

ASSEMBLY BILL NO. 353—ASSEMBLYMAN MCARTHUR

MARCH 20, 2017

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing professional licensing.
(BDR 54-930)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to professional licensing; setting forth the state policy concerning occupational regulations; establishing a procedure to review the criminal history of potential applicants for certain certification or licensure; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law contains various licensing requirements and other regulations on
2 natural persons who engage in certain occupations within this State. (Title 54 of
3 NRS, chapters 1, 7, 76, 90, 116A, 119A, 122, 159, 240, 240A, 361, 394, 435, 445B,
4 449, 450B, 453A, 455C, 457, 458, 463, 466, 467, 477, 482, 483, 487, 489, 490,
5 503, 504, 505, 534, 544, 555, 576, 581, 582, 584, 587, 599A, 599B, 618, 683A,
6 683C, 684A, 684B, 685A, 686B, 689, 692A, 692B, 695J, 696A, 697, 706 and 706A
7 of NRS) **Section 10** of this bill sets forth the policy concerning occupational
8 regulations, including using the least restrictive regulation to protect consumers
9 from harms that threaten public health and safety. **Section 13** of this bill provides
10 that a natural person with a criminal history may petition the responsible
11 governmental entity or regulatory body, at any time, including before obtaining any
12 required education or paying any fee, for a determination of whether the natural
13 person’s criminal history will disqualify the natural person from obtaining a
14 occupational license, a specialty occupational license for medical reimbursement or
15 certification to engage in a lawful occupation. **Section 14** of this bill provides that,
16 in the event of a conflict between this bill and certain existing occupational
17 regulations within the Nevada Revised Statutes, the provisions of this bill will
18 control.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 622 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 14, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 14, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 9, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3. 1.** *“Certification” means a voluntary program in*
9 *which:*

10 (a) *A private organization grants nontransferable recognition*
11 *to a natural person who meets certain professional qualifications*
12 *established by the private organization; or*

13 (b) *A governmental entity or regulatory body grants*
14 *nontransferable recognition to a natural person who meets certain*
15 *professional qualifications established by a legislative body,*
16 *governmental entity or regulatory body.*

17 2. *The term does not include an exclusive right to practice a*
18 *lawful occupation or restrict a natural person who is not certified*
19 *from engaging in such lawful occupation.*

20 **Sec. 4.** *“Governmental entity” means any agency of this*
21 *State, a local government as defined in NRS 278B.070 or any*
22 *other political subdivision of this State or an agency thereof.*

23 **Sec. 5.** *“Lawful occupation” means any course of conduct,*
24 *pursuit or occupation that includes the sale of goods or services*
25 *that are not themselves illegal to sell, irrespective of whether the*
26 *natural person selling such goods or services is subject to an*
27 *occupational regulation.*

28 **Sec. 6.** *“Occupational license” means a license:*

29 1. *To perform exclusively a lawful occupation for*
30 *compensation based on meeting certain personal qualifications*
31 *established by law; and*

32 2. *That is required to perform the lawful occupation for*
33 *compensation and without which performing that occupation is*
34 *unlawful.*

35 **Sec. 7. 1.** *“Occupational regulation” means a law, statute,*
36 *ordinance, rule, practice or policy requiring a natural person to*
37 *possess certain personal qualifications to work or perform a*
38 *lawful occupation.*

39 2. *The term does not include a law, statute, ordinance, rule,*
40 *practice or policy requiring a natural person to have a business*
41 *license or a zoning or land-use regulation, except to the extent*
42 *such law, statute, ordinance, rule, practice or policy regulates the*



1 *personal qualifications of a natural person to perform a lawful*
2 *occupation.*

3 **Sec. 8.** *“Personal qualifications” means criteria established*
4 *by a law, statute, ordinance, rule, practice or policy related to the*
5 *background or qualifications of a natural person, including,*
6 *without limitation, completion of an approved educational*
7 *program, satisfactory performance on an examination, work*
8 *experience, criminal history, moral standing and completion of*
9 *continuing education.*

