State of Nebraska,

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

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

5 Sec. 3. Government certification means a nontransferable
6 recognition granted to an individual by an occupational board through a
7 voluntary program in which the individual meets personal qualifications
8 established by the Legislature. Government certification allows the
9 certified individual to use a designated title. For purposes of the
10 Occupational Board Reform Act, in analyzing health professions which are
11 subject to the Nebraska Regulation of Health Professions Act, the
12 definition of certification in section 71-6206 applies.

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

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

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
27 services;

28 (7) Regulation of the process of providing the specific goods or
29 services to consumers;

30 (8) Inspection;

31 (9) Bonding or insurance;

- 1 (10) Registration;
- 2 (11) Government certification; and
- 3 (12) Occupational license.

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

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

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

16 (2) Occupational regulation includes any government certification,
17 registration, and occupational license.

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

25 Sec. 9. Personal qualifications means criteria related to an
26 individual's personal background and characteristics, including
27 completion of an approved educational program, satisfactory performance
28 on an examination, work experience, other evidence of attainment of
29 requisite skills or knowledge, moral standing, criminal history, and
30 completion of continuing education.

31 Sec. 10. Private certification means a nontransferable recognition

1 granted to an individual by a private organization through a voluntary
2 program in which the individual meets personal qualifications established
3 by the private organization.

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

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

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

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

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

23 (1) Government certification and registration are not synonymous
24 with occupational license;

25 (2) Except as provided in section 3 of this act, when the terms
26 certification and certified are used outside of the Occupational Board
27 Reform Act to mean a requirement that an individual meet certain personal
28 qualifications to work legally, those terms in that context shall be
29 interpreted for purposes of the Occupational Board Reform Act as
30 requiring an individual to meet the requirements for an occupational
31 license; and

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

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

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

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

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

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

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

24 (6) To provide ongoing legislative review of occupational
25 regulations.

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 submit to the
31 appropriate occupational board a preliminary application for an

1 occupational license, government certification, or state recognition of
2 the individual's personal qualifications for a determination as to
3 whether the individual's criminal conviction would disqualify the
4 individual from obtaining the occupational license, government
5 certification, or state recognition of the individual's personal
6 qualifications from that occupational board. The preliminary application
7 may be submitted at any time, including prior to obtaining required
8 education or paying any fee, other than the fee for the preliminary
9 application under subsection (7) of this section.

10 (b) The individual may include with the preliminary application
11 additional information about the individual's current circumstances,
12 including the time since the offense, completion of the criminal
13 sentence, other evidence of rehabilitation, testimonials, employment
14 history, and employment aspirations.

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

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

1 under subsection (3) of this section.

2 (5) The individual may appeal the determination of the occupational
3 board. The appeal shall be in accordance with the Administrative
4 Procedure Act.

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

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

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

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

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

31 (a) The title of the regulated occupation and the name of the

1 occupational board responsible for enforcement of the occupational
2 regulations;

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

5 (c) The number of members of the occupational board and how the
6 members are appointed;

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

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

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

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

19 (h) A review of the basic assumptions underlying the creation of the
20 occupational regulations;

21 (i) A statement from the occupational board on the effectiveness of
22 the occupational regulations; and

23 (j) A comparison of whether and how other states regulate the
24 occupation.

25 (4) Subject to subsection (5) of this section, each committee shall
26 also analyze, and include in its report, whether the occupational
27 regulations meet the policies stated in section 14 of this act
28 considering the following recommended courses of action for meeting such
29 policies:

30 (a) If the need is to protect consumers against fraud, the likely
31 recommendation will be to strengthen powers under the Uniform Deceptive

1 Trade Practices Act or require disclosures that will reduce misleading
2 attributes of the specific goods or services;

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

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

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

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

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

20 (g) If the need is to address a systematic information shortfall
21 such that a reasonable consumer is unable to distinguish between the
22 quality of providers, there is an absence of institutions that provide
23 adequate guidance to the consumer, and the consumer's inability to
24 distinguish between providers and the lack of adequate guidance allows
25 for undue risk of present, significant, and substantiated harms, the
26 likely recommendation will be to enact an occupational license.

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

31 (6) In developing recommendations under this section, the committee

1 shall review any report issued to the Legislature pursuant to the
2 Nebraska Regulation of Health Professions Act, if applicable, and
3 consider any findings or recommendations of such report related to the
4 occupational regulations under review.

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

9 Sec. 17. Section 84-901.02, Revised Statutes Cumulative Supplement,
10 2016, is amended to read:

11 84-901.02 The Legislature finds that:

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

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

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

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

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

27 84-907.06 Whenever an agency proposes to adopt, amend, or repeal a
28 rule or regulation, the agency shall (1) at least thirty days before the
29 public hearing, when notice of a proposed rule or regulation is sent out,
30 or (2) at the same time the agency requests approval from the Governor
31 for an emergency rule or regulation under section 84-901.04, ~~the agency~~

1 ~~shall~~ send to the Executive Board of the Legislative Council for purposes
2 of section 84-907.07 if applicable, to the Executive Board of the
3 Legislative Council to be forwarded to the relevant standing committee of
4 the Legislature for purposes of the Occupational Board Reform Act if
5 applicable, and to the Secretary of State to be made available to the
6 public by means which include, but are not limited to, publication on the
7 Secretary of State's web site, if applicable, the following information:
8 ~~A (a)~~ a copy of the hearing notice required by section 84-907; ~~τ~~ ~~(b)~~ a
9 draft copy of the rule or regulation; ~~τ~~ and ~~(c)~~ the information provided
10 to the Governor pursuant to section 84-907.09.

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

13 84-910 (1) On or before July 1 of each year, each agency shall
14 notify the Legislative Performance Audit Committee of the status of all
15 rules and regulations pending before the agency which have not been
16 adopted and promulgated. If an additional appropriation was made with
17 respect to legislation enacted to provide funding for or additional staff
18 to implement a program for which rules and regulations are required to be
19 adopted, the notification shall include what the funding has been used
20 for and what functions the staff have been performing while such rules
21 and regulations are pending. The format of the notification shall be
22 established by the committee ~~no later than June 1, 2011,~~ and shall be
23 updated periodically thereafter.

24 (2) On or before July 1 of each year, each agency shall, for
25 purposes of the Occupational Board Reform Act, notify the Executive Board
26 of the Legislative Council of the status of all rules and regulations
27 pending before the agency which have not been adopted and promulgated.
28 The executive board shall forward any notification received pursuant to
29 this subsection to the standing committee of the Legislature with
30 jurisdiction over the rules and regulations.

31 Sec. 20. Section 84-920, Revised Statutes Cumulative Supplement,

1 2016, is amended to read:

2 84-920 Sections 84-901 to 84-920 and the Occupational Board Reform
3 Act shall be known and may be cited as the Administrative Procedure Act.

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

5 Sec. 22. Original section 84-910, Reissue Revised Statutes of
6 Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative
7 Supplement, 2016, and section 84-907.06, Revised Statutes Supplement,
8 2017, are repealed.