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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

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A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- OCCUPATIONAL LICENSING
REVIEW ACT

Introduced By: Representatives Place, and Chippendale

Date Introduced: February 02, 2022

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 5 of the General Laws entitled "BUSINESSES AND PROFESSIONS"
2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 91

4 OCCUPATIONAL LICENSING REVIEW ACT

5 **5-91-1. Title.**

6 This chapter shall be known and may be cited as the "Occupational Licensing Review Act".

7 **5-91-2. Purpose.**

8 It is the purpose of this chapter to establish a policy for the regulation of occupations,
9 specifying criteria for government regulation to increase opportunities, promote competition,
10 encourage innovation, protect consumers, establish canons of statutory interpretation, and create a
11 process to review the criminal history of business owners to reduce offenders' disqualifications.

12 **5-91-3. Legislative findings.**

13 The general assembly finds and it shall be the policy of this state that:

14 (1) The right of an individual to pursue a lawful occupation is a fundamental right.

15 (2) Where the state finds it is necessary to displace competition, it will use the least
16 restrictive regulation to protect consumers from present, significant, and substantiated harms that
17 threaten public health and safety.

18 (3) Legislative leaders will assign the responsibility to review legislation and laws related

1 to occupational regulations.

2 **5-91-4. Definitions.**

3 As used in this chapter, the following terms shall have the following meanings:

4 (1) "Governmental certification" means a voluntary, government-granted, and non-
5 transferable recognition to an individual who meets personal qualifications related to a lawful
6 occupation. Upon the government's initial and continuing approval, the individual may use
7 "government certified" or "state certified" as a title. A non-certified individual also may perform
8 the lawful occupation for compensation, but may not use the terms "government certified" or "state
9 certified" as a title. In this chapter, the term "government certified" is not synonymous with
10 "occupational license." It is also not intended to include credentials, such as those used for medical-
11 board certification or held by a certified public accountant, that are prerequisites to working
12 lawfully in an occupation.

13 (2) "Government registration" means a requirement to give notice to the government that
14 may include the individual's name and address, the individual's agent for service of process, the
15 location of the activity to be performed, and a description of the service the individual provides.
16 "Government registration" does not include personal qualifications and is not transferable but it
17 may require a bond or insurance. Upon the government's receipt of notice, the individual may use
18 "government registered" as a title. A non-registered individual may not perform the occupation for
19 compensation or use "government registered" as a title. In this chapter, "government registration"
20 is not intended to be synonymous with "occupational license." It is also not intended to include
21 credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in
22 an occupation.

23 (3) "Lawful occupation" means a course of conduct, pursuit or profession that includes the
24 sale of goods or services that are not themselves illegal to sell, irrespective of whether the individual
25 selling them is subject to an occupational regulation or not.

26 (4) "Least restrictive regulation" means, from the least to the most restrictive:

27 (i) Market competition;

28 (ii) Third-party or consumer-created ratings and reviews;

29 (iii) Private certification;

30 (iv) Voluntary bonding or insurance;

31 (v) Specific private civil cause of action to remedy consumer harm;

32 (vi) Chapter 13.1 of title 6, "deceptive trade practices";

33 (vii) Mandatory disclosure of attributes of the specific good or service;

34 (viii) Regulation of the process of providing the specific good or service;

1 (ix) Regulation of the facility where the specific goods or services are sold;

2 (x) Inspection;

3 (xi) Bonding;

4 (xii) Insurance;

5 (xiii) Government registration;

6 (xiv) Government certification;

7 (xv) Specialty occupational license for medical reimbursement; and

8 (xvi) Occupational license.

9 (5) "Occupational license" means a lawful non-transferable authorization for an individual
10 to perform exclusively a lawful occupation for compensation based on meeting personal
11 qualifications established by the general assembly. In an occupation for which a license is required,
12 it is illegal for an individual who does not possess a valid occupational license to perform the
13 occupation for compensation.

14 (6) "Occupational regulation" means a statute, rule, practice, policy, or other state law that
15 allows an individual to use an occupational title or work in a lawful occupation. It includes
16 government registration, government certification, and occupational license. It excludes a business
17 license, facility license, building permit, or zoning and land use regulation, except to the extent
18 those state laws regulate an individual's personal qualifications to perform a lawful occupation.

