

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 2011

TO: Honorable Bill Callegari, Chair, House Committee on Government Efficiency & Reform

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2291 by Callegari (Relating to government regulation of an individual's occupation.),
Committee Report 1st House, Substituted

Because the bill could potentially affect all regulatory agencies or entities, the extent of which cannot be determined by many regulatory agencies, the fiscal implications of the state cannot be estimated.

The bill would amend the Labor Code, allowing an individual to engage in a legal occupation without being subject to administrative rules or government practices that regulate the occupation and that are unnecessary and substantially burdensome to engage in the occupation unless the rule or practice is necessary to protect against a present and recognizable harm to the public health or safety or the burden is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation. The bill would create an affirmative defense by an individual in any administrative or judicial proceeding to enforce a rule or policy with the standard of “unnecessary and substantially burdensome”.

The bill would allow a defense for non-public health or safety (NPHS) rule violations, unless the burden is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation , allowing NPHS violations to be appealed under the appropriate jurisdiction, requiring multiple agencies, included but not limited to the Texas Alcoholic Beverage Commission, the State Office of Administrative Hearings, the Department of State Health Services, the Texas Commission on Environmental Quality, the Department of Public Safety, or any other agency or regulatory body which regulates occupations. Agencies would possibly have to hire additional legal or administrative staff and pay additional costs to handle a substantially increased caseload. In cases heard in which the individual receives a favorable ruling the result would be a loss of revenue by state agencies.

The Department of Public Safety, Texas Workforce Commission, and Texas Commission on Environmental Quality anticipate that any additional work resulting from passage of the bill could be absorbed with current resources. The Texas Alcoholic and Beverage Commission anticipates significant costs from the bill. The agency that would potentially be most significantly impacted by the bill is the State Office of Administrative Hearings (SOAH). According to the SOAH, the bill would potentially pose significant burdens on agencies attempting to take enforcement action against licensees. SOAH processes about 40,000 cases potentially implicated by the bill each year. SOAH is unable to determine the fiscal impact of the bill. The Department of State Health Services also indicates that litigation costs associated with the bill are unknown but could be substantial.

The bill would take effect September 1, 2011

Local Government Impact

Because the bill could potentially affect every local entity in the state of Texas, the extent of which can only be determined by the number of individuals who wish to use this defense, the cost to units of local government could not be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 320 Texas Workforce Commission, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 537 State Health Services, Department of, 582 Commission on Environmental Quality

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