

## **BILL ANALYSIS**

C.S.H.B. 2291  
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Government Efficiency & Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The would recognize Texans' right to engage in any occupation not prohibited by law without being subject to regulatory administrative rules or government practices that are substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing such regulation. The bill would give individuals a defense to a prosecution for violating an administrative rule or government practice relating to their occupation provided that they demonstrate through a preponderance of the evidence that the rule or practice is substantially burdensome. If the defendant could show this substantial burden, the government would then be required to prove the regulatory burden provided by rule or practice is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation. The bill would allow practitioners relief from rules and practices relating to occupational regulations that do not reflect a legislative intent.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

The bill Adds Chapter 94, Labor Code, entitled "Right to Engage in Occupation" and defines "government" for purposes of the bill.

The bill provides that an individual may engage in an occupation not prohibited by law without being subject to administrative rules or government practices that regulate the occupation and that are substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation. The bill provides that government may substantially burden an individual's right to engage in an occupation only if the government demonstrates that the burden is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

The bill allows an individual to assert as a defense in any administrative or judicial proceeding to enforce an administrative rule or government practice that the standard that an occupational regulation is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation has not been met. The bill allows an individual to bring action for declaratory judgment or injunctive or other equitable relief for a regulatory rule or practice that is substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

The bill provides that an individual who brings an action or asserts as a defense against rule or practice that is substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation has to show by a preponderance of the evidence that the administrative rule or government practice substantially burdens the

individual's right to engage in an occupation not prohibited by law. The bill provides that if an individual meets the preponderance of the evidence burden, then the government must demonstrate by clear and convincing evidence that the administrative rule or government practice is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

The bill makes the changes introduced by the Act prospective.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The original version provided that an individual may engage in an occupation not prohibited by law without being subject to statutes that regulate the occupation and that is unnecessary and substantially burdensome. The committee substitute does not include a reference to statutes.

The original version provided that government may substantially burden an individual's right to engage in an occupation if the government demonstrates that the burden is necessary to protect against a present and recognizable harm to public health or safety. The committee substitute provides that government may burden an individual's right to engage in an occupation if that burden is necessary to fulfill the intent of the statute authorizing the regulation of that occupation. The substitute does not require that the government demonstrate that the regulatory burden is necessary to protect against a harm to public health or safety.

The original version of the bill allows an individual to assert as a defense in any administrative or judicial proceeding to enforce a statute that the standard that an occupational regulation is necessary to protect against a present and recognizable harm to the public health or safety has not been met. The committee substitute provides that an individual may assert as a defense in any administrative or judicial proceeding to enforce an administrative rule or government practice that the standard that a regulation is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation has not been met. The substitute does not require that the individual prove that a regulation fails to protect against a harm to public health or safety.

The original version of the bill allowed an individual to bring action for declaratory judgment or injunctive or other equitable relief from a regulation that is unnecessary, substantially burdensome, or fails to protect against a present and recognizable harm to the public health or safety. The committee substitute changes that same section to allow an individual to bring action for declaratory judgment or injunctive or other equitable relief for a violation of a regulation that is substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

The original bill provided that an individual who brings an action or asserts a defense authorized under the Act has the initial burden of persuasion that the statute, administrative rule, or government practice related to the statute or rule substantially burdens the individual's right to engage in an occupation not prohibited by law. The committee substitute changes the individual's obligation to show by a preponderance of the evidence that the rule or practice substantially burdens the individual's right to engage in an occupation not prohibited by law.

The original version of the bill provided that if an individual meets the required burden of persuasion, then the government must demonstrate by clear and convincing evidence that the statute, administrative rule, or government practice is necessary to protect against a present and

recognizable harm to the public health or safety. The committee substitute provides that that if an individual meets the preponderance of the evidence burden, then the government must demonstrate by clear and convincing evidence that the administrative rule or government practice is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.