

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

HOUSE BILL 2176

5 By: Representative McCollum
6

For An Act To Be Entitled

8 AN ACT TO ENCOURAGE ECONOMIC DEVELOPMENT BY
9 FACILITATING THE EMPLOYMENT OF INDIVIDUALS IN VARIOUS
10 PROFESSIONS; TO REGULATE THE PRACTICES OF
11 OCCUPATIONAL BOARDS, COMMISSIONS, AND OTHER ENTITIES
12 WHILE PRESERVING HEALTH AND SAFETY STANDARDS; TO
13 DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO ENCOURAGE ECONOMIC DEVELOPMENT BY
17 FACILITATING EMPLOYMENT OF INDIVIDUALS;
18 TO REGULATE OCCUPATIONAL BOARDS,
19 COMMISSIONS, AND OTHER ENTITIES WHILE
20 PRESERVING HEALTH AND SAFETY STANDARDS;
21 AND TO DECLARE AN EMERGENCY.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. Arkansas Code Title 11 is amended to add an additional
28 chapter to read as follows:

Chapter 16

RIGHT TO A LAWFUL OCCUPATION

11-16-101. Purpose – Construction.

33 (a) The purpose of this chapter is to:

34 (1) Ensure that a person may pursue a lawful occupation free
35 from unnecessary regulation; and

36 (2) Protect against the misuse of occupational regulations to



1 reduce competition and increase prices to consumers.

2 (b) This chapter does not:

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

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

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

8 (c) This chapter shall:

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

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

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

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

20
 21 11-16-102. Definitions.

22 As used in this chapter:

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

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

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

34 (A) Completion of an approved educational program;

35 (B) Satisfactory performance on an examination;

36 (C) Work experience;

1 (D) Criminal history; and

2 (E) Completion of continuing education;

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

4 (A) Is acting as either:

5 (i) A self-employed person; or

6 (ii) An employee of a private entity; and

7 (B) Is not acting as:

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

10 (ii) A foster parent;

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

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

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

21
 22 11-16-103. Right to engage in a lawful occupation.

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

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

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

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

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

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

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

5 (iii) Inspection;

6 (iv) Bonding;

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

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

11 (vii) Licensing based on meeting certain personal
 12 qualifications.

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

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

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

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

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

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

26
 27 11-16-104. Defense.

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

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

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

1 the evidence that the occupational regulation at issue:

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

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

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

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 12 11-16-105. Legislation.

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

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

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

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

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