

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2622

By: Kirby

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 creating the Oklahoma Sunrise Act; stating
9 legislative intent; providing for criteria of
10 regulation; providing for regulation of occupations;
11 providing for presumption against grandfathering;
12 providing authority to regulate; requiring report in
13 support of regulation; requiring report to be entered
14 into legislative record; requiring report to be
15 entered into administrative record; providing for
16 judicial relief; providing for burden of persuasion;
17 providing for penalty for failure to include written
18 report; defining terms; providing for codification;
19 and providing an effective date.

20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 5001 of Title 59, unless there
23 is created a duplication in numbering, reads as follows:

24 This act shall be known and may be cited as the "Oklahoma
Sunrise Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 5002 of Title 59, unless there
is created a duplication in numbering, reads as follows:

1 A. The Legislature finds that the interests of the people of
2 the state are served by ensuring that the regulation of occupations
3 does not infringe upon the people's right to work or reduce
4 competition in the provision of services to consumers.

5 B. The Legislature declares that no regulation shall be imposed
6 upon any occupation unless required for the safety and well being of
7 the citizens of the state. In evaluating whether an occupation
8 shall be regulated or whether an existing occupational regulation
9 shall be changed, the following factors shall be considered:

10 1. Whether the unregulated practice of an occupation has harmed
11 or endangered the health, safety and welfare of citizens of the
12 state and whether the potential for further harm is recognizable and
13 not remote;

14 2. Whether the practice of an occupation requires specialized
15 skill or training and whether the public needs and will benefit by
16 assurances of initial and continuing occupational ability;

17 3. Whether the citizens of this state are or may be effectively
18 protected by other means, including inspections, business
19 regulations, deceptive trade practice acts, civil law, and criminal
20 law; and

21 4. Whether the overall cost-effectiveness and economic impact
22 would be positive for citizens of the state.

23 C. If the Legislature or state agency, board, or commission
24 finds after evaluation of the factors identified in subsection B of

1 this section that it is necessary to regulate an occupation not
2 credentialed or regulated or to change an existing occupational
3 regulation, regulation shall be implemented consistent with the
4 policy of this section, in the following order:

5 1. Creation or extension of common law or statutory causes of
6 civil action, and the creation or extension of criminal
7 prohibitions;

8 2. Enactment of business regulations or inclusion of the
9 commercial activity in a deceptive trade practice act;

10 3. Imposition of inspection requirements and the ability to
11 enforce violations by injunctive relief in the courts;

12 4. Implementation of a system of registration whereby
13 practitioners register with the regulating state agency their name
14 and address, agents for service of process, the location of the
15 activity to be performed, and a description of the services
16 provided;

17 5. Implementation of a system of certification whereby
18 practitioners who will be the only persons permitted to use a
19 designated title are listed on an official roster after having met
20 predetermined qualifications; or

21 6. Implementation of a system of licensing whereby a
22 practitioner shall receive recognition by the state of having met
23 predetermined qualifications, and persons not licensed are
24 prohibited from practicing.

1 Two or more of these modes may be simultaneously implemented if
2 necessary and appropriate.

3 D. There is a presumption against "grandfathering" or exempting
4 persons who are currently working in an occupation from new
5 regulations.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 5003 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 A. A person may participate in a lawful occupation free from
10 unreasonable occupational regulations. The government may burden
11 that participation only if it demonstrates that the imposition of
12 that burden is necessary for and substantially related to protecting
13 health and safety of citizens.

14 B. Within fifteen (15) days of the introduction of a bill
15 proposing new or expanded regulation of an occupation, a state
16 agency, the legislative author, or the proponents of the new or
17 expanded regulation shall submit a written report to the chair of
18 the standing committee in each house of the Legislature to which the
19 bill was referred.

20 C. If a new rule or new interpretation of existing rules or
21 statutes is to be considered by a state agency, board, or
22 commission, other than the Legislature, the state agency, board, or
23 commission shall prepare a written report setting out the
24 information required by this section.

