

SENATE BILL NO. 330—SENATOR ROBERSON

MARCH 20, 2017

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Enacts the Right to Earn a Living Act.
(BDR 54-849)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; establishing certain standards against which governmental entities and regulatory bodies are required to review regulations relating to entry into businesses and professions and certain restrictions on the provision of public services; authorizing a natural person to petition a governmental entity or regulatory body to request the amendment or repeal of such regulations; authorizing a natural person to appeal a denial of such a petition to the district court; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law contains various licensing requirements and other regulations on
2 natural persons who engage in certain occupations within this State. (Title 54 of
3 NRS, chapters 1, 7, 76, 90, 116A, 119A, 122, 159, 240, 240A, 361, 394, 435, 445B,
4 449, 450B, 453A, 455C, 457, 458, 463, 466, 467, 477, 482, 483, 487, 489, 490,
5 503, 504, 505, 534, 544, 555, 576, 581, 582, 584, 587, 599A, 599B, 618, 683A,
6 683C, 684A, 684B, 685A, 686B, 689, 692A, 692B, 695J, 696A, 697, 706 and 706A
7 of NRS) This bill enacts the Right to Earn a Living Act.
8 **Sections 9 and 10** of this bill require entry regulations and public service
9 restrictions to be demonstrably necessary and carefully tailored to fulfill legitimate
10 public health, safety or welfare objectives. **Sections 4 and 6** of this bill define the
11 terms “entry regulation” and “public service restriction” for those purposes.
12 **Sections 11 and 12** of this bill authorize a natural person to: (1) petition a
13 governmental entity or regulatory body to request the amendment or repeal of entry
14 regulations or public service restrictions to bring those regulations into compliance
15 with the standards set forth in **sections 9 and 10**; and (2) appeal a denial of such a
16 petition to the district court.



17 **Section 13** of this bill provides that, in the event of a conflict between this bill
18 and certain entry regulations or public service restrictions within existing law, the
19 provisions of this bill will control.

20 **Section 14** of this bill requires each governmental entity and regulatory body
21 to, on or before October 1, 2018: (1) review entry regulations within the jurisdiction
22 of the governmental entity or regulatory body; and (2) amend or repeal the entry
23 regulations, as necessary, to bring such regulations into compliance with the
24 standard set forth in **section 9**. **Section 14** also requires a governmental entity and
25 regulatory body to submit, on or before January 1, 2019, a report concerning its
26 review of the entry regulations to the Director of the Legislative Counsel Bureau
27 for transmittal to the Nevada Legislature.

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

1 **Section 1.** Chapter 622 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 13, inclusive, of this
3 act.

4 **Sec. 2.** *The provisions of sections 2 to 13, inclusive, of this*
5 *act may be cited as the Right to Earn a Living Act.*

6 **Sec. 3.** *As used in sections 2 to 13, inclusive, of this act,*
7 *unless the context otherwise requires, the words and terms defined*
8 *in sections 4 to 7, inclusive, of this act have the meanings ascribed*
9 *to them in those sections.*

10 **Sec. 4.** *“Entry regulation” means a law, statute, ordinance,*
11 *rule, practice, policy, fee, condition, examination or other*
12 *provision regulating the entry of a business into a particular*
13 *market or of a natural person into a profession or occupation.*

14 **Sec. 5.** *“Governmental entity” means any agency of this*
15 *State, a local government as defined in NRS 278B.070 or any*
16 *other political subdivision of this State or an agency thereof.*

17 **Sec. 6. 1.** *“Public service restriction” means a law, statute,*
18 *ordinance, rule, practice, policy, fee, condition, examination or*
19 *other provision, the effect of which is to exclude or limit the*
20 *provision of a public service, with or without the support of a*
21 *public subsidy.*

22 **2.** *As used in this section, “subsidy” includes, without*
23 *limitation, taxes, grants, user fees or any other money received by*
24 *or on behalf of a governmental agency or regulatory body.*

25 **Sec. 7.** *“Welfare” means the protection of members of the*
26 *public against fraud or harm. The term does not include the*
27 *protection of existing businesses or agencies, whether publicly or*
28 *privately owned, against competition.*

29 **Sec. 8.** *The Legislature hereby finds and declares that:*



1 *1. The right of a natural person to pursue a chosen business*
2 *or profession, free from arbitrary or excessive governmental*
3 *interference, is a fundamental right.*

4 *2. The freedom to earn an honest living has traditionally*
5 *provided the surest means for economic mobility.*

6 *3. In recent years, many entry regulations have exceeded*
7 *legitimate public purposes and have had the effect of arbitrarily*
8 *limiting entry and reducing competition.*

9 *4. The burden of excessive regulation is borne most heavily*
10 *by natural persons outside the economic mainstream, for whom*
11 *opportunities for economic advancement are curtailed.*

12 *5. It is in the public interest:*

13 *(a) To ensure the right of all natural persons to pursue*
14 *legitimate entrepreneurial and professional opportunities to the*
15 *limits of their talent and ambition;*

16 *(b) To provide the means for the vindication of this right; and*

17 *(c) To ensure that entry regulations are demonstrably*
18 *necessary and carefully tailored to legitimate public health, safety*
19 *and welfare objectives.*

20 **Sec. 9.** *All entry regulations must be demonstrably necessary*
21 *and carefully tailored to fulfill legitimate public health, safety or*
22 *welfare objectives.*

23 **Sec. 10.** *All public service restrictions must be demonstrably*
24 *necessary and carefully tailored to fulfill legitimate public health,*
25 *safety or welfare objectives.*

26 **Sec. 11. 1.** *Any natural person may petition any*
27 *governmental entity or regulatory body requesting the amendment*
28 *or repeal of:*

