

By: Callegari

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 statutes, administrative rules, or government practices that regulate the occupation and that are unnecessary and substantially burdensome.

(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 protect against a present and recognizable harm to the public health or safety.

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

(b) An individual may bring an action for declaratory judgment or injunctive or other equitable relief for a violation of

1 Section 94.002.

2 (c) An individual who brings an action or asserts a defense
3 under this section has the initial burden of persuasion that the
4 statute or administrative rule or a government practice related to
5 the statute or rule substantially burdens the individual's right to
6 engage in an occupation not prohibited by law.

7 (d) If the individual meets the burden of persuasion under
8 Subsection (c), the government must then demonstrate by clear and
9 convincing evidence that the statute, administrative rule, or
10 government practice is necessary to protect against a present and
11 recognizable harm to the public health or safety.

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

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