

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

SENATE BILL 894

5 By: Senator G. Stubblefield
6

For An Act To Be Entitled

8 AN ACT TO AMEND ARKANSAS LAW CONCERNING THE RIGHT TO
9 ENGAGE IN A LAWFUL OCCUPATION; AND FOR OTHER
10 PURPOSES.
11

Subtitle

14 TO AMEND ARKANSAS LAW CONCERNING THE
15 RIGHT TO ENGAGE IN A LAWFUL OCCUPATION.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. Arkansas Code Title 11 is amended to add an additional
21 chapter to read as follows:

CHAPTER 15

Right to a Lawful Occupation

11-15-101. Purpose.

The purpose of this chapter is to:

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

29 (2) Protect against the misuse of occupational rules to reduce
30 competition and increase prices to consumers.
31

11-15-102. Definitions.

As used in this chapter:

34 (1) "Certification" means a voluntary program for which the
35 State of Arkansas establishes the criteria to grant recognition to a
36 person who:



1 (A) Has met certain predetermined qualifications for a
2 lawful occupation; and

3 (B) May use “certified” as a designated title;

4 (2) “Court” means a court of law, administrative tribunal, or
5 other government agency acting in a judicial or quasi-judicial capacity;

6 (3) “Government” means the State of Arkansas or any of its
7 political subdivisions;

8 (4) “Lawful occupation” means a course of conduct, pursuit, or
9 profession that includes the sale of goods or services that are not
10 themselves illegal to sell irrespective of whether the person selling
11 them is subject to an occupational regulation;

12 (5) “Least restrictive means of furthering the compelling
13 governmental interest” means the following, from least restrictive to
14 most restrictive:

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

17 (B) Inspection;

18 (C) Bonding;

19 (D) Registration;

20 (E) Certification; and

21 (F) Licensing;

22 (6) “Occupational license” means a nontransferable
23 authorization to perform a lawful occupation for compensation based on
24 meeting predetermined qualifications established by the State of
25 Arkansas, including without limitation the following:

26 (A) Satisfactory completion of an approved education
27 program;

28 (B) Acceptable performance on a qualifying examination
29 or series of examinations;

30 (C) Completion of a satisfactory criminal background
31 check;

32 (D) Good moral standing; and

33 (E) Satisfactory completion of continuing education;

34 (7) “Occupational regulation” means a statute, ordinance,
35 rule, practice, policy, or other government-prescribed requirement for a
36 person to work in a lawful occupation;

1 (8)(A) "Registration" means a requirement established by the
2 State of Arkansas in which a person:

- 3 (i) Submits notification to a state agency; and
- 4 (ii) May use "registered" as a designated title.

5 (B) "Registration" may include without limitation the
6 disclosure of:

- 7 (i) The registered person's name and address;
- 8 (ii) The registered person's agent for service of
- 9 process;
- 10 (iii) The location of the activity to be performed;

11 and

- 12 (iv) A description of the service the registered
- 13 person provides.

14 (C) "Registration" may include a requirement to post a
15 bond or obtain insurance but does not include education or experience
16 requirements; and

17 (9) "Substantial burden" means:

18 (A) A legal or other regulatory obstacle that imposes
19 significant difficulty or cost on a person seeking to enter into or continue
20 in a lawful occupation; and

21 (B) A burden that is more than incidental.

22
23 11-15-103. Right to engage in a lawful occupation.

24 (a) A person has a right to engage in a lawful occupation free from an
25 occupational regulation that creates a substantial burden unless the
26 government demonstrates that:

27 (1) It has a compelling interest in protecting against present
28 and recognizable harm to the public health or safety; and

29 (2) The occupational regulation is the least restrictive means
30 of furthering the compelling governmental interest.

31 (b) The right established in this section is subject to the following:

32 (1) A noncertified person shall not use the title "certified" in
33 performing a lawful occupation that is subject to certification requirements;

34 (2) A nonlicensed person shall not perform for compensation a
35 lawful occupation for which an occupational license is required; and

36 (3) A nonregistered person shall not:

1 (A) Perform for compensation a lawful occupation that is
2 subject to registration requirements; or

3 (B) Use “registered” as a designated title.

4
5 11-15-104. Defense and relief.

6 (a) A person may assert as a defense the right to engage in a lawful
7 occupation in any judicial or administrative proceeding to enforce an
8 occupational regulation that violates this chapter.

9 (b) A person may bring an action for declaratory judgment, injunctive
10 relief, or other equitable relief for a violation of this chapter.

11 (c)(1) A person may assert a defense to or bring an action challenging
12 the enforceability of an occupational regulation under this section if the
13 occupational regulation:

14 (A) Existed as of the effective date of this chapter; or

15 (B) Was enacted, adopted, or amended after the effective
16 date of this chapter.

17 (2) Subdivision (c)(1) of this section does not apply if the
18 occupational regulation contains an exemption from this chapter.

19 (d)(1) A person who asserts a defense or brings an action under this
20 section has the initial burden of proving that an occupational regulation
21 substantially burdens the person’s right to engage in a lawful occupation.

22 (2) If a person meets the burden of proof under subdivision
23 (d)(1) of this section, the government must demonstrate by clear and
24 convincing evidence that:

25 (A) It has a compelling interest in protecting against
26 present and recognizable harm to the public health or safety; and

27 (B) The occupational regulation is the least restrictive
28 means of furthering the compelling governmental interest.

29 (e) This section does not:

30 (1) Create a right of action against the federal government for
31 its use of a state occupational regulation in federal law;

32 (2) Create a right of action against a private party; or

33 (3) Require a private party to do business with a person who is
34 not certified, licensed, or registered to perform the lawful occupation for
35 compensation.

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1 11-15-105. Judicial determination.

2 (a) This chapter shall be construed liberally to protect the right to
3 engage in a lawful occupation established in this chapter.

4 (b) A court considering a potential violation of this chapter shall:

5 (1) Make its own findings of fact and conclusions of law; and

6 (2) Not grant any presumption to legislative determinations:

7 (A) Of harm to the public health or safety; or

8 (B) That the regulation is the least restrictive means of
9 furthering the compelling governmental interest.

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11 11-15-106. Applicability.

12 This chapter applies only to private employees and does not affect or
13 impair a government's authority to prescribe occupational regulations for
14 public employees.