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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3343

04/07/2014 Authored by Woodard

The bill was read for the first time and referred to the Committee on Labor, Workplace and Regulated Industries

1.1 A bill for an act
1.2 relating to occupations; allowing an individual to pursue a lawful occupation
1.3 based on meeting requirements needed to protect consumers; recognizing private
1.4 certification organizations; specifying requirements for private certification
1.5 organizations; allowing for use of factors in addition to personal qualifications;
1.6 authorizing rulemaking; creating civil and criminal penalties; proposing coding
1.7 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. **Scope.** For the purposes of this chapter, the terms defined in this
1.11 section have the meanings given.

1.12 Subd. 2. **Government.** "Government" means the state of Minnesota, a school
1.13 district, county, or home rule charter or statutory city.

1.14 Subd. 3. **Lawful occupation.** "Lawful occupation" means a course of conduct,
1.15 pursuit, or profession that includes the sale of goods or services that is not itself illegal
1.16 irrespective of an occupational regulation.

1.17 Subd. 4. **Occupational regulation.** "Occupational regulation" means a statute,
1.18 ordinance, rule, or other requirement in law that requires an individual to possess certain
1.19 personal qualifications to work in a lawful occupation.

1.20 Subd. 5. **Personal qualifications.** "Personal qualifications" means criteria related to
1.21 an individual's personal background, including completion of an approved educational
1.22 program, satisfactory performance on an examination, work experience, criminal history,
1.23 moral standing, and completion of continuing education.

1.24 Subd. 6. **Private certification.** "Private certification" means a voluntary program in
1.25 which a private certifying organization grants nontransferable recognition to an individual

2.1 to perform a lawful occupation within the scope of practice established by the private
 2.2 certifying organization based on the individual possessing certain personal qualifications
 2.3 that are established by the private certifying organization. The recognition may also be
 2.4 based on consumer comments and other factors determined by the private certifying
 2.5 organization.

2.6 Subd. 7. **Private certifying organization.** "Private certifying organization" means
 2.7 a nongovernmental organization that allows an individual to apply for private certification
 2.8 regardless of the individual's race, creed, color, ethnicity, national origin, religion, sex,
 2.9 sexual orientation, or marital status.

2.10 Subd. 8. **Privately certified.** "Privately certified" means a designated title that an
 2.11 individual may use if the individual is certified by a private certifying organization.

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

2.13 Subdivision 1. **Privation certification.** An individual who is certified by a private
 2.14 certifying organization may engage in the lawful occupation for which that individual is
 2.15 privately certified regardless of any occupational regulation enacted by the government.

2.16 Subd. 2. **Penalty prohibited.** The government shall not prohibit or impose a
 2.17 penalty, fine, or fee on a privately certified individual for engaging in a lawful occupation
 2.18 in compliance with this chapter.

2.19 **Sec. 3. [213.03] PRIVATE CERTIFYING ORGANIZATIONS; BOND.**

2.20 Subdivision 1. **Eligibility.** In order to lawfully certify individuals under section
 2.21 213.02, a private certifying organization shall:

2.22 (1) publish on a publicly accessible Web site each of the following:

2.23 (i) the scope of practice for each lawful occupation that the organization certifies;

2.24 (ii) the personal qualifications that an individual must possess to become certified by
 2.25 the private certifying organization;

2.26 (iii) the other factors the private certifying organization uses to certify individuals.

2.27 This may include consumer comments, rankings, and other factors;

2.28 (iv) the names, business addresses, and Web sites of all privately certified
 2.29 individuals; and

2.30 (v) the states in which the private certifying organization is registered;

2.31 (2) require personal qualifications that are related to the lawful occupation for which
 2.32 an individual is certified;

2.33 (3) verify an individual's personal qualifications before certification and periodically
 2.34 verify that the certified individual remains eligible for certification;

3.1 (4) require a privately certified individual to prominently display the private
 3.2 certification as required under section 213.04, subdivision 1, and to make available
 3.3 materials about the personal qualifications and other factors required for the private
 3.4 certification on request; and

3.5 (5) have at least 50 privately certified individuals in active practice after one year in
 3.6 operation.

