

AMENDMENTS TO LB299

Introduced by Government, Military and Veterans Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 18 of this act shall be known and may be
4 cited as the Occupational Board Reform Act.

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

7 Sec. 3. Certification means a voluntary program (1) in which either
8 a private organization or the state government grants nontransferable
9 recognition to an individual who meets personal qualifications
10 established by either the private organization or the Legislature, (2) by
11 which an individual receives approval and the authority to use the term
12 certified as a designated title to engage in a lawful occupation, and (3)
13 which is not required to engage in a lawful occupation but is required in
14 order to use the term certified as a designated title to engage in the
15 lawful occupation.

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

20 Sec. 5. Least restrictive regulation means one of the following
21 types of regulation, listed from least restrictive to most restrictive:

- 22 (1) Market competition;
- 23 (2) Third-party or consumer-created ratings and reviews;
- 24 (3) Private certification;
- 25 (4) Specific private civil cause of action to remedy consumer harm;
- 26 (5) Deceptive trade practices under the Uniform Deceptive Trade
27 Practices Act;

1 (6) Mandatory disclosure of attributes of the specific goods or
2 services;

3 (7) Regulation of the process of providing the specific goods or
4 services to consumers;

5 (8) Inspection;

6 (9) Bonding or insurance;

7 (10) Registration;

8 (11) Government certification;

9 (12) Specialty occupational license for medical reimbursement; and

10 (13) Occupational licensure.

11 Sec. 6. Occupational board means a board, commission, department,
12 or other entity created by state law which regulates providers.

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

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

22 (2) Occupational regulation includes certification, registration,
23 and occupational licensure.

24 (3) Occupational regulation does not include business licensure,
25 facility licensure, building permit requirements, or zoning and land-use
26 regulation except to the extent that the same state laws that require a
27 business license, a facility license, a building permit, or zoning and
28 land-use regulation also regulate an individual's personal qualifications
29 to perform a lawful occupation.

30 Sec. 9. Personal qualifications means criteria related to an
31 individual's personal background and characteristics, including

1 completion of an approved educational program, satisfactory performance
2 on an examination, work experience, other evidence of attainment of
3 requisite skills or knowledge, moral standing, criminal history, and
4 completion of continuing education.

5 Sec. 10. Provider means a provider of goods or services engaged in
6 a lawful occupation regulated by an occupational board, including, but
7 not limited to:

- 8 (1) Abstracters;
- 9 (2) Accountants;
- 10 (3) Acupuncturists;
- 11 (4) Agricultural engineers;
- 12 (5) Aircraft and civil aviation mechanics;
- 13 (6) Alcohol and drug counselors;
- 14 (7) Architects;
- 15 (8) Architectural engineers;
- 16 (9) Asbestos workers;
- 17 (10) Athlete agents;
- 18 (11) Athletic coaches;
- 19 (12) Athletic trainers;
- 20 (13) Audiologists;
- 21 (14) Audiology or speech-language pathology assistants;
- 22 (15) Bank executive officers;
- 23 (16) Barbers;
- 24 (17) Barber instructors;
- 25 (18) Bill and account collectors;
- 26 (19) Body branders;
- 27 (20) Body piercers;
- 28 (21) Boiler and pressure vessel inspectors;
- 29 (22) Boxers and seconds;
- 30 (23) Boxing promoters;
- 31 (24) Broker-dealer agents;

- 1 (25) Broker-dealers;
- 2 (26) Bulk milk haulers and samplers;
- 3 (27) Certified legal video specialists;
- 4 (28) Certified special population specialists;
- 5 (29) Chemical engineers;
- 6 (30) Chiropractors;
- 7 (31) Civil engineers;
- 8 (32) Clinical nurse specialists;
- 9 (33) Commercial dog or cat breeders;
- 10 (34) Commercial dog or cat dealers;
- 11 (35) Contractors and subcontractors;
- 12 (36) Control systems engineers;
- 13 (37) Cosmetologists;
- 14 (38) Cosmetology instructors;
- 15 (39) Counselors;
- 16 (40) County assessors;
- 17 (41) County highway and city street superintendents;
- 18 (42) Court reporters;
- 19 (43) Credit counselors;
- 20 (44) Credit union loan officers;
- 21 (45) Dental assistants;
- 22 (46) Dental hygienists;
- 23 (47) Dentists;
- 24 (48) Dialysis patient care technicians;
- 25 (49) Driver safety course instructors;
- 26 (50) Education administrators;
- 27 (51) Electrical and computer engineers;
- 28 (52) Electricians;
- 29 (53) Electrologists;
- 30 (54) Electrology instructors;
- 31 (55) Elementary school teachers;

