

## **BILL ANALYSIS**

C.S.H.B. 87  
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Government Efficiency & Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that during a recent interim a house committee on government reform evaluated policy implications of the widespread licensing and regulation of professionals in Texas. As documented in the committee's interim report to the legislature, the committee found that occupational licensing programs administered by the state had grown to affect a significant portion of the state's workforce. According to the parties, Texas now regulates more than 500 types of occupations, representing the jobs held by approximately 2.7 million Texans or nearly one-third of the state workforce.

The committee found that, while some occupational licensing programs serve a compelling public interest, the state's policy emphasis in favor of greater occupational regulation has negative implications for the state's workforce and consumers, particularly in regard to occupational licensing programs that restrict an individual's entry into regulated occupations. This may preclude many individuals' exercise of their right to work, and, in regard to occupational licensing programs that sometimes work to protect licensees from additional competition, can limit consumers' choices while increasing the prices for the services rendered. In addition to these findings, the committee found that new occupational licensing programs expand state government size, spending, and regulatory control over certain segments of the state's job market.

The interested parties contend that the state should recognize a citizen's right to engage in any occupation that is not prohibited by law without being subject to state agency rules, policies, or practices that are substantially burdensome and unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of that occupation. To that end, C.S.H.B. 87 seeks to ensure that a rule or practice relating to an occupation fulfills the purpose and intent of the statute authorizing the regulation.

### **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**

C.S.H.B. 87 amends the Labor Code to authorize an individual to engage in an occupation not prohibited by law free from any substantial burden created by a state agency rule, policy, or practice unless the state agency demonstrates that the state has a compelling governmental interest in protecting against actual and specific harm to the public health or safety and that the rule, policy, or practice is narrowly tailored to further that compelling governmental interest.

C.S.H.B. 87 authorizes an individual to assert as a defense in any administrative or judicial proceeding to enforce a state agency rule, policy, or practice that this standard regarding a compelling governmental interest and the narrow tailoring of the rule, policy, or practice has not been met. The bill requires an individual who asserts such a defense to show by a preponderance

of evidence that the state agency rule, policy, or practice substantially burdens the individual's right to engage in an occupation not prohibited by law and, if the individual meets the preponderance of the evidence burden, requires the agency to then demonstrate by a preponderance of the evidence that the state has a compelling governmental interest in protecting against actual and specific harm to the public health or safety and that the rule, policy, or practice is narrowly tailored to further that compelling governmental interest.

C.S.H.B. 87 requires a judge or other authority presiding over a proceeding in which a person asserts such a defense, including an administrative law judge, to make findings of fact and conclusions of law when making a determination in the proceeding and prohibits the judge or other authority from making a presumption based on legislative or administrative determinations regarding harm to the public health or safety or whether the regulation is narrowly tailored to further a compelling governmental interest.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 87 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

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, "state agency" means an agency, department, board, or commission of the state.

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 a state agency rule, policy, or practice that regulates the occupation if the rule, policy, or practice is:

- (1) substantially burdensome; and
- (2) unnecessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

(b) A state agency rule, policy, or practice may substantially burden an individual's right to engage in an occupation only if the agency demonstrates that the rule, policy, or practice is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

Sec. 94.003. DEFENSE AND RELIEF.

#### HOUSE COMMITTEE SUBSTITUTE

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, "state agency" means an agency, department, board, or commission of the state.

Sec. 94.002. INDIVIDUAL'S RIGHT TO ENGAGE IN OCCUPATION. An individual may engage in an occupation not prohibited by law free from any substantial burden created by a state agency rule, policy, or practice unless the state agency demonstrates that:

- (1) the state has a compelling governmental interest in protecting against actual and specific harm to the public health or safety; and
- (2) the rule, policy, or practice is narrowly tailored to further that compelling governmental interest.

Sec. 94.003. DEFENSE AND RELIEF. (a)

(a) An individual may assert as a defense in any administrative or judicial proceeding to enforce a state agency rule, policy, or practice 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 Section 94.002.

(c) An individual who brings an action or asserts a defense under this section must show by a preponderance of the evidence that the state agency rule, policy, or practice substantially burdens the individual's right to engage in an occupation not prohibited by law.

(d) If the individual meets the preponderance of the evidence burden provided under Subsection (c), the state agency must then demonstrate by clear and convincing evidence that the agency rule, policy, or practice is necessary to fulfill the purpose and intent of the statute authorizing the regulation of the occupation.

An individual may assert as a defense in any administrative or judicial proceeding to enforce a state agency rule, policy, or practice that the standard required by Section 94.002 has not been met.

(b) An individual who asserts a defense under this section must show by a preponderance of the evidence that the state agency rule, policy, or practice substantially burdens the individual's right to engage in an occupation not prohibited by law.

(c) If the individual meets the preponderance of the evidence burden required by Subsection (b), the state agency must then demonstrate by a preponderance of the evidence that the state has a compelling governmental interest in protecting against actual and specific harm to the public health or safety, and that the rule, policy, or practice is narrowly tailored to further that compelling governmental interest.

Sec. 94.004. ADMINISTRATIVE OR JUDICIAL DETERMINATION. A judge or other authority presiding over a proceeding in which a person asserts a defense under Section 94.003, including an administrative law judge, shall make findings of fact and conclusions of law when making a determination in a proceeding under this chapter. The judge or other authority may not make a presumption based on legislative or administrative determinations regarding:  
(1) harm to the public health or safety; or  
(2) whether the regulation is narrowly tailored to further a compelling governmental interest.

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

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect  
September 1, 2013.

SECTION 3. Same as introduced version.