

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 1776

(SENATE AUTHORS: NEWMAN)

DATE
03/06/2017

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OFFICIAL STATUS
Introduction and first reading
Referred to State Government Finance and Policy and Elections

1.1 A bill for an act
1.2 relating to occupations; providing for oversight of state occupational regulations;
1.3 creating a petition process for review of occupational disqualification based on
1.4 criminal history; requiring reports; amending Minnesota Statutes 2016, sections
1.5 214.001, subdivisions 1, 3; 214.002, subdivision 2; 214.01, by adding subdivisions;
1.6 proposing coding for new law in Minnesota Statutes, chapter 214.

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

1.8 Section 1. Minnesota Statutes 2016, section 214.001, subdivision 1, is amended to read:

1.9 Subdivision 1. **Policy.** The legislature finds that the interests of the people of the state
1.10 are served by the regulation of certain occupations. The legislature further finds:

1.11 (1) that it is desirable for boards composed primarily of members of the occupations so
1.12 regulated to be charged with formulating the policies and standards governing the occupation;

1.13 (2) that economical and efficient administration of the regulation activities can be
1.14 achieved through the provision of administrative services by departments of state government;
1.15 and

1.16 (3) that procedural fairness in the disciplining of persons regulated by the boards requires
1.17 a separation of the investigative and prosecutorial functions from the ~~board's~~ boards' judicial
1.18 responsibility.

1.19 Sec. 2. Minnesota Statutes 2016, section 214.001, subdivision 3, is amended to read:

1.20 Subd. 3. **Regulation of new occupations.** (a) If the legislature finds after evaluation of
1.21 the factors identified in subdivision 2 that it is necessary to regulate an occupation not
1.22 ~~heretofore~~ currently credentialed or regulated because providers' reputations disseminated

2.1 privately are insufficient to protect consumers, then the state shall use the least restrictive
 2.2 regulation ~~should be implemented~~ necessary to protect consumers from present, significant,
 2.3 and substantiated harm that threatens public health and safety consistent with the policy of
 2.4 this section, in modes in the following order:

2.5 (1) recognition of private certification;

2.6 (2) creation or extension of common law or statutory causes of civil action, and the
 2.7 creation or extension of criminal prohibitions;

2.8 (3) enactment of new or enhanced authority for the attorney general to prosecute fraud;

2.9 (4) enactment of a regulation of the process providing the lawful goods or services to
 2.10 consumers including expanding the scope of a building or housing code, environmental
 2.11 protection laws, or regulations of the sale of specific goods or services;

2.12 ~~(2)~~ (5) imposition of inspection requirements and the ability to enforce violations by
 2.13 injunctive relief in the courts;

2.14 (6) imposition of a bonding or insurance requirement;

2.15 ~~(3)~~ (7) implementation of a system of registration whereby practitioners give notice to
 2.16 the state that may include the individual's name and address, the individual's agent for service
 2.17 of process, the location of the activity to be performed, and a description of the service the
 2.18 individual provides. "Registration" does not include predetermined personal qualifications
 2.19 but may require a bond or insurance. Upon the state's receipt of notice, the individual may
 2.20 use "registered" as a designated title. A nonregistered individual must not perform the
 2.21 occupation for compensation or use "registered" as a designated title;

2.22 (8) implementation of a system of certification whereby practitioners who will be the
 2.23 only persons permitted to use a designated title are listed on an official roster after having
 2.24 met predetermined personal qualifications, and whereby noncertified individuals are allowed
 2.25 to perform the occupation for compensation; ~~or~~

2.26 (9) implementation of a system of a limited license for the purpose of receiving payment
 2.27 or reimbursement from a government agency whereby the practitioner must receive
 2.28 recognition by the state of having met predetermined personal qualifications but persons
 2.29 not so licensed may practice for compensation but do not qualify for payments or
 2.30 reimbursement from a government agency. A private company may recognize this credential;
 2.31 or

3.1 ~~(4)~~ (10) implementation of a system of licensing whereby a practitioner must receive
3.2 recognition by the state of having met predetermined personal qualifications, and persons
3.3 not so licensed are prohibited from practicing.

3.4 (b) Two or more of ~~these~~ the modes in paragraph (a) may be simultaneously implemented
3.5 if necessary and appropriate.

3.6 Sec. 3. Minnesota Statutes 2016, section 214.002, subdivision 2, is amended to read:

3.7 Subd. 2. **Contents of report.** A report in support of the regulation of a health-related or
3.8 non-health-related occupation must address the following issues as specifically as possible:

3.9 (1) the harm to the public that is or could be posed by the unregulated practice of the
3.10 occupation or by continued practice at its current degree of regulation;

3.11 (2) any reason why existing civil or criminal laws or procedures are inadequate to prevent
3.12 or remedy any harm to the public;

3.13 (3) why the proposed level of regulation is being proposed and why, if there is a ~~lesser~~
3.14 less restrictive degree of regulation, it was not selected;

3.15 (4) any associations, organizations, or other groups representing the occupation seeking
3.16 regulation and the approximate number of members in each in Minnesota;

3.17 (5) the functions typically performed by members of this occupational group and whether
3.18 they are identical or similar to those performed by another occupational group or groups;

3.19 (6) whether any specialized training, education, or experience is required to engage in
3.20 the occupation and, if so, how current practitioners have acquired that training, education,
3.21 or experience;

3.22 (7) whether the proposed regulation would change the way practitioners of the occupation
3.23 acquire any necessary specialized training, education, or experience and, if so, why;

3.24 (8) whether any current practitioners of the occupation in Minnesota lack whatever
3.25 specialized training, education, or experience might be required to engage in the occupation
3.26 and, if so, how the proposed regulation would address that lack;

3.27 (9) whether new entrants into the occupation would be required to provide evidence of
3.28 any necessary training, education, or experience, or to pass an examination, or both;

3.29 (10) whether current practitioners would be required to provide evidence of any necessary
3.30 training, education, or experience, or to pass an examination, and, if not, why not; ~~and~~

4.1 (11) the expected impact of the proposed regulation on the supply of practitioners of the
 4.2 occupation and on the cost of services or goods provided by the occupation; and

4.3 (12) whether and how other states and the federal government regulate the occupation.