- 1 (56) Elevator inspectors and elevator inspection supervisors;
- 2 (57) Employment agents;
- 3 (58) Environmental engineers;
- 4 (59) Environmental health specialists;
- 5 (60) Estheticians;
- 6 (61) Esthetician instructors;
- 7 (62) Farm labor contractors;
- 8 (63) Fire alarm inspectors;
- 9 (64) Fire protection engineers;
- 10 (65) Fire sprinkler contractors;
- 11 (66) Fireworks operators;
- 12 (67) Funeral directors and embalmers;
- 13 (68) Genetic counselors;
- 14 (69) Geologists;
- 15 (70) Hearing instrument specialists;
- 16 (71) Horse trainers;
- 17 (72) Industrial engineers;
- 18 (73) Industrial hygienists;
- 19 (74) Insurance producers and consultants;
- 20 (75) Investment advisers and adviser representatives;
- 21 (76) Jockeys;
- 22 (77) Kindergarten teachers;
- 23 (78) Land surveyors;
- 24 (79) Landscape architects;
- 25 (80) Law enforcement officers;
- 26 (81) Lead-based paint licensees;
- 27 (82) Licensed practical nurses;
- 28 (83) Livestock dealers;
- 29 (84) Lobbyists;
- 30 (85) Marriage and family therapists;
- 31 (86) Massage therapists;

- 1 (87) Master plumbers;
- 2 (88) Mechanical engineers;
- 3 (89) Medical nutrition therapists;
- 4 (90) Medication aides;
- 5 (91) Mental health practitioners;
- 6 (92) Metallurgical and materials engineers;
- 7 (93) Middle school teachers;
- 8 (94) Milk producers and field representatives;
- 9 (95) Mining and mineral engineers;
- 10 (96) Mixed martial artists;
- 11 (97) Mortgage loan originators;
- 12 (98) Motor vehicle, trailer, and motorcycle dealers;
- 13 (99) Motorcycle-only dealers;
- 14 (100) Nail technicians;
- 15 (101) Nail technology instructors;
- 16 (102) Notaries public;
- 17 (103) Nuclear engineers;
- 18 (104) Nurse aides;
- 19 (105) Nurse anesthetists;
- 20 (106) Nurse midwives;
- 21 (107) Nurse practitioners;
- 22 (108) Nursery stock distributors;
- 23 (109) Nursing home administrators;
- 24 (110) Occupational therapists;
- 25 (111) Occupational therapy assistants;
- 26 (112) Optometrists;
- 27 (113) Osteopathic physicians and surgeons;
- 28 (114) Out-of-hospital emergency care providers;
- 29 (115) Paid dining assistants;
- 30 (116) Perfusionists;
- 31 (117) Permanent color technicians;

- 1 (118) Personal trainers;
- 2 (119) Pesticide applicators;
- 3 (120) Pesticide dealers;
- 4 (121) Petroleum engineers;
- 5 (122) Pharmacists;
- 6 (123) Pharmacy technicians;
- 7 (124) Physical therapists;
- 8 (125) Physical therapist assistants;
- 9 (126) Physician assistants;
- 10 (127) Physicians and surgeons;
- 11 (128) Pilots;
- 12 (129) Podiatrists;
- 13 (130) Polygraph examiners;
- 14 (131) Private detectives;
- 15 (132) Professional engineers;
- 16 (133) Psychologists;
- 17 (134) Race horse identifiers and tatoopers;
- 18 (135) Race horse owners;
- 19 (136) Race horse stable attendants;
- 20 (137) Race track workers;
- 21 (138) Radiographers;
- 22 (139) Radon specialists and technicians;
- 23 (140) Real estate brokers;
- 24 (141) Real estate salespersons;
- 25 (142) Real property appraisers;
- 26 (143) Registered nurses;
- 27 (144) Respiratory care practitioners;
- 28 (145) School counselors;
- 29 (146) Secondary school teachers;
- 30 (147) Sign language interpreters;
- 31 (148) Social workers and master social workers;

