

Senate File 2332 - Introduced

SENATE FILE 2332

BY SCHNEIDER

A BILL FOR

1 An Act establishing a right to engage in a lawful occupation
2 free from substantial burdens imposed by occupational
3 regulations unless certain conditions are met and providing
4 remedies.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 27.1 Legislative findings,
2 declarations, and recognition.

3 The general assembly finds and declares that individuals
4 possess the fundamental right to engage in the occupation of
5 their choice free from unreasonable government regulation.
6 Barriers to entry, like occupational licenses, make it
7 difficult for individuals to provide for themselves and their
8 families, to innovate, and to create employment opportunities.
9 To encourage the creation of new jobs and support economic
10 development, this chapter recognizes this fundamental right
11 to engage in an occupation, limits occupational regulations
12 to the protection of public health and safety, and provides a
13 mechanism by which unreasonable occupational regulations may
14 be challenged.

15 Sec. 2. NEW SECTION. 27.2 Definitions.

16 For purposes of this chapter, unless the context otherwise
17 requires:

18 1. "*Certification*" means a voluntary program in which the
19 government grants nontransferable recognition to an individual
20 who meets certain personal qualifications, which permits the
21 individual to use "certified" as a designated title, but
22 which is not required for an individual to engage in a lawful
23 occupation for compensation. "*Certification*" by the government
24 does not include certification by a private certification
25 organization.

26 2. "*Government*" means any agency or other entity
27 of government of this state or of any of its political
28 subdivisions.

29 3. "*Lawful occupation*" means a course of conduct, pursuit,
30 or profession that includes the sale of goods or services that
31 can be legally sold in this state, irrespective of whether
32 the individual selling them is subject to an occupational
33 regulation.

34 4. "*Least restrictive means of furthering a compelling*
35 *governmental interest*", from least to most restrictive, means

1 the following:

2 (1) Absence of any occupational regulations.

3 (2) A provision for private civil action in small claims or
4 district court to remedy consumer harm.

5 (3) Inspection requirements.

6 (4) Bonding or insurance requirements.

7 (5) Registration requirements.

8 (6) Certification requirements.

9 (7) Occupational license requirements.

10 5. "*Occupational license*" means a nontransferable
11 authorization in law for an individual to engage in a lawful
12 occupation for compensation based on meeting certain personal
13 qualifications, without which it is illegal for an individual
14 to engage in the occupation for compensation. "*Occupational*
15 *license*" does not include registration or certification.

16 6. "*Occupational regulation*" means a statute, ordinance,
17 rule, practice, policy, or other requirement in law that an
18 individual possess certain personal qualifications in order to
19 engage in a lawful occupation.

20 7. "*Personal qualifications*" means criteria established by
21 law related to an individual's personal background including
22 but not limited to completion of an approved educational
23 program, satisfactory performance on an examination, work
24 experience, criminal history, moral standing, and completion
25 of continuing education.

26 8. "*Registration*" means a requirement established by law
27 in which an individual must give notice to the government in
28 order to engage in a lawful occupation and to use "*registered*"
29 as a designated title. Such notice may include but is not
30 limited to the individual's name and address, the individual's
31 agent for service of process, the location of the activity to
32 be performed, and a description of the service the individual
33 provides. "*Registration*" may require a bond or insurance.
34 "*Registration*" by the government does not include certification
35 by a private registration organization. A "*registration*" is

1 nontransferable.

2 9. "*Substantial burden*" means a requirement in an
3 occupational regulation that imposes significant difficulty or
4 cost on an individual seeking to enter into or continue in a
5 lawful occupation. "*Substantial burden*" means a burden that is
6 more than incidental.

7 Sec. 3. NEW SECTION. 27.3 **Right to engage in a lawful**
8 **occupation — remedies.**

9 1. An individual has a right to engage in a lawful
10 occupation free from any substantial burden imposed by an
11 occupational regulation unless the government demonstrates all
12 of the following with respect to such occupational regulation:

13 a. The government has a compelling interest in protecting
14 against present and recognizable harm to the public health or
15 safety.

16 b. The occupational regulation is the least restrictive
17 means of furthering that compelling governmental interest.

18 2. a. An individual may assert as a defense in any judicial
19 or administrative proceeding brought by the government to
20 enforce an occupational regulation that such occupational
21 regulation violates the individual's right established in
22 subsection 1.

23 b. An individual may bring an action for declaratory
24 judgment or injunctive or other equitable relief against the
25 government for an occupational regulation that violates the
26 individual's right established in subsection 1. An individual
27 need not exhaust administrative remedies to bring such an
28 action.

29 3. An individual who asserts a defense or brings an action
30 under subsection 2 has the initial burden of proof that an
31 occupational regulation substantially burdens the individual's
32 right to engage in a lawful occupation.

