

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

HOUSE BILL 2001

By: Representatives Womack, Bragg, Bell, Payton, Gates, Ballinger
By: Senator Hester

For An Act To Be Entitled

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

Subtitle

TO STIMULATE JOB CREATION AND ECONOMIC
DEVELOPMENT 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 (1) Repeal any portion of current law concerning the regulation
2 of occupations and professions; or

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

5 (c) This chapter shall:

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

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

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

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

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18 11-16-102. Definitions.

19 As used in this chapter:

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

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

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

31 (A) Completion of an approved educational program;

32 (B) Satisfactory performance on an examination;

33 (C) Work experience;

34 (D) Criminal history;

35 (E) Moral standing; and

36 (F) 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:

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

(ii) A foster parent; or

(iii) Acting as 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, and a pharmacist; 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 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

1 that protect consumers from harm;

2 (iii) Inspection;

3 (iv) Bonding;

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

6 (vi) Certification based on meeting certain personal
7 qualifications; and

8 (vii) Licensing based on meeting certain personal
9 qualifications.

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

12 (1) Allow a person to use the title "certified", "registered",
13 or "licensed" or hold himself or herself out as being certified, registered,
14 or licensed if the person is not certified, registered, or licensed as
15 required by law;

16 (2) If a license is required to perform a lawful occupation,
17 allow a person who is not licensed to perform the lawful occupation or hold
18 himself or herself out as being a member of the relevant profession,
19 including without limitation the professions of teaching and practicing law
20 or medicine; or

21 (3) 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 clear and convincing 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 clear and convincing
35 evidence that the occupational regulation at issue:

36 (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 no more restrictive than is 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.

11-16-106. Sunset.

(a) This chapter expires two (2) years after the effective date of this chapter.

(b) The expiration of this chapter does not affect a private individual's right to assert a defense under § 11-16-104 in an action that commenced before the expiration of the 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

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