

SENATE BILL No. 10

By Senators Hilderbrand, Fagg, Steffen, Straub, Thompson and Wilborn

1-6

1 AN ACT concerning labor and employment; relating to occupational
2 licensing and regulation; enacting the right to earn a living act.

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4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 4, and amendments thereto, shall be
6 known and may be cited as the right to earn a living act.

7 (b) The legislature finds that:

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

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

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

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

19 (5) It is in the public interest to:

20 (A) Ensure the right of all individuals to pursue legitimate
21 entrepreneurial and professional opportunities to the limits of their talent
22 and ambition;

23 (B) provide the means for the vindication of this right; and

24 (C) ensure that regulations of entry into professions are demonstrably
25 necessary and carefully tailored to legitimate health, safety and welfare
26 objectives.

27 (c) For the purposes of this act:

28 (1) "Agency" means any department, bureau, division, board,
29 authority, agency, commission or institution of this state, any political
30 subdivision of the state and any city, county or unified government that is
31 authorized by law to administer, adopt or enforce any occupational rule
32 and regulation or occupational license. "Agency" does not include the
33 judicial and legislative branches of government.

34 (2) "Occupational license" means a nontransferable and exclusive
35 authorization in law in which the legislature establishes the personal
36 qualifications necessary to engage in any occupation or profession.

1 (3) "Occupational rule and regulation" means any regulation, rule,
2 policy, fee, condition, test, permit, administrative practice or other
3 provision in which an agency establishes the personal qualifications
4 necessary to engage in any occupation or profession. An "occupational
5 rule and regulation" does not include an "occupational license."

6 (4) "Less restrictive regulation" means, from least to most restrictive:

- 7 (A) Market competition;
8 (B) third-party or consumer-created ratings and reviews;
9 (C) private certification;
10 (D) voluntary bonding or insurance;
11 (E) specific private civil cause of action to remedy consumer harm;
12 (F) deceptive trade practice act;
13 (G) mandatory disclosure of attributes of the specific good or service;
14 (H) regulation of the process of providing the specific good or
15 service;
16 (I) inspection;
17 (J) bonding requirements;
18 (K) insurance requirements;
19 (L) government registration;
20 (M) government certification;
21 (N) specialty occupational license for medical reimbursement; and
22 (O) occupational license.

23 (5) "Personal qualifications" means criteria related to an individual's
24 personal background and characteristics including completion of an
25 approved educational program, satisfactory performance on an
26 examination, work experience, other evidence of attainment of requisite
27 skills or knowledge, moral character, criminal history and completion of
28 continuing education.

29 (6) "Specialty occupational license for medicaid reimbursement"
30 means a non-transferable authorization in law for an individual to qualify
31 for payment or reimbursement from a governmental agency for the non-
32 exclusive provision of medical services based on meeting personal
33 qualifications established by the legislature. A private health insurance
34 company or other private company may recognize this credential for the
35 purpose of reimbursing medical costs.

36 (7) "Welfare" means the protection of members of the public against
37 fraud or harm and shall be narrowly construed. "Welfare" does not include
38 the protection of existing businesses or agencies, whether publicly or
39 privately owned, against competition.

40 (8) "Subsidy" means taxes, grants, user fees or any other funds
41 received by or on behalf of an agency.

42 Sec. 2. (a) All occupational rules and regulations shall be limited to
43 those demonstrably necessary and carefully promulgated to fulfill

1 legitimate public health, safety or welfare objectives as provided by this
2 act.

3 (b) Prior to July 1, 2022, every agency shall complete a
4 comprehensive review of all occupational rules and regulations and
5 occupational licenses within their jurisdictions, and for each it shall:

6 (1) Articulate with specificity the public health, safety or welfare
7 objectives served by the rule and regulation;

8 (2) articulate the reasons why the rule and regulation is necessary to
9 serve the specified objectives;

10 (3) analyze, where information is readily available, the effects of rule
11 and regulation on opportunities for workers, consumer choices and costs,
12 general unemployment, market competition, governmental costs and other
13 effects; and

14 (4) compare the rule and regulation to whether and how other states
15 regulate the business or profession.

16 (c) To the extent the agency finds any rule and regulation that the
17 agency determines does not satisfy the standard set forth in subsection (a),
18 it shall:

19 (1) Repeal the occupational rule and regulation or modify the
20 occupational rule and regulation to conform with the standard set forth by
21 subsection (a) if such action is within the agency's authority; or

22 (2) recommend to the legislature actions necessary to repeal or
23 modify the occupational license or occupational rule and regulation to
24 conform to the standard of subsection (a) if such action as it relates to an
25 occupational rule and regulation is not within the agency's authority.

26 (d) Prior to October 1, 2022, each agency shall report to the
27 legislature on all actions taken to conform with this section. The report
28 shall be provided to the senate committee on commerce and the house
29 committee on commerce, labor and economic development on or before
30 February 1, 2023, and each February 1 thereafter.

31 Sec. 3. (a) Any person may petition any agency to repeal or modify
32 any occupational rule and regulation within its jurisdiction.

33 (b) Within 90 days of the filing of such petition, the agency shall:

34 (1) Repeal the occupational rule and regulation;

35 (2) modify the occupational rule and regulation to achieve the
36 standard set forth in section 2, and amendments thereto; or

37 (3) state in writing provided to the petitioner the basis of the agency's
38 conclusion that the occupational rule and regulation conforms with the
39 standard set forth in section 2, and amendments thereto.

40 (c) Filing a petition shall not be a requirement or prohibition for any
41 person to file an action in a court of general jurisdiction to challenge an
42 occupational rule and regulation.

43 (d) The plaintiff shall prevail if the court finds by a preponderance of

1 the evidence that the challenged occupational rule and regulation, on its
2 face or in its effect, burdens the entry into a profession or occupation, and
3 that:

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

8 (2) the legitimate public health, safety or welfare objectives can be
9 effectively served by using a less restrictive occupational rule and
10 regulation that is less burdensome to economic opportunity.

11 (e) Upon a finding for the plaintiff, the court shall enjoin further
12 enforcement of the challenged occupational rule and regulation and shall
13 award reasonable attorney fees and costs to the plaintiff.

14 Sec. 4. If any provision or clause of this act or application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of this act that can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

19 Sec. 5. This act shall take effect and be in force from and after its
20 publication in the statute book.