

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

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 2176

By: Representative McCollum

## For An Act To Be Entitled

AN ACT TO ENCOURAGE ECONOMIC DEVELOPMENT BY FACILITATING THE EMPLOYMENT OF INDIVIDUALS IN VARIOUS PROFESSIONS; TO REGULATE THE PRACTICES OF OCCUPATIONAL BOARDS, COMMISSIONS, AND OTHER ENTITIES WHILE PRESERVING HEALTH AND SAFETY STANDARDS; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

## Subtitle

TO ENCOURAGE ECONOMIC DEVELOPMENT BY FACILITATING EMPLOYMENT OF INDIVIDUALS; TO REGULATE OCCUPATIONAL BOARDS, COMMISSIONS, AND OTHER ENTITIES WHILE PRESERVING HEALTH AND SAFETY STANDARDS; AND TO DECLARE AN EMERGENCY.

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 – Construction.

##### (a) 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 regulations to



reduce competition and increase prices to consumers.

(b) This chapter does not:

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

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

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

(c) This chapter shall:

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

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

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

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

11-16-102. Definitions.

As used in this chapter:

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

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

(3) "Personal qualifications" means criteria related to a person's personal background, including without limitation:

(A) Completion of an approved educational program;

(B) Satisfactory performance on an examination;

(C) Work experience;

(D) Criminal history; and

(E) Completion of continuing education;

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

(A) Is acting as either:

(i) A self-employed person; or

(ii) An employee of a private entity; and

(B) Is not acting as:

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

(ii) A foster parent;

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

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

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

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

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

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

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

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

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

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

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

(iii) Inspection;

(iv) Bonding;

(v) Registration without the requirement that the private individual meet certain personal qualifications;

(vi) Certification based on meeting certain personal qualifications that are required in order to use the title "certified"; and

(vii) Licensing based on meeting certain personal qualifications.

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

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

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

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

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

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

11-16-104. Defense.

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

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

(2) The state has the burden of proving by the preponderance of

the evidence that the occupational regulation at issue:

(A) Is substantially related to the state's important interest in protecting against present and recognizable harm to the public health or safety; and

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

(c) 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. Legislation.

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

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

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

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

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