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DATE	D-PG	OFFICIAL STATUS
02/21/2011	271	Introduction and first reading Referred to Commerce and Consumer Protection
04/27/2011	1420a	Comm report: To pass as amended and re-refer to Judiciary and Public Safety

1.1A bill for an act

1.2relating to occupational licensure; stating a right to engage in an occupation;

1.3specifying conditions for government regulation of occupations; amending

1.4Minnesota Statutes 2010, section 214.01; proposing coding for new law as

1.5Minnesota Statutes, chapter 213.

1.6BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7Section 1. **[213.01] RIGHT TO ENGAGE IN AN OCCUPATION.**

1.8Subdivision 1. **Definition.** In this chapter, "government" means the government

1.9of this state or any political subdivision.

1.10Subd. 2. **Right to engage in an occupation.** (a) An individual may engage in a

1.11legal occupation without being subject to statutes, administrative rules, and governmental

1.12policies that regulate the occupation that are arbitrary, unnecessary, or substantially

1.13burdensome.

1.14(b) No government shall require an occupational license, certification, registration,

1.15or other occupational regulation that imposes a substantial burden on the person unless the

1.16government demonstrates that it has a compelling interest in protecting against present and

1.17recognizable harm to the public health and safety, and the regulation is the least restrictive

1.18means to furthering that compelling government interest.

1.19Subd. 3. **Defense and relief.** (a) An individual may assert as a defense in any

1.20administrative or judicial proceeding to enforce a statute or administrative rule that the

1.21standard required by subdivision 2, paragraph (b), has not been met.

1.22(b) An individual may bring an action for declaratory judgment or injunctive or other

1.23equitable relief for a violation of subdivision 2.

1.24(c) An individual who brings an action or asserts a defense under this section has

1.25the initial burden of proof that the statute or administrative rule or a government practice

related to the statute or rule substantially burdens the individual's right to engage in an occupation not prohibited by law.

(d) If the individual meets the burden of proof under paragraph (c), the government must then demonstrate by clear and convincing evidence that the government has a compelling interest in protecting against present and recognizable harm to the public health and safety, and the regulation is the least restrictive means for furthering that compelling governmental interest.

Subd. 4. **No change in labor law.** The right established by this section does not change the right to collective bargaining.

Subd. 5. **Judicial determination.** A district court shall liberally construe this statute to protect the right established in subdivision 2, paragraph (a). A district court shall make its own findings of fact and conclusions of law. It shall not rely on legislative findings of fact not presented in admissible form to the district court. It shall not grant any presumption to legislative determinations of harm to the public health and safety or that the regulation is the least restrictive means to further a compelling government interest.

Sec. 2. Minnesota Statutes 2010, section 214.01, is amended to read:

**214.01 DEFINITIONS.**

Subdivision 1. **Application.** The words defined in this section for purposes of this chapter have the meanings given them unless the context clearly requires otherwise.

Subd. 1a. **Council of Health Boards.** "Council of Health Boards" means a collaborative body established by the health-related licensing boards.

Subd. 1b. **Certification.** "Certification" means a voluntary process by which the legislature establishes the criteria to grant recognition to a person who (1) has met certain predetermined qualifications and (2) may use "certified" as a designated title. Use of the title certified by a person who is not certified is unlawful. "Certification" is the middle form of occupational regulation. Noncertified persons may also perform the occupation for compensation.

Subd. 2. **Health-related licensing board.** "Health-related licensing board" means the Board of Examiners of Nursing Home Administrators established pursuant to section 144A.19, the Office of Unlicensed Complementary and Alternative Health Care Practice established pursuant to section 146A.02, the Board of Medical Practice created pursuant to section 147.01, the Board of Nursing created pursuant to section 148.181, the Board of Chiropractic Examiners established pursuant to section 148.02, the Board of Optometry established pursuant to section 148.52, the Board of Physical Therapy established pursuant to section 148.67, the Board of Psychology established pursuant to section 148.90, the

Board of Social Work pursuant to section 148D.025, the Board of Marriage and Family Therapy pursuant to section 148B.30, the Office of Mental Health Practice established pursuant to section 148B.61, the Board of Behavioral Health and Therapy established by section 148B.51, the Board of Dietetics and Nutrition Practice established under section 148.622, the Board of Dentistry established pursuant to section 150A.02, the Board of Pharmacy established pursuant to section 151.02, the Board of Podiatric Medicine established pursuant to section 153.02, and the Board of Veterinary Medicine established pursuant to section 156.01.

**Subd. 2a. License.** "License" means a nontransferable authorization to perform an occupation for compensation based on meeting predetermined qualifications established by the legislature such as (1) satisfactory completion of an approved education or training program and (2) acceptable performance on a qualifying examination or series of examinations. "Licensing" or "licensure" means authorization to engage in an occupation for compensation which would otherwise be unlawful in the absence of such authorization. A license is the most restrictive form of occupational regulation.

**Subd. 3. Non-health-related licensing board.** "Non-health-related licensing board" means the Board of Teaching established pursuant to section 122A.07, the Board of Barber Examiners established pursuant to section 154.001, the Board of Cosmetologist Examiners established pursuant to section 155A.20, the Board of Assessors established pursuant to section 270.41, the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design established pursuant to section 326.04, the Private Detective and Protective Agent Licensing Board established pursuant to section 326.33, the Board of Accountancy established pursuant to section 326A.02, and the Peace Officer Standards and Training Board established pursuant to section 626.841.

**Subd. 4. Occupational regulations.** "Occupational regulations" means registration, certification and licensing, statutes, administrative rules, and practices.

**Subd. 5. Registration.** "Registration" means a voluntary process established by the legislature in which a person (1) may submit notification to a state agency and (2) may use "registered" as a designated title. Notification to a state agency may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and a description of the service the person provides. Use of the title "registered" by a person who is not registered is unlawful. The term does not include a requirement to post a bond or other security. "Registration" is the least restrictive form of occupational regulation. Nonregistered persons may also perform the occupation for compensation.