

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

*As Engrossed: H3/12/15*

# A Bill

HOUSE BILL 2001

5 By: Representatives Womack, Bragg, Bell, Payton, Gates, Ballinger  
6 By: Senator Hester  
7

## For An Act To Be Entitled

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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16 TO STIMULATE JOB CREATION AND ECONOMIC  
17 DEVELOPMENT WHILE PRESERVING HEALTH AND  
18 SAFETY STANDARDS; AND TO DECLARE AN  
19 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

##### 11-16-101. Purpose – Construction.

###### (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.

###### (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 themselves illegal to sell regardless of whether the person selling them  
24 is subject 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 the following:

32 (A) Completion of an approved educational program;

33 (B) Satisfactory performance on an examination;

34 (C) Work experience;

35 (D) Criminal history;

36 (E) Moral standing; and

1                   (F) Completion of continuing education;  
2           (4) "Private individual" means a person who:  
3                   (A) Is acting as either:  
4                           (i) A self-employed person; or  
5                           (ii) An employee of a private entity; and  
6                   (B) Is *not acting as*:  
7                           (i) A contractor or subcontractor that seeks payment  
8 from a government for the provision of goods, services, or both;  
9                           (ii) A foster parent;  
10                          (iii) A person who owes a duty of good faith, trust,  
11 confidence, and candor to another person when performing a lawful occupation,  
12 including without limitation an attorney, an accountant, a real estate agent  
13 or broker, an engineer, a physician, a dentist, a nurse, and a pharmacist; 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 more restrictive than is necessary to further the  
30 state's important interest in protecting against present and recognizable  
31 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 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  
37 interest in protecting against present and recognizable harm to the public

1 health or safety; and

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

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

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9 11-16-105. Legislation.

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

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15 11-16-106. Sunset.

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

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

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

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

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

36 (3) If the bill is vetoed by the Governor and the veto is

1 overridden, the date the last house overrides the veto.

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*/s/Womack*

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