10 **Sec. 9.** *“Specialty occupational license for medical*
11 *reimbursement” means a specialty license which meets the*
12 *requirements of section 12 of this act.*

13 **Sec. 10.** 1. *The Legislature declares that it is the policy of*
14 *this State that:*

15 (a) *The right of a natural person to pursue an occupation is a*
16 *fundamental right;*

17 (b) *Occupational regulations shall be construed and applied to*
18 *increase economic opportunities, promote competition and*
19 *encourage innovation;*

20 (c) *Where the State finds it is necessary to displace*
21 *competition, it will use the least restrictive regulation to protect*
22 *consumers from present, significant and substantiated harms that*
23 *threaten public health and safety; and*

24 (d) *An occupational regulation may be enforced against a*
25 *natural person only to the extent the natural person sells goods*
26 *and services that are included explicitly in the statute that defines*
27 *the scope of practice of the occupation.*

28 2. *As used in this section, “least restrictive regulation” means*
29 *a regulation that uses the least restrictive means of furthering an*
30 *important interest pursuant to the prioritization of factors set forth*
31 *in section 11 of this act.*

32 **Sec. 11.** 1. *The prioritization of the least restrictive means*
33 *of furthering an important interest, from least to most restrictive,*
34 *is as follows:*

35 (a) *Market competition.*

36 (b) *Third-party or consumer-created ratings and reviews.*

37 (c) *Certification by a private organization.*

38 (d) *Authorization for the initiation of a private civil action to*
39 *remedy a perceived or alleged harm to the public.*

40 (e) *A deceptive trade practice in violation of NRS 598.0903 to*
41 *598.0999, inclusive.*

42 (f) *Regulation of the process of providing the specific goods or*
43 *services to consumers.*

44 (g) *Inspection of a premises or documents by an employee or*
45 *authorized agent of a governmental entity or regulatory body.*



1 (h) *A requirement for bonding or insurance.*

2 (i) *Registration.*

3 (j) *Certification by a governmental entity or regulatory body.*

4 (k) *Specialty occupational license for medical reimbursement.*

5 (l) *Licensure by a governmental entity or regulatory body.*

6 2. *For the purposes of this section, "registration" means a*
7 *requirement established by a legislative body, governmental entity*
8 *or regulatory body that a natural person give notice to a*
9 *governmental entity or regulatory body that may include the name*
10 *and address of the natural person, the natural person's agent for*
11 *service of process, the location of the activity to be performed and*
12 *a description of the goods or services the natural person will*
13 *provide. The term does not include a requirement that a natural*
14 *person meet certain personal qualifications, however, it may*
15 *include a requirement that a natural person be bonded or insured.*

16 **Sec. 12.** 1. *To be deemed a specialty occupational license*
17 *for medical reimbursement, a specialty license must be a*
18 *nontransferable authorization in law for a natural person to*
19 *provide identified medical services and qualify for payment or*
20 *reimbursement from a governmental entity based on meeting*
21 *personal qualifications established by a legislative body,*
22 *governmental entity or regulatory body.*

23 2. *A specialty occupational license for medical*
24 *reimbursement may be recognized by a private company.*

25 **Sec. 13.** 1. *The fundamental right of a natural person to*
26 *pursue an occupation includes the right of a natural person with a*
27 *criminal history to obtain from a governmental entity or*
28 *regulatory body, as applicable:*

29 (a) *An occupational license;*

30 (b) *A specialty occupational license for medical*
31 *reimbursement; or*

32 (c) *Certification to engage in a lawful occupation.*

33 2. *A natural person with a criminal history may petition the*
34 *responsible governmental entity or regulatory body, at any time,*
35 *including, without limitation, before obtaining any required*
36 *education or paying any fee, for a determination of whether the*
37 *natural person's criminal history will disqualify the person from*
38 *obtaining:*

