

Right to Earn a Living Act

Summary

Among the rights Americans cherish the most are freedoms to pursue a chosen enterprise or profession. Yet of all the rights we deem fundamental, economic liberty has eroded most of all, to the extent that the “right” to receive a welfare check today enjoys greater legal protection than the right to earn an honest living.

Licensing and regulation of businesses and professions – often placed in the hands of the regulated industry-artificially limit entry and reduce competition. Myriad entry-level opportunities are affected by occupational licensing laws, government-imposed monopolies in businesses such as taxicabs and trash hauling, and restrictions on home-based businesses such as day-care centers.

The principal victims of these of these restrictions are people outside the economic mainstream, for whom the bottom rungs of the economic ladder are cut off. This model legislation would ensure that all such regulations are limited to legitimate public health, safety, and welfare objectives, and that individuals are free to earn a share of the American Dream.

Model Policy

Section 1. This Act may be referred to as the “Right to Earn a Living Act.”

Section 2. {Statement of Findings and Purposes.}

(A)The legislature hereby finds and declares that:

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

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

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

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

(5) It is in the public interest:

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

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

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

Section 3. {Definitions}.

(A) "Agency" shall be broadly construed to include the state, all units of state government and all units of government and shall exclude no entity established under the constitution or laws of the state or established by any entity which was itself established under the constitution or laws of the state. [It excludes private certification organizations.](#)

(A2) Occupational license. "Occupational license" is a nontransferable and exclusive authorization in law in which the legislature establishes the personal qualifications necessary to engage in any occupation or profession.

(B) "Occupational regulations" shall include any regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision in which an agency ~~or board~~ establishes the personal qualifications necessary to engage in any occupation or profession. For the purpose of this chapter, an occupational regulation does not include an "occupational license."

(C) "Less restrictive regulation" means, from least to most restrictive,

1. market competition,
2. third-party or consumer-created ratings and reviews,
3. private certification,
4. voluntary bonding or insurance,
5. specific private civil cause of action to remedy consumer harm,
6. deceptive trade practice act,
7. mandatory disclosure of attributes of the specific good or service,
8. regulation of the process of providing the specific good or service,
9. inspection,
10. bonding,
11. insurance,
12. [government](#) registration,
13. government certification,
14. specialty occupational license for medical reimbursement, and
15. occupational license.

(D) "Personal qualifications" are criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral [standing character](#), criminal history and completion of continuing education.

(E) "Specialty occupational license for medical reimbursement" means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of medical services based on meeting personal qualifications established by the legislature. A private [health insurance](#) company [or other private company](#) may recognize this credential [for the purpose of reimbursing medical costs](#).

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

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

Section 4. {Limitation on Occupational Regulations.} All occupational regulations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

Section 5. {Elimination of Occupational Regulations.}

(A) Within one year following enactment, every agency shall conduct a comprehensive review of all occupational regulations and occupational licenses within their jurisdictions, and for each it shall:

- (1) Articulate with specificity the public health, safety, or welfare objective(s) served by the regulation,
- (2) Articulate the reason(s) why the regulation is necessary to serve the specified objective(s),
- (3) Analyze, where information is readily available, the effects of regulation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects, and
- (4) Compare the regulation to whether and how other states regulate the business or profession.

(B) To the extent the agency finds any regulation that does not satisfy the standard set forth in Section 4, it shall:

- (1) Repeal the occupational regulation or modify the occupational regulation to conform with the standard of Section 4 if such action is within the agency's authority to do so; or
- (2) Recommend to the legislature actions necessary to repeal or modify the occupational license or occupational regulation to conform to the standard of Section 4 if such action as it relates to an occupational regulation is not within the agency's authority.

(C) Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 6. {Administrative proceedings}.

(A) Any person may petition any agency to repeal or modify any occupational regulation within its jurisdiction.

(B) Within 90 days of a petition filed under (A) above, the agency shall either repeal the occupational regulation, modify the regulation to achieve the standard set forth in Section 4, or state the basis on which it concludes the regulation conforms with the standard set forth in Section 4.

Section 7. {Enforcement.}

(A) Whether or not a petition is filed pursuant to Section 6, any person may file an action in a Court of general jurisdiction to challenge an occupational regulation.

(B) With respect to the challenge of an occupational regulation, the plaintiff(s) shall prevail if the Court finds by a preponderance of evidence that the challenged occupational regulation on its face or in its effect burdens the entry into a profession or occupation; and either

(1) That an agency has failed to prove by a preponderance of evidence that the challenged occupational regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) Where the challenged occupational regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by using a less restrictive regulation, as defined in Section 3(C), which is less burdensome to economic opportunity.

(D) Upon a finding for the plaintiff(s), the Court shall enjoin further enforcement of the challenged occupational regulation, and shall award reasonable attorney's fees and costs to the plaintiff(s).

Section 11. {Severability clause.}

Section 12. {Repealer clause.}

Section 13. {Effective date.}