19 (7) "Personal qualifications" means criteria that are related to an individual's personal
20 background and characteristics. They may include one or more of the following: completion of an
21 approved educational program, satisfactory performance on an examination, work experience,
22 apprenticeship, other evidence of attainment of requisite knowledge and skills, passing a review of
23 the individual's criminal record and completion of continuing education.

24 (8) "Private certification" means a voluntary program in which a private organization grants
25 non-transferable recognition to an individual who meets personal qualifications and standards
26 relevant to performing the occupation as determined by the private organization. The individual
27 may use a designated title of "certified," as permitted by the organization.

28 (9) "Specialty occupational license for medical reimbursement" means a non-transferable
29 authorization in law for an individual to qualify for payment or reimbursement from a government
30 agency for the non-exclusive provision of new or niche medical services based on meeting personal
31 qualifications established by the general assembly. A private health insurance company or other
32 private company may recognize this credential. Notwithstanding this specialty license, it is legal
33 for a person regulated under another occupational regulation to provide similar services as defined
34 in state law for compensation and reimbursement. It is also legal for an individual who does not

1 possess this specialty license to provide the identified medical services for compensation, but the
2 non-licensed individual will not qualify for payment or reimbursement from a government agency.

3 **5-91-5. Review of occupational regulations.**

4 (a) The speaker of the house of representatives and the president of the senate shall assign
5 to the small business committee of the house and the labor committee of the senate, hereinafter
6 "committees," the responsibility to analyze proposals and legislation to create new occupational
7 regulations and/or modify existing occupational regulations.

8 (b) The committees shall be responsible for reviewing legislation to enact or modify an
9 occupational regulation to ensure compliance with the policies set forth in § 5-91-3.

10 (1) The committees shall require proponents to submit evidence of present, significant, and
11 substantiated harms to consumers in the state. The committees may also request information from
12 state agencies that contract with individuals in regulated occupations and others knowledgeable of
13 the occupation, labor-market economics, or other factors, cost and benefits.

14 (2) The committees shall determine if the proposed regulation meets the state's policy in §
15 5-91-3 of using the least restrictive regulation necessary to protect consumers from present,
16 significant, and substantiated harms.

17 (3) The committees' analysis in subsection (b)(2) of this section shall employ a rebuttable
18 presumption that consumers are sufficiently protected by market competition and private remedies
19 as listed in § 5-91-4(4)(i) through (iv). The committees shall give added consideration to the use of
20 private certification programs that allow a provider to give consumers information about the
21 provider's knowledge, skills and association with a private certification organization.

22 (4) The committees may rebut the presumption in subsection (b)(3) of this section if they
23 find both credible, empirical evidence of present, significant, and substantiated harm, and that
24 consumers do not have the information and means to protect themselves against such harm. If
25 evidence of such unmanageable harm is found, the committees may recommend the least restrictive
26 government regulation to address the harm as listed in § 5-91-4(4)(v) through (xvi).

27 (5) The committees shall use the following guidelines to form their recommendation in
28 subsection (b)(2) of this section. If the harm arises from:

29 (i) Contractual disputes, including pricing disputes, the committees may recommend
30 enacting a specific civil cause of action in district court to remedy consumer harm. This cause of
31 action may provide for reimbursement of attorneys' fees and/or court costs, if a consumer's claim
32 is successful;

33 (ii) Fraud, if found, the committees may recommend strengthening powers under chapter
34 13.1 of title 6, "deceptive trade practices", or by requiring disclosure that will reduce misleading

1 attributes of the specific good or services;

2 (iii) General health and safety risks, the committees may recommend enacting a regulation
3 on the related process or requiring a facility license;

4 (iv) Unclean facilities, the committees may recommend requiring periodic facility
5 inspections;

6 (v) A provider's failure to complete a contract fully or to professional standards, the
7 committees may recommend requiring the provider to be bonded;

8 (vi) A lack of protection for a person who is not a party to a contract between providers
9 and consumers, the committees may recommend requiring the provider have insurance;

