

By: Callegari, Laubenberg, et al.

H.B. No. 87

Substitute the following for H.B. No. 87:

By: Harper-Brown

C.S.H.B. No. 87

A BILL TO BE ENTITLED

AN ACT

relating to 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, "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) 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

1 right to engage in an occupation not prohibited by law.

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

9 Sec. 94.004. ADMINISTRATIVE OR JUDICIAL DETERMINATION. A
10 judge or other authority presiding over a proceeding in which a
11 person asserts a defense under Section 94.003, including an
12 administrative law judge, shall make findings of fact and
13 conclusions of law when making a determination in a proceeding
14 under this chapter. The judge or other authority may not make a
15 presumption based on legislative or administrative determinations
16 regarding:

- 17 (1) harm to the public health or safety; or
18 (2) whether the regulation is narrowly tailored to
19 further a compelling governmental interest.

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

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