

2018 Regular Session

SENATE BILL NO. 504

BY SENATOR WARD

STATE AGENCIES. Enacts the Louisiana Right to Earn a Living Act. (8/1/18)

1 AN ACT

2 To enact Chapter 12-A of Title 49 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 49:920 through 925, relative to state administration and
4 regulations and rulemaking; to enact the Louisiana Right to Earn a Living Act; to
5 provide certain findings, definitions, terms, conditions, procedures, requirements,
6 and effects; to provide for certain administrative and judicial actions; and to provide
7 for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 12-A of Title 49 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 49:920 through 925, is hereby enacted to read as follows:

11 **CHAPTER 12-A. LOUISIANA RIGHT TO EARN A LIVING ACT**

12 **§920. Title and form of citation**

13 **This Chapter shall be known and may be cited as "The Louisiana Right**
14 **to Earn a Living Act"**.

15 **§921. Legislative findings**

16 **The Louisiana Legislature finds that:**

17 **A. The right of individuals to pursue a chosen business or profession,**

1 free from arbitrary or excessive government interference, is a fundamental civil
2 right.

3 B. The freedom to earn an honest living traditionally has provided the
4 surest means for economic mobility.

5 C. It is in the public interest:

6 (1) To ensure the right of all individuals to pursue legitimate
7 entrepreneurial and professional opportunities to the limits of their talent and
8 ambition.

9 (2) To provide the means for the vindication of this right; and

10 (3) To ensure that regulations of entry into businesses and professions
11 are demonstrably necessary and carefully tailored to legitimate health, safety,
12 and welfare objectives.

13 §922. Definitions

14 Unless the context clearly indicates otherwise, for the purposes of this
15 Chapter:

16 (1) "Agency" means an agency as defined in R.S. 49:951.

17 (2) "Entry regulations" shall include any rule, fee, test or permit relating
18 to the use by an individual of an occupational title or the opportunity to engage
19 in any lawful occupation or profession.

20 (3) "Public service restriction" shall include any rule, policy, fee,
21 condition, test, permit, and administrative practice, with or without the support
22 of public subsidy or user fees.

23 (4) "Welfare" shall be narrowly construed to encompass protection of
24 members of the public against fraud or harm. This term shall not encompass
25 the protection of existing businesses or agencies, whether publicly or privately
26 owned, against competition.

27 (5) "Subsidy" shall include taxes, grants, user fees or any other funds
28 received by or on behalf of an agency.

29 §923. Limitation on entry regulations

1 A. Entry regulations and public service restrictions with respect to
2 businesses and professions shall be limited to those demonstrably necessary and
3 carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

4 B. A review of an entry regulation or public service restriction pursuant
5 to this Chapter shall consider whether:

6 (1) It is required by state or federal law.

7 (2) It is necessary to protect the public health, safety, or welfare.

8 (3) A purpose or effect of the entry regulation or public service
9 restriction is to unnecessarily inhibit competition or arbitrarily deny entry into
10 a business, trade, profession, or occupation.

11 (4) The intended purpose of the entry regulation or public service
12 restriction could be accomplished by less restrictive or burdensome means.

13 (5) The agency lacks the statutory authority to adopt the entry regulation
14 or public service restriction.

15 §924. Elimination of entry regulations

16 A. Within one year from the effective date of this Chapter, each agency
17 shall conduct a comprehensive review of all entry regulations within its
18 jurisdiction. For each such entry regulation the agency shall:

19 (1) Articulate with specificity the public health, safety, or welfare
20 objectives served by the regulation.

21 (2) Articulate reasons why the regulation is necessary to serve the
22 specified objectives.

23 B. If during such review an agency determines that a regulation does not
24 satisfy the provisions of this Chapter, the agency shall:

25 (1) Repeal the entry regulation or modify it to conform with the
26 provisions of this chapter.

27 (2) Recommend to the legislature the repeal or modification of statutory
28 language as necessary to conform the entry regulation to the provisions of this
29 Chapter.

1 C. Each agency shall report to the legislature on all actions taken to
2 conform entry regulations to the requirements of this Chapter not later than
3 fifteen months following the effective date of this Chapter.

4 §925. Petition to agency; judicial action

5 A. Any person may petition an agency to repeal or modify an entry
6 regulation or public service restriction adopted by it.

7 B. The agency shall respond to the petition within ninety days of its
8 receipt by repealing the entry regulation or public service restriction, modifying
9 the entry regulation or public service restriction to conform with the provisions
10 of this Chapter, or stating the basis and reasons for the conclusion by the agency
11 that the entry regulation or public service restriction conforms to the provisions
12 of this Chapter or cannot be repealed or modified without the enactment of
13 legislation.

14 C. If an agency fails to respond to the petition within ninety days of its
15 receipt, the petitioner may file an action in a court of competent jurisdiction and
16 venue to challenge the entry regulation or public service restriction.

17 D. If the court finds by a preponderance of the evidence that the
18 challenged entry regulation or public service restriction on its face or in its
19 effect burdens the creation of a business, the entry of a business into a
20 particular market, or entry into a profession or occupation, the court shall
21 enjoin enforcement of the challenged entry regulation or public service
22 restriction, and award reasonable attorney fees and costs to the plaintiff.

23 E. The provisions of this Section shall not preclude and are in addition
24 to any other right or remedy otherwise available by law.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Xavier I. Alexander.

Proposed law provides for the following legislative findings:

- (1) The right for a individual to pursue a chosen business or profession free from

arbitrary or excessive government interference. Further provides that the freedom to earn an honest living provides the surest means for economical mobility.

- (2) It is in the public interest to ensure rights to pursue legitimate professional opportunities, and to ensure regulations of entry into businesses and professions are necessary and tailored to legitimate health, safety, and welfare.

Proposed law defines "agency", "entry regulations", "public service restrictions", "welfare", and "subsidy".

Proposed law provides that entry regulations and public service restrictions with respect to businesses and professions shall be necessary and tailored to fulfill legitimate public health, safety or welfare objectives.

Proposed law provides that in reviewing entry regulations or public service restrictions the agency shall consider whether:

- (1) It is required by state or federal law.
- (2) It is necessary to protect public health, safety, or welfare.
- (3) Its purpose or effect is to inhibit competition or deny entry into business.
- (4) Its purpose could be accomplished by a less restrictive means.
- (5) The agency lacks authority to adopt the regulation or restriction.

Proposed law provides that within one year every agency shall conduct a comprehensive review of all regulations each agency shall:

- (1) Articulate the public health, safety, or welfare of the regulation.
- (2) Articulate why the regulation is necessary to serve specified objectives.

Proposed law provides that if regulations do not meet a public health, safety or welfare objective, the agency shall repeal, modify the regulation, or recommend to the legislature actions necessary to repeal or modify the regulation.

Proposed law provides that each agency shall report all action taken to conform to the proposed law within 15 months of enactment of the proposed law to the legislature.

Proposed law relative to judicial action provides that any person may petition an agency to repeal or modify a regulation. Further provides that agency shall respond within 90 days by repealing, modifying or stating a basis on which it concludes the regulation or restriction conforms with the proposed law or requires legislature to conform to the proposed law.

Proposed law provides that if an agency does not answer the petition within 90 days, any person may file a petition in a court of competent jurisdiction. Further provides that to prevail in an action the court must find by a preponderance of the evidence that the regulation or public service restriction on its face burdens entry into a business or professional occupation. If so, the court shall enjoin enforcement and award attorney fees and costs.

Effective August 1, 2018.

(Adds R.S. 49:920 – 925)