

DRAFT The Occupational Licensing Relief and Job Creation Act

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Summary

Occupational licensing increases unemployment by about 1%, raises prices by about 15%, and offers no incremental consumer protection over a competitive market. This Act ensures that an individual may pursue lawful occupation free from unnecessary occupational regulations, and protects against the use of occupational regulations to reduce competition and increase prices to consumers. When enacting future occupational regulations, this Act requires state legislatures to find real harm, and select the least-restrictive regulation to address that harm. The Act also protects entrepreneurs by shifting the burden to the government to show in court and administrative hearings that it is enforcing occupational laws for health-and-safety reasons, and not solely as a barrier to entry.

Model Legislation

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. 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) "Court" means any court, administrative tribunal or other government agency acting in a judicial or quasi-judicial capacity.
- (D) "Government" means the government of this state or any of its political subdivisions.
- (E) "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.

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48 (F) “Least restrictive means of furthering a compelling governmental interest” means,
49 from least to most restrictive,

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51 (1) A provision for private civil action to remedy consumer harm,

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53 (2) Inspection,

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55 (3) Bonding or insurance,

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57 (4) Registration,

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59 (5) Certification, or

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61 (6) Occupational license.

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63 (G) "Occupational license" is a nontransferable authorization in law for an individual
64 to perform a lawful occupation for compensation based on meeting personal
65 qualifications established by a legislative body. It is illegal for an individual who
66 does not possess an occupational license to perform the occupation for
67 compensation. Occupational licensing is the most restrictive form of occupational
68 regulation.

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70 (H) "Occupational regulation" means a statute, ordinance, rule, practice, policy or other
71 requirement in law for an individual to work in a lawful occupation. It excludes a
72 business license and zoning and land use regulations except to the extent those laws
73 regulate an individual's personal qualifications to perform a lawful occupation.

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75 (I) “Personal qualifications” are criteria established by a legislative body related to an
76 individual's personal background including completion of an approved educational
77 program, satisfactory performance on an examination, work experience, moral standing
78 and completion of continuing education.

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

89

90 (K) “Substantial burden” means a legal or other regulatory obstacle that imposes significant
91 difficulty or cost on an individual seeking to enter into or continue in a lawful
92 occupation. A substantial burden is a burden that is more than incidental.

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

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

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

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

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105 (B) Defense and Relief

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

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111 (2) An individual may bring an action for declaratory judgment or injunctive or other
112 equitable relief for a violation of Section 3, Subsection (A) by the government.

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

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

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

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

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126 (5) If the individual meets the burden of proof under Subsection (4), the government
127 must demonstrate by clear and convincing evidence that the government has a
128 compelling interest in protecting against present and recognizable harm to the public
129 health or safety, and the occupational regulation is the least restrictive means for
130 furthering that compelling interest.

131

132 (C) A court shall liberally construe this Act to protect the right established in Subsection (A)
133 of this section. A court shall make its own findings of fact and conclusions of law. It
134 shall not grant any presumption to legislative or administrative determinations of harm to
135 the public health or safety, or that the regulation is the least restrictive means of
136 furthering a compelling governmental interest.

137

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

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142 **Section 4. {Federal law’s use of state occupational regulations}**

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

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

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150 **Section 6. {Severability Clause}**

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152 **Section 7. {Repealer Clause}**

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154 **Section 8. {Effective Date}**



COMMON CAUSE
Holding Power Accountable