29 *(a) An entry regulation within the jurisdiction of the*
30 *governmental entity or regulatory body; or*

31 *(b) A public service restriction within the jurisdiction of the*
32 *governmental entity or regulatory body.*

33 **2.** *The governmental entity or regulatory body shall issue its*
34 *determination in response to a petition submitted pursuant to*
35 *subsection 1 within 90 days after receiving such a petition. The*
36 *determination must be in writing and include:*

37 *(a) With regard to an entry regulation:*

38 *(1) If the governmental entity or regulatory body denies the*
39 *petition, the basis upon which the governmental entity or*
40 *regulatory body concludes that the entry regulation conforms with*
41 *the standard set forth in section 9 of this act; or*

42 *(2) The decision of the governmental entity or regulatory*
43 *body to amend or repeal the entry regulation to achieve the*
44 *standard set forth in section 9 of this act; or*



1 (b) With regard to a public service restriction, if the
2 governmental entity or regulatory body denies the petition, the
3 basis upon which the governmental entity or regulatory body
4 concludes that the public service restriction conforms with the
5 standard set forth in section 10 of this act.

6 **Sec. 12.** 1. A natural person may appeal a determination
7 on a petition described in subparagraph (1) of paragraph (a) of
8 subsection 2 of section 11 of this act or paragraph (b) of
9 subsection 2 of section 11 of this act to the district court without
10 regard to the exhaustion of administrative remedies.

11 2. A plaintiff prevails in a challenge of a determination
12 concerning an entry regulation if the court finds by a
13 preponderance of the evidence that the entry regulation on its face
14 or in its effect burdens the creation of a business, the entry of a
15 business into a particular market or entry into a profession or
16 occupation and:

17 (a) That the entry regulation is not demonstrably necessary
18 and carefully tailored to fulfill legitimate public health, safety or
19 welfare objectives; or

20 (b) Where the entry regulation is necessary to the legitimate
21 public health, safety or welfare objectives, such objectives can be
22 effectively served by regulations less burdensome to economic
23 opportunity.

24 3. A plaintiff prevails in a challenge of a determination
25 concerning a public service restriction if the court finds by a
26 preponderance of the evidence that on its face or in its effect
27 either:

28 (a) That the public service restriction is not demonstrably
29 necessary and carefully tailored to fulfill legitimate public health,
30 safety or welfare objectives; or

31 (b) Where the public service restriction is necessary to fulfill
32 legitimate public health, safety or welfare objectives, such
33 objectives can be effectively served by restrictions that allow more
34 private participation.

35 4. Upon a finding for the plaintiff, the court shall enjoin
36 further enforcement of the entry regulation or public service
37 restriction and shall award reasonable attorney's fees and costs to
38 the plaintiff.

39 **Sec. 13.** 1. The enforcement of any provision of chapters 1,
40 7, 76, 90, 116A, 119A, 122, 159, 240, 240A, 361, 394, 435, 445B,
41 449, 450B, 453A, 455C, 457, 458, 463, 466, 467, 477, 482, 483,
42 487, 489, 490, 503, 504, 505, 534, 544, 555, 576, 581, 582, 584,
43 587, 599A, 599B, 618, 622A to 628B, inclusive, 630 to 649,
44 inclusive, 652 to 656A, inclusive, 683A, 683C, 684A, 684B, 685A,
45 686B, 689, 692A, 692B, 695J, 696A, 697, 706 and 706A of NRS



1 *are subject to the provisions of sections 2 to 12, inclusive, of this*
2 *act.*

3 *2. In the event that any provision of a chapter set forth in*
4 *subsection 1 conflicts with a provision of sections 2 to 12,*
5 *inclusive, of this act, that provision of sections 2 to 12, inclusive,*
6 *of this act controls.*

7 **Sec. 14.** 1. On or before October 1, 2018, every
8 governmental entity and regulatory body shall conduct a
9 comprehensive review of all entry regulations within their
10 jurisdictions and for each such entry regulation the governmental
11 entity or regulatory body must:

12 (a) Articulate with specificity the public health, safety or welfare
13 objective served by the regulation; and

14 (b) Articulate the reason why the regulation is necessary to
15 service the specified objective.

16 2. If a governmental entity or regulatory body finds during its
17 review pursuant to subsection 1 that an entry regulation does not
18 conform to the standard set forth in section 9 of this act, the
19 governmental entity or regulatory body shall:

20 (a) Repeal the entry regulation or amend the entry regulation to
21 conform with the standard set forth in section 9 of this act if those
22 actions are within the authority of the governmental entity or
23 regulatory body; or

24 (b) Recommend to the Nevada Legislature any legislation
25 necessary to repeal or amend the entry regulation to conform with
26 the standard set forth in section 9 of this act if those actions are not
27 within the authority of the governmental entity or regulatory body.

28 3. On or before January 1, 2019, every governmental entity and
29 regulatory body shall submit a report to the Director of the
30 Legislative Counsel Bureau for transmittal to the Nevada
31 Legislature. The report must include, without limitation:

32 (a) A summary of each action taken by the governmental entity
33 or regulatory body to conform with this section; and

34 (b) Any recommendations for legislation necessary to carry out
35 the provisions of subsection 2.

36 4. As used in this section:

37 (a) "Entry regulation" has the meaning ascribed to it in section 4
38 of this act.

39 (b) "Governmental entity" has the meaning ascribed to it in
40 section 5 of this act.

41 (c) "Regulatory body" has the meaning ascribed to it in
42 NRS 622.060.

43 (d) "Welfare" has the meaning ascribed to it in section 7 of this
44 act.



1 **Sec. 15.** The provisions of subsection 1 of NRS 218D.380 do
2 not apply to any provision of this act which adds or revises a
3 requirement to submit a report to the Legislature.

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