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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

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

Introduced By: Representatives Place, Quattrocchi, Nardone, and Filippi

Date Introduced: February 26, 2020

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
2 RELATIONS" 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 outside the
17 economic mainstream, for whom opportunities for economic advancement are curtailed.

18 (5) It is in the public interest:

19 (i) To ensure the right of all individuals to pursue legitimate entrepreneurial and

1 professional opportunities to the limits of their talent and ambition;

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

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

5 **28-5.2-3. Definitions.**

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

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

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

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

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

20 **28-5.2-4. Limitation on entry regulations.**

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

24 **28-5.2-5. Limitation on public service restrictions.**

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

27 **28-5.2-6. Elimination of entry regulations.**

28 (a) Within one year following enactment, every agency shall conduct a comprehensive
29 review of all entry regulations within their jurisdictions, and for each such entry regulation it
30 shall:

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

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

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

3 (1) Repeal the entry regulation, or modify the entry regulation to conform with the
4 standard of § 28-5.2-4, if such action is not within the agency's authority to do so; or

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

8 (c) Within fifteen (15) months following enactment of this chapter, each agency shall
9 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 on which it concludes the public service restriction conforms with the
21 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 favorably acted upon by the agency, the person(s) filing a petition challenging an
25 entry regulation or public service restriction may file an action in a court of general jurisdiction.

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

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

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

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

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

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

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

11 **28-5.2-9. State preemption of inconsistent local laws.**

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

17 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

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

4 This act would take effect upon passage.

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