

HOUSE BILL NO. 299

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE EASTMAN

Introduced: 2/24/20

Referred: Judiciary, Labor & Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to occupational licensing."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
4 to read:

5 SHORT TITLE. This Act may be known as the Right to Earn a Living Act.

6 * **Sec. 2.** AS 08.02 is amended by adding new sections to read:

7 **Sec. 08.02.060. Legislative findings.** 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 right;

10 (2) the freedom to earn an honest living has traditionally provided the
11 surest means for economic mobility;

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

15 (4) the burden of excessive regulation is borne most heavily by

1 individuals outside the economic mainstream, for whom opportunities for economic
2 advancement are curtailed; and

3 (5) it is in the public interest to

4 (A) ensure the right of all individuals to pursue legitimate
5 entrepreneurial and professional opportunities to the limits of their talent and
6 ambition;

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

8 (C) ensure that regulations of entry into professions are
9 demonstrably necessary and carefully tailored to fulfill legitimate health,
10 safety, and welfare objectives.

11 **Sec. 08.02.065. Limitation on occupational regulations; petitions.** (a)
12 Occupational regulations shall be limited to those demonstrably necessary and
13 carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

14 (b) A person may petition an agency to repeal or modify an occupational
15 regulation within that agency's jurisdiction. Within 90 days after a petition is filed
16 under this subsection, the agency shall repeal the occupational regulation, modify the
17 regulation to achieve the standard set out in (a) of this section, or issue written
18 findings summarizing the reason the agency has determined that the regulation
19 conforms with the standard set out in (a) of this section.

20 (c) Regardless of whether a petition is filed under (b) of this section, a person
21 may file an action in a court of general jurisdiction to challenge an occupational
22 regulation.

23 (d) A person who challenges an occupational regulation under (b) of this
24 section may prevail if the court finds by a preponderance of evidence that the
25 challenged occupational regulation on its face or in its effect unreasonably or
26 unlawfully burdens the entry of a person into a profession or occupation and that

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

30 (2) where the challenged occupational regulation is necessary to fulfill
31 the legitimate public health, safety, or welfare objectives, those objectives can be

effectively served by using a less restrictive regulation that is less likely to unreasonably burden the entry of a person into a profession or occupation.

(e) If a court finds that the plaintiff has prevailed on a claim filed under this section, the court shall enjoin further enforcement of the challenged occupational regulation and award reasonable attorney fees and costs to the plaintiff as permitted by the Alaska Rules of Civil Procedure.

(f) In this section, unless the context otherwise requires,

(1) "less restrictive regulation" means, listed in order beginning with least restrictive and ending with most restrictive, the following:

(A) market competition;

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

(C) private certification;

(D) voluntary bonding or insurance;

(E) specific private civil cause of action to remedy consumer harm;

(F) deceptive trade practice act;

(G) mandatory disclosure of attributes of the specific good or service;

(H) regulation of the process of providing the specific good or service;

(I) inspection;

(J) bonding;

(K) insurance;

(L) government registration;

(M) government certification;

(N) specialty occupational license for medical reimbursement;

(O) occupational license;

(2) "occupational license" means a license or permit issued under this title;

(3) "occupational regulation" means a regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision in which an agency

1 establishes the personal qualifications necessary to engage in an occupation or
2 profession;

3 (4) "personal qualification" means criteria related to an individual's
4 personal background and characteristics, including completion of an approved
5 educational program, satisfactory performance on an examination, work experience,
6 other evidence of attainment of requisite skills or knowledge, moral character,
7 criminal history, and completion of continuing education;

8 (5) "specialty occupational license for medical reimbursement" means
9 a nontransferable authorization in law for an individual to qualify for payment or
10 reimbursement from a government agency for the nonexclusive provision of medical
11 services based on meeting personal qualifications established by the legislature;

12 (6) "welfare" means protection of individuals against fraud or harm;
13 "welfare" does not include the protection of existing businesses or agencies, whether
14 publicly or privately owned, against competition.

15 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 **TRANSITION: ELIMINATION OF CERTAIN OCCUPATIONAL REGULATIONS.**

18 (a) Within one year after the effective date of this Act, each agency shall conduct a
19 comprehensive review of all occupational regulations and occupational licenses within the
20 agency's jurisdiction, prepare a report with the findings, and publish the report under
21 AS 44.62.175 (Alaska Online Public Notice System). The report must

22 (1) identify with specificity the public health, safety, and welfare objectives
23 served by the regulation;

24 (2) identify the reason the regulation is necessary to serve its objective;

25 (3) discuss, where information is readily available, the effects of the
26 regulation, including effects on opportunities for workers, consumer choices and costs,
27 general unemployment, market competition, and governmental costs; and

28 (4) compare the regulation to whether and how other states regulate the
29 business or profession.

30 (b) If an agency finds a regulation that does not satisfy the standard set out in sec. 2 of
31 this Act, the agency shall recommend in the report published under (a) of this section that the

1 regulation be repealed or amended to conform with the standard under sec. 2 of this Act.

2 (c) Within 15 months after the effective date of this Act, each agency shall provide by
3 delivery to the chief clerk of the house of representatives and the senate secretary a report to
4 the legislature summarizing the actions the agency has taken under this section.

5 (d) In this section, "occupational license" and "occupational regulation" have the
6 meanings given in AS 08.02.065, enacted by sec. 2 of this Act.