

THE OCCUPATIONAL LICENSING ~~RELIEF AND JOB CREATION~~ DEFENSE ACT

{Title, enacting clause, etc.}

**Section 1. {Purpose}**

This Act's purpose is to:

(A) Ensure that an individual may pursue a lawful occupation free from unnecessary occupational regulations, and

(B) Protect against the misuse of occupational regulations to reduce competition and increase prices to consumers.

**Section 2. {Definitions}** The following definitions apply in this Act:

(A) "Business license" means a permit, registration, certification, franchise or other approval required by law for a sole proprietorship, partnership or corporate entity to do business.

(B) "Certification" is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body. Upon approval, the individual may use "certified" as a designated title or as part of a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "certified." "Certification" is not intended to be synonymous with an "occupational license" in this Act or to prohibit the use of private certification.

(C) "Certified" is a designated title an individual may use if the individual meets the personal qualifications for certification established by the government or a private certifying organization.

(D) "Court" means any court, administrative tribunal or other government agency acting in a judicial or quasi-judicial capacity.

(E) "Government" means the government of this state or any of its political subdivisions.

(F) "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

(G) "Least restrictive means of furthering an ~~non-compelling~~ important governmental interest" means, from least to most restrictive,

- (1) Market competition,
- (2) Third-party or consumer-created ratings and reviews,
- (3) Private certification,
- (4) Voluntary bonding or insurance,
- (5) A provision for private civil action in small-claims or district court to remedy consumer harm,
- (6) Deceptive trade practice act,
- (7) Mandatory disclosure of attributes of the specific good or service,
- (8) Regulation of the process of providing the specific good or service,
- (9) Inspection,
- (10) Bonding, ~~or~~
- (11) Insurance,
- (12) Registration,
- (13) Certification,
- (14) Specialty occupational license for medical reimbursement or
- (15) Occupational license.

(H) “Occupational license” is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

(I) “Occupational regulation” means a statute, ordinance, rule, practice, policy or other requirement in law that an individual possess certain personal qualification to work in a lawful occupation. It excludes a business license and zoning and land use regulations except to the extent those laws regulate an individual’s personal qualifications to perform a lawful occupation.

(J) “Personal qualifications” are criteria established by a legislative body related to an individual’s personal background including completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing and completion of continuing education.

(K) “Registered” is a designated title an individual may use if the individual meets the requirements for registration established by the government or a private registration organization.

(L) “Registration” means a requirement established by a legislative body in which an individual gives notice to the government that may include the individual’s name and address, the individual’s agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. “Registration” does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use “registered” as a designated title or as part of a designated title. A non-registered individual may not perform the occupation for compensation or use “registered” as a designated title. “Registration” is not transferable. It is not intended to be synonymous with an “occupational license” in this Act or to prohibit the use of private registration.

(M) “Specialty occupational license for medical reimbursement” means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of medical services based on meeting personal qualifications established by the legislature. A private company may recognize this credential.

(N) “Substantial burden” means a requirement in an occupational regulation that imposes significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation. A substantial burden is a burden that is more than incidental.

### **Section 3. {Right to engage in a lawful occupation}**

(A) An individual has a fundamental right to engage in a lawful occupation free from any substantial burden in an occupational regulation unless the government demonstrates

(1) It has a non-compelling important interest in protecting against present and recognizable harm to the public health or safety, and

(2) The occupational regulation is the least restrictive means of furthering that compelling important interest.

(B) Defense and Relief

(1) An individual may assert as a defense the right to engage in a lawful occupation in any judicial or administrative proceeding brought by the government to enforce an occupational regulation that violates Section 3, Subsection (A) which is.

~~(2) An individual may bring an action for declaratory judgment or injunctive or other equitable relief for a violation of Section 3, Subsection (A) by the government, without regard to the exhaustion of administrative remedies.~~

~~(3) An individual may assert as a defense or bring an action against the enforceability of an occupational regulation, pursuant to Subsections (1) and (2), which is:~~

(a) In law at the effective date of this Act; or

(b) Enacted, adopted or amended after the effective date of this Act and does not include in state statute an explicit exemption from this Act.

~~(2) An individual who asserts a defense or brings an action under this section has the initial burden of proof that an occupational regulation substantially burdens the individual's right to engage in a lawful occupation.~~

~~(3) If the individual meets the burden of proof under Subsection (2), the government must demonstrate by clear and convincing evidence that the government has an compelling important interest in protecting against present and recognizable harm to the public health or safety, and the occupational regulation is the least restrictive means for furthering that compelling important governmental interest.~~

~~(6) An employer or potential employer may assert the right of an employee or potential employee recognized in Section 3, Subsection (A) by bringing a defense or action under this subsection.~~

(C) A court shall liberally construe this Act to protect the right established in Subsection (A) of this section. In construing occupational regulations, including occupational licensing statutes, rules, policies or practices, the following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

(1) Occupational regulations shall be construed and applied to increase economic opportunities, promote competition and encourage innovation;

(2) Any ambiguities in occupational regulations shall be construed in favor of workers and aspiring workers; and

(3) The scope of practice in occupational regulations shall be construed narrowly so as to limit its application to individuals who would be burdened by regulatory requirements only partially related to the goods and services they provide.

(D) A court shall make its own findings of fact and conclusions of law. It shall not grant any presumption to legislative or administrative determinations of harm to the public health or safety, or that the regulation is the least restrictive means of furthering an compelling important governmental interest.

(E) Nothing in this section shall be construed (1) to create a right of action against the government or a private party or (2) to require the government or a private party to do business with an individual who is not licensed, certified or registered with the government.

#### **Section 4. {Federal law's use of state occupational regulations}**

(A) Nothing in this Act shall be construed to create a right of action against the federal government for its use of a state occupational regulation in federal law.

**Section 5. {Exemption} [Optional].** This Act does not apply to an occupational regulation of an individual who is a [insert type of occupation to be exempted].

**Section 6. {Severability Clause}**

**Section 7. {Repealer Clause}**

**Section 8. {Effective Date}**

*Adopted by the Commerce, Insurance and Economic Development Task Force at the Spring Task Force Summit on May 11, 2012. Amended by the Commerce, Insurance and Economic Development Task Force at the Annual Meeting, August 8, 2013.*

*Approved by the ALEC Board of Directors on July 3, 2012. Approved by the ALEC Board of Directors October 2013.*

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