4.4 Sec. 4. **[214.003] PETITION FOR REVIEW OF CRIMINAL HISTORY.**

4.5 Subdivision 1. Findings. The legislature finds that the right of an individual to pursue
 4.6 an occupation is a fundamental right. The right of an individual to pursue an occupation
 4.7 includes the right of an individual with a criminal history to obtain an occupational license,
 4.8 specialty occupational license for medical reimbursement, government certification, or any
 4.9 state recognition.

4.10 Subd. 2. Definitions. For the purpose of this section, the following terms have the
 4.11 meanings given:

4.12 (1) "board" includes a state occupational licensing board or a state agency or department
 4.13 that engages in occupational licensing; and

4.14 (2) "state recognition" means the state has formally acknowledged the individual's
 4.15 occupational qualifications by licensing, certifying, registering, or otherwise authorizing
 4.16 the individual to engage in an occupation under state law.

4.17 Subd. 3. Petition. An individual with a criminal history may petition the responsible
 4.18 licensing board at any time for a determination of whether the individual's criminal history
 4.19 will disqualify the individual from obtaining state recognition. An individual may petition
 4.20 the board before obtaining any required education necessary for licensing or paying any
 4.21 application fee.

4.22 Subd. 4. Disqualification. (a) Notwithstanding any other statute or rule, the board is
 4.23 authorized to determine whether or not the individual's criminal history disqualifies the
 4.24 individual from obtaining state recognition.

4.25 (b) The board may find the individual's criminal history disqualifies the individual from
 4.26 obtaining state recognition only if:

4.27 (1) the individual has a felony conviction;

4.28 (2) the type of felony for which the individual was convicted is expressly codified as a
 4.29 disqualifying offense in the relevant occupational license's statute; and

4.30 (3) the board concludes the state has an important interest in protecting public safety
 4.31 that is superior to the individual's right. The board may make this conclusion only if it
 4.32 determines, by clear and convincing evidence at the time of the petition, that (i) the specific

5.1 offense for which the individual was convicted is substantially related to the state's interest,
5.2 (ii) the individual, based on the nature of the specific offense for which the individual was
5.3 convicted and on the individual's current circumstances, is more likely to reoffend by virtue
5.4 of having the license than if the individual did not have the license, and (iii) a reoffense will
5.5 cause greater harm than it would if the individual did not have the license.

5.6 Subd. 5. **Determination.** (a) The board shall issue its determination within 90 days after
5.7 the board receives the petition. The determination shall be in writing and include a finding
5.8 of fact and a conclusion of law.

5.9 (b) If the board determines the individual's criminal history disqualifies the individual
5.10 from obtaining state recognition, the board must advise the individual of the appeal and
5.11 resubmission procedures in subdivisions 6 and 7, including advising the individual of what
5.12 actions the individual could take to remedy the disqualification.

5.13 Subd. 6. **Appeal.** The individual may appeal the board's determination under chapter
5.14 14, the Administrative Procedure Act.

5.15 Subd. 7. **Resubmission.** The individual may resubmit a petition to the same responsible
5.16 board at any time two years after final judgment in the initial petition. If the new petition
5.17 is submitted on the grounds that the individual has undertaken the actions the board has
5.18 advised will remedy the disqualification, then the individual may resubmit a petition at any
5.19 time six months after the final judgment in the initial petition.

5.20 Subd. 8. **Rescind determination.** The board may rescind its determination at any time
5.21 in the future if the individual is convicted of an additional offense that the board determines
5.22 meets the conditions in subdivision 4, paragraph (b).

5.23 Subd. 9. **Fee.** The board may charge the individual a fee to recoup its costs in
5.24 administering this section not to exceed \$100 for each petition.

5.25 Sec. 5. Minnesota Statutes 2016, section 214.01, is amended by adding a subdivision to
5.26 read:

5.27 Subd. 2a. **Least restrictive regulation.** "Least restrictive regulation" means, from least
5.28 to most restrictive:

5.29 (1) market competition;

5.30 (2) third-party or consumer-created ratings and reviews;

5.31 (3) private certification;

5.32 (4) a specific private civil cause of action to remedy consumer harm;

6.1 (5) new or enhanced authority for the attorney general to prosecute fraud, including
6.2 expanding the scope of deceptive trade practices;

6.3 (6) a regulation of the process of providing the specific goods or services to consumers,
6.4 including expanding the scope of a building or housing code, environmental protection
6.5 laws, or regulation of the sale of specific goods or services;

6.6 (7) inspection;

6.7 (8) bonding or insurance;

6.8 (9) registration;

6.9 (10) government certification;

6.10 (11) limited license for government payments or reimbursements for medical services;
6.11 and

6.12 (12) occupational license.

6.13 Sec. 6. Minnesota Statutes 2016, section 214.01, is amended by adding a subdivision to
6.14 read:

6.15 Subd. 4. **Predetermined personal qualifications.** "Predetermined personal qualifications"
6.16 are criteria related to an individual's personal background and experience including
6.17 completion of an approved educational program, satisfactory performance on an examination,
6.18 work experience, other evidence of attainment of requisite skills or knowledge, moral
6.19 standing, criminal history, and completion of continuing education.