10 (vii) Transactions with transient, out-of-state, or fly-by-night providers, the committees
11 may recommend requiring the provider to register its business with the secretary of state;

12 (viii) A shortfall or imbalance in the consumer's knowledge about the goods or services
13 relative to the provider's knowledge (asymmetrical information), the committees may recommend
14 enacting government certification;

15 (ix) An inability to qualify providers of new or highly-specialized medical services for
16 reimbursement by the state, the committees may recommend enacting a specialty license for
17 medical reimbursement;

18 (x) A systematic information shortfall in which a reasonable consumer of the goods or
19 services is permanently unable to distinguish between the quality of providers and there is an
20 absence of institutions that provide guidance to consumers, the committees may recommend
21 enacting an occupational license; or

22 (xi) The need to address multiple types of harm, the committees may recommend a
23 combination of regulations to include, but not be limited to, a government regulation combined
24 with a private remedy including third-party or consumer-created ratings and reviews, or private
25 certification.

26 (6) The committees' analysis of the need for regulation in subsection (b)(3) of this section,
27 will include the effects of legislation on opportunities for workers, consumer choices and costs,
28 general unemployment, market competition, governmental costs, and other effects.

29 (7) The committees' analysis of the need for regulation in subsection (b)(3) of this section,
30 shall compare the legislation to determine whether and how other states regulate the occupation,
31 including the occupation's scope of practice that other states use, and the personal qualifications
32 other states require.

33 (8) The committees shall report their findings and recommendations to the initial and other
34 subsequent committees that shall consider the legislation. The report shall include

1 recommendations addressing:

2 (i) The type of regulation, if any;

3 (ii) The requisite personal qualifications, if any; and

4 (iii) The scope of practice, if applicable.

5 (9) The committees may also comment on whether and how much responsibility the

6 legislation delegates to a licensing board to promulgate administrative rules, particularly rules

7 relating to establishing the occupation's scope of practice or the personal qualifications required to

8 work in the occupation. The comments should make the general assembly aware of exposure to

9 antitrust litigation that the legislation may cause because of excessive or ambiguous delegation of

10 authority to licensing boards to engage in administrative rulemaking.

11 (c) The house of representatives and the senate shall each adopt rules requiring the

12 committees considering the legislation to enact or modify an occupational regulation to receive the

13 committees' analysis and recommendations in subsection (b) of this section prior to voting on the

14 legislation.

15 (d) Nothing in this section shall be construed to preempt federal regulation or to require a

16 private certification organization to grant or deny private certification to any individual.

17 **5-91-6. Analysis of existing occupational licenses.**

18 (a) Commencing on January 1, 2023, the speaker of the house of representatives and the

19 president of the senate shall assign the committees the overall responsibility to analyze existing

20 occupational licenses.

21 (1) Each relevant standing committee of the legislature is responsible for reviewing

22 approximately twenty percent (20%) of the current occupational licenses under the committees'

23 jurisdiction per year. The chairpersons of the committees shall select the occupational licenses to

24 be reviewed annually.

25 (2) Each relevant standing committee of the legislature will review all occupational

26 licenses under the committees' jurisdiction within the subsequent five (5) years, and will repeat

27 such a review in each five (5) year period thereafter.

28 (b) The committees must use the criteria in § 5-91-5(b)(2) through (8) to analyze the

29 existing occupational licenses.

30 (c) Commencing on January 1, 2024, the committees shall report on an annual basis

31 thereafter the findings of their reviews to the speaker of the house of representatives, the president

32 of the senate, the governor and the attorney general. In their report, the committees may recommend

33 the legislature enact new legislation that:

34 (1) Repeals the occupational licenses;

- 1 (2) Converts the occupational licenses to the least restrictive regulations in § 5-91-4;
2 (3) Instructs the relevant licensing board or agency to promulgate revised regulations
3 reflecting the legislature's decision to use least restrictive alternatives to occupational licenses;
4 (4) Changes the requisite personal qualifications of an occupational license;
5 (5) Redefines the scope of practice in an occupational license; or
6 (6) Reflects other recommendations to the legislature.
7 (d) Nothing in this section shall be construed to preempt federal regulation or authorize the
8 committees to review the means that a private certification organization uses to issue, deny or
9 revoke a private certification to any individual, or to require a private certification organization to
10 grant or deny private certification to any individual.

