

By: Callegari

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.

(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. (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.

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 state agency rule, policy, or practice substantially burdens
7 the individual's right to engage in an occupation not prohibited by
8 law.

9 (d) If the individual meets the preponderance of the
10 evidence burden provided under Subsection (c), the state agency
11 must then demonstrate by clear and convincing evidence that the
12 agency rule, policy, or practice is necessary to fulfill the
13 purpose and intent of the statute authorizing the regulation of the
14 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, 2013.