

ONE HUNDRED FIFTH LEGISLATURE - SECOND SESSION - 2018
COMMITTEE STATEMENT
LB299

Hearing Date: Friday February 24, 2017
Committee On: Government, Military and Veterans Affairs
Introducer: Ebke
One Liner: Adopt the Occupational Board Reform Act and change procedures for rules and regulations

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 5 Senators Brewer, Briese, Lowe, Murante, Wayne
Nay:
Absent:
Present Not Voting: 3 Senators Blood, Hilgers, Thibodeau

Verbal Testimony:

Proponents:

Senator Laura Ebke
Lee McGrath
Nicole Fox
Matt Litt

Representing:

Introducer
Institute for Justice
Platte Institute for Economic Research
Americans for Prosperity - NE

Opponents:

Bruce Ramge
Chris Callihan

Steve Simpson
Greg Lemon
Ken Allen
John Markey
Dan Sweetwood
Ted Huscher

Representing:

Department of Insurance
American Subcontractors Association - Nebraska Chapter
Elevator Constructors - Local 28
Nebraska Real Estate Commission
Board of Barber Examiners
IBEW Local Union 265
Nebraska Board of Accountancy
Nebraska Geological Society

Neutral:

Kim Robak

Representing:

Nebraska Medical Association

Summary of purpose and/or changes:

LB 299 adopts the Occupational Board Reform Act

Sections 3-14 define terms for the purposes of the Act.

Section 15 requires that regulations be construed and applied to increase economic opportunities, promote competition, and encourage innovation, and be the least restrictive means of achieving the regulation's ends. It limits regulation to those govern the sale of goods and services explicitly included in the statute governing the particular occupation's scope of practice. It also requires ongoing legislative review of occupational regulation and legislation related to that regulation.

Section 16 states the purposes of the Act.

Section 17 allows an individual with a criminal history to petition the appropriate occupational board, prior to obtaining the necessary education for the occupation, for a determination as to whether their criminal history would disqualify them from obtaining the applicable license. In making this determination, the appropriate board will only determine that an individual's criminal history will disqualify that individual from obtaining a license if the following 3 circumstances are met:

- The individual has a felony conviction.
- The felony conviction is one that is specifically listed in the statute governing the license as disqualifying for the license.
- The board concludes that the state has an important interest in not issuing the license that outweighs the individual's right to obtain it. The bill sets out standards for this conclusion.

The section also specifies how the board shall issue its determination and provides for an appeals process by the individual. An individual may file such a petition every 2 years. If the individual has taken action to remedy the disqualification, they may file the petition after 6 months.

Section 18 creates the Office of Supervision of Occupational Boards. It charges the Governor with appointing an executive director for the office. The executive director must hire at least one attorney for the office. The section also requires the office to explicitly approve or reject any proposed rule, regulation, policy, other occupational regulation, or enforcement action prior to its approval. The failure of the office to do so does not constitute approval. Section 18 also gives the office other responsibilities and authorities to carry out its functions.

Section 19 require the office to independently do the following:

- Play a substantial role in the development of an occupational board's rules and regulations to ensure that the rules and regulations benefit consumers and do not serve the private interests of the providers that the occupational board regulates.
- Disapprove the use by an occupational board of any rule or regulation that fails to comply with the policies stated in section 15 of this act and terminate any enforcement action pending for such rule or regulation on the effective date of this act or at any subsequent time.
- Exercise control over an occupational board by reviewing and affirmatively approving the occupational board's rules, regulations, and enforcement action to ensure compliance with the policies stated in section 15 of this act.
- Review the legislative history of the authorizing legislation for each occupational board and its rules, regulations, and enforcement actions, including analysis under section 23 of this act, and conduct a reasonable investigation to gain additional information, including less restrictive regulatory approaches, to reduce the occupational board's exposure to antitrust litigation.

Section 20 allows an individual to file a complaint with the office regarding a regulation or enforcement action, and lays out how such a complaint should be handled.

Section 21 allows a member of the Legislature to request that the Attorney General review the following:

- A rule, regulation, policy, or enforcement action of an occupational board if the member believes it is inconsistent with the policies stated in section 15 of this act.
- The active supervision of an occupational board provided by the Office of Supervision of Occupational Boards.
- Any response by the office provided pursuant to section 20 of this act.

Section 22 creates the Legislative Office of Occupational Regulations, and requires the Executive Board of the Legislative Council to appoint the Legislative Regulator Analyst as the director of the office.

Section 23 requires the office to do the following:

- Review proposed legislation to enact or modify occupational regulations to ensure compliance with the policies stated in section 15 of this act.
- Determine whether the legislation meets the requirements of the policies stated in section 15 of this act by using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harm
- Evaluate the effects of the legislation on opportunities for workers, consumer choices and costs, general

unemployment, market competition, governmental costs, and any other relevant issues.

- Compare the legislation with occupational regulation in other states.
- Issue a report regarding the legislation to the relevant committee in a timely fashion in order that the committee may review the report prior to voting on the legislation which would enact or modify occupational regulations.

Section 24 allows the office to do the following:

- Require proponents of legislation which would enact or modify occupational regulations to submit evidence of present, significant, and substantiated harm to consumers in Nebraska.
- Require information from sources other than proponents who are knowledgeable regarding the proposed occupational regulations, the effect on labor economics, and other relevant factors.

Section 25 requires the office to annually review providers, as defined in section 11, and complete a review of each provider at least once in a 5 year period.

The remaining section conform existing statutes to the requirements of the Act.

Explanation of amendments:

AM 1665 replaces the bill. It keeps the individual rights portion of the bill, but eliminates the executive branch enforcement board. Instead, it vests regulatory oversight in the Legislature through regulatory evaluations.

The bill accomplishes this through the following changes:

- Amends Sections 1-13 to conform to the following changes.
- Creates a state policy that occupational regulations shall be construed (a) to protect the individual worker's right to pursue a lawful occupation, (b) to use the least restrictive means necessary to protect public health and safety, and (c) to require actual enumeration of a product or service as regulated by statute as condition of any enforcement action against an individual. (Section 14)
- Creates a process for an individual considering a new career to pay \$100 and petition a licensing board for an advisory opinion on the effect of a past conviction on the individual's eligibility for an occupational license. (Section 15)
- Requires legislative committee staff to do the following. (Sections 16-18)
 - Evaluate the effects of proposed legislation pertaining to occupational regulation, to ensure that such regulation is narrowly tailored to achieve the specific public benefit sought.
 - Compare proposed legislation with policies enacted in other states.
 - Issue a report on legislative bills to committees of relevant jurisdiction.
 - Request that bill proponents and others provide evidence of existing harm to be addressed, the likely effect on labor economics, and other information.
 - Annual review of approximately one-fifth of occupational regulations to improve compliance with policies states in this bill, with report made to the Clerk of the Legislature.
- Updates Administrative Procedure Act's (APA) prefatory legislative findings, provide that copies of certain notices and other documents go to new office as part of the rules and regulations process. (Sections 19-22)
- New operative date of January 1, 2019. (Section 23)

John Murante, Chairperson