33 4. If the individual meets the burden of proof under
34 subsection 3, the government must demonstrate by clear and
35 convincing evidence that the government has a compelling

1 interest in protecting against present and recognizable harm
2 to the public health or safety, and that the occupational
3 regulation is the least restrictive means for furthering that
4 compelling governmental interest.

5 5. The presiding officer or court in a proceeding in
6 which an individual asserts a defense or brings an action
7 under subsection 2 shall make its own findings of fact and
8 conclusions of law with no deference given to any determination
9 by the government or in statute or rule that an occupational
10 regulation serves a compelling governmental interest in
11 protecting against present and recognizable harm to the public
12 health or safety or that the occupational regulation is the
13 least restrictive means of furthering a compelling governmental
14 interest.

15 6. An employer may assert a defense or bring an action under
16 subsection 2 on behalf of an employee or prospective employee.

17 Sec. 4. NEW SECTION. **27.4 Private registration and**
18 **certification permitted.**

19 An individual may use the words "registered" or "certified"
20 as a designated title or as part of a designated title if
21 the individual meets the requirements for registration
22 or certification established by a private registration
23 or certification organization. The individual shall not
24 portray such registration or certification as granted by the
25 government.

26 Sec. 5. NEW SECTION. **27.5 Construction.**

27 1. This chapter shall be liberally construed to protect the
28 right established in section 27.3, subsection 1.

29 2. This chapter shall not be construed to create a right of
30 action against a private party or to require a private party to
31 do business with an individual who is not licensed, certified,
32 or registered with the government.

33 3. This chapter shall not be construed to create a right of
34 action against the federal government for its use of a state
35 occupational regulation in federal law.

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with
the explanation's substance by the members of the general assembly.

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4 This bill provides that an individual has a right to engage
5 in a lawful occupation free from any substantial burden
6 imposed by an occupational regulation unless the government
7 demonstrates with respect to such occupational regulation that
8 the government has a compelling interest in protecting against
9 present and recognizable harm to the public health or safety
10 and the occupational regulation is the least restrictive means
11 of furthering that compelling governmental interest.

12 An individual may assert as a defense in any judicial or
13 administrative proceeding brought by the government to enforce
14 an occupational regulation that such occupational regulation
15 violates this right. An individual may also bring an action
16 for declaratory judgment or injunctive or other equitable
17 relief against the government for an occupational regulation
18 that violates this right. An individual need not exhaust
19 administrative remedies to bring such an action.

20 An individual who asserts such a defense or brings such an
21 action has the initial burden of proof that an occupational
22 regulation substantially burdens the individual's right to
23 engage in a lawful occupation. If the individual meets the
24 burden of proof, the government must demonstrate by clear
25 and convincing evidence that the government has a compelling
26 interest in protecting against present and recognizable harm
27 to the public health or safety, and that the occupational
28 regulation is the least restrictive means for furthering that
29 compelling governmental interest. The presiding officer or
30 court in such a proceeding shall make its own findings of
31 fact and conclusions of law with no deference given to any
32 determination by the government or in statute or rule that
33 an occupational regulation serves a compelling governmental
34 interest in protecting against present and recognizable harm to
35 the public health or safety or that the occupational regulation

1 is the least restrictive means of furthering a compelling
2 governmental interest. An employer may assert a defense
3 or bring an action on behalf of an employee or prospective
4 employee.

5 The bill defines "occupational regulation" as a statute,
6 ordinance, rule, practice, policy, or other requirement in law
7 that an individual possess certain personal qualifications
8 in order to engage in a lawful occupation. The bill defines
9 "substantial burden" as a requirement in an occupational
10 regulation that imposes significant difficulty or cost on
11 an individual seeking to enter into or continue in a lawful
12 occupation. "Substantial burden" means a burden that is more
13 than incidental. The bill defines "government" as any agency
14 or other entity of government of this state or of any of its
15 political subdivisions.

16 The bill defines "least restrictive means of furthering
17 a compelling governmental interest" as, from least to most
18 restrictive, absence of any occupational regulations, a
19 provision for private civil action in small claims or district
20 court to remedy consumer harm, inspection requirements,
21 bonding or insurance requirements, registration requirements,
22 certification requirements, and occupational license
23 requirements.

24 The bill permits an individual to use the words "registered"
25 or "certified" as a designated title or as part of a designated
26 title if the individual meets the requirements for registration
27 or certification established by a private registration or
28 certification organization. An individual cannot portray such
29 registration or certification as granted by the government.

30 The bill is to be liberally construed to protect the right
31 established by the bill. The bill is not to be construed to
32 create a right of action against a private party or to require
33 a private party to do business with an individual who is not
34 licensed, certified, or registered with the government. The
35 bill is not to be construed to create a right of action against

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1 the federal government for its use of a state occupational
2 regulation in federal law.