

**SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION**

S.F. No. 3311

(SENATE AUTHORS: NEWMAN)

DATE	D-PG	OFFICIAL STATUS
03/29/2016		Introduction and first reading Referred to State and Local Government

A bill for an act

relating to occupations; providing for oversight of state occupational regulations; requiring reports; amending Minnesota Statutes 2014, sections 3.303, by adding a subdivision; 214.001, subdivisions 1, 3, by adding subdivisions; 214.002, subdivision 2, by adding a subdivision; 214.01, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 214.

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

Section 1. Minnesota Statutes 2014, section 3.303, is amended by adding a subdivision to read:

Subd. 7a. **Regulatory effects on minorities and the underprivileged.** The Legislative Coordinating Commission shall study and report to the legislature by January 15, 2017, and every five years thereafter, on matters relating to the economic effects of existing and proposed occupational regulations on the availability of service providers to and employment opportunities for members of economically underprivileged classes and racial minorities. It shall also report to the legislature on whether occupational regulations are being enforced for the benefit of all consumers consistent with section 214.001.

Sec. 2. Minnesota Statutes 2014, section 214.001, subdivision 1, is amended to read:

Subdivision 1. **Policy.** The legislature finds that the interests of the people of the state are served by the regulation of certain occupations. The legislature further finds:
(1) that it is desirable for boards composed primarily of members of the occupations so regulated to be charged with formulating the policies and standards governing the occupation;

2.1 (2) that economical and efficient administration of the regulation activities can
 2.2 be achieved through the provision of administrative services by departments of state
 2.3 government; and

2.4 (3) that procedural fairness in the disciplining of persons regulated by the boards
 2.5 requires (i) a separation of the investigative and prosecutorial functions from the board's
 2.6 boards' judicial responsibility, and (ii) active supervision of the boards' disciplinary actions.

2.7 Sec. 3. Minnesota Statutes 2014, section 214.001, is amended by adding a subdivision
 2.8 to read:

2.9 Subd. 1a. **Administrative rules.** It is the responsibility of the governor or the
 2.10 governor's designee to ensure that all rules and policies related to occupational licensing
 2.11 promulgated by the state's executive agencies and boards are consistent with the policies
 2.12 in subdivision 1.

2.13 Sec. 4. Minnesota Statutes 2014, section 214.001, is amended by adding a subdivision
 2.14 to read:

2.15 Subd. 1b. **Enforcement.** An occupational regulation may be enforced against
 2.16 an individual only to the extent the individual sells lawful goods and services that are
 2.17 explicitly included in the law that defines the occupation's scope of practice.

2.18 Sec. 5. Minnesota Statutes 2014, section 214.001, subdivision 3, is amended to read:

2.19 Subd. 3. **Regulation of new occupations.** (a) If the legislature finds after evaluation
 2.20 of the factors identified in subdivision 2 that it is necessary to regulate an occupation
 2.21 not heretofore credentialed or regulated because private credentials and reputations are
 2.22 insufficient to protect consumers, then the state shall use the least restrictive regulation
 2.23 ~~should be implemented~~ necessary to protect consumers from present, significant, and
 2.24 substantiated harm that threatens public health and safety consistent with the policy of this
 2.25 section, in modes in the following order:

2.26 (1) creation or extension of common law or statutory causes of civil action, and the
 2.27 creation or extension of criminal prohibitions;

2.28 (2) enactment of a regulation of the process providing the lawful goods or services
 2.29 to consumers, including expanding the scope of a deceptive trade practices act to include
 2.30 the sale of specific goods or services;

2.31 ~~(2)~~ (3) imposition of inspection requirements and the ability to enforce violations
 2.32 by injunctive relief in the courts;

2.33 (4) imposition of a bonding or insurance requirement;

