

ASSEMBLY BILL NO. 269—ASSEMBLYMEN JONES, MOORE, SEAMAN,
GARDNER, FIORE; DICKMAN, DOOLING, ELLISON,
SHELTON, TROWBRIDGE AND WHEELER

MARCH 12, 2015

JOINT SPONSOR: SENATOR GUSTAVSON

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing professional licensing.
(BDR 54-899)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to professional licensing; providing that a natural person has a right to engage in a lawful occupation free from a substantial burden imposed by an occupational regulation; providing that a natural person may assert the right to engage in a lawful occupation as a defense in any judicial or administrative proceeding brought against the person; authorizing a natural person to bring an action against a governmental entity or regulatory body seeking to enforce an occupational regulation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law contains various licensing requirements and other regulations on natural persons who engage in certain occupations within this State. (Title 54 of NRS, chapters 1, 7, 90, 116A, 119A, 159, 240, 240A, 361, 394, 435, 445B, 449, 450B, 455C, 457, 458, 463, 466, 467, 477, 482, 483, 503, 504, 505, 534, 544, 555, 576, 581, 582, 584, 587, 599A, 599B, 618, 683A, 683C, 684A, 684B, 685A, 686B, 689, 692A, 692B, 695J, 696A, 697 and 706 of NRS) **Section 8** of this bill provides that a natural person has a right to engage in a lawful occupation within this State free from any substantial burden contained within an occupational regulation unless the governmental entity or regulatory body seeking to enforce the regulation demonstrates that it has an important interest in protecting against a present and recognizable harm to public health or safety and the regulation represents the least restrictive means of furthering that important interest. **Section 9** of this bill provides



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that a natural person may assert the right to engage in a lawful occupation as a defense in any action brought to enforce an occupational regulation. **Section 10** of this bill authorizes a natural person to bring an action for declaratory, injunctive or other equitable relief against a governmental entity or regulatory body for a violation of the provisions of this bill, irrespective of whether the person has exhausted all administrative remedies. **Section 12** of this bill establishes the burden of proof for such an action. **Section 13** of this bill authorizes an employer to assert the rights of an employee or potential employee under the provisions of this bill by initiating an action or maintaining a defense as provided for in this bill. **Section 14** of this bill requires a court to liberally construe the provisions of this bill and prohibits the court from granting any presumption to legislative or administrative determinations of harm to the public health or safety or that the regulation is the least restrictive means of furthering an important governmental interest. **Section 15** of this bill provides that nothing in this bill creates a right of action against a private party or the Federal Government. **Section 16** of this bill provides certain categories of occupations that are exempt from the provisions of this bill. **Section 17** of this bill provides that, in the event of a conflict between this bill and certain existing occupational regulations within NRS, the provisions of this bill will control.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 622 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 7, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Governmental entity” means any agency of this State, a local government as defined in NRS 278B.070 or any other political subdivision of this State or an agency thereof.*

Sec. 4. *“Lawful occupation” means any course of conduct, pursuit or occupation that includes the sale of goods or services that are not themselves illegal to sell, irrespective of whether the natural person selling such goods or services is subject to an occupational regulation.*

Sec. 5. 1. *“Occupational regulation” means a law, statute, ordinance, rule, practice or policy requiring a natural person to possess certain personal qualifications to work or perform a lawful occupation.*

2. *The term does not include a law, statute, ordinance, rule, practice or policy requiring a natural person to have a business license or a zoning or land-use regulation, except to the extent such law, statute, ordinance, rule, practice or policy regulates the personal qualifications of a natural person to perform a lawful occupation.*



Sec. 6. *“Personal qualifications” means criteria established by a law, statute, ordinance, rule, practice or policy related to the background or qualifications of a natural person, including, without limitation, completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing and completion of continuing education.*

Sec. 7. *“Substantial burden” means a burden that is more than incidental. In relation to an occupational regulation, the term includes, without limitation, a requirement that imposes a significant difficulty or cost on a natural person seeking to enter into or continue in a lawful occupation.*

Sec. 8. 1. *A natural person has a right to engage in a lawful occupation in this State free from any substantial burden contained within an occupational regulation unless the governmental entity or regulatory body seeking to enforce the occupational regulation demonstrates that:*

(a) It has an important interest in protecting against present and recognizable harm to the public health or safety; and

(b) The occupational regulation is the least restrictive means of furthering that important interest.

2. *For the purposes of paragraph (b) of subsection 1, the prioritization of the least restrictive means of furthering an important interest, from least to most restrictive, is as follows:*

(a) Market competition.

(b) Authorization for the initiation of a private civil action to remedy a perceived or alleged harm to the public.

(c) Inspection of a premises or documents by an employee or authorized agent of a governmental entity or regulatory body.

(d) A requirement for bonding or insurance.

(e) Registration.

(f) Certification.

(g) Licensure by a governmental entity or regulatory body.

