

To: The Senate Committee on Commerce
From: The City of Olathe
Subject: Testimony in opposition to SB 10
Date: January 27, 2021



Dear Chair Olson, Vice Chair Steffen, Ranking Member Holland, and Committee Members,

Please consider this letter our testimony in opposition to Senate Bill 10.

Although the City currently regulates very few occupations, we oppose this bill because it is too broad and interferes with our ability to govern our own affairs regarding regulation of professions. Recently, we have had success in combatting human trafficking through our regulations of massage businesses and massage therapists. This bill will weaken professional regulations like our massage regulations and subjects the City to additional legal risks simply for doing a normal government function within the proper scope of municipal police power. We have four main objections to the bill.

First, the scope of the bill is too broad. It sets a up very difficult hurdles for any future occupational regulations our elected governing body may consider, as well as requiring a process to review and potentially amend or repeal existing occupational regulations.

The first section of the act says that practicing professions free from arbitrary or excessive government interference is a fundamental civil right. We disagree with the bill's characterization that practicing a profession is a fundamental civil right. The federal and state constitutions do not guarantee individuals the right to engage in unregulated business conduct without regard to the public health or public safety or public welfare. Professional regulations have always been appropriate matters for regulation by cities and the State through the appropriate use of general police power, as reviewed by the courts using rational basis review when necessary. There is no constitutional right and there should be no constitutional right to be an unregulated and unlicensed massage therapist, security guard, truck driver, etc.

Second, the bill seems designed to weaken or eliminate existing occupational licensing. Section Two says:

“(a) All occupational rules and regulations shall be limited to those demonstrably necessary and carefully promulgated to fulfill legitimate public health, safety or welfare objectives as provided by this Act.”

By using the additional word “legitimate” to the normal police power language, the bill implies that some current occupational licensing laws are illegitimate even though they protect public health or safety or welfare. The bill also contains a narrow definition of “welfare” that only includes protection against fraud and harm, and that the word welfare must be narrowly construed.

Third, his bill is directly contradictory to the idea of home rule. Instead of allowing locally elected governing bodies to determine their own local affairs and giving cities the largest measure of self-government, this bill reaches right into local affairs and attempts to institute a

process to force elected governing bodies to repeal their own ordinances, if they do not meet the bills vague requirement of “demonstrably necessary and carefully promulgated to fulfill legitimate public health, safety or welfare objectives as provided by this Act.”

Finally, this bill will be costly and burdensome on cities in two ways. Section Two requires by July 1, 2022, all cities to perform cost and effect analyses of existing regulations concerning workers, consumers, the market, and the government without providing any funding for these mandated quantitative, economic, and policy analyses. In addition, the bill creates a new private cause of action against cities for any person to challenge occupational regulations, even if they are not subject to the regulations. They may sue a city and win their attorney’s fees. All they must do is show that the regulation burdens entry into the profession and that a less restrictive occupational regulation could potentially exist. This is biased against all occupational regulations – even regulations that pass the normal test of police power. The only legally “safe” option under this bill is to have no occupational regulations at all, since it is always possible that someone could dream up a slightly less restrictive way to regulate any profession even if that approach would be less protective of the public or highly inefficient.

In conclusion, for the above reasons we express our opposition to Senate Bill 10 and ask you to not advance the bill. Please feel free to contact Assistant City Attorney Daniel Yoza if you have questions or would like further information. He can be reached at (913) 971-8946 or dayoza@olatheks.org.