

By: Callegari

H.B. No. 2291

Substitute the following for H.B. No. 2291:

By: Callegari

C.S.H.B. No. 2291

A BILL TO BE ENTITLED

AN ACT

relating to government regulation of an individual's occupation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 2, Labor Code, is amended by adding Chapter 94 to read as follows:

CHAPTER 94. RIGHT TO ENGAGE IN OCCUPATION

Sec. 94.001. DEFINITION. In this chapter, "government" means the government of this state or any of its political subdivisions.

Sec. 94.002. INDIVIDUAL'S RIGHT TO ENGAGE IN OCCUPATION.

(a) 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.

(b) The 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.

Sec. 94.003. DEFENSE AND RELIEF. (a) An individual may assert as a defense in any administrative or judicial proceeding to enforce an administrative rule or government practice that the standard required by Section 94.002(b) has not been met.

1 (b) An individual may bring an action for declaratory
2 judgment or injunctive or other equitable relief for a violation of
3 Section 94.002.

4 (c) An individual who brings an action or asserts a defense
5 under this section must show by a preponderance of the evidence that
6 the administrative rule or government practice substantially
7 burdens the individual's right to engage in an occupation not
8 prohibited by law.

9 (d) If the individual meets the preponderance of the
10 evidence burden provided under Subsection (c), the government must
11 then demonstrate by clear and convincing evidence that the
12 administrative rule or government practice is necessary to fulfill
13 the purpose and intent of the statute authorizing the regulation of
14 the occupation.

15 SECTION 2. Chapter 94, Labor Code, as added by this Act,
16 applies only to an action commenced on or after the effective date
17 of this Act. An action commenced before the effective date of this
18 Act is governed by the law applicable to the action immediately
19 before the effective date of this Act, and that law is continued in
20 effect for that purpose.

21 SECTION 3. This Act takes effect September 1, 2011.