- 1 (149) Software engineers;
- 2 (150) Special education teachers;
- 3 (151) Speech-language pathologists;
- 4 (152) Strength and conditioning specialists;
- 5 (153) Structural engineers;
- 6 (154) Surgical first assistants;
- 7 (155) Swimming pool operators;
- 8 (156) Tactical strength and conditioning facilitators;
- 9 (157) Tattoo artists;
- 10 (158) Teachers and substitute teachers;
- 11 (159) Trailer-only dealers;
- 12 (160) Truck drivers for heavy trucks;
- 13 (161) Truck drivers for light and delivery services trucks;
- 14 (162) Veterinarians;
- 15 (163) Veterinary technicians;
- 16 (164) Viatical settlement brokers;
- 17 (165) Vocational education teachers;
- 18 (166) Voice stress examiners;
- 19 (167) Wastewater treatment operators;
- 20 (168) Wastewater treatment system professionals;
- 21 (169) Water treatment plant operators;
- 22 (170) Water well drillers; and
- 23 (171) Wrecker and salvage dealers.

24 Sec. 11. (1) Registration means (a) a requirement to give notice to
25 the government that may include the individual's name and address, the
26 individual's agent for service of process, the location of the activity
27 to be performed, and a description of the service the individual
28 provides, (b) upon receipt of the notice by the government, the
29 individual may use the term registered as a designated title to engage in
30 a lawful occupation, and (c) such notice is required to engage in the
31 lawful occupation for compensation and is required in order to use the

1 term registered as a designated title to engage in the lawful occupation.

2 (2) Registration does not include any requirements to show personal
3 qualifications but may require a bond or insurance.

4 (3) Registration is not transferable.

5 Sec. 12. (1) Specialty occupational license for medical
6 reimbursement means a nontransferable authorization in law for an
7 individual to qualify for payment or reimbursement from a government
8 agency for the nonexclusive provision of medical services based on
9 meeting personal qualifications established by the Legislature.

10 (2) A specialty occupational license for medical reimbursement may
11 be recognized by a private company.

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

13 (1) Certification and registration are not synonymous with
14 occupational licensure;

15 (2) When the terms certification and certified are used outside of
16 the Occupational Board Reform Act to mean a requirement that an
17 individual meet certain personal qualifications to work legally, those
18 terms in that context shall be interpreted for purposes of the
19 Occupational Board Reform Act as requiring an individual to meet the
20 requirements for an occupational license; and

21 (3) When the terms registration and registered are used outside of
22 the Occupational Board Reform Act to mean a requirement that an
23 individual meet certain personal qualifications to work legally, those
24 terms in that context shall be interpreted for purposes of the
25 Occupational Board Reform Act as requiring an individual to meet the
26 requirements for an occupational license.

27 Sec. 14. (1) Occupational regulations shall be construed and
28 applied to increase economic opportunities, promote competition, and
29 encourage innovation.

30 (2) It is the policy of the State of Nebraska:

31 (a) To protect the fundamental right of an individual to pursue a

1 lawful occupation;

2 (b) To use the least restrictive regulation necessary to protect
3 consumers from present, significant, and substantiated harms that
4 threaten public health and safety when competition alone is not
5 sufficient;

6 (c) To enforce an occupational regulation against an individual only
7 to the extent that the individual sells goods and services that are
8 included explicitly in the statute that governs the lawful occupation's
9 scope of practice; and

10 (d) To provide ongoing legislative review of occupational regulation
11 and legislation related to occupational regulation.

12 Sec. 15. (1) The fundamental right of an individual to pursue an
13 occupation includes the right of an individual with a criminal history to
14 obtain an occupational license, a specialty occupational license for
15 medical reimbursement, or government certification or state recognition
16 of the individual's personal qualifications.

17 (2)(a) An individual who has a criminal conviction may petition the
18 appropriate occupational board at any time, including prior to obtaining
19 required education or paying any fee, for a determination as to whether
20 the individual's criminal conviction would disqualify the individual from
21 obtaining an occupational license, a specialty occupational license for
22 medical reimbursement, or government certification or state recognition
23 of the individual's personal qualifications from that occupational board.

