

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

**S.F. No. 784**

(SENATE AUTHORS: PETERSEN, B.)

DATE	D-PG	OFFICIAL STATUS
02/12/2015	273	Introduction and first reading Referred to Jobs, Agriculture and Rural Development

A bill for an act

relating to occupations; ensuring an individual may pursue a lawful occupation free from unnecessary occupational regulations; stating a right to engage in an occupation to create a greater number of jobs; specifying conditions for government regulation of occupations to protect against misuse of occupational regulations to reduce competition and increase prices to consumers; proposing coding for new law in Minnesota Statutes, chapter 326.

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

Section 1. **[326.522] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Business license.** "Business license" means a permit, registration, certification, franchise, or other approval required by law for a sole proprietorship, partnership, or corporation to do business.

Subd. 3. **Certification.** "Certification" is a voluntary program in which a private organization or the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body. Upon approval, the individual may use "certified" as a designated title. A noncertified individual may also perform the lawful occupation for compensation but may not use the title "certified." Certification is not intended to be synonymous with an "occupational license" in this chapter.

Subd. 4. **Court.** "Court" means any court, administrative tribunal, or other government agency acting in a judicial or quasijudicial capacity.

Subd. 5. **Government.** "Government" means the government of this state or any of its political subdivisions.

2.1 Subd. 6. **Lawful occupation.** "Lawful occupation" means a course of conduct,  
2.2 pursuit, or profession that includes the sale of goods or services that are not themselves  
2.3 illegal to sell irrespective of whether the individual selling them is subject to an  
2.4 occupational regulation.

2.5 Subd. 7. **Least restrictive means of furthering an important governmental**  
2.6 **interest.** "Least restrictive means of furthering an important governmental interest"  
2.7 means, from least to most restrictive:

2.8 (1) market competition;

2.9 (2) private certification;

2.10 (3) a provision for private civil action to remedy consumer harm;

2.11 (4) a deceptive trade practice act;

2.12 (5) a regulation of the underlying conduct;

2.13 (6) inspection;

2.14 (7) bonding or insurance;

2.15 (8) registration;

2.16 (9) government certification; or

2.17 (10) occupational license.

2.18 Subd. 8. **Occupational license.** "Occupational license" is a nontransferable  
2.19 authorization in law for an individual to perform a lawful occupation for compensation  
2.20 based on meeting personal qualifications established by a legislative body. It is illegal  
2.21 for an individual who does not possess an occupational license to perform the occupation  
2.22 for compensation. Occupational licensing is the most restrictive form of occupational  
2.23 regulation.

2.24 Subd. 9. **Occupational regulation.** "Occupational regulation" means a statute,  
2.25 ordinance, rule, practice, policy, or other law requiring an individual to possess certain  
2.26 personal qualifications to work in a lawful occupation. It excludes a business license,  
2.27 facility license, building permit, or zoning and land use regulation except to the extent  
2.28 those laws regulate an individual's personal qualifications to perform a lawful occupation.

2.29 Subd. 10. **Personal qualifications.** "Personal qualifications" means criteria related  
2.30 to an individual's personal background including completion of an approved educational  
2.31 program, satisfactory performance on an examination, work experience, moral standing,  
2.32 criminal history, and completion of continuing education.

2.33 Subd. 11. **Registration.** "Registration" means a requirement established by a  
2.34 legislative body in which an individual gives notice to the government that may include  
2.35 the individual's name and address, the individual's agent for service of process, the  
2.36 location of the activity to be performed, and a description of the service the individual

3.1 provides. Registration does not include personal qualifications but may require a bond  
3.2 or insurance. Upon approval, the individual may use "registered" as a designated title.  
3.3 A nonregistered individual may not perform the occupation for compensation or use  
3.4 "registered" as a designated title. Registration is not transferable. It is not intended to be  
3.5 synonymous with an occupational license under sections 326.522 to 326.5221.

3.6 Subd. 12. **Substantial burden.** "Substantial burden" means a legal or other  
3.7 regulatory obstacle that imposes significant difficulty or cost on an individual seeking  
3.8 to enter into or continue in a lawful occupation. A substantial burden is a burden that  
3.9 is more than incidental.

3.10 Sec. 2. **[326.5221] RIGHT TO ENGAGE IN A LAWFUL OCCUPATION.**

3.11 Subdivision 1. **Statutory right.** An individual has a right to engage in a lawful  
3.12 occupation free from any substantial burden in the form of an occupational regulation  
3.13 unless the government demonstrates: (1) it has an important interest in protecting against  
3.14 present and recognizable harm to the public health or safety; and (2) the occupational  
3.15 regulation is the least restrictive means of furthering an important governmental interest.

3.16 Subd. 2. **Defense and relief.** (a) An individual may assert as a defense the right to  
3.17 engage in a lawful occupation in any judicial or administrative proceeding brought by the  
3.18 government to enforce an occupational regulation that violates subdivision 1.

3.19 (b) An individual may bring an action for declaratory judgment or injunctive or  
3.20 other equitable relief, as it relates to the individual, for a violation of subdivision 1  
3.21 by the government.

3.22 (c) An individual may assert as a defense or bring an action against the enforceability  
3.23 of an occupational regulation, pursuant to paragraphs (a) and (b), which is:

3.24 (1) in law at the effective date of this chapter; or

3.25 (2) enacted, adopted, or amended after the effective date of this chapter and does not  
3.26 include an explicit statutory exemption from this chapter.

3.27 (d) An individual who asserts a defense or brings an action under this section has  
3.28 the initial burden of proof that an occupational regulation substantially burdens the  
3.29 individual's right to engage in a lawful occupation.

3.30 (e) If the individual meets the burden of proof under paragraph (d), the government  
3.31 must demonstrate by clear and convincing evidence that the government has an important  
3.32 interest in protecting against present and recognizable harm to the public health or safety,  
3.33 and the occupational regulation is the least restrictive means for furthering that important  
3.34 governmental interest.

4.1 Subd. 3. **Judicial determination.** A court shall liberally construe this chapter to  
4.2 protect the right established in subdivision 1. A court shall make its own findings of fact  
4.3 and conclusions of law. It shall not grant any presumption to legislative or administrative  
4.4 determinations of harm to the public health or safety, or that the regulation is the least  
4.5 restrictive means of furthering an important governmental interest.

4.6 Subd. 4. **Limitation.** Nothing in this section shall be construed to create a right of  
4.7 action against a private party or to require a private party to do business with an individual  
4.8 who is not licensed, certified, or registered with the government.

4.9 Subd. 5. **Federal use of state occupational regulations.** Nothing in this section  
4.10 shall be construed to create a right of action against the federal government for its use of a  
4.11 state occupational regulation in federal law.

4.12 Subd. 6. **Collective bargaining rights.** The right established in subdivision 1 is  
4.13 subordinate to the right to collective bargaining established in sections 179.10 and 179A.06.

4.14 Subd. 7. **Exemption.** Sections 326.522 to 326.5221 do not apply to an occupational  
4.15 regulation of an individual who is a government employee or a fiduciary whose fiduciary  
4.16 status is established in state law.

4.17 **Sec. 3. EFFECTIVE DATE.**

4.18 Sections 1 and 2 are effective August 1, 2016.