



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB3319

by Rep. Allen Skillicorn

#### SYNOPSIS AS INTRODUCED:

New Act

Creates the Right to Earn a Living Act. Defines "entry regulations", "public service restrictions", and other terms. Provides that all entry regulations with respect to businesses and professions and all public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives. Provides that within one year after the effective date of the Act, all agencies shall conduct a comprehensive review of all entry regulations within their jurisdictions, and for each such entry regulation it shall: (i) articulate with specificity the public health, safety, or welfare objective or objectives served by the regulation; and (ii) articulate the reason or reasons why the regulation is necessary to serve the specified objective or objectives. Provides that any person may petition any agency to repeal or modify any entry regulation into a business or profession within its jurisdiction. Requires the agency, within 90 days after a petition has been filed, to either repeal the entry regulation, modify the regulation to achieve standards specified under the Act, or state the basis on which it concludes the regulation conforms with those standards. Contains provisions concerning enforcement and the preemption of local laws inconsistent with the provisions of the Act.

LRB100 03921 KTG 13926 b

FISCAL NOTE ACT  
MAY APPLY

HOME RULE NOTE  
ACT MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Right  
5 to Earn a Living Act.

6 Section 5. Statement of legislative findings and purposes.  
7 The General Assembly hereby finds and declares that:

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

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

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

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

20 (e) It is in the public interest:

21 (1) to ensure the right of all individuals to pursue  
22 legitimate entrepreneurial and professional opportunities  
23 to the limits of their talent and ambition;

1           (2) to provide the means for the vindication of this  
2           right; and

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

7           Section 10. Definitions. As used in this Act:

8           "Agency" means the State, all units of State government,  
9           any county, city, town, or political subdivision of this State,  
10          and any branch, department, division, office, or agency of  
11          State or local government.

12          "Entry regulations" means any law, ordinance, regulation,  
13          rule, policy, fee, condition, test, permit, administrative  
14          practice, or other provision relating to a market or the  
15          opportunity to engage in any occupation or profession.

16          "Public service restrictions" means any law, ordinance,  
17          regulation, rule, policy, fee, condition, test, permit, or  
18          other administrative practice, with or without the support of  
19          public subsidy or user fees.

20          "Welfare" means the protection of members of the public  
21          against fraud or harm. "Welfare" does not include the  
22          protection of existing businesses or agencies, whether  
23          publicly or privately owned, against competition.

24          "Subsidy" means taxes, grants, user fees, or any other  
25          funds received by or on behalf of an agency.

1           Section 15. Limitation on entry regulations. All entry  
2 regulations with respect to businesses and professions shall be  
3 limited to those demonstrably necessary and carefully tailored  
4 to fulfill legitimate public health, safety, or welfare  
5 objectives.

6           Section 20. Limitation on public service restrictions. All  
7 public service restrictions shall be limited to those  
8 demonstrably necessary and carefully tailored to fulfill  
9 legitimate public health, safety, or welfare objectives.

10          Section 25. Elimination of entry regulations.

11           (a) Within one year after the effective date of this Act,  
12 each agency shall conduct a comprehensive review of all entry  
13 regulations within its jurisdiction and for each such entry  
14 regulation it shall:

15                   (1) articulate with specificity the public health,  
16 safety, or welfare objective or objectives served by the  
17 regulation; and

18                   (2) articulate the reason or reasons why the regulation  
19 is necessary to serve the specified objective or  
20 objectives.

21           (b) To the extent the agency finds any regulation that does  
22 not satisfy the standard set forth in Section 15, it shall:

23                   (1) repeal the entry regulation or modify the entry

1 regulation to conform with the standard of Section 15 if  
2 such action is not within the agency's authority to do so;  
3 or

4 (2) recommend to the General Assembly actions  
5 necessary to repeal or modify the entry regulation to  
6 conform to the standard of Section 15 if such action is not  
7 within the agency's authority.

8 (c) Within 15 months after the effective date of this Act,  
9 each agency shall report to the General Assembly on all actions  
10 taken to conform with this Section.

11 Section 30. Administrative proceedings.

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

15 (b) Within 90 days of a petition filed under subsection  
16 (a), the agency shall either repeal the entry regulation,  
17 modify the regulation to achieve the standard set forth in  
18 Section 15, or state the basis on which it concludes the  
19 regulation conforms with the standard set forth in Section 15.

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

22 (d) Within 90 days of a petition filed under subsection  
23 (c), the agency shall state the basis on which it concludes the  
24 public service restriction conforms with the standard set forth  
25 in Section 20.

1 Section 35. Enforcement.

2 (a) Any time after 90 days following a petition filed  
3 pursuant to Section 25 that has not been favorably acted upon  
4 by the agency, the person filing a petition challenging an  
5 entry regulation or public service restriction may file an  
6 action in a court of general jurisdiction.

7 (b) With respect to the challenge of an entry regulation,  
8 the plaintiff shall prevail if the court finds by a  
9 preponderance of evidence that the challenged entry regulation  
10 on its face or in its effect burdens the creation of a  
11 business, the entry of a business into a particular market, or  
12 entry into a profession or occupation; and either:

13 (1) the challenged entry regulation is not  
14 demonstrably necessary and carefully tailored to fulfill  
15 legitimate public health, safety, or welfare objectives;  
16 or

17 (2) if the challenged entry regulation is necessary to  
18 the legitimate public health, safety, or welfare  
19 objectives, such objectives can be effectively served by  
20 regulations less burdensome to economic opportunity.

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

25 (1) the challenged public service restriction is not

1           demonstrably necessary and carefully tailored to fulfill  
2           legitimate public health, safety, or welfare objectives;  
3           or

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

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

13          Section 40. State preemption of inconsistent local laws.  
14          The right of individuals to pursue a chosen business or  
15          profession is a matter of statewide concern and is not subject  
16          to further inconsistent regulation by a county, city, town, or  
17          other political subdivision of this State. This Act preempts  
18          all inconsistent rules, regulations, codes, ordinances, and  
19          other laws adopted by a county, city, town, or other political  
20          subdivision of this State regarding the right of individuals to  
21          pursue a chosen business or profession. A home rule unit may  
22          not regulate an individual's entry into a business or  
23          profession in a manner inconsistent with this Act. This Section  
24          is a limitation under subsection (i) of Section 6 of Article  
25          VII of the Illinois Constitution on the concurrent exercise by

1 home rule units of powers and functions exercised by the State.