11 **5-91-7. Interpretations of statutes and rules.**

- 12 (a) Occupational regulations shall be construed and applied to increase economic
13 opportunities, promote competition, and encourage innovation.
14 (b) Any ambiguities in occupational regulations will be construed in favor of workers and
15 aspiring workers to work.
16 (c) The scope of practice in occupational regulations is to be construed narrowly to avoid
17 burdening individuals with regulatory requirements that only have an attenuated relationship to the
18 goods or services they provide.

19 **5-91-8. Review of criminal record.**

- 20 (a) The right of an individual to pursue a lawful occupation is a fundamental right.
21 (b) Notwithstanding any other law, a board, agency, department or other state agency
22 (hereafter "board") shall only utilize § 28-5.1-14 to deny, diminish, suspend, revoke, withhold or
23 otherwise limit state recognition because of a criminal conviction.

24 **5-91-9. Petition for board determination prior to obtaining personal qualifications.**

- 25 (a) An individual with a criminal record may petition a board at any time, including before
26 obtaining any requested personal qualifications, for a decision whether the individual's criminal
27 record will disqualify them from obtaining state recognition.
28 (b) The individual shall include in the petition their criminal record or authorize the board
29 to obtain their criminal record.
30 (c) The board shall make its decision using the criteria and process in § 5-91-8.
31 (d) The board shall issue its decision no later than sixty (60) days after the board receives
32 the petition, or no later than ninety (90) days after the board receives the petition if a hearing is
33 held. Any decision by the board shall be in writing, and include the criminal record, findings of fact
34 and conclusions of law.

1 (e) A decision concluding that the state recognition shall be granted or granted with
2 conditions is binding on the board in any later ruling on state recognition of the petitioner, unless
3 there is a relevant, material and adverse change in the petitioner's criminal record.

4 (f) If the board decides that state recognition should not be granted, the board shall advise
5 the petitioner of actions the petitioner may take to remedy the disqualification.

6 (g) The petitioner may submit a revised petition reflecting completion of the remedial
7 actions set forth in subsection (f) of this section before any deadline, which deadline shall not be
8 less than twenty (20) days from the issuance date of the decision, the board may set in its alternative
9 advisory decision.

10 (h) The petitioner may appeal the board's decision as provided for in chapter 35 of title 42
11 ("administrative procedures act").

12 (i) The petitioner may submit a new petition to the board not less than one year following
13 a final judgment on the initial petition, or upon obtaining the required qualifications, whichever is
14 earlier.

15 (j) The board may charge a fee to the petitioner to recoup its costs not to exceed one
16 hundred dollars (\$100) for each petition.

17 **5-91-10. Reporting requirements.**

18 (a) The house of representatives and the senate shall establish an annual reporting
19 requirement of the committees specifying:

20 (1) The number of times that each board acted to deny, diminish, suspend, revoke, withhold
21 or otherwise limit state recognition from a licensed individual because of criminal convictions;

22 (2) The offenses upon which each board relied in acting to deny, diminish, suspend, revoke,
23 withhold or otherwise limit state recognition;

24 (3) The numbers of each board's approvals and denials under §§ 5-91-8 and 5-91-9;

25 (4) The offenses for which the board approved or denied petitions under §§ 5-91-8 and 5-
26 91-9; and

27 (5) Other data which the house of representatives and senate determines as relevant.

28 (b) The house of representatives and the senate shall compile and publish annually a report
29 on a searchable public website.

30 **5-91-11. Limitation.**

31 Nothing in this chapter shall be construed to require a private certification organization to
32 grant or deny private certification to any individual.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- OCCUPATIONAL LICENSING
REVIEW ACT

1 This act would establish a policy for the regulation of occupations, specifying criteria for
2 government regulation to increase opportunities, promote competition, encourage innovation,
3 protect consumers, establish canons of statutory interpretation and a process to review the criminal
4 history of business owners to reduce offenders' disqualifications.

5 This act would take effect upon passage.

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