39 (a) *An occupational license;*

40 (b) *A specialty occupational license for medical*
41 *reimbursement; or*

42 (c) *Certification to engage in a lawful occupation.*

43 3. *Notwithstanding any other statute or rule, the*
44 *governmental entity or regulatory body is authorized to determine*



1 *whether the natural person's criminal history disqualifies the*
2 *natural person from obtaining:*

3 *(a) An occupational license;*

4 *(b) A specialty occupational license for medical*
5 *reimbursement; or*

6 *(c) Certification to engage in a lawful occupation.*

7 *4. The governmental entity or regulatory body may find that*
8 *the natural person's criminal history disqualifies the natural*
9 *person from obtaining an occupational license, a specialty*
10 *occupational license for medical reimbursement or certification*
11 *only if:*

12 *(a) The natural person has a felony conviction;*

13 *(b) The type of felony for which the natural person was*
14 *convicted is an expressly codified disqualifying offense in the*
15 *relevant statute governing:*

16 *(1) An occupational license;*

17 *(2) A specialty occupational license for medical*
18 *reimbursement; or*

19 *(3) Certification to engage in a lawful occupation; and*

20 *(c) The governmental entity or regulatory body determines, by*
21 *clear and convincing evidence, that the State has an important*
22 *interest in protecting public safety that is superior to the natural*
23 *person's right because both the nature of the specific disqualifying*
24 *offense for which the natural person was convicted and the risk of*
25 *the natural person's recidivating that specific offense are, at the*
26 *time of the petition, substantially related to the State's interest.*

27 *5. The governmental entity or regulatory body shall issue its*
28 *determination within 90 days after the governmental entity or*
29 *regulatory body receives the petition. The determination must be*
30 *in writing and include a finding of facts and a conclusion of law.*

31 *6. If the governmental entity or regulatory body determines*
32 *the State's interest is superior to the natural person's right, the*
33 *governmental entity or regulatory body may advise the natural*
34 *person of the actions the natural person may take to remedy the*
35 *disqualification.*

36 *7. The natural person may appeal the determination of the*
37 *governmental entity or regulatory body as provided for in the*
38 *Nevada Administrative Procedure Act.*

39 *8. The natural person may submit a new petition to the same*
40 *governmental entity or regulatory body at any time 2 years after*
41 *final judgment in the initial petition. If the new petition is*
42 *submitted on the ground that the natural person has undertaken*
43 *the actions the governmental entity or regulatory body has advised*
44 *him or her will remedy the disqualification, then the natural*



1 *person may submit a new petition at any time 6 months after final*
2 *judgment in the initial petition.*

3 *9. The governmental entity or regulatory body may rescind its*
4 *determination at any time in the future if the natural person is*
5 *convicted of an additional offense that the governmental entity or*
6 *regulatory body determines meet the elements in subsection 4.*

7 **Sec. 14.** *1. The enforcement of any provision of chapters 1,*
8 *7, 76, 90, 116A, 119A, 122, 159, 240, 240A, 361, 394, 435, 445B,*
9 *449, 450B, 453A, 455C, 457, 458, 463, 466, 467, 477, 482, 483,*
10 *487, 489, 490, 503, 504, 505, 534, 544, 555, 576, 581, 582, 584,*
11 *587, 599A, 599B, 618, 622A to 628B, inclusive, 630 to 649,*
12 *inclusive, 652 to 656A, inclusive, 683A, 683C, 684A, 684B, 685A,*
13 *686B, 689, 692A, 692B, 695J, 696A, 697, 706 and 706A of NRS is*
14 *subject to the provisions of sections 2 to 13, inclusive, of this act.*

15 *2. In the event that any provision of a chapter set forth in*
16 *subsection 1 conflicts with a provision of sections 2 to 13,*
17 *inclusive, of this act, that provision of sections 2 to 13, inclusive,*
18 *of this act controls.*