1 D. A report in support of the regulation of a health-related or
2 non-health-related occupation must address the following issues as
3 specifically as possible:

4 1. The harm to the public that occurred by the practice of the
5 occupation at its current degree of regulation. This shall include
6 an analysis of data of at least one (1) year in the preceding three
7 (3) years showing:

8 a. the number of occurrences of actual harm,

9 b. number of complaints filed with government agencies,
10 and

11 c. the number of lawsuits filed related to incompetent
12 performance, compared to the total number of
13 occurrences in which the service was provided in the
14 state;

15 2. Why existing business regulations, deceptive trade practices
16 laws, inspection programs, civil or criminal laws or procedures are
17 inadequate to prevent or remedy any harm to the public;

18 3. Why the proposed level of regulation is being proposed and
19 why, if there is a lesser degree of regulation, it was not selected;

20 4. Any associations, organizations, or other groups
21 representing the occupation seeking regulation and the approximate
22 number of members in each in this state;

1 5. The functions typically performed by members of an
2 occupational group and whether they are identical or similar to
3 those performed by another occupational group or groups;

4 6. Whether any specialized training, education, or experience
5 is required to engage in the occupation and, if so, how current
6 practitioners have acquired that training, education, or experience;

7 7. Whether the proposed regulation would change the way
8 practitioners of the occupation acquire any necessary specialized
9 training, education, or experience and, if so, why;

10 8. Whether any current practitioners of the occupation in this
11 state lack whatever specialized training, education, or experience
12 might be required to engage in the occupation and, if so, how the
13 proposed regulation would address that lack;

14 9. Whether new entrants into the occupation would be required
15 to provide evidence of any necessary training, education, or
16 experience, or to pass an examination, or both;

17 10. Whether current practitioners would be required to provide
18 evidence of any necessary training, education, or experience, or to
19 pass an examination, and, if not, why not; and

20 11. The expected impact of the proposed regulation on the
21 supply of practitioners of the occupation and on the cost of
22 services or goods provided by the occupation.

23 E. The initial committee in each legislative body to hear the
24 proposed legislation shall enter the written report into each

1 committee's legislative record prior to each committee voting on the
2 legislation.

3 F. A state agency shall enter the written report required by
4 subsection C of this section into its administrative record prior to
5 voting on the proposed change.

6 G. Any regulation enacted in violation of the requirement of
7 subsection F of this section is void as a matter of law.

8 H. A person may assert a violation of subsection E or F of this
9 section or subsection B of Section 2 of this act as a claim or
10 defense in a judicial or administrative proceeding to obtain
11 appropriate relief against the state. Standing to assert a claim or
12 defense shall be governed by the general rules of standing in
13 Oklahoma courts.

14 I. If a person produces prima facie evidence to support a claim
15 alleging a violation of subsection B or C of Section 2 of this act
16 or subsection E or F of this section, the state shall bear the
17 burden of persuasion on any element of the claim, except that the
18 person shall bear the burden of persuasion on whether the statute,
19 administrative rule, or government practice that is challenged by
20 the claim substantially burdens the person's participation in a
21 lawful occupation.

22 J. If the legislative or administrative record fails to include
23 the written report required by subsection E or F of this section,
24 persons subject to the newly adopted or increased regulation shall

1 remain free to practice their occupation at the prior degree of
2 regulation.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 5004 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Oklahoma Sunrise Act:

7 1. "Certification" means a voluntary process by which the
8 Legislature establishes the criteria to grant recognition to a
9 person who has met certain predetermined qualifications and may use
10 "certified" as a designated title. Use of the title "certified" by
11 a person who is not certified is unlawful. "Certification" is the
12 middle form of occupational regulation. Noncertified persons may
13 also perform the occupation for compensation.

14 2. "License" means a nontransferable authorization to perform
15 an occupation for compensation based on meeting predetermined
16 qualifications established by the Legislature such as satisfactory
17 completion of an approved education or training program and
18 acceptable performance on a qualifying examination or series of
19 examinations. "Licensing" or "licensure" means authorization to
20 engage in an occupation for compensation which would otherwise be
21 unlawful in the absence of such authorization. A license is the
22 most restrictive form of occupational regulation.

23 3. "Occupational regulations" mean registration, certification
24 and licensing statutes and administrative rules.

1 4. "Occupational regulatory regime" means to subject an
2 occupation to a program of registration, certification or licensing
3 by statute, administrative rule, administrative interpretive rule,
4 administrative guidance document or a state agency's statutory
5 interpretation.

6 5. "Registration" means a voluntary process established by the
7 Legislature in which a person may submit notification to a state
8 agency and may use "registered" as a designated title. Notification
9 may include the person's name and address, agent for service of
10 process, the location of the activity to be performed, and a
11 description of the service the person provides. The term does not
12 include a requirement to post a bond or other security.
13 Registration is the least restrictive form of occupational
14 regulation. Nonregistered persons may also perform the occupation
15 for compensation.

16 6. "Unregulated" means not subject to registration,
17 certification and licensing.

18 SECTION 5. This act shall become effective November 1, 2010.

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