

SECOND REGULAR SESSION

HOUSE BILL NO. 2312

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HILL.

5818H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 324, RSMo, by adding thereto one new section relating to occupational regulation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 324, RSMo, is amended by adding thereto one new section, to be known as section 324.027, to read as follows:

324.027. 1. The provisions of this section shall be known and may be cited as the "Occupational Regulation Defense Act".

2. For purposes of this section, the following terms mean:

(1) "Certification", a voluntary program in which the state or a political subdivision grants nontransferrable recognition to an individual who meets personal qualifications established by the state or a political subdivision. Upon approval, an individual may use the term "certified" as a designated title. A noncertified individual may perform the lawful occupation for compensation but shall not use the title of "certified";

(2) "Lawful occupation", 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 occupational regulation;

(3) "Occupational license", a nontransferable authorization for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by the state or any of its political subdivisions. An individual who does not possess an occupational license shall not perform the occupation for compensation;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) "Occupational regulation", any law, rule, practice, or policy that allows an
18 individual to use an occupational title or work in a lawful occupation. Such term includes
19 registration, certification, and occupational license, but does not include a business license,
20 facility license, building permit, or zoning and land use regulation except to the extent such
21 licenses, permits, or regulations pertain to an individual's qualifications to perform a
22 lawful occupation;

23 (5) "Personal qualifications", criteria established by the state or any of its political
24 subdivisions related to an individual's personal background including completion of an
25 approved educational program, satisfactory performance on an examination, work
26 experience, other evidence of attainment of requisite skills or knowledge, moral standing,
27 criminal history, and completion of continuing education;

28 (6) "Registration", a requirement to give notice to the state or any of its political
29 subdivisions that may include the individual's name and address, the individual's agent for
30 service of process, the location of the activity to be performed, and a description of the
31 service the individual provides. "Registration" does not include personal qualifications
32 but may require a bond or insurance. Upon approval, the individual may use "registered"
33 as a designated title. A nonregistered individual shall not perform the occupation for
34 compensation or use "registered" as a designated title. "Registration" is not transferable;

35 (7) "Specialty occupational license for medical reimbursement", a nontransferable
36 authorization in law for an individual to qualify for payment or reimbursement from the
37 state or a political subdivision for the nonexclusive provision of medical services based on
38 meeting personal qualifications established by the legislature. A private company may
39 recognize this credential. An individual regulated under another occupational regulation
40 may provide similar services for compensation and reimbursement, and an individual who
41 does not possess this specialty license may provide the identified medical services for
42 compensation and reimbursement, but the nonlicensed individual shall not qualify for
43 payment or reimbursement from the state or from a political subdivision of the state;

44 (8) "Substantial burden", a requirement in an occupational regulation that imposes
45 significant difficulty or cost on an individual seeking to enter into or continue in a lawful
46 occupation. A substantial burden is a burden that is more than incidental.

47 3. There is hereby established a defense against the enforcement of any
48 occupational regulation. An individual may assert a defense against the enforcement of an
49 occupational regulation in an administrative proceeding or judicial proceeding. An
50 individual who asserts a defense against the enforcement of an occupational regulation
51 shall have the initial burden of proving by clear and convincing evidence that an

52 occupational regulation substantially burdens the individual's right to pursue a lawful
53 occupation.

54 4. (1) If the individual meets the burden of proof in subsection 3 of this section, the
55 state or political subdivision shall demonstrate by clear and convincing evidence that the
56 state or political subdivision has an important interest in protecting against present and
57 recognizable harm to the public health or safety and that the occupational regulation is
58 substantially related to and the least restrictive means for furthering that important
59 governmental interest. In determining whether an occupational regulation is the least
60 restrictive means to further the government's interest, the court shall consider the
61 requirements imposed by the regulation.

62 (2) For purposes of this subsection, "Least restrictive means of furthering an
63 important governmental interest" means, from least to most restrictive:

64 (a) Market competition;

65 (b) Third-party or consumer-created ratings and reviews;

66 (c) Private certification;

67 (d) Voluntary bonding or insurance;

68 (e) A provision for private civil action in small-claims or district court to remedy
69 consumer harm;

70 (f) Deceptive trade practice act;

71 (g) Mandatory disclosure of attributes of the specific good or service;

72 (h) Regulation of the process of providing the specific good or service;

73 (i) Inspection;

74 (j) Bonding;

75 (k) Insurance;

76 (l) Registration;

77 (m) Government certification;

78 (n) Specialty occupational license for medical reimbursement; and

79 (o) Occupational license.

80 5. Nothing in this section shall be construed to create a cause of action against the
81 state or political subdivision, or to require the state or political subdivision to contract with
82 an individual who is not licensed, certified, or registered with the state or political
83 subdivision.

84 6. The provisions of this section shall not apply to an individual who is a
85 government employee or who is required to be licensed under state law in order to comply
86 with federal law.

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