

2023 -- H 5492

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- RIGHT TO EARN A LIVING ACT

Introduced By: Representatives Place, Newberry, and Nardone

Date Introduced: February 10, 2023

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR RELATIONS"

2 is hereby amended by adding thereto the following chapter:

3 CHAPTER 5.2

4 RIGHT TO EARN A LIVING ACT

5 **28-5.2-1. Short title.**

6 This chapter shall be known and may be cited as the "Right to Earn a Living Act."

7 **28-5.2-2. Legislative findings.**

8 It is hereby found and declared as follows:

9 (1) The right of individuals to pursue a chosen business or profession, free from arbitrary  
10 or excessive government interference, is a fundamental civil right.

11 (2) The freedom to earn an honest living traditionally has provided the surest means for  
12 economic mobility.

13 (3) In recent years, many regulations of entry into businesses and professions have  
14 exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and  
15 reducing competition.

16 (4) The burden of excessive regulation is borne most heavily by individuals within  
17 communities outside the economic mainstream, for whom opportunities for economic advancement  
18 are curtailed.

19 (5) It is in the public interest:

1 (i) To ensure the right of all individuals to pursue legitimate entrepreneurial and  
2 professional opportunities to the limits of their talent and ambition;

3 (ii) To provide the means for the vindication of this right; and

4 (iii) To ensure that regulations of entry into businesses and professions are demonstrably  
5 necessary and carefully tailored to legitimate health, safety, and welfare objectives.

6 **28-5.2-3. Definitions.**

7 (1) "Agency" shall be broadly construed to include the state, all units of state government,  
8 any city, town, or political subdivision of this state, and any branch, department, division, office,  
9 or agency of state or local government.

10 (2) "Entry regulations" shall include any law, ordinance, regulation, rule, policy, fee,  
11 condition, test, permit, administrative practice, or other provision relating in a market, or the  
12 opportunity to engage in any occupation or profession.

13 (3) "Public service restrictions" shall include any law, ordinance, regulation, rule, policy,  
14 fee, condition, test, permit, or other administrative practice, with or without the support of public  
15 subsidy and/or user fees.

16 (4) "Subsidy" shall include taxes, grants, user fees or any other funds received by or on  
17 behalf of an agency.

18 (5) "Welfare" shall be narrowly construed to encompass protection of members of the  
19 public against fraud or harm. This term shall not encompass the protection of existing businesses  
20 or agencies, whether publicly or privately owned, against competition.

21 **28-5.2-4. Limitation on entry regulations.**

22 All entry regulations with respect to businesses and professions shall be limited to those  
23 demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare  
24 objectives.

25 **28-5.2-5. Limitation on public service restrictions.**

26 All public service restrictions shall be limited to those demonstrably necessary and  
27 carefully tailored, to fulfill legitimate public health, safety, or welfare objectives.

28 **28-5.2-6. Elimination of entry regulations.**

29 (a) Within one year following the effective date of this chapter, every agency shall conduct  
30 a comprehensive review of all entry regulations within their jurisdictions, and for each such entry  
31 regulation it shall:

32 (1) Articulate with specificity the public health, safety, or welfare objective(s) served by  
33 the regulation; and

34 (2) Articulate the reason(s) why the regulation is necessary to serve the specified

1 objective(s).

2 (b) To the extent the agency finds any regulation that does not satisfy the standard set forth  
3 in § 28-5.2-4, it shall:

4 (1) Repeal the entry regulation, or modify the entry regulation to conform with the standard  
5 of § 28-5.2-4, if such action is within the agency's authority to do so; or

6 (2) Recommend to the legislature actions necessary to repeal or modify the entry regulation  
7 to conform to the standard of § 28-5.2-4 if such action is not within the agency's authority.

8 (c) Within fifteen (15) months following the effective date of this chapter, each agency  
9 shall report to the legislature on all actions taken to conform with this section.

10 **28-5.2-7. Administrative proceedings.**

11 (a) Any person may petition any agency to repeal or modify any entry regulation into a  
12 business or profession, within its jurisdiction.

13 (b) Within ninety (90) days of a petition filed under subsection (a) of this section, the  
14 agency shall either repeal the entry regulation, modify the regulation to achieve the standard set  
15 forth in § 28-5.2-4, or state the basis on which it concludes the regulation conforms with the  
16 standard set forth in § 28-5.2-4.

17 (c) Any person may petition any agency to repeal or modify a public service restriction  
18 within its jurisdiction.

19 (d) Within ninety (90) days of a petition filed under subsection (c) of this section, the  
20 agency shall state the basis upon which it concludes the public service restriction conforms with  
21 the standard set forth in § 28-5.2-5.

22 **28-5.2-8. Enforcement.**

23 (a) Any time after ninety (90) days following a petition filed pursuant to § 28-5.2-7 that  
24 has not been acted upon by the agency pursuant to the provisions of § 28-5.2-7(b) and (d), the  
25 person(s) filing a petition challenging an entry regulation or public service restriction, may file an  
26 action in superior court.

27 (b) With respect to the challenge of an entry regulation, the plaintiff(s) shall prevail if the  
28 court finds by a preponderance of evidence, that the challenged entry regulation on its face or in its  
29 effect burdens the creation of a business, the entry of a business into a particular market, or entry  
30 into a profession or occupation; and either:

31 (1) That the challenged entry regulation is not demonstrably necessary and carefully  
32 tailored to fulfill legitimate public health, safety, or welfare objectives; or

33 (2) Where the challenged entry regulation is necessary to the legitimate public health,  
34 safety, or welfare objectives, such objectives can be effectively served by regulations less

1 burdensome to economic opportunity.

2 (c) With respect to the challenge of a public service restriction, the plaintiff(s) shall prevail  
3 if the court finds by a preponderance of the evidence, that on its face or in its effect either:

4 (1) That the challenged public service restriction is not demonstrably necessary and  
5 carefully tailored to fulfill legitimate public health, safety or welfare objectives; or

6 (2) Where the challenged public service restriction is necessary to fulfill legitimate public  
7 health, safety or welfare objectives, such objectives can be effectively served by restrictions that  
8 allow greater private participation.

9 (d) Upon a finding for the plaintiff(s), the court shall enjoin further enforcement of the  
10 challenged entry regulation or public service restriction, and shall award reasonable attorneys' fees  
11 and costs to the plaintiff(s).

12 **28-5.2-9. State preemption of inconsistent local laws.**

13 The right of individuals to pursue a chosen business or profession, is a matter of statewide  
14 concern and is not subject to further inconsistent regulation by a city, town or other political  
15 subdivision of the state. This chapter preempts all inconsistent rules, regulations, codes, ordinances  
16 and other laws adopted by a city, town or other political subdivision of this state regarding the right  
17 of individuals to pursue a chosen business or profession.

18 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS -- RIGHT TO EARN A LIVING ACT

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1           This act would establish procedures to ensure that agency regulations or public service  
2 restrictions do not unjustly restrict individuals from entering into businesses, professions or public  
3 services and that the regulations or restrictions achieve articulable, legitimate public health, safety  
4 and welfare objectives.

5           This act would take effect upon passage.

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