

By: Harrison

H.B. No. 3714

A BILL TO BE ENTITLED

AN ACT

relating to limitations on the enforcement of certain occupational regulations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Occupations Code, is amended by adding Chapter 2 to read as follows:

CHAPTER 2. LIMITATION ON ENFORCEMENT OF CERTAIN OCCUPATIONAL REGULATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2.001. DEFINITIONS. In this chapter:

(1) "License" means a nontransferable and exclusive authorization issued by a licensing authority authorizing an individual, based on the established personal qualifications, to engage in a particular occupation.

(2) "Licensing authority" means a department, commission, board, office, or other agency of this state or a political subdivision of this state that issues a license, specialty occupational license for medical reimbursement, registration, certificate, permit, or other authorization related to an occupation.

(3) "Occupational regulation" means any regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision in which a licensing authority establishes the personal qualifications necessary to engage in any

occupation or profession. The term does not include a license.

(4) "Personal qualifications" means criteria related to an individual's personal background and characteristics related to eligibility for a license including:

(A) educational attainment;

(B) passage of an examination;

(C) work experience;

(D) character; and

(E) criminal history.

(5) "Specialty occupational license for medical reimbursement" means a nontransferable authorization to perform a medical service that is:

(A) required for an individual to be eligible to receive payment or reimbursement from a governmental agency or other entity for providing medical services; and

(B) issued by a licensing authority to an individual who meets the established personal qualifications.

(6) "Welfare" means an action to protect the public against fraud or harm. The term does not include an action to protect an existing public or private entity against competition.

Sec. 2.002. POLICY. It is the policy of this state that all occupational regulations must be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, and welfare objectives.

Sec. 2.003. REVIEW REQUIRED. (a) Not later than September 1, 2024, each licensing authority shall conduct a comprehensive review of each occupational regulation applicable to a license

issued by the authority and for each occupational regulation:

(1) specify the public health, safety, or welfare objective served by the regulation and the reason the regulation is necessary to serve each objective;

(2) analyze, based on any available information, the effects of the regulation on:

(A) opportunities for workers;

(B) consumer choices and costs;

(C) general unemployment;

(D) market competition;

(E) governmental costs; and

(F) other related measures; and

(3) compare the regulation with how the applicable business or profession is regulated in other states.

(b) A licensing authority shall for any occupational regulation determined during a review under Subsection (a) to violate the policy provided by Section 2.002:

(1) repeal the regulation or modify the regulation to conform to the policy provided by Section 2.002, if the authority is authorized by law to do so; or

(2) recommend that the legislature repeal the regulation or take any other action necessary to modify the regulation to conform to the policy provided by Section 2.002.

(c) Not later than December 1, 2024, each licensing authority shall submit to the legislature a report summarizing any actions taken by the authority under Subsection (b)(1) and any recommendations made under Subsection (b)(2).

1        (d) This section expires September 1, 2025.

2                    SUBCHAPTER B. ENFORCEMENT

3        Sec. 2.051. PETITION FOR REPEAL OR MODIFICATION. (a) A  
4 person may petition a licensing authority to repeal or modify an  
5 occupational regulation applicable to a license issued by the  
6 authority if the regulation violates the policy provided by Section  
7 2.002.

8        (b) Not later than the 90th day after the date a licensing  
9 authority receives a petition under Subsection (a), the authority  
10 shall:

11                    (1) repeal the regulation;

12                    (2) modify the regulation to conform to the policy  
13 provided by Section 2.002;

14                    (3) state the reasons the authority has determined  
15 that the regulation does not violate the policy provided by Section  
16 2.002; or

17                    (4) notify the petitioner that the authority is not  
18 authorized under law to repeal or modify the regulation.

19        Sec. 2.052. INJUNCTIVE RELIEF. (a) A person may bring an  
20 action for an injunction against the enforcement of an occupational  
21 regulation in a district court in Travis County or any county in  
22 which the regulation is enforced.

23        (b) A person is entitled to relief from an occupational  
24 regulation if the court finds by a preponderance of evidence that  
25 the occupational regulation on its face or in its effect burdens the  
26 entry into a profession or occupation and:

27                    (1) the licensing authority is unable to prove by a

preponderance of evidence that the regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(2) if the regulation is necessary to the legitimate public health, safety, or welfare objectives as demonstrated under Subdivision (1), the objective can be effectively served by using a less restrictive regulation that is less burdensome to economic opportunity.

(c) In determining whether an occupational regulation is less restrictive for purposes of Subsection (b)(2), the following list represents regulations from least restrictive to most restrictive:

(1) market competition;

(2) ratings or reviews from consumers or third parties;

(3) private certification;

(4) voluntary bonding or insurance;

(5) existence of a specific private cause of action to remedy a consumer harm;

(6) a law prohibiting deceptive trade practices;

(7) a requirement for mandatory disclosure to a consumer of attributes of a specific good or service;

(8) a restriction on the process of providing a specific good or service to a consumer;

(9) inspection requirements;

(10) a requirement that an individual obtain a bond or insurance;

1           (11) a statute, rule, or policy requiring registration  
2 with a licensing authority;

3           (12) a statute, rule, or policy requiring  
4 certification by a licensing authority;

5           (13) a specialty occupational license for medical  
6 reimbursement; and

7           (14) a statute, rule, or policy requiring licensing by  
8 a licensing authority.

9           (d) The court shall award to a plaintiff who prevails under  
10 this section reasonable attorney's fees and costs.

11           SECTION 2. This Act takes effect September 1, 2023.