

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 1551

5 By: Representatives Womack, D. Meeks, Gonzales, Bentley, Pilkington, Ballinger, Dotson
6 By: Senator Hester
7

For An Act To Be Entitled

8
9 AN ACT TO CREATE THE RIGHT TO ENGAGE IN A LAWFUL
10 OCCUPATION; TO STIMULATE JOB CREATION AND ECONOMIC
11 DEVELOPMENT WHILE PRESERVING HEALTH AND SAFETY
12 STANDARDS; TO DECLARE AN EMERGENCY; AND FOR OTHER
13 PURPOSES.
14

Subtitle

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17 TO STIMULATE JOB CREATION AND ECONOMIC
18 DEVELOPMENT WHILE PRESERVING HEALTH AND
19 SAFETY STANDARDS; AND TO DECLARE AN
20 EMERGENCY.
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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25 SECTION 1. Arkansas Code Title 11 is amended to add an additional
26 chapter to read as follows:

Chapter 16

RIGHT TO A LAWFUL OCCUPATION

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30 11-16-101. Purpose – Construction.

31 (a) The purpose of this chapter is to:

32 (1) Ensure that a person may pursue a lawful occupation free
33 from unnecessary regulation; and

34 (2) Protect against the misuse of occupational regulations to
35 reduce competition and increase prices to consumers.

36 (b) This chapter does not:



1 (1) Repeal any portion of current law concerning the regulation
 2 of occupations and professions;

3 (2) Sanction the illegal practice of a licensed occupation; or

4 (3) Change the scope of practice generally for any profession,
 5 occupation, or class of healthcare provider.

6 (c) This chapter shall:

7 (1) Be construed liberally to protect the right to engage in a
 8 lawful occupation established in this chapter; and

9 (2) Not be construed to provide a presumption in favor of the
 10 government regarding:

11 (A) The relationship between an occupational regulation
 12 and the government’s important interest in protecting against harm to the
 13 public health or safety; or

14 (B) Whether the occupational regulation is the least
 15 restrictive means of furthering a government’s important interest in
 16 protecting against present and recognizable harm to the public health or
 17 safety.

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 19 11-16-102. Definitions.

20 As used in this chapter:

21 (1) “Lawful occupation” means a course of conduct, pursuit, or
 22 profession that includes the sale of goods or services that are not
 23 illegal to sell regardless of whether the person selling them is subject
 24 to an occupational regulation;

25 (2) “Occupational regulation” means a statute, ordinance,
 26 rule, practice, policy, or other requirement prescribed by the state for a
 27 private individual to work in a lawful occupation, regardless of whether the
 28 statute, ordinance, rule, practice, policy, or other government-prescribed
 29 requirement existed before the effective date of this chapter;

30 (3) “Personal qualifications” means criteria related to a
 31 person’s personal background, including without limitation:

32 (A) Completion of an approved educational program;

33 (B) Satisfactory performance on an examination;

34 (C) Work experience;

35 (D) Criminal history; and

36 (E) Completion of continuing education;

1 (4) "Private individual" means a person who:

2 (A) Is acting as either:

3 (i) A self-employed person; or

4 (ii) An employee of a private entity; and

5 (B) Is not acting as:

6 (i) A contractor or subcontractor that seeks payment
 7 from a government for the provision of goods or services, or both;

8 (ii) A foster parent;

9 (iii) A person who owes a duty of good faith, trust,
 10 confidence, and candor to another person when performing a lawful occupation,
 11 including without limitation an attorney, an accountant, a real estate agent
 12 or broker, an engineer, a physician, a dentist, a nurse, a pharmacist, an
 13 insurance producer, and an architect; or

14 (iv) A government employee, including without
 15 limitation a public school teacher; and

16 (5) "State" means a department, agency, board, commission,
 17 office, or other authority of the state or a political subdivision of the
 18 state.

