

**Constitution Revision Commission
Declaration Of Rights Committee
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 18

Relating to: DECLARATION OF RIGHTS, creates new section

Introducer(s): Commissioner Donalds

Article/Section affected: Article I, new section.

Date: January 24, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>
2.	<u>LE</u>	<u></u>

I. SUMMARY:

The Florida Supreme Court has held that the right to work, earn a living, and acquire and possess property from the fruits of one’s labor is an alienable right. However, the right to pursue a business, occupation, or profession is subject to the paramount right of the government, through the police power, to impose reasonable restrictions as may be required for the protection of the public. Pursuant to these constitutional principles, occupational regulations are reviewed by the courts for constitutionality using a “rational basis” test. The rational basis test requires only that the challenged law be rationally related to a legitimate government interest. Such regulations, referred to as “economic regulations” as well, may include:

- Occupational Regulations/Licensing;
- Zoning for certain business activities; and
- Disclosure requirements.

The proposal requires that the government demonstrate, through actual evidence, that the government’s infringement of the inalienable right to pursue an honest trade, vocation, occupation, or career is necessary to advance an important governmental interest and that less restrictive alternatives have been sincerely considered. Thus, the proposal requires that occupational regulations passed by the Legislature and local governments be subject to a higher level of judicial scrutiny than is required under current law.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Through the exercise of its “police power” state and local government have broad powers to regulate businesses, trades, vocations, occupations, and careers to protect the public from harm and further public health, safety, and morals. Such regulations are commonly referred to as “economic regulations.” These regulations may take the form of laws and ordinances relating to, but not limited to:

- Occupational licensing;
- Occupational regulation;
- Zoning for certain business activities; and
- Disclosure requirements concerning the business or occupation.

As an illustrative example, the following state agencies or entities regulate and license the indicated businesses, trades, vocations, occupations and careers:

- **Department of Business and Professional Regulation:** Cosmetologists, Certified Public Accountants, Geologists, Realtors, Veterinary Medicine, etc.
- **Department of Health:** Physicians, Nurses, Dentists, Dieticians, Pharmacists, Paramedics, etc.
- **Agency for Health Care Administration:** Hospitals, Nursing Homes, etc.
- **Department of Children and Families:** Child Care Facilities.
- **Supreme Court of Florida:** Attorneys and Paralegals.

Although the United States Constitution and the Florida Constitution recognize the right to pursue a lawful occupation or business, the right is not regarded as a “fundamental right” and is subject to reasonable regulation by the state and local government.

Police Power of the Government

The Tenth Amendment to the United States Constitution provides that the “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Thus, states have all powers that are not limited by the Federal Constitution or by the constitution of that state. One of the powers reserved to states is the “police power.”

The “police power” of a state is said to be derived from its sovereign right to protect its citizens, and it was born with, and is a necessary concomitant of, civilized government.¹ Traditionally, a state’s police power has been defined as the authority to provide for the public health, safety, and morals. Consequently, the state has the police power to enact laws reasonably construed as expedient for protections of the health, safety, general welfare, morals, lives, peace, order, quiet, prosperity, convenience and best interests of the public.² The police power embraces all manner of wholesome and reasonable laws not repugnant to the Constitution, either with or without

¹ 10A Fla. Jur 2d Constitutional Law § 191.

² 10A Fla. Jur. 2d Constitutional Law § 194.

penalties, as will be judged for the good of the public.³ The police power is restricted only by the applicable provisions of the federal and state Constitutions designed to protect private rights from arbitrary and oppressive governmental action.⁴

Constitutional Standards for Regulation of Occupations

The Florida Supreme Court has held that the right to earn a livelihood by engaging in a lawful occupation or business is constitutionally protected, but it is also subject to the police power of the state to enact laws which advance the public health, safety moral or general welfare.⁵ In reviewing claims that the right to pursue a lawful occupation or business has been infringed, the Court explained that the proper standard by which to evaluate the Legislature's exercise of the police power in [this area] is whether the means utilized bear a rational relationship to a legitimate state objective.⁶ In determining whether the legislative act bears a rational relationship to a legitimate state objective, the Court explained:

The legislature is vested with wide discretion to determine the public interest and the measures necessary for its achievement. The fact that the legislature may not have chosen the best possible means to eradicate the evils perceived is of no consequence to the courts provided that the means selected are not wholly unrelated to achievement of the legislative purpose. A more rigorous inquiry would amount to a determination of the wisdom of the legislation, and would usurp the legislative prerogative to establish policy.⁷

The Florida Supreme Court has expressly acknowledged that although the right to pursue a occupation or business is “a constitutional right, it is not the species of fundamental right which invokes the strict scrutiny standard.”⁸

B. EFFECT OF PROPOSED CHANGES:

The proposal requires that the government demonstrate, through actual evidence, that the government's infringement of the inalienable right to pursue an honest trade, vocation, occupation, or career is necessary to advance an important governmental interest and that less restrictive alternatives have been sincerely considered. Thus, the proposal requires that occupational regulations (licensing, zoning, etc.) passed by the Legislature and local governments be subject to a higher level of judicial scrutiny than is required under current law.

If approved by the voters, the proposal will take effect on January 8, 2019.⁹

³ *Id.*

⁴ *Id.*

⁵ *Fraternal Order of Police, Metropolitan Dade County, Lodge No. 6 v. Department of State*, 392 So. 2d 1296, 1301 (Fla. 1980)

⁶ *Id.* at 1302.

⁷ *Id.* at 1303.

⁸ *Id.*

⁹ See Article XI, Sec. 5(e) of the Florida Constitution (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

C. FISCAL IMPACT:

The fiscal impact is indeterminate.

III. Additional Information:

A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

B. Amendments:

None.

C. Technical Deficiencies:

None.

D. Related Issues:

None.