3.1 ~~(3)~~ (5) implementation of a system of registration whereby practitioners give notice
 3.2 to the state that may include the individual's name and address, the individual's agent for
 3.3 service of process, the location of the activity to be performed, and a description of the
 3.4 service the individual provides. "Registration" does not include predetermined personal
 3.5 qualifications but may require a bond or insurance. Upon the state's receipt of notice, the
 3.6 individual may use "registered" as a designated title. A nonregistered individual must not
 3.7 perform the occupation for compensation or use "registered" as a designated title;

3.8 (6) implementation of a system of certification whereby practitioners who will be the
 3.9 only persons permitted to use a designated title are listed on an official roster after having
 3.10 met predetermined personal qualifications; or

3.11 (7) implementation of a system of a limited license for the purpose of receiving
 3.12 payment or reimbursement from a government agency whereby the practitioner must
 3.13 receive recognition by the state of having met predetermined personal qualifications but
 3.14 persons not so licensed may practice for compensation but do not qualify for payments
 3.15 or reimbursement from a government agency. A private company may recognize this
 3.16 credential; or

3.17 ~~(4)~~ (8) implementation of a system of licensing whereby a practitioner must receive
 3.18 recognition by the state of having met predetermined personal qualifications, and persons
 3.19 not so licensed are prohibited from practicing.

3.20 (b) Two or more of these the modes in paragraph (a) may be simultaneously
 3.21 implemented if necessary and appropriate.

3.22 Sec. 6. Minnesota Statutes 2014, section 214.002, is amended by adding a subdivision
 3.23 to read:

3.24 Subd. 1a. **Occupational regulations analyst.** (a) The Legislative Coordinating
 3.25 Commission shall establish an analyst position to analyze occupational regulations
 3.26 consistent with section 214.001.

3.27 (b) The analyst must issue periodic reports, as determined by the Legislative
 3.28 Coordinating Commission, on the availability of service providers to and employment
 3.29 opportunities for members of economically underprivileged classes and racial minorities.

3.30 (c) The analyst must review legislation to enact or modify an occupational regulation
 3.31 to ensure compliance with the policies in section 214.001.

3.32 (d) The analyst may require submission of evidence from the legislation's
 3.33 proponents. The analyst may also require information from others knowledgeable of the
 3.34 occupation, labor economics, or other factors.

4.1 (e) The analyst must determine if the legislation meets the state policy of using
 4.2 the least restrictive regulation necessary to protect consumers from present, significant,
 4.3 and substantiated harm.

4.4 (f) The analyst must evaluate the effects of legislation on opportunities for workers,
 4.5 consumers choices and costs, general unemployment, market competition, governmental
 4.6 costs, and other effects including availability of service providers to and employment
 4.7 opportunities for members of economically underprivileged classes and racial minorities.

4.8 (g) The analyst must issue a report to relevant committees about proposed
 4.9 occupational regulation legislation as requested by the legislature.

4.10 Sec. 7. Minnesota Statutes 2014, section 214.002, subdivision 2, is amended to read:

4.11 Subd. 2. **Contents of report.** A report in support of the regulation of a health-related
 4.12 or non-health-related occupation must address the following issues as specifically as
 4.13 possible:

4.14 (1) the harm to the public that is or could be posed by the unregulated practice of the
 4.15 occupation or by continued practice at its current degree of regulation;

4.16 (2) any reason why existing civil or criminal laws or procedures are inadequate to
 4.17 prevent or remedy any harm to the public;

4.18 (3) why the proposed level of regulation is being proposed and why, if there is a
 4.19 lesser degree of regulation, it was not selected;

4.20 (4) any associations, organizations, or other groups representing the occupation
 4.21 seeking regulation and the approximate number of members in each in Minnesota;

4.22 (5) the functions typically performed by members of this occupational group and
 4.23 whether they are identical or similar to those performed by another occupational group
 4.24 or groups;

4.25 (6) whether any specialized training, education, or experience is required to engage
 4.26 in the occupation and, if so, how current practitioners have acquired that training,
 4.27 education, or experience;

