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:

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

Sec. 2. As used in this act:

(a) "Certification" means a voluntary program in which the government grants nontransferable recognition to an individual based on meeting certain personal qualifications, including the authority to use "certified" as or as part of a designated title if certification is approved. The term is not synonymous with the term occupational license in this act or to refer to or prohibit the use of private certification.
(b) "Certified" is a designated title an individual may use if his or her certification is approved. A noncertified individual may perform the lawful occupation for compensation but may not use certified as a designated title.

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

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

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

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

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

(ii) Inspection.

(iii) Bonding or insurance.

(iv) Registration.

(v) Certification.

(vi) Occupational license.

(g) "Occupational license" means a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications. It is illegal for an individual who does not
possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

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

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

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

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

(l) "Substantial burden" means a requirement in an occupational regulation that imposes significant difficulty or cost on an
individual seeking to enter into or continue in a lawful occupation. A substantial burden is a burden that is more than incidental.

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

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

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

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

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

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

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

(b) Enacted, adopted, promulgated, or amended after the effective date of this act and does not include in state statute an explicit exemption from this act.
(5) An individual who asserts a defense or brings an action under this section has the initial burden of proof that an occupational regulation substantially burdens the individual's right to engage in a lawful occupation.

(6) If an individual meets the burden of proof described in subsection (5), 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 the occupational regulation is the least restrictive means of furthering that compelling governmental interest.

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

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

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

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