

Creating A Statutory Right to Challenge – The “Right to Earn A Living Act”

- **“Right to Earn A Living Act”** – Model legislation created by the Goldwater Institute would implement a policy that occupational regulations shall be construed to protect the individual worker's right to pursue a lawful occupation and use the least restrictive means necessary to protect public health and safety. The model legislation gives an affected individual a right to challenge an occupational licensing rule, requirement, or decision. Key aspects of the right to challenge include the following:
 - Anyone may petition a governmental entity to repeal or modify specific occupational licensing regulations, to which the entity must respond within 90 days.
 - Where the entity decides not to grant the petition, the individual who requested the agency action may challenge it in court.
 - The court is instructed to rule in favor of the challenger if it makes two findings: (1) that the challenged regulation burdens the creation of a business, the entry of a business into a particular market, or entry into a profession or occupation; and (2) that the challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives or that such objectives can be effectively served by regulations less burdensome to economic opportunity. If the court makes those two findings, it is directed to enjoin the regulations and award reasonable attorney fees.
- **Arizona** - [SB 1437 of 2017](#) – Based on the Right to Earn a Living Act, discussed above, this law establishes a review process for occupational licensing decisions, including enhancement of an individual's right to internally appeal an administrative rule. Further, the law expands the independent oversight role of the Governor's Regulatory Review Council. The law also establishes the right to go to court for a declaratory ruling that a rule isn't necessary to protect the public health, safety or welfare. This portion of the law has been criticized as giving courts authority to make policy decisions.
- **Nebraska** - [LB 299 of 2018](#) - Creates a state policy that occupational regulations shall be construed (a) to protect an individual worker's right to pursue a lawful occupation, (b) to use the least restrictive means necessary to protect public health and safety, and (c) to require actual enumeration of a product or service as regulated by statute as a condition of any enforcement action against an individual. Unlike Arizona's law and the model “Right to Earn a Living Act,” this law does not contain an appeal process for individuals, except regarding the effect of a past criminal conviction on an individual's eligibility for an occupational licensure.
- **Tennessee** - [SB 2469/HB 2201 of 2016](#) – Tennessee's version of the Right to Earn a Living Act requires a legislative committee to review occupational licensing regulations to ensure that they are necessary to protect the public's health, safety, or welfare. If a committee finds that the purpose of a regulation could be accomplished through less restrictive or burdensome means, then the committee may express disapproval to the agency promulgating the regulation. If compliance with recommended changes is not implemented, the committee may request that the General Assembly suspend any or all of the agency's rulemaking authority.