3. *For the purposes of this section:*

(a) “Certification” means a voluntary program in which a governmental entity or regulatory body grants nontransferable recognition to a natural person who meets certain professional qualifications established by a legislative body, governmental entity or regulatory body. The term does not include an exclusive right to practice a lawful occupation or restrict a noncertified natural person from engaging in such lawful occupation; and

(b) “Registration” means a requirement established by a legislative body, governmental entity or regulatory body that a natural person give notice to a governmental entity or regulatory



body that may include the name and address of the natural person, the natural person's agent for service of process, the location of the activity to be performed and a description of the goods or services the natural person will provide. The term does not include a requirement that a natural person meet certain personal qualifications, however, it may include a requirement that a natural person be bonded or insured.

Sec. 9. In any judicial or administrative proceeding brought by a governmental entity or regulatory body to enforce an occupational regulation that violates the provisions of subsection 1 of section 8 of this act, a natural person may assert as a defense the right to engage in a lawful occupation pursuant to section 8 of this act.

Sec. 10. A natural person may bring an action for declaratory, injunctive or other equitable relief against a governmental entity or regulatory body for a violation of subsection 1 of section 8 of this act without regard to the exhaustion of administrative remedies.

Sec. 11. A natural person may assert as a defense or bring an action against the enforceability of an occupational regulation pursuant to sections 9 and 10 of this act that is:

1. A law, statute, ordinance, rule, practice or policy existing on or before October 1, 2015; or

2. A law, statute, ordinance, rule, practice or policy adopted or amended after October 1, 2015, that does not include an explicit exemption from sections 2 to 17, inclusive, of this act.

Sec. 12. 1. A natural person who asserts a defense or brings an action pursuant to section 9 or 10 of this act has the initial burden of proof that an occupational regulation substantially burdens the right of the natural person to engage in a lawful occupation.

2. If a natural person meets the burden of proof established by subsection 1, the governmental entity or regulatory body must demonstrate by clear and convincing evidence that the governmental entity or regulatory body has an important interest in protecting against present and recognizable harm to the public health or safety and the occupational regulation represents the least restrictive means for furthering that important interest.

Sec. 13. An employer or potential employer may assert the right of an employee or potential employee recognized in subsection 1 of section 8 of this act by initiating and maintaining a defense or action pursuant to section 9 or 10 of this act.



Sec. 14. *1. A court of competent jurisdiction in this State shall liberally construe the provisions of sections 2 to 17, inclusive, of this act to protect the right established in subsection 1 of section 8 of this act.*

2. In adjudicating any action brought pursuant to section 9 or 10 of this act, a court shall make its own findings of fact and conclusions of law. The court shall not grant any presumption to legislative or administrative determinations of harm to the public health or safety, or that the occupational regulation is the least restrictive means of furthering an important governmental interest.

Sec. 15. *1. Nothing in sections 2 to 17, inclusive, of this act shall be construed to create a right of action against a private party or to require a private party to do business with a natural person who is not licensed, certified or registered with a governmental entity or regulatory body.*

2. Nothing in sections 2 to 17, inclusive, of this act shall be construed to create a right of action against the Federal Government for its use of a state occupational regulation in federal law.

Sec. 16. *1. Sections 2 to 17, inclusive, of this act do not apply to the occupational regulation of a natural person who is:*

(a) An employee of a governmental entity or regulatory body;
(b) A fiduciary whose fiduciary status is recognized in a law, statute or ordinance; or

(c) Required by federal law to be subject to occupational regulation in order to engage in a lawful occupation.

2. For the purposes of paragraph (b) of subsection 1, the status of a fiduciary is recognized in a law, statute or ordinance if:

(a) A law, statute or ordinance specifically declares the natural person to be a fiduciary;

(b) The occupation engaged in by the natural person creates a fiduciary relationship with a third party under common law; or

(c) A law, statute or ordinance requires the natural person to maintain a trust account separate and distinct from the personal money of the natural person for the deposit of money received by, or on behalf of, a client or other third party.

Sec. 17. *1. The enforcement of any provision of chapters 1, 7, 90, 116A, 119A, 159, 240, 240A, 361, 394, 435, 445B, 449, 450B, 455C, 457, 458, 463, 466, 467, 477, 482, 483, 503, 504, 505, 534, 544, 555, 576, 581, 582, 584, 587, 599A, 599B, 618, 622A to 628A, inclusive, 630 to 649, inclusive, 652 to 656A, inclusive, 683A, 683C, 684A, 684B, 685A, 686B, 689, 692A, 692B, 695J, 696A, 697 and 706 of NRS is subject to the provisions of sections 2 to 16, inclusive, of this act.*



1 *2. In the event that any provision of a chapter set forth in*
2 *subsection 1 conflicts with a provision of sections 2 to 16,*
3 *inclusive, of this act, that provision of sections 2 to 16, inclusive,*
4 *of this act controls.*

