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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2002**

01/30/2012 Authored by Downey, Mazorol, Holberg, Drazkowski, Banaian and others

The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to occupational regulation; ensuring a person may pursue a lawful
1.3 occupation free from unnecessary regulations; stating a right to engage in
1.4 an occupation to create a greater number of jobs; specifying conditions for
1.5 government regulation of occupations to protect against misuse of occupational
1.6 regulations to reduce competition and increase prices to consumers; proposing
1.7 coding for new law as Minnesota Statutes, chapter 213.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. **[213.01] DEFINITIONS.**

1.10 Subdivision 1. **Definitions.** For the purposes of this chapter, the words defined in
1.11 this section have the meaning given.

1.12 Subd. 2. **Certification.** "Certification" is a voluntary program for which the
1.13 legislature establishes the criteria to grant recognition to a person who (1) has met certain
1.14 predetermined qualifications and (2) may use "certified" as a designated title. Noncertified
1.15 persons may also perform the occupation for compensation, but the use of the title
1.16 "certified" by a noncertified person is illegal. For the purposes of this chapter, the term
1.17 certification is not intended to be synonymous with "licensing" or "license."

1.18 Subd. 3. **Court.** "Court" means any court, administrative tribunal, or other
1.19 government agency acting in a judicial or quasi-judicial capacity.

1.20 Subd. 4. **Government.** "Government" means the government of this state or any of
1.21 its political subdivisions.

1.22 Subd. 5. **Lawful occupation.** "Lawful occupation" means a course of conduct,
1.23 pursuit, or profession that includes the sale of goods or services that are not themselves
1.24 illegal to sell, irrespective of whether the person selling them is subject to an occupational
1.25 regulation.

2.1 Subd. 6. **Least restrictive occupational regulation.** "Least restrictive occupational
 2.2 regulation" means, from least to most restrictive:

2.3 (1) a provision for private civil action to remedy consumer harm;

2.4 (2) inspection;

2.5 (3) bonding;

2.6 (4) registration;

2.7 (5) certification; or

2.8 (6) licensing.

2.9 Subd. 7. **License.** "License" is a nontransferable authorization to perform an
 2.10 occupation for compensation based on meeting:

2.11 (1) predetermined qualifications established by the legislature, such as satisfactory
 2.12 completion of an approved education program and acceptable performance on a qualifying
 2.13 examination or series of examinations; and

2.14 (2) continuing education qualifications.

2.15 It is illegal for nonlicensed persons to perform the occupation for compensation. A license
 2.16 is the most restrictive form of occupational regulation.

2.17 Subd. 8. **Occupational regulation.** "Occupational regulation" means a statute, rule,
 2.18 practice, policy, or other government-prescribed requirement for a person to work in a
 2.19 lawful occupation.

2.20 Subd. 9. **Registration.** "Registration" means a requirement established by the
 2.21 legislature in which a person (1) submits notification to a state agency, and (2) may use
 2.22 "registered" as a designated title. Notification may include the person's name and address,
 2.23 the person's agent for service of process, the location of the activity to be performed, and a
 2.24 description of the service the person provides. Registration does not include education
 2.25 or experience requirements. Registration may include a requirement to maintain a
 2.26 bond. Nonregistered persons may not perform the occupation for compensation or use
 2.27 "registered" as a designated title. For purposes of this chapter, the term registration is not
 2.28 intended to be synonymous with "licensing" or "license."

2.29 Subd. 10. **Substantial burden.** "Substantial burden" means a legal or other
 2.30 regulatory obstacle that imposes significant difficulty or cost on a person seeking to enter
 2.31 into or continue in a lawful occupation. A substantial burden is a burden that is more
 2.32 than incidental.

2.33 **Sec. 2. [213.02] RIGHT TO ENGAGE IN A LAWFUL OCCUPATION.**

2.34 Subdivision 1. **Statutory right.** A person has a right to engage in a lawful
 2.35 occupation free from any substantial burden, unless the government demonstrates (1)

3.1 it has a compelling interest in protecting against present and recognizable harm to the
3.2 public health or safety, and (2) the occupational regulation is the least restrictive means of
3.3 furthering that compelling interest.

3.4 Subd. 2. **Defense and relief.** (a) A person may assert as a defense the right to
3.5 engage in a lawful occupation in any judicial or administrative proceeding to enforce an
3.6 occupational regulation that violates subdivision 1.

3.7 (b) A person may bring an action for declaratory judgment or injunctive or other
3.8 equitable relief for a violation of subdivision 1.

3.9 (c) A person may assert as a defense or bring an action against the enforceability of
3.10 an occupational regulation, pursuant to paragraphs (a) and (b), which is:

3.11 (1) in law at the effective date of this act; or

3.12 (2) enacted, adopted, or amended after the effective date of this act and does not
3.13 include in statute an explicit exemption from this chapter.

3.14 (d) A person who asserts a defense or brings an action under this section has the
3.15 initial burden of proof that an occupational regulation substantially burdens the person's
3.16 right to engage in a lawful occupation.

3.17 (e) If the person meets the burden of proof under paragraph (d), the government
3.18 must demonstrate by clear and convincing evidence that the government has a compelling
3.19 interest in protecting against present and recognizable harm to the public health or safety
3.20 and the occupational regulation is the least restrictive means for furthering that compelling
3.21 interest.

3.22 Subd. 3. **Judicial determination.** A court shall liberally construe this chapter to
3.23 protect the right established in subdivision 1. A court shall make its own findings of fact
3.24 and conclusions of law. It shall not grant any presumption to legislative or administrative
3.25 determinations of harm to the public health or safety, or that the regulation is the least
3.26 restrictive means of furthering a compelling governmental interest.

3.27 Sec. 3. **[213.03] EXEMPTIONS.**

3.28 This chapter does not apply to occupational regulation of a person who is (1)
3.29 an employee of the government, or (2) a fiduciary whose fiduciary status is recognized
3.30 in statute.

3.31 Sec. 4. **[213.04] NO CHANGE TO COLLECTIVE BARGAINING RIGHTS.**

3.32 The right established by this chapter does not change the right to collective
3.33 bargaining as established in section 179.10.