

House File 4 - Introduced

HOUSE FILE 4
BY PETTENGILL

A BILL FOR

1 An Act to establish 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 Purpose.

2 The purposes of this chapter are:

3 1. To ensure that an individual may pursue a lawful
4 occupation free from unnecessary occupational regulations.

5 2. To protect against the misuse of occupational
6 regulations to reduce competition and increase prices to
7 consumers.

8 Sec. 2. NEW SECTION. 27.2 Definitions.

9 For purposes of this chapter, unless the context otherwise
10 requires:

11 1. "*Business license*" means a permit, registration,
12 certification, franchise, or other approval required by law for
13 a person to do business in this state.

14 2. "*Certification*" means a voluntary program in which the
15 government grants nontransferable recognition to an individual
16 who meets personal qualifications established by law, which
17 permits the individual to use "certified" as a designated
18 title, but which is not required for an individual to engage
19 in a lawful occupation for compensation. "*Certification*" by
20 the government does not include certification by a private
21 certification organization.

22 3. "*Government*" means any agency or other entity
23 of government of this state or of any of its political
24 subdivisions.

25 4. "*Lawful occupation*" means a course of conduct, pursuit,
26 or profession that includes the sale of goods or services that
27 can be legally sold in this state, irrespective of whether
28 the individual selling them is subject to an occupational
29 regulation.

30 5. "*Least restrictive means of furthering a compelling*
31 *governmental interest*", from least to most restrictive, means
32 the following:

33 a. Absence of any occupational regulations.

34 b. A provision for private civil action in small claims or
35 district court to remedy consumer harm.

- 1 c. Inspection requirements.
- 2 d. Bonding or insurance requirements.
- 3 e. Registration requirements.
- 4 f. Certification requirements.
- 5 g. Occupational license requirements.

6 6. "*Occupational license*" means a nontransferable
7 authorization in law for an individual to engage in a lawful
8 occupation for compensation based on meeting personal
9 qualifications established by law, without which it is illegal
10 for an individual to engage in the occupation for compensation.
11 "*Occupational license*" does not include registration or
12 certification.

13 7. "*Occupational regulation*" means a statute, ordinance,
14 rule, practice, policy, or other requirement in law that an
15 individual possess certain personal qualifications in order
16 to engage in a lawful occupation. "*Occupational regulation*"
17 excludes a business license and zoning and land use regulations
18 except to the extent such requirements regulate an individual's
19 personal qualifications to perform a lawful occupation.

20 8. "*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 9. "*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 10. "*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

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

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

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

An individual who asserts such a defense or brings such an action has the initial burden of proof that an occupational regulation substantially burdens the individual's right to engage in a lawful occupation. If the individual meets the burden of proof, the government must demonstrate by clear and convincing evidence that the government has a compelling interest in protecting against present and recognizable harm to the public health or safety, and that the occupational regulation is the least restrictive means for furthering that compelling governmental interest. The presiding officer or court in such a proceeding shall make its own findings of fact and conclusions of law with no deference given to any determination by the government or in statute or rule that an occupational regulation serves a compelling governmental interest in protecting against present and recognizable harm to 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. "Occupational
9 regulation" excludes a business license and zoning and
10 land use regulations except to the extent such requirements
11 regulate an individual's personal qualifications to perform
12 a lawful occupation. The bill defines "substantial burden"
13 as a requirement in an occupational regulation that imposes
14 significant difficulty or cost on an individual seeking to
15 enter into or continue in a lawful occupation. "Substantial
16 burden" means a burden that is more than incidental. The
17 bill defines "government" as any agency or other entity
18 of government of this state or of any of its political
19 subdivisions.

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

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

34 The bill is to be liberally construed to protect the right
35 established by the bill. The bill is not to be construed to

1 create a right of action against a private party or to require
2 a private party to do business with an individual who is not
3 licensed, certified, or registered with the government. The
4 bill is not to be construed to create a right of action against
5 the federal government for its use of a state occupational
6 regulation in federal law.