

SB338 – Sponsor’s Testimony (Sen. Joe Balyeat)

Madame Chair, members of the committee; for the record I’m Sen. Joe Balyeat representing SD 34. It’s a pleasure to bring you SB338 today. This bill is a general bill designed to give some guidance to various licensing boards. The bill would apply to all boards equally. It’s a pretty simple bill. Here’s all it says:

(b) (i) boards shall apply the standards and rules in a manner that does not discriminate against any person licensed by the board with regard to how the standards and rules are applied to other persons licensed by the board; and

(ii) Boards shall apply the standards and rules in a manner that does not restrain trade or competition from persons or businesses that are otherwise qualified to practice the profession or occupation;

Why should we add this language? I think this committee is well aware of some of the problems we’ve had with boards over-reaching their legitimate function of consumer protection; and basically using various boards as a means of shutting out new members from practicing the trade. I won’t reiterate those situations. But those situations you know about aren’t the only reasons I brought this bill. I’ve had several instances during the interim where I felt that boards over-stepped... and did so to the great detriment of the people who were just trying to follow the rules and earn a living in their chosen profession. Let me give you one example:

A constituent approached me. She was already a licensed hair stylist and wanted to open a shop in my district. She had already leased the premises and remodeled and was all set to open shop. But such a shop requires a separate state license in addition to her individual license. She applied to the board, and they denied her request because her shop didn’t include a bathroom within the shop itself. Never mind that there was a bathroom in the hallway outside her shop, just 52 inches from her front door! But the Board denied her a variance and she later discovered that the board wouldn’t even meet again for several months. She was out of business for no good reason, with no recourse whatsoever. The Board had their rules and their meeting schedule, and never mind this woman’s livelihood, or the fact that her life’s savings had been invested in a business she couldn’t even open.

When I found out about it, I called the Board; questioning why they wouldn’t give this woman a variance. I said it sounded to me like they were just using their rules to shut out competition. Their response --- “Well, we aren’t always that strict with the rules. We often grant variances, especially to people who are already in the business.” Now, why they thought that response would make me happy; I have no idea. But you can imagine my angry response: “You’re telling me you interpret the rules loosely for people who are already in business, but interpret the rules strictly for newcomers? Now I know you’re simply using the rules to shut out new competition.”

Well, because I intervened, that woman eventually got her license. But that situation and several others have made it very clear to me that these licensing boards need to have some checks and balances somehow. They have absolute power over a person’s entire livelihood and career. And power corrupts, and absolute power corrupts absolutely. So this bill is just one small step to possibly level the playing field just a little bit. To give a person just a tiny bit of leverage – that if it can be proven that the Board acted in a discriminatory fashion, that the person would have a cause of action to get some justice in the matter.

That’s it. That’s the whole bill; and the reasons for the bill. I didn’t try to get any proponents because I believe this committee already knows there’s a problem. As you listen to opponents tell you the sky is falling in; please keep one thought in mind. There are academic studies examining how bureaucracies work.. And I use “bureaucracy” not in any demeaning sense of the word, but in the academic sense. One finding of those studies is that bureaucracies tend to exaggerate the consequence of a law change prior to its passage; and then minimize the law change after passage. Beforehand, they’ll interpret this wording in SB338 as broadly as possible, predict untold unintended consequences; and tell you this bill is the end of life as we know it. But if the legislature in its wisdom passes the bill anyway; afterwards they’ll construe the bill’s wording narrowly; and say it hardly changes anything at all. With that pre-caution, I’ll sit and listen to opponents, and then I’ll answer questions and reserve the right to close.