4.28 (7) whether the proposed regulation would change the way practitioners of the
 4.29 occupation acquire any necessary specialized training, education, or experience and, if
 4.30 so, why;

4.31 (8) whether any current practitioners of the occupation in Minnesota lack whatever
 4.32 specialized training, education, or experience might be required to engage in the
 4.33 occupation and, if so, how the proposed regulation would address that lack;

4.34 (9) whether new entrants into the occupation would be required to provide evidence
 4.35 of any necessary training, education, or experience, or to pass an examination, or both;

5.1 (10) whether current practitioners would be required to provide evidence of any
 5.2 necessary training, education, or experience, or to pass an examination, and, if not, why
 5.3 not; ~~and~~

5.4 (11) the expected impact of the proposed regulation on the supply of practitioners of
 5.5 the occupation and on the cost of services or goods provided by the occupation; and

5.6 (12) whether and how other states and the federal government regulate the occupation.

5.7 Sec. 8. **[214.003] OFFICE OF ADMINISTRATIVE HEARINGS;**
 5.8 **OCCUPATIONAL BOARDS' DISCIPLINARY ACTIONS.**

5.9 Subdivision 1. **Office of Supervision of Occupational Boards' Disciplinary**
 5.10 **Actions.** The Office of Administrative Hearings shall establish the Office of Supervision
 5.11 of Occupational Boards' Disciplinary Actions.

5.12 Subd. 2. **Duties.** The office must actively supervise state occupational boards
 5.13 to ensure compliance with section 214.001. The office must be staffed by one or more
 5.14 attorneys who do not provide general counsel to any board and who may exercise control
 5.15 over a board's disciplinary actions.

5.16 Subd. 3. **Actively supervise.** For the purposes of this section, "actively supervise"
 5.17 means the office must act independently to:

5.18 (1) evaluate enforcement actions proposed after the effective date of this act to
 5.19 determine consistency with section 214.001; and

5.20 (2) exercise control over each board by reviewing and approving only enforcement
 5.21 actions that are consistent with section 214.001.

5.22 Subd. 4. **Approval.** The office must review, approve, or reject proposed
 5.23 enforcement with respect to licensed or unlicensed practice of work alleged to be
 5.24 inconsistent with or outside the applicable state law's scope of practice. The office's
 5.25 approval of any action must be explicit; silence or failure to act is not deemed approval.

5.26 Subd. 5. **Costs.** A board appearing before the office must bear the cost of the review.

5.27 Subd. 6. **Additional responsibility.** The governor or a state legislator may ask the
 5.28 chief judge of the Office of Administrative Hearings to review and issue a report about
 5.29 any board's rule, policy, or enforcement action that the governor or state legislator believes
 5.30 is inconsistent with section 214.001.

5.31 Sec. 9. Minnesota Statutes 2014, section 214.01, is amended by adding a subdivision
 5.32 to read:

5.33 Subd. 2a. **Least restrictive regulation.** "Least restrictive regulation" means, from
 5.34 least to most restrictive:

- 6.1 (1) market competition;
6.2 (2) a specific private civil cause of action to remedy consumer harm;
6.3 (3) a regulation of the process of providing the specific goods or services to
6.4 consumers, including expanding the scope of a deceptive trade practices act to include the
6.5 sale of specific goods or services;
6.6 (4) inspection;
6.7 (5) bonding or insurance;
6.8 (6) registration;
6.9 (7) government certification;
6.10 (8) limited license for government payments or reimbursements for medical
6.11 services; and
6.12 (9) occupational license.

6.13 Sec. 10. Minnesota Statutes 2014, section 214.01, is amended by adding a subdivision
6.14 to read:

6.15 Subd. 4. **Predetermined personal qualifications.** "Predetermined personal
6.16 qualifications" are criteria related to an individual's personal background and experience
6.17 including completion of an approved educational program, satisfactory performance
6.18 on an examination, work experience, other evidence of attainment of requisite skills or
6.19 knowledge, moral standing, criminal history, and completion of continuing education.