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 20 11-16-103. Right to engage in a lawful occupation.

21 (a) A private individual has the right to engage in a lawful
 22 occupation without being required to comply with an occupational regulation
 23 that:

24 (1) Imposes a substantial burden on the private individual in
 25 terms of time, financial obligations, or the expenditure of other resources;

26 (2) Is not substantially related to the state's important
 27 interest in protecting against present and recognizable harm to the public
 28 health or safety; and

29 (3)(A) Is either unreasonable or more restrictive than is
 30 necessary to further the state's important interest in protecting against
 31 present and recognizable harm to the public health or safety.

32 (B) The means of restricting a private individual's right
 33 to engage in a lawful occupation are as follows, from least restrictive to
 34 most restrictive:

35 (i) A provision for private civil action to remedy
 36 consumer harm;

1 (ii) Deceptive trade practice acts and other laws
 2 that protect consumers from harm;
 3 (iii) Inspection;
 4 (iv) Bonding;
 5 (v) Registration without the requirement that the
 6 private individual meet certain personal qualifications;
 7 (vi) Certification based on meeting certain personal
 8 qualifications that are required in order to use the title "certified"; and
 9 (vii) Licensing based on meeting certain personal
 10 qualifications.

11 (b) However, the right to engage in a lawful occupation under this
 12 section does not:

13 (1) If the person is not certified, registered, or licensed as
 14 required by law, allow the person to:

15 (A) Use the title "certified", "registered", or
 16 "licensed";

17 (B) Hold himself or herself out as being certified,
 18 registered, or licensed; or

19 (C) Represent that he or she is a member of the relevant
 20 profession; or

21 (2) Require a person to do business with a private individual
 22 who is not certified, registered, or licensed to perform a lawful occupation
 23 for compensation.

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 25 11-16-104. Defense.

26 (a) A private individual may assert the right to engage in a lawful
 27 occupation only as a defense in a judicial or administrative proceeding to
 28 enforce an occupational regulation that violates this chapter.

29 (b)(1) The private individual asserting a defense under this section
 30 has the burden of proving by the preponderance of the evidence that the
 31 occupational regulation at issue imposes a substantial burden on the private
 32 individual in terms of time, financial obligations, or the expenditure of
 33 other resources.

34 (2) The state has the burden of proving by the preponderance of
 35 the evidence that the occupational regulation at issue:

36 (A) Is substantially related to the state's important

1 interest in protecting against present and recognizable harm to the public
 2 health or safety; and

3 (B) Is both reasonable and no more restrictive than
 4 necessary to advance the state's important interest in protecting against
 5 present and recognizable harm to the public health or safety.

6 (c) A decision in a judicial or administrative proceeding on the
 7 validity of a defense asserted under this section applies only to the person
 8 who asserted the defense.

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 10 11-16-105. Legislation.

11 An occupational regulation adopted to comply with a law enacted after
 12 the effective date of this chapter is exempt from this chapter only if the
 13 law explicitly states that the occupational regulation is exempt from this
 14 chapter.

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 16 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 17 General Assembly of the State of Arkansas that a person's right to engage in
 18 a lawful occupation is hindered by unnecessary regulations in this state;
 19 that these unnecessary regulations have a negative impact on Arkansas's
 20 economy and on the ability of the state's citizens to earn a living; and that
 21 this act is immediately necessary to reduce the unnecessary regulations that
 22 are hindering the growth of the state's economy and the financial well-being
 23 of the state's citizens. Therefore, an emergency is declared to exist, and
 24 this act being immediately necessary for the preservation of the public
 25 peace, health, and safety shall become effective on:

26 (1) The date of its approval by the Governor;

27 (2) If the bill is neither approved nor vetoed by the Governor,
 28 the expiration of the period of time during which the Governor may veto the
 29 bill; or

30 (3) If the bill is vetoed by the Governor and the veto is
 31 overridden, the date the last house overrides the veto.

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