24 (b) The individual may include with the petition additional
25 information about the individual's current circumstances, including the
26 time since the offense, completion of the criminal sentence, other
27 evidence of rehabilitation, testimonials, employment history, and
28 employment aspirations.

29 (3) Upon receipt of a petition under subsection (2) of this section
30 and a fee if required under subsection (7) of this section, the
31 appropriate occupational board shall make a determination of whether the

1 individual's criminal conviction would disqualify the individual from
2 obtaining an occupational license, a specialty occupational license for
3 medical reimbursement, or government certification or state recognition
4 of the individual's personal qualifications from that occupational board.
5 In making such determination, an individual's criminal history shall only
6 disqualify the individual if:

7 (a) The individual has a felony conviction;

8 (b) The felony conviction is expressly listed as a disqualifying
9 offense in the statutes governing occupational regulation by the
10 occupational board; and

11 (c) The occupational board concludes that the state has an important
12 interest in protecting public safety that outweighs the individual's
13 right to pursue an occupation. The occupational board may come to this
14 conclusion only if it determines, by clear and convincing evidence at the
15 time of the petition, that (i) the specific offense for which the
16 individual was convicted is substantially related to the state's public
17 safety interest, (ii) based on the nature of the specific offense for
18 which the individual was convicted and the individual's circumstances at
19 the time of the petition, the individual is more likely to re-offend by
20 virtue of having the license, certification, or recognition than if the
21 individual did not have the license, certification, or recognition, and
22 (iii) another offense by the individual will cause greater harm than it
23 would if the individual did not have the license, certification, or
24 recognition.

25 (4) The occupational board shall issue its determination in writing
26 within ninety days after receiving a petition under subsection (2) of
27 this section. The determination shall include findings of fact and
28 conclusions of law. If the occupational board determines that the state's
29 public safety interest outweighs the individual's right, the occupational
30 board may advise the individual of any action the individual may take to
31 remedy the disqualification. If the occupational board finds that the

1 individual has been convicted of a subsequent felony, the occupational
2 board may rescind a determination upon finding that the subsequent felony
3 conviction would be disqualifying under subsection (3) of this section.

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

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

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

17 Sec. 16. (1) For each legislative bill or amendment to a
18 legislative bill which would enact or modify occupational regulations,
19 the standing committee of the Legislature to which the bill is referred
20 shall:

21 (a) Review the proposed legislation with respect to the policies
22 stated in section 14 of this act;

23 (b) Determine whether the proposed legislation meets the
24 requirements of the policies stated in section 14 of this act by using
25 the least restrictive regulation necessary to protect consumers from
26 present, significant, and substantiated harm;

27 (c) Evaluate the effects of the proposed legislation on
28 opportunities for workers, consumer choices and costs, general
29 unemployment, market competition, governmental costs, and any other
30 relevant issues;

31 (d) Compare the proposed legislation with occupational regulation in

1 other states and for similar occupations; and

2 (e) Issue a report regarding the proposed legislation in a timely
3 fashion in order that the committee may review the report prior to voting
4 on the legislation.

5 (2) In determining whether proposed legislation meets the
6 requirement of using the least restrictive regulation necessary to
7 protect consumers, the legislative committee shall presume that market
8 competition and private remedies are sufficient to protect consumers.

9 (3) The presumption in subsection (2) of this section may be
10 overcome if the legislative committee finds empirical evidence of a
11 systematic problem that warrants more restrictive regulation to protect
12 consumers. If such a problem is present in the state, the legislative
13 committee shall recommend the least restrictive regulation that addresses
14 the problem. The legislative committee shall use the following guidelines
15 to form its recommendation:

16 (a) If the need is to protect consumers against fraud, the likely
17 recommendation will be to strengthen powers under the Uniform Deceptive
18 Trade Practices Act or require disclosures that will reduce misleading
19 attributes of the specific goods or services;

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

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

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

30 (e) If the need is to protect consumers against potential damages by
31 transient providers, the likely recommendation will be to require that

1 providers register their businesses with the Secretary of State;

2 (f) If the need is to protect consumers against a shortfall or
3 imbalance of knowledge about the goods or services relative to the
4 providers' knowledge, the likely recommendation will be to enact
5 voluntary private or government certification; and

6 (g) If the need is to qualify providers of new or highly specialized
7 medical services for reimbursement by the state, the likely
8 recommendation will be to enact a specialty license for medical
9 reimbursement.

