

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

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: H2/3/15 H2/11/15
A Bill

HOUSE BILL 1158

By: Representative Womack
By: Senator Hester

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS LAW CONCERNING THE RIGHT TO ENGAGE IN A LAWFUL OCCUPATION; TO STIMULATE JOB CREATION AND ECONOMIC DEVELOPMENT WHILE PRESERVING HEALTH AND SAFETY STANDARDS; AND FOR OTHER PURPOSES.

Subtitle

TO STIMULATE JOB CREATION AND ECONOMIC DEVELOPMENT WHILE PRESERVING HEALTH AND SAFETY STANDARDS.

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 16

Right to a Lawful Occupation

11-16-101. 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.

11-16-102. Definitions.

As used in this chapter:



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

(A) Has met certain predetermined personal 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 a state or local agency, board, or commission;

(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 an important governmental interest" means the following, from least restrictive to most restrictive:

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

(B) Deceptive trade practice acts and other laws that protect consumers from harm;

(C) Inspection;

(D) Bonding;

(E) Registration;

(F) Certification; and

(G) Licensing;

(6) "Occupational license" means an authorization to perform a lawful occupation for compensation based on meeting predetermined personal qualifications established by the government;

(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) "Personal qualifications" means criteria related to an individual's personal background, including without limitation the following:

(A) Completion of an approved educational program;

(B) Satisfactory performance on an examination;

(C) Work experience;

(D) Criminal history;

(E) Moral standing; and

(F) Completion of continuing education;

(9)(A) "Registration" means a requirement established by the government 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 personal qualifications; and

(10) "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.

11-16-103. 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 an important 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 important 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 use the title "licensed" in

performing a lawful occupation for which an occupational license is required; and

(3) A nonregistered person shall not use "registered" as a designated title.

11-16-104. 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)(1) A person may assert a defense to 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 (b)(1) of this section does not apply if the occupational regulation contains an exemption from this chapter.

(c)(1) A person who asserts a defense under this section has the initial burden of proving that an occupational regulation is a substantial burden on the person's right to engage in a lawful occupation.

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

(A) It has an important 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 important governmental interest.

(d) This section does not:

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

(2) Apply to occupations in which state law imposes a fiduciary duty on the person performing the occupation.

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

11-16-105. 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 important governmental interest.

11-16-106. Superseding legislation.

In order to be exempt from this chapter, a law that enacts or amends an occupational regulation after the effective date of this chapter shall explicitly state that it supersedes the right to engage in a lawful occupation.

11-16-107. Applicability.

This chapter applies only to private individuals and does not affect or impair a government's authority to prescribe occupational regulations with respect to a government contract for a person who seeks payment from the government for the provisions of goods, services, or both, including without limitation a government contractor, a government subcontractor, and a foster parent.

/s/Womack