

2018 Regular Session

HOUSE BILL NO. 825

BY REPRESENTATIVE THOMAS

COMMERCIAL REGULATIONS: Creates the Right to Earn a Living Act

1 AN ACT

2 To enact Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 37:41 through 47, relative to occupational licenses; to create the Right to
4 Earn a Living Act; to provide with respect to licensing provisions regarding public
5 health and safety; to provide for a review of licensing requirements and regulations;
6 to provide a procedure to challenge a regulation; to provide for the repeal and
7 modification of regulations; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 1-D of Title 37 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 37:41 through 47, is hereby enacted to read as follows:

11 CHAPTER 1-D. RIGHT TO EARN A LIVING ACT

12 §41. Short Title

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

15 §42. Legislative findings and purpose

16 A. The legislature hereby finds and declares the following:

17 (1) The right of individuals to pursue a chosen business interest or profession
18 free from arbitrary or excessive government interference is a fundamental right.

19 (2) The freedom to earn an honest living traditionally has provided the surest
20 means for economic mobility.

1 (3) In recent years many regulations necessary for the entry into the business
2 world or into a profession have exceeded legitimate public purposes and have had
3 the effect of arbitrarily limiting entry and reducing competition.

4 (4) The burden of excessive regulation is borne most heavily by individuals
5 outside the economic mainstream; individuals for whom opportunities for economic
6 advancement are curtailed.

7 B. The right of every person to pursue legitimate entrepreneurial and
8 professional opportunities to the limits of his talent and ambition is a matter of public
9 interest; as is the ability to provide the means for the vindication of this right, and to
10 ensure that regulations of entry into businesses and professions are demonstrably
11 necessary and carefully tailored to legitimate health, safety, and welfare objectives.

12 §43. Definitions

13 When used in this Chapter, the following terms have the meanings ascribed
14 as follows:

15 (1) "Agency" means any state board, commission, department, agency, or
16 office of the state including any political subdivision.

17 (2) "Entry regulation" means any law, ordinance, regulation, rule, policy, fee,
18 condition, test, permit, administrative practice, licensing requirement, or other
19 provision regulating the market or the opportunity to engage in any occupation or
20 profession.

21 (3) "Subsidy" means any tax, grant, user fee, or any other funds received by
22 or on behalf of an agency.

23 (4) "Welfare" means the protection of members of the public against fraud
24 or harm. "Welfare" shall not mean the protection of businesses or agencies, whether
25 publicly or privately owned, against competition.

26 §44. Limitation of entry regulation

27 Any business or profession entry regulation shall be limited to those
28 demonstrably necessary and carefully tailored to fulfill legitimate public health,
29 safety, or welfare objectives.

1 §45. Petition for modification; administrative; judicial

2 A. An individual may petition an agency to request a repeal or modification
3 of any entry regulation into a profession or business within the agency's jurisdiction.
4 The agency shall evaluate the merits of the petition and make a decision whether to
5 modify or repeal the regulation in question within ninety days of the submission of
6 the petition.

7 B.(1) If the agency has not responded to the petition within ninety days or
8 if the agency has responded with an answer that is unsatisfactory to the individual
9 who filed the petition, the individual may file a suit challenging the regulation in a
10 court of competent jurisdiction.

11 (2) If the plaintiff proves by the preponderance of the evidence that the
12 regulation presents an undue burden on his ability to enter a certain profession or go
13 into business in a certain market when weighed against the effect the regulation has
14 on the fulfillment of a legitimate public health, safety, or welfare objective, the judge
15 shall order that the agency repeal or modify the regulation.

16 §46. Elimination of entry regulations

17 A. Each agency shall complete a comprehensive review of all entry
18 regulations within its jurisdiction and articulate with specificity the public health,
19 safety, or welfare objective served by each regulation and the reason why the
20 regulation is necessary to fulfill that purpose.

21 B. Each agency shall report its findings to the House Committee on
22 Commerce and the Senate Committee on Commerce, Consumer Protection, and
23 International Affairs. If an agency finds that a regulation does not satisfy a
24 legitimate public health, safety, or welfare objective, it shall modify or repeal the
25 regulation, or, when necessary, recommend that the legislature modify or repeal the
26 regulation

27 §47. Preemption

28 The right of an individual to pursue his chosen profession or business interest
29 is a matter of statewide concern and is not subject to further inconsistent regulation

1 by any political subdivision of the state. Any decision by an agency or court to
 2 repeal or modify a regulation shall preempt another agency from upholding the
 3 regulation.

4 Section 2. (A) The review of all entry regulations required by the provisions of R.S.
 5 37:46(A) as enacted by Section 1 of this Act shall be complete by August 1, 2019.

6 (B) Each agency shall report its findings to the House Committee on
 7 Commerce and the Senate Committee on Commerce, Consumer Protection, and
 8 International Affairs as required by the provisions of R.S. 37:46(B) as enacted by
 9 Section 1 of this Act by January 1, 2020.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 825 Original

2018 Regular Session

Thomas

Abstract: Creates the Right to Earn a Living Act for the review and repeal or modification of licensing requirements and regulations to allow more open access to professions and business ventures.

Proposed law provides legislative intent which declares that arbitrary government involvement in the regulation of business interests and professional licences is contrary to the public policy of our state and to the entrepreneurial spirit of its people.

Proposed law further provides that the right to enter a profession of choice and earn a living is a fundamental right and the key to economic mobility.

Proposed law provides definitions.

Proposed law requires a review of the policies and entry regulations of professional licensing boards and agencies as well as any hurdles to going into business.

Proposed law requires a modification or repeal of those policies that are not demonstrably necessary to maintain the public health, safety, or welfare of the people of the state and that the agency recommend that the legislature modify or repeal the policies that require legislative action.

Proposed law allows a private citizen to petition an agency for a modification or repeal of a policy that the citizen believes is detrimental to public interest because the policy presents an undue burden upon a person attempting to enter the profession or business of his choice while not contributing to the public health, safety, or welfare of the population. The agency has 90 days to respond from the submission of the petition.

Proposed law provides that if the private citizen is displeased with the outcome of his petition or if the agency does not answer his petition within 90 days, he may file a suit in district court.

Proposed law requires a judge to order the policy be repealed or modified if the plaintiff in the matter can prove by the preponderance of the evidence that the regulation presents an undue burden on his ability to enter a certain profession or go into business in a certain market when weighed against the effect the regulation has on the fulfillment of a legitimate public health, safety, or