3.7 Subd. 2. **Bond.** A private certifying organization may require individuals it certifies
 3.8 to obtain and maintain a bond for liability that is related to the practice of the individual's
 3.9 privately certified lawful occupation.

3.10 Subd. 3. **Registration.** A private certifying organization shall register with the
 3.11 secretary of state. It shall provide the secretary of state with the organization's name,
 3.12 address, officers, and the names of individuals initially privately certified. The secretary
 3.13 of state may impose a registration fee to recoup costs and promulgate rules and forms to
 3.14 facilitate reporting.

3.15 Subd. 4. **Fees.** A private certifying organization may require a privately certified
 3.16 individual to pay initial and ongoing fees.

3.17 **Sec. 4. [213.04] SIGN; VIOLATION; CLASSIFICATION.**

3.18 Subdivision 1. **Notice required.** (a) A privately certified individual who engages
 3.19 in a lawful occupation for which the government has enacted an occupational regulation
 3.20 must prominently display a sign with lettering that is at least one inch in height stating that
 3.21 the individual is not licensed or otherwise occupationally regulated by the government.

3.22 (b) A privately certified individual who is not licensed, registered, or certified by the
 3.23 government shall not use the term "licensed," "certified," or "registered" to describe the
 3.24 individual's credential or any words, titles, abbreviations, or letters which would induce a
 3.25 reasonably knowledgeable consumer of such services to believe the privately certified
 3.26 individual using them is occupationally regulated by the government. A privately certified
 3.27 individual may use the term "privately certified" to describe the individual's credentials or
 3.28 as part of a title or designation.

3.29 Subd. 2. **Penalty** A person who violates subdivision 1, paragraph (b), is guilty of a
 3.30 misdemeanor and is subject to a fine of up to \$2,500 or the penalty under section 213.05,
 3.31 whichever is applicable.

3.32 **Sec. 5. [213.05] FALSE CLAIM; VIOLATION; CLASSIFICATION.**

3.33 An individual who knowingly and falsely claims to be privately certified pursuant
 3.34 to this chapter is guilty of a felony and is subject to a fine of up to an amount equal to

4.1 the last 12 months of the individual's revenue from the lawful occupation or \$5,000,
4.2 whichever is greater.

4.3 **Sec. 6. [213.06] ENFORCEMENT.**

4.4 (a) The secretary of state shall enforce this chapter and has the authority to terminate
4.5 the government's recognition of the private certifying organization for failure to meet the
4.6 requirements in section 213.03, subdivision 1.

4.7 (b) The private certifying organization that continues to operate 90 days after failing
4.8 to meet the requirements in section 213.03, subdivision 1, is guilty of a felony and is
4.9 subject to a fine of up to \$5,000.

4.10 (c) Except to the extent that the laws require a privately certified individual to possess
4.11 personal qualifications established by the government to perform a lawful occupation, this
4.12 chapter does not limit the government's authority to enact and enforce laws relating to:

4.13 (1) a business license or permit, facility license, building permit, or land use
4.14 regulation; and

4.15 (2) public health, safety and environmental regulations, including the sale and use of
4.16 substances that present potential dangers to public health and safety including chemicals,
4.17 explosives, and pharmaceuticals.

4.18 (d) Nothing in this chapter shall be construed to:

4.19 (1) change the government's sole authority to require an individual to obtain and
4.20 maintain a government-issued driver's license and related insurance for personal or
4.21 commercial vehicle use;

4.22 (2) limit damages in a private civil action against an individual who is privately
4.23 certified or who knowingly and falsely claims to be privately certified;

4.24 (3) create a right of action against a private party or the government requiring
4.25 either to do business with an individual who is not licensed, certified, or registered with
4.26 the government; or

4.27 (4) allow for private certification of occupations regulated by the federal government
4.28 or required by federal law to be regulated by the government.

4.29 **Sec. 7. EFFECTIVE DATE.**

4.30 Sections 1 to 6 are effective August 1, 2015.