

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL NO.651

By: Dahm

AS INTRODUCED

An Act relating to labor; creating the Right To Earn A Living Act; providing short title; defining terms; limiting occupational license regulations to fulfill certain objectives; requiring certain actions within certain time-frames; stating conduct required to be reviewed; allowing petition to repeal occupational regulations; directing agency action within certain time of filing petition; allowing persons to file court challenge to certain regulations; providing for preponderance of evidence for certain findings; providing for injunctive relief; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 950.1 of Title 40, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Right to Earn a Living Act."

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 950.2 of Title 40, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1 1. "Agency" shall be broadly construed to include the state,
2 all agencies, boards and commissions of state government and all
3 political subdivisions of the state and shall exclude no entity
4 established under the constitution or laws of the state or
5 established by any entity which was itself established under the
6 constitution or laws of the state;

7 2. "Occupational license" means a nontransferable and exclusive
8 authorization in law in which the legislature establishes the
9 personal qualifications necessary to engage in any occupation or
10 profession;

11 3. "Occupational regulations" shall include any regulation,
12 rule, policy, fee, condition, test, permit, administrative practice,
13 or other provision in which an agency or board establishes the
14 personal qualifications necessary to engage in any occupation or
15 profession. For the purpose of this act, an occupational regulation
16 does not include an "occupational license";

17 4. "Less restrictive regulation" means, from least to most
18 restrictive:

- 19 a. market competition,
- 20 b. third-party or consumer-created ratings and reviews,
- 21 c. private certification,
- 22 d. voluntary bonding or insurance,
- 23 e. specific private civil cause of action to remedy
24 consumer harm,

- f. Oklahoma Deceptive Trade Practices Act,
- g. mandatory disclosure of attributes of the specific good or service,
- h. regulation of the process of providing the specific good or service,
- i. inspection,
- j. bonding,
- k. insurance,
- l. registration,
- m. government certification,
- n. specialty occupational license for medical reimbursement, and
- o. occupational license;

4. "Personal qualifications" means criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history and completion of continuing education;

5. "Specialty occupational license for medical reimbursement" means a nontransferable 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

1 personal qualifications established by the Legislature. A private
2 company may recognize this credential;

3 6. "Welfare" shall be narrowly construed to encompass
4 protection of members of the public against fraud or harm. This
5 term shall not encompass the protection of existing businesses or
6 agencies, whether publicly or privately owned, against competition;
7 and

8 7. "Subsidy" shall include taxes, grants, user fees or any
9 other funds received by or on behalf of an agency.

10 SECTION 3. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 950.3 of Title 40, unless there
12 is created a duplication in numbering, reads as follows:

13 All occupational regulations shall be limited to those
14 demonstrably necessary and carefully tailored to fulfill legitimate
15 public health, safety or welfare objectives.

16 SECTION 4. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 950.4 of Title 40, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Within one year following enactment, every agency shall
20 conduct a comprehensive review of all occupational regulations and
21 occupational licenses within their jurisdictions, and for each it
22 shall:

23 1. Articulate with specificity the public health, safety or
24 welfare objective(s) served by the regulation;

1 2. Articulate the reasons why the regulation is necessary to
2 serve the specified objectives;

3 3. Analyze, where information is readily available, the effects
4 of regulation on opportunities for workers, consumer choices and
5 costs, general unemployment, market competition, governmental costs
6 and other effects; and

7 4. Compare the regulation to whether and how other states
8 regulate the business or profession.

9 B. To the extent the agency finds any regulation that does not
10 satisfy the standard set forth in Section 3 of this act, it shall:

11 1. Repeal the occupational regulation or modify the
12 occupational regulation to conform with the standard of Section 3 of
13 this act if such action is within the agency's authority to do so;
14 or

15 2. Recommend to the Legislature actions necessary to repeal or
16 modify the occupational license or occupational regulation to
17 conform to the standard of Section 3 of this act if such action as
18 it relates to an occupational regulation is not within the agency's
19 authority.

20 C. Within fifteen (15) months following enactment, each agency
21 shall report to the Legislature on all actions taken to conform with
22 this section.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 950.5 of Title 40, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any person may petition any agency to repeal or modify any
5 occupational regulation within its jurisdiction.

6 B. Within ninety (90) days of a petition filed under subsection
7 A of this section, the agency shall either repeal the occupational
8 regulation, modify the regulation to achieve the standard set forth
9 in Section 3 of this act, or state the basis on which it concludes
10 the regulation conforms with the standard set forth in Section 3 of
11 this act.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 950.6 of Title 40, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Whether or not a petition is filed pursuant to Section 5 of
16 this act, any person may file an action in a court of general
17 jurisdiction to challenge an occupational regulation.

18 B. With respect to the challenge of an occupational regulation,
19 the plaintiff shall prevail if the court finds by a preponderance of
20 evidence that the challenged occupational regulation on its face or
21 in its effect burdens the entry into a profession or occupation; and
22 either:

23 1. That an agency has failed to prove by a preponderance of
24 evidence that the challenged occupational regulation is not
25

1 demonstrably necessary and carefully tailored to fulfill legitimate
2 public health, safety or welfare objectives; or

3 2. Where the challenged occupational regulation is necessary to
4 the legitimate public health, safety or welfare objectives, such
5 objectives can be effectively served by using a less restrictive
6 regulation, as defined in Section 2 of this act, which is less
7 burdensome to economic opportunity.

8 C. Upon a finding for the plaintiff, the court shall enjoin
9 further enforcement of the challenged occupational regulation, and
10 shall award reasonable attorney fees and costs to the plaintiff.

11 SECTION 7. This act shall become effective January 1, 2020.
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