

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
89th General Assembly  
Regular Session, 2013

# A Bill

SENATE BILL 894

By: Senator G. Stubblefield

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE RIGHT TO  
ENGAGE IN A LAWFUL OCCUPATION; AND FOR OTHER  
PURPOSES.

## Subtitle

TO AMEND ARKANSAS LAW CONCERNING THE  
RIGHT TO ENGAGE IN A LAWFUL OCCUPATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 11 is amended to add an additional  
chapter to read as follows:

### CHAPTER 15

#### Right to a Lawful Occupation

#### 11-15-101. Purpose.

The purpose of this chapter is to:

- (1) Ensure that a person may pursue a lawful occupation free from unnecessary regulation; and
- (2) Protect against the misuse of occupational rules to reduce competition and increase prices to consumers.

#### 11-15-102. Definitions.

As used in this chapter:

- (1) "Certification" means a voluntary program for which the State of Arkansas establishes the criteria to grant recognition to a person who:



(A) Has met certain predetermined qualifications for a lawful occupation; and

(B) May use "certified" as a designated title;

(2) "Court" means a court of law, administrative tribunal, or other government agency acting in a judicial or quasi-judicial capacity;

(3) "Government" means the State of Arkansas or any of its political subdivisions;

(4) "Lawful occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the person selling them is subject to an occupational regulation;

(5) "Least restrictive means of furthering the compelling governmental interest" means the following, from least restrictive to most restrictive:

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

(B) Inspection;

(C) Bonding;

(D) Registration;

(E) Certification; and

(F) Licensing;

(6) "Occupational license" means a nontransferable authorization to perform a lawful occupation for compensation based on meeting predetermined qualifications established by the State of Arkansas, including without limitation the following:

(A) Satisfactory completion of an approved education program;

(B) Acceptable performance on a qualifying examination or series of examinations;

(C) Completion of a satisfactory criminal background check;

(D) Good moral standing; and

(E) Satisfactory completion of continuing education;

(7) "Occupational regulation" means a statute, ordinance, rule, practice, policy, or other government-prescribed requirement for a person to work in a lawful occupation;

(8)(A) "Registration" means a requirement established by the State of Arkansas in which a person:

- (i) Submits notification to a state agency; and
- (ii) May use "registered" as a designated title.

(B) "Registration" may include without limitation the disclosure of:

- (i) The registered person's name and address;
- (ii) The registered person's agent for service of

process;

- (iii) The location of the activity to be performed;

and

- (iv) A description of the service the registered

person provides.

(C) "Registration" may include a requirement to post a bond or obtain insurance but does not include education or experience requirements; and

(9) "Substantial burden" means:

(A) A legal or other regulatory obstacle that imposes significant difficulty or cost on a person seeking to enter into or continue in a lawful occupation; and

(B) A burden that is more than incidental.

11-15-103. Right to engage in a lawful occupation.

(a) A person has a right to engage in a lawful occupation free from an occupational regulation that creates a substantial burden unless the government demonstrates that:

(1) It has a compelling interest in protecting against present and recognizable harm to the public health or safety; and

(2) The occupational regulation is the least restrictive means of furthering the compelling governmental interest.

(b) The right established in this section is subject to the following:

(1) A noncertified person shall not use the title "certified" in performing a lawful occupation that is subject to certification requirements;

(2) A nonlicensed person shall not perform for compensation a lawful occupation for which an occupational license is required; and

(3) A nonregistered person shall not:

(A) Perform for compensation a lawful occupation that is subject to registration requirements; or

(B) Use “registered” as a designated title.

11-15-104. Defense and relief.

(a) A person may assert as a defense the right to engage in a lawful occupation in any judicial or administrative proceeding to enforce an occupational regulation that violates this chapter.

(b) A person may bring an action for declaratory judgment, injunctive relief, or other equitable relief for a violation of this chapter.

(c)(1) A person may assert a defense to or bring an action challenging the enforceability of an occupational regulation under this section if the occupational regulation:

(A) Existed as of the effective date of this chapter; or

(B) Was enacted, adopted, or amended after the effective date of this chapter.

(2) Subdivision (c)(1) of this section does not apply if the occupational regulation contains an exemption from this chapter.

(d)(1) A person who asserts a defense or brings an action under this section has the initial burden of proving that an occupational regulation substantially burdens the person’s right to engage in a lawful occupation.

(2) If a person meets the burden of proof under subdivision (d)(1) of this section, the government must demonstrate by clear and convincing evidence that:

(A) It has a compelling interest in protecting against present and recognizable harm to the public health or safety; and

(B) The occupational regulation is the least restrictive means of furthering the compelling governmental interest.

(e) This section does not:

(1) Create a right of action against the federal government for its use of a state occupational regulation in federal law;

(2) Create a right of action against a private party; or

(3) Require a private party to do business with a person who is not certified, licensed, or registered to perform the lawful occupation for compensation.

11-15-105. Judicial determination.

(a) This chapter shall be construed liberally to protect the right to engage in a lawful occupation established in this chapter.

(b) A court considering a potential violation of this chapter shall:

(1) Make its own findings of fact and conclusions of law; and

(2) Not grant any presumption to legislative determinations:

(A) Of harm to the public health or safety; or

(B) That the regulation is the least restrictive means of furthering the compelling governmental interest.

11-15-106. Applicability.

This chapter applies only to private employees and does not affect or impair a government's authority to prescribe occupational regulations for public employees.