

# HOUSE BILL No. 4641

April 30, 2013, Introduced by Rep. McMillin and referred to the Committee on Regulatory Reform.

A bill to establish a right to engage in a lawful occupation without unreasonable governmental regulation; to limit occupational regulations to the protection of health and safety; and to provide remedies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "occupational licensing relief and job creation act".

3           Sec. 2. As used in this act:

4           (a) "Certification" means a voluntary program in which the  
5 government grants nontransferable recognition to an individual  
6 based on meeting certain personal qualifications, including the  
7 authority to use "certified" as or as part of a designated title if  
8 certification is approved. The term is not synonymous with the term  
9 occupational license in this act or to refer to or prohibit the use  
10 of private certification.

1           (b) "Certified" is a designated title an individual may use if  
2 his or her certification is approved. A noncertified individual may  
3 perform the lawful occupation for compensation but may not use  
4 certified as a designated title.

5           (c) "Court" means any court, administrative tribunal, or other  
6 government agency that is acting in a judicial or quasi-judicial  
7 capacity.

8           (d) "Government" means the government of this state or any of  
9 its political subdivisions.

10           (e) "Lawful occupation" means a course of conduct, pursuit, or  
11 profession that includes the sale of goods or services that are not  
12 themselves illegal to sell irrespective of an occupational  
13 regulation.

14           (f) "Least restrictive means of furthering a compelling  
15 governmental interest" means any of the following, from least to  
16 most restrictive:

17           (i) A provision for private civil action in small-claims or  
18 district court to remedy consumer harm.

19           (ii) Inspection.

20           (iii) Bonding or insurance.

21           (iv) Registration.

22           (v) Certification.

23           (vi) Occupational license.

24           (g) "Occupational license" means a nontransferable  
25 authorization in law for an individual to perform a lawful  
26 occupation for compensation based on meeting personal  
27 qualifications. It is illegal for an individual who does not

1 possess an occupational license to perform the occupation for  
2 compensation. Occupational licensing is the most restrictive form  
3 of occupational regulation.

4 (h) "Occupational regulation" means a statute, ordinance,  
5 rule, practice, policy, or other requirement in law that an  
6 individual possess certain personal qualifications to work in a  
7 lawful occupation.

8 (i) "Personal qualifications" means criteria related to an  
9 individual's personal background, including, but not limited to,  
10 completion of an approved educational program, satisfactory  
11 performance on an examination, work experience, criminal history,  
12 moral standing, or completion of continuing education.

13 (j) "Registered" is a designated title an individual may use  
14 if his or her registration is approved. A nonregistered individual  
15 may not perform the occupation for compensation or use "registered"  
16 as a designated title.

17 (k) "Registration" means a requirement in law that an  
18 individual give notice to the government that may include the  
19 individual's name and address, the individual's agent for service  
20 of process, the location of the activity to be performed, or a  
21 description of the service the individual provides. Registration  
22 does not include meeting personal qualifications but may require a  
23 bond or insurance. A registration is not transferable. The term is  
24 not intended to be synonymous with an occupational license in this  
25 act or to prohibit the use of private registration.

26 (l) "Substantial burden" means a requirement in an occupational  
27 regulation that imposes significant difficulty or cost on an

1 individual seeking to enter into or continue in a lawful  
2 occupation. A substantial burden is a burden that is more than  
3 incidental.

4       Sec. 3. (1) An individual has a right to engage in a lawful  
5 occupation free from any substantial burden in an occupational  
6 regulation unless the government demonstrates both of the  
7 following:

8       (a) It has a compelling interest in protecting against present  
9 and recognizable harm to the public health or safety.

10       (b) The occupational regulation is the least restrictive means  
11 of furthering that compelling governmental interest.

12       (2) An individual may assert as a defense the right to engage  
13 in a lawful occupation in any judicial or administrative proceeding  
14 brought by the government to enforce an occupational regulation  
15 that violates subsection (1).

16       (3) An individual may bring an action for declaratory judgment  
17 or injunctive or other equitable relief against the government for  
18 a violation of subsection (1), without regard to the exhaustion of  
19 administrative remedies.

20       (4) An individual may assert the right described in subsection  
21 (1) as a defense in an action described in subsection (2), or bring  
22 an action described in subsection (3), against the enforceability  
23 of an occupational regulation that is any of the following:

24       (a) In law on the effective date of this act.

25       (b) Enacted, adopted, promulgated, or amended after the  
26 effective date of this act and does not include in state statute an  
27 explicit exemption from this act.

1           (5) An individual who asserts a defense or brings an action  
2 under this section has the initial burden of proof that an  
3 occupational regulation substantially burdens the individual's  
4 right to engage in a lawful occupation.

5           (6) If an individual meets the burden of proof described in  
6 subsection (5), the government must demonstrate by clear and  
7 convincing evidence that the government has a compelling interest  
8 in protecting against present and recognizable harm to the public  
9 health or safety, and the occupational regulation is the least  
10 restrictive means of furthering that compelling governmental  
11 interest.

12           (7) An employer or potential employer may assert the right of  
13 an employee or potential employee recognized in subsection (1) by  
14 bringing a defense or action under this subsection.

15           (8) A court shall liberally construe this act to protect the  
16 rights recognized in subsection (1). A court shall make its own  
17 findings of fact and conclusions of law. It shall not grant any  
18 presumption to legislative or administrative determinations of harm  
19 to the public health or safety, or that the regulation is the least  
20 restrictive means of furthering a compelling governmental interest.

21           (9) This section does not create a right of action against a  
22 private party or require a private party to do business with an  
23 individual who is not licensed, certified, or registered with the  
24 government.

25           Sec. 4. This act does not create a right of action against the  
26 federal government.