

2024 -- H 7388

LC004212

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RIGHT TO EARN A LIVING ACT

Introduced By: Representatives Place, and Nardone

Date Introduced: January 31, 2024

Referred To: House State Government & Elections

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR RELATIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 5.2

4 RIGHT TO EARN A LIVING ACT

5 **28-5.2-1. Short title.**

6 This chapter shall be known and may be cited as the "Right to Earn a Living Act."

7 **28-5.2-2. Legislative findings.**

8 It is hereby found and declared as follows:

9 (1) The right of individuals to pursue a chosen business or profession, free from arbitrary
10 or excessive government interference, is a fundamental civil right.

11 (2) The freedom to earn an honest living traditionally has provided the surest means for
12 economic mobility.

13 (3) In recent years, many regulations of entry into businesses and professions have
14 exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and
15 reducing competition.

16 (4) The burden of excessive regulation is borne most heavily by individuals within
17 communities outside the economic mainstream, for whom opportunities for economic advancement
18 are curtailed.

19 (5) It is in the public interest:

1 (i) To ensure the right of all individuals to pursue legitimate entrepreneurial and
2 professional opportunities to the limits of their talent and ambition;

3 (ii) To provide the means for the vindication of this right; and

4 (iii) To ensure that regulations of entry into businesses and professions are demonstrably
5 necessary and carefully tailored to legitimate health, safety, and welfare objectives.

6 **28-5.2-3. Definitions.**

7 (1) "Agency" shall be broadly construed to include the state, all units of state government,
8 any city, town, or political subdivision of this state, and any branch, department, division, office,
9 or agency of state or local government.

10 (2) "Entry regulations" shall include any law, ordinance, regulation, rule, policy, fee,
11 condition, test, permit, administrative practice, or other provision relating in a market, or the
12 opportunity to engage in any occupation or profession.

13 (3) "Public service restrictions" shall include any law, ordinance, regulation, rule, policy,
14 fee, condition, test, permit, or other administrative practice, with or without the support of public
15 subsidy and/or user fees.

16 (4) "Subsidy" shall include taxes, grants, user fees or any other funds received by or on
17 behalf of an agency.

18 (5) "Welfare" shall be narrowly construed to encompass protection of members of the
19 public against fraud or harm. This term shall not encompass the protection of existing businesses
20 or agencies, whether publicly or privately owned, against competition.

21 **28-5.2-4. Limitation on entry regulations.**

22 All entry regulations with respect to businesses and professions shall be limited to those
23 demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare
24 objectives.

25 **28-5.2-5. Limitation on public service restrictions.**

26 All public service restrictions shall be limited to those demonstrably necessary and
27 carefully tailored, to fulfill legitimate public health, safety, or welfare objectives.

28 **28-5.2-6. Elimination of entry regulations.**

29 (a) Within one year following the effective date of this chapter, every agency shall conduct
30 a comprehensive review of all entry regulations within their jurisdictions, and for each such entry
31 regulation it shall:

32 (1) Articulate with specificity the public health, safety, or welfare objective(s) served by
33 the regulation; and

34 (2) Articulate the reason(s) why the regulation is necessary to serve the specified

1 objective(s).

2 (b) To the extent the agency finds any regulation that does not satisfy the standard set forth
3 in § 28-5.2-4, it shall:

4 (1) Repeal the entry regulation, or modify the entry regulation to conform with the standard
5 of § 28-5.2-4, if such action is within the agency's authority to do so; or

6 (2) Recommend to the legislature actions necessary to repeal or modify the entry regulation
7 to conform to the standard of § 28-5.2-4 if such action is not within the agency's authority.

8 (c) Within fifteen (15) months following the effective date of this chapter, each agency
9 shall report to the legislature on all actions taken to conform with this section.

10 **28-5.2-7. Administrative proceedings.**

11 (a) Any person may petition any agency to repeal or modify any entry regulation into a
12 business or profession, within its jurisdiction.

13 (b) Within ninety (90) days of a petition filed under subsection (a) of this section, the
14 agency shall either repeal the entry regulation, modify the regulation to achieve the standard set
15 forth in § 28-5.2-4, or state the basis on which it concludes the regulation conforms with the
16 standard set forth in § 28-5.2-4.

17 (c) Any person may petition any agency to repeal or modify a public service restriction
18 within its jurisdiction.

19 (d) Within ninety (90) days of a petition filed under subsection (c) of this section, the
20 agency shall state the basis upon which it concludes the public service restriction conforms with
21 the standard set forth in § 28-5.2-5.

22 **28-5.2-8. Enforcement.**

23 (a) Any time after ninety (90) days following a petition filed pursuant to § 28-5.2-7 that
24 has not been acted upon by the agency pursuant to the provisions of § 28-5.2-7(b) and (d), the
25 person(s) filing a petition challenging an entry regulation or public service restriction, may file an
26 action in superior court.

27 (b) With respect to the challenge of an entry regulation, the plaintiff(s) shall prevail if the
28 court finds by a preponderance of evidence, that the challenged entry regulation on its face or in its
29 effect burdens the creation of a business, the entry of a business into a particular market, or entry
30 into a profession or occupation; and either:

31 (1) That the challenged entry regulation is not demonstrably necessary and carefully
32 tailored to fulfill legitimate public health, safety, or welfare objectives; or

33 (2) Where the challenged entry regulation is necessary to the legitimate public health,
34 safety, or welfare objectives, such objectives can be effectively served by regulations less

1 burdensome to economic opportunity.

2 (c) With respect to the challenge of a public service restriction, the plaintiff(s) shall prevail
3 if the court finds by a preponderance of the evidence, that on its face or in its effect either:

4 (1) That the challenged public service restriction is not demonstrably necessary and
5 carefully tailored to fulfill legitimate public health, safety or welfare objectives; or

6 (2) Where the challenged public service restriction is necessary to fulfill legitimate public
7 health, safety or welfare objectives, such objectives can be effectively served by restrictions that
8 allow greater private participation.

9 (d) Upon a finding for the plaintiff(s), the court shall enjoin further enforcement of the
10 challenged entry regulation or public service restriction, and shall award reasonable attorneys' fees
11 and costs to the plaintiff(s).

12 **28-5.2-9. State preemption of inconsistent local laws.**

13 The right of individuals to pursue a chosen business or profession, is a matter of statewide
14 concern and is not subject to further inconsistent regulation by a city, town or other political
15 subdivision of the state. This chapter preempts all inconsistent rules, regulations, codes, ordinances
16 and other laws adopted by a city, town or other political subdivision of this state regarding the right
17 of individuals to pursue a chosen business or profession.

18 SECTION 2. Chapter 45-24 of the General Laws entitled "Zoning Ordinances" is hereby
19 amended by adding thereto the following section:

20 **45-24-37.1. Home-based businesses.**

21 Notwithstanding any zoning or other municipal ordinance to the contrary, any individual
22 operating a home-based business which meets the criteria provided by the Internal Revenue Code
23 for a home office tax deduction, may operate without securing any approvals from their
24 municipality; provided, that the home-based business does not store chemicals, other hazardous
25 materials, or park heavy equipment on the premises, and not more than ten percent (10%) of the
26 premises are used for parking in connection with the operation of the home-based business.

27 SECTION 3. Section 5-10-9 of the General Laws in Chapter 5-10 entitled "Barbers,
28 Hairdressers, Cosmeticians, Manicurists and Estheticians" is hereby amended to read as follows:

29 **5-10-9. Classes of licenses.**

30 (a) Licenses shall be divided into the following classes and shall be issued by the division
31 to applicants for the licenses who have qualified for each class of license:

32 (1) A "hairdresser's and cosmetician's license" shall be issued by the division to every
33 applicant for the license who meets the requirements of § 5-10-8 and has completed a course of
34 instruction in hairdressing and cosmetology consisting of not less than one thousand (1,000) hours

1 of continuous study and practice.

2 (2) An “instructor’s license” shall be granted by the division to any applicant for the license
3 who has held a hairdresser’s and cosmetician’s license, a barber’s license, a manicurist’s license,
4 or an esthetician’s license, issued under the laws of this state or another state, for at least the three
5 (3) years preceding the date of application for an instructor’s license and:

6 (i) Meets the requirements of § 5-10-8;

7 (ii) Has satisfactorily completed three hundred (300) hours of instruction in hairdressing
8 and cosmetology, barber, manicurist, or esthetician teacher training approved by the division as
9 prescribed by regulation;

10 (iii) Has satisfactorily passed a written and a practical examination approved by the
11 division to determine the fitness of the applicant to receive an instructor’s license;

12 (iv) Has complied with § 5-10-10; and

13 (v) Has complied with any other qualifications that the division prescribes by regulation.

14 (3) A “manicurist license” shall be granted to any applicant for the license who meets the
15 following qualifications:

16 (i) Meets the requirements of § 5-10-8; and

17 (ii) Has completed a course of instruction, consisting of not less than three hundred (300)
18 hours of professional training in manicuring, in an approved school.

19 (4) An “esthetician license” shall be granted to any applicant for the license who meets the
20 following qualifications:

21 (i) Meets the requirements of § 5-10-8;

22 (ii) Has completed a course of instruction in esthetics, consisting of not less than six
23 hundred (600) hours of continuous study and practice over a period of not less than four (4) months,
24 in an approved school of hairdressing and cosmetology; and

25 (iii) Any applicant who holds a diploma or certificate from a skin-care school, that is
26 recognized as a skin-care school by the state or nation in which it is located, and meets the
27 requirements of subsection (4)(i) of this section, shall be granted a license to practice esthetics;
28 provided, that the skin-care school has a requirement that, in order to graduate from the school, a
29 student must have completed a number of hours of instruction in the practice of skin care, which
30 number is at least equal to the number of hours of instruction required by the division.

31 (5) A “barber” license shall be issued by the division to every applicant for the license who
32 meets the requirements of § 5-10-8 and:

33 (i) Has completed a course of instruction in barbering consisting of not less than one
34 thousand five hundred (1,500) hours of continuous study and practice in an approved school;

1 (ii) Has possessed, for at least two (2) years prior to the filing of the application, a certificate
2 of registration in full force and effect from the department of health of the state specifying that
3 person as a registered, apprentice barber, and the application of that applicant is accompanied by
4 an affidavit, or affidavits, from his or her employer, or former employers, or other reasonably
5 satisfactory evidence showing that the applicant has been actually engaged in barbering as an
6 apprentice barber in the state during those two (2) years; or

7 (iii) A combination of barber school training and apprenticeship training as determined by
8 the rules and regulations prescribed by the division.

9 **(b) Any licensed barber, hairdresser, pedicurist, manicurist or individual providing makeup**
10 **application services may provide training to any unlicensed individual providing services to the**
11 **clients of the licensee a location where the licensee is also providing services for a training period**
12 **of up to four (4) years. Any individual who completes the four (4) year training period shall be**
13 **entitled to apply for and receive a license upon certification by the licensee that such a four (4) year**
14 **training has been completed; provided, however, the division may require additional training and/or**
15 **licensure for the application or use of hazardous chemicals.**

16 SECTION 4. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS -- RIGHT TO EARN A LIVING ACT

1 This act would establish procedures to ensure that agency regulations or public service
2 restrictions do not unjustly restrict individuals from entering into businesses, professions or public
3 services and that the regulations or restrictions achieve articulable, legitimate public health, safety
4 and welfare objectives.

5 This act would also allow the operation of a home-based business, as long as it meets the
6 criteria for a home office IRS income tax deduction, without securing any approvals from the
7 municipality. The business may not store chemicals or other hazardous materials, may not park
8 heavy equipment and not more than ten percent (10%) of the premises is used for parking,
9 notwithstanding any contrary zoning law or ordinance.

10 This act would further allow any licensed barber, hairdresser, pedicurist, manicurist, or
11 individual providing makeup application services to provide training services for individuals that
12 presently do not have such a license, and upon the completion of a four (4) year training period, the
13 trainee shall be entitled to receive a license, although the division may require more training for the
14 use of hazardous chemicals.

15 This act would take effect upon passage.

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