

GOLDWATER

I N S T I T U T E

January 29, 2026

Rep. Erica Layon

Chair, House Committee on Executive Departments and Administration

RE: Support HB 1340 – The Right to Earn a Living Act

Chair Layon and Members of the Committee:

On behalf of the Goldwater Institute, I am writing to submit testimony in support of HB 1340. The Goldwater Institute is a free-market think-tank and public interest litigation firm that works in courtrooms, capitols, and communities nationwide to protect constitutional rights and empower individuals to live freer lives. HB 1340 intends to recognize the right to earn a living as a civil right that undergirds the fabric of our constitutional republic. At its core, the legislation simply requires that occupational regulations be limited to those that are demonstrably necessary and carefully tailored to fulfill legitimate public health, safety and welfare objectives.

Of all the constitutional rights that Americans cherish, the freedom to earn a living or work in the profession we choose receives the least protection under the law. Courts allow occupational licensing boards to impose nearly any restriction or regulations on professions, so long as that restriction has any “rational basis” to a legitimate government objective. The government does not need to actually prove the regulation’s effectiveness, and challengers must disprove every possible basis that might support the law, effectively making it impossible for average Americans to successfully challenge occupational regulations in court.

In contrast, if a government agency places a restriction on a fundamental constitutional right, such as a restriction on your ability to hold up a sign on the side of a road, then the government must demonstrate a very strong justification for restricting your First Amendment rights if you challenge the restriction court. In this scenario, the burden is on the government to legally justify its restriction, and the court will treat the government’s alleged justification with strong skepticism.

HB 1340 solves this disparity in several ways. First, it requires that all occupational regulations be limited to those that are demonstrably necessary and carefully tailored to fulfill legitimate public health, safety and welfare standards. The bill requires agencies to review all of their occupational regulations under this standard, and it gives agencies the opportunity to repeal any regulations that do not comply. Further, individuals can petition agencies to repeal or modify occupational regulations that fail to fulfill legitimate government objectives.

Individuals may also seek injunctive relief against enforcement of occupational regulations that violate this legislation in court. In court, individuals are entitled to relief if agencies cannot prove that the occupational regulation is demonstrably necessary and narrowly tailored to fulfill legitimate objectives. Further, if the regulation is necessary to further a legitimate objective, then the court must also grant relief if the objective can be effectively served by using a less restrictive regulation that is less burdensome to economic opportunity. This provision truly secures the right to earn a living as a fundamental constitutional right.

This bill recognizes the right to earn a living as a civil right while balancing the government's ability to regulate through *legitimate* and *proportionate* health, safety and welfare regulations. Tennessee, Arizona, and Louisiana each have similar laws protecting this foundational right.

In states that have passed similar measures, regulatory agencies are taking a more deliberate, measured approach to regulating occupations. The laws have not resulted in an explosion of litigation due to the "cause of action" provision, and agencies have not been overwhelmed with petitions to review regulations. Instead, agencies are more likely to proactively remove inappropriate regulations with questionable objectives, thus avoiding potential petitions and litigation.

When government restricts economic liberty and limits entry into an industry, the legal burden of proving the occupational rule to be an overreach is often insurmountable. By default, the legal burden falls on the worker to prove that the regulation is excessive, and courts generally defer to the government. Thankfully, HB 1340 offers a fair solution to this problem by creating a pathway to identify burdensome regulations and a meaningful right to challenge those regulations in court. The Goldwater Institute applauds the New Hampshire General Court for its continued leadership on occupational licensing reform and for considering such an impactful measure.

Sincerely,

Brian Norman
Director of State Affairs
Goldwater Institute