GOLDWATER INSTITUTE

Right to Earn a Living Act

AN ACT relating to the right to pursue a lawful occupation.

Section 1. Short Title

This Act may be referred to as the "Right to Earn a Living Act."

Section 2. Statement of Findings and Purposes

(A) The legislature hereby finds and declares that:

1. The right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right.
2. The freedom to earn an honest living traditionally has provided the surest means for economic mobility.
3. In recent years, many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition.
4. The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.
5. It is in the public interest:
    a. To ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition;
    b. To provide the means for the vindication of this right; and
    c. To ensure that regulations of entry into businesses and professions are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives.

Section 3. Definitions

(A) "Agency" shall be broadly construed to include the state, all units of state government, any county, city, town, or political subdivision of this state, and any branch, department, division, office, or agency of state or local government.

(B) "Occupational regulations" shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating in a market, or the opportunity to engage in any occupation or profession. For the purpose of this chapter, an occupational regulation does not include an "occupational license."

(C) "Occupational license" is a nontransferable and exclusive authorization in law in which the legislature establishes the personal qualifications necessary to engage in any occupation or profession.

(D) “Personal qualifications” are criteria related to an individual’s personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral character, criminal history and completion of continuing education.

(E) “Public service restrictions” shall include any law, ordinance, regulation, rule, policy, fee, condition, test, permit, or other administrative practice, with or without the support of public subsidy and/or user fees.

(F) “Welfare” shall be narrowly construed to encompass protection of members of the public against fraud or harm. This term shall not encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

(G) “Subsidy” shall include taxes, grants, user fees or any other funds received by or on behalf of an agency.

Section 4. Limitation on Occupational Regulations

(A) All occupational regulations with respect to businesses and professions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

Section 5. Limitation on Public Service Restrictions

(A) All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

Section 6. Elimination of Occupational Regulations

(A) Within one year following enactment, every agency shall conduct a comprehensive review of all occupational regulations within their jurisdictions, and for each such occupational regulation it shall:

1. Articulate with specificity the public health, safety, or welfare objective(s) served by the regulation, and
2. Articulate the reason(s) why the regulation is necessary to serve the specified objective(s).

(B) To the extent the agency finds any regulation that does not satisfy the standard set forth in Section 4, it shall:

1. Repeal the occupational regulation or modify the occupational regulation to conform with the standard of Section 4 if such action is not within the agency’s authority to do so; or
2. Recommend to the legislature actions necessary to repeal or modify the occupational regulation to conform to the standard of Section 4 if such action is not within the agency’s authority.

(C) Within 15 months following enactment, each agency shall report to the legislature on all actions taken to conform with this section.

Section 7. Administrative Proceedings

(A) Any person may petition any agency to repeal or modify any occupational regulation within its jurisdiction.

(B) Within 90 days of a petition filed under (A) above, the agency shall either repeal the occupational regulation, modify the regulation to achieve the standard set forth in Section 4, or state the basis on which it concludes the regulation conforms with the standard set forth in Section 4.

(C) Any person may petition any agency to repeal or modify a public service restriction within its jurisdiction.

(D) Within 90 days of a petition filed under (C) above, the agency shall state the basis on which it concludes the public service restriction conforms with the standard set forth in Section 5.

Section 8. Enforcement

(A) Any time after 90 days following a petition filed pursuant to Section 6 that has not been favorably acted upon by the agency, the person(s) filing a petition challenging an occupational regulation or public service restriction may file an action in a Court of general jurisdiction.

(B) With respect to the challenge of an occupational regulation, the plaintiff(s) shall prevail if the Court finds by a preponderance of evidence that the challenged occupational regulation on its face or in its effect burdens the creation of a business, the entry of a business into a particular market, or entry into a profession or occupation; and either

1. That the challenged occupational regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or
2. Where the challenged occupational regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by regulations less burdensome to economic opportunity.

(C) With respect to the challenge of a public service restriction, the plaintiff(s) shall prevail if the court finds by a preponderance of the evidence that on its face or in its effect either:

1. That the challenged public service restriction is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives; or
2. Where the challenged public service restriction is necessary to fulfill legitimate public health, safety or welfare objectives, such objectives can be effectively served by restrictions that allow greater private participation.

(D) Upon a finding for the plaintiff(s), the Court shall enjoin further enforcement of the challenged occupational regulation or public service restriction, and shall award reasonable attorney's fees and costs to the plaintiff(s).

Section 9. State Preemption Clause

(A) This article preempts all inconsistent rules, regulations, codes, ordinances and other laws adopted by a county, city, town or other political subdivision of this state regarding the right of individuals to pursue a chosen business or profession.