10 Sec. 17. A standing committee of the Legislature may:

11 (1) Request proponents of legislation that would enact or modify
12 occupational regulations to submit evidence of present, significant, and
13 substantiated harm to consumers in Nebraska; and

14 (2) Request information from sources other than proponents who are
15 knowledgeable regarding the proposed occupational regulations, the effect
16 on labor economics, and other relevant factors.

17 Sec. 18. Each standing committee of the Legislature shall review
18 and analyze, using the criteria in section 16 of this act, the
19 occupational regulations deriving their authority from statutes under the
20 committee's jurisdiction. The committee shall complete the review and
21 analysis of all such regulations under the jurisdiction of the committee
22 within five years and every five years thereafter. The committee may
23 require the submission of information by the affected occupational board,
24 members or employees of the board, and other affected parties. The
25 committee shall annually provide to the Clerk of the Legislature an
26 electronic report of its findings and suggested changes regarding at
27 least twenty percent of the occupational regulations under its
28 jurisdiction.

29 Sec. 19. Section 84-901.02, Revised Statutes Cumulative Supplement,
30 2016, is amended to read:

31 84-901.02 The Legislature finds that:

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

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

8 (3) Agencies should be encouraged to advise the public of current
9 opinions, interpretations, approaches, and likely courses of action by
10 means of guidance documents; ~~and~~ -

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

14 Sec. 20. Section 84-907.06, Revised Statutes Supplement, 2017, is
15 amended to read:

16 84-907.06 Whenever an agency proposes to adopt, amend, or repeal a
17 rule or regulation, the agency shall (1) at least thirty days before the
18 public hearing, when notice of a proposed rule or regulation is sent out,
19 or (2) at the same time the agency requests approval from the Governor
20 for an emergency rule or regulation under section 84-901.04, ~~the agency~~
21 ~~shall~~ send to the Executive Board of the Legislative Council for purposes
22 of section 84-907.07 if applicable, to the Executive Board of the
23 Legislative Council to be forwarded to the relevant standing committee of
24 the Legislature for purposes of the Occupational Board Reform Act if
25 applicable, and to the Secretary of State to be made available to the
26 public by means which include, but are not limited to, publication on the
27 Secretary of State's web site, if applicable, the following information:
28 A ~~(a)~~ a copy of the hearing notice required by section 84-907; ~~;~~ ~~(b)~~ a
29 draft copy of the rule or regulation; ~~;~~ ~~and~~ ~~(c)~~ the information provided
30 to the Governor pursuant to section 84-907.09.

31 Sec. 21. Section 84-910, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 84-910 On or before July 1 of each year, each agency shall notify
3 the Legislative Performance Audit Committee and the Executive Board of
4 the Legislative Council for purposes of the Occupational Board Reform
5 Act, if applicable, of the status of all rules and regulations pending
6 before the agency which have not been adopted and promulgated. If the
7 executive board receives a notification pursuant to this section, the
8 executive board shall forward the notification to the standing committee
9 of the Legislature with jurisdiction over the rules and regulations. If
10 an additional appropriation was made with respect to legislation enacted
11 to provide funding for or additional staff to implement a program for
12 which rules and regulations are required to be adopted, the notification
13 shall include what the funding has been used for and what functions the
14 staff have been performing while such rules and regulations are pending.
15 The format of the notification shall be established by the committee ~~no~~
16 ~~later than June 1, 2011,~~ and shall be updated periodically thereafter.

17 Sec. 22. Section 84-920, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 84-920 Sections 84-901 to 84-920 and the Occupational Board Reform
20 Act shall be known and may be cited as the Administrative Procedure Act.

21 Sec. 23. This act becomes operative on January 1, 2019.

22 Sec. 24. Original section 84-910, Reissue Revised Statutes of
23 Nebraska, sections 84-901.02 and 84-920, Revised Statutes Cumulative
24 Supplement, 2016, and section 84-907.06, Revised Statutes Supplement,
25 2017, are repealed.