

2021 -- H 5428

=====
LC000348
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

—————
A N A C T

RELATING TO BUSINESSES AND PROFESSIONS

Introduced By: Representatives Place, Chippendale, and Quattrocchi

Date Introduced: February 08, 2021

Referred To: House Judiciary

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 90

4 OCCUPATIONAL LICENSING REVIEW ACT

5 **5-90-1. Title.**

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

7 **5-90-2. 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 **5-90-3. 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
19 to occupational regulations.

1 **5-90-4. Definitions.**

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

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

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

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

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

26 (i) Market competition;

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

28 (iii) Private certification;

29 (iv) Voluntary bonding or insurance;

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

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

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

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

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

- 1 (x) Inspection;
- 2 (xi) Bonding;
- 3 (xii) Insurance;
- 4 (xiii) Government registration;
- 5 (xiv) Government certification;
- 6 (xv) Specialty occupational license for medical reimbursement; and
- 7 (xvi) Occupational license.

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

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

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

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

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

1 non-licensed individual will not qualify for payment or reimbursement from a government agency.

2 **5-90-5. Review of occupational regulations.**

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

7 (b) The committees shall be responsible for reviewing legislation to enact or modify an
8 occupational regulation to ensure compliance with the policies set forth in § 5-90-3.

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

13 (2) The committees will determine if the proposed regulation meets the state's policy in §
14 5-90-3 of using the least restrictive regulation necessary to protect consumers from present,
15 significant, and substantiated harms.

16 (3) The committee's analysis in subsection (b)(2) of this section will employ a rebuttable
17 presumption that consumers are sufficiently protected by market competition and private remedies
18 as listed in § 5-90-4(4)(i) through (iv). The committees will give added consideration to the use of
19 private certification programs that allow a provider to give consumers information about the
20 provider's knowledge, skills and association with a private certification organization.

21 (4) The committees may rebut the presumption in subsection (b)(3) of this section if they
22 find both credible, empirical evidence of present, significant, and substantiated harm, and that
23 consumers do not have the information and means to protect themselves against such harm. If
24 evidence of such unmanageable harm is found, the committees may recommend the least restrictive
25 government regulation to address the harm as listed in § 5-90-4(4)(v) through (xvi).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (9) The committees may also comment on whether and how much responsibility the
5 legislation delegates to a licensing board to promulgate administrative rules, particularly rules
6 relating to establishing the occupation's scope of practice or the personal qualifications required to
7 work in the occupation. The comments should make the general assembly aware of exposure to
8 antitrust litigation that the legislation may cause because of excessive or ambiguous delegation of
9 authority to licensing boards to engage in administrative rulemaking.

10 (c) The house of representatives and the senate shall each adopt rules requiring the
11 committees considering the legislation to enact or modify an occupational regulation to receive the
12 committee's analysis and recommendations in subsection (b) of this section prior to voting on the
13 legislation.

14 (d) Nothing in this section shall be construed to preempt federal regulation or to require a
15 private certification organization to grant or deny private certification to any individual.

16 **5-90-6. Analysis of existing occupational licenses.**

17 (a) Commencing on January 1, 2022, the speaker of the house of representatives and the
18 president of the senate shall assign the committees the overall responsibility to analyze existing
19 occupational licenses.

20 (1) Each relevant standing committee of the legislature is responsible for reviewing
21 approximately twenty percent (20%) of the current occupational licenses under the committee's
22 jurisdiction per year. The committee chairperson shall select the occupational licenses to be
23 reviewed annually.

24 (2) Each relevant standing committee of the legislature will review all occupational
25 licenses under the committee's jurisdiction within the subsequent five (5) years, and will repeat
26 such a review in each five (5) year period thereafter.

27 (b) The committees must use the criteria in § 5-90-5(b)(2) through (8) to analyze the
28 existing occupational licenses.

29 (c) Commencing on January 1, 2023, the committees shall report on an annual basis
30 thereafter the findings of their reviews to the speaker of the house of representatives, the president
31 of the senate, the governor and the attorney general. In its report, the committees will recommend
32 the legislature enact new legislation that:

33 (1) Repeals the occupational licenses;

34 (2) Converts the occupational licenses to the less restrictive regulations in § 5-90-4;

1 (3) Instructs the relevant licensing board or agency to promulgate revised regulations
2 reflecting the legislature's decision to use less restrictive alternatives to occupational licenses;

3 (4) Changes the requisite personal qualifications of an occupational license;

4 (5) Redefines the scope of practice in an occupational license; or

5 (6) Reflects other recommendations to the legislature.

6 (d) Nothing in this section shall be construed to preempt federal regulation or authorize the
7 committee to review the means that a private certification organization uses to issue, deny or revoke
8 a private certification to any individual, or to require a private certification organization to grant or
9 deny private certification to any individual.

10 **5-90-7. Interpretations of statutes and rules.**

11 (a) Occupational regulations will be construed and applied to increase economic
12 opportunities, promote competition, and encourage innovation.

13 (b) Any ambiguities in occupational regulations will be construed in favor of workers and
14 aspiring workers to work.

15 (c) The scope of practice in occupational regulations is to be construed narrowly to avoid
16 burdening individuals with regulatory requirements that only have an attenuated relationship to the
17 goods or services they provide.

18 **5-90-8. Review of criminal record.**

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

20 (b) Notwithstanding any other law, a board, agency, department or other state agency
21 (hereafter "board") shall only utilize this chapter to deny, diminish, suspend, revoke, withhold or
22 otherwise limit state recognition because of a criminal conviction.

23 (c) A board may not automatically bar an individual from state recognition because of a
24 criminal conviction, but will provide individualized consideration.

25 (d) A board may only consider a conviction of a non-excluded crime that is a felony or
26 violent misdemeanor.

27 (e) A board will not consider:

28 (1) Non-conviction information from the criminal justice system or the court system,
29 including information related to a deferred adjudication, participation in a diversion program, or an
30 arrest not resulting in a conviction;

31 (2) A conviction for which no sentence of incarceration can be imposed;

32 (3) A conviction that has been sealed, expunged, pardoned or overturned on appeal;

33 (4) A juvenile adjudication;

34 (5) A non-violent misdemeanor;

1 (6) A conviction that occurred more than three (3) years before the date of the board's
2 consideration, except for a conviction of:

3 (i) A crime of violence as defined in § 11-47-2; or
4 (ii) A felony related to criminal fraud, larceny or embezzlement as defined in §§ 11-41-3
5 and 11-41-4.

6 (f) A board shall not use any vague terms in its consideration and decision including, but
7 not limited to, the following:

8 (1) Good moral character;
9 (2) Moral turpitude; or
10 (3) Character and fitness.

11 (g) The board shall consider the individual's current circumstances including:

12 (1) The age of the individual when they committed the offense;
13 (2) The passage of time since the offense;
14 (3) The completion of the criminal sentence;
15 (4) The attainment of a certificate of rehabilitation or good conduct;
16 (5) Completion of, or active participation in a rehabilitative drug or alcohol treatment
17 program;

18 (6) Testimonials and recommendations, including any progress reports from the
19 individual's parole or probation officer;

20 (7) Other evidence of rehabilitation;
21 (8) Education and training;
22 (9) Employment history;
23 (10) Employment aspirations;
24 (11) The individual's current family responsibilities; and
25 (12) Other information that the individual submitted to the board.

26 (h) A board shall hold a public hearing on an individual's request for licensing, should the
27 individual request one, pursuant to chapter 35 of title 42 ("administrative procedures act").

28 (i) The board may deny, diminish, suspend, revoke, withhold or otherwise limit state
29 recognition only if the board determines:

30 (1) The state has an important interest in regulation of a lawful occupation that is directly,
31 substantially and adversely impaired by the individual's non-excluded criminal record as mitigated
32 by the individual's current circumstances in subsection (g) of this section; or

33 (2) The state's interest outweighs the individual's fundamental right to pursue a lawful
34 occupation;

1 In any case in which the board votes to deny, diminish, suspend, revoke, withhold or
2 otherwise limit state recognition and deny an individual the right to pursue a lawful occupation, a
3 board will have the burden of supporting that decision by clear and convincing evidence.

4 (j) Any individual denied state recognition or otherwise aggrieved by a board's decision
5 may appeal the decision as provided in chapter 35 of title 42 ("administrative procedures act").

6 **5-90-9. Petition for board determination prior to obtaining personal qualifications.**

7 (a) An individual with a criminal record may petition a board at any time, including before
8 obtaining any requested personal qualifications, for a decision whether the individual's criminal
9 record will disqualify them from obtaining state recognition.

10 (b) The individual will include in the petition their criminal record or authorize the board
11 to obtain their criminal record.

12 (c) The board will make its decision using the criteria and process in § 5-90-5.

13 (d) The board will issue its decision no later than sixty (60) days after the board receives
14 the petition, or no later than ninety (90) days after the board receives the petition if a hearing is
15 held. Any decision by the board shall be in writing, and include the criminal record, findings of fact
16 and conclusions of law.

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

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

22 (g) The petitioner may submit a revised petition reflecting completion of the remedial
23 actions before any deadline, which deadline shall not be less than twenty (20) days of the date the
24 board sets in its alternative advisory decision.

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

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

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

32 **5-90-10. Reporting requirements.**

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

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

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

5 (3) The numbers of each board's approvals and denials under § 5-90-6;

6 (4) The offenses for which the board approved or denied petitions under § 5-90-6; and

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

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

10 **5-90-11. Limitation.**

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

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

=====
LC000348
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS

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 create a process to review the
4 criminal history of business owners to reduce offenders' disqualifications.

5 This act would take effect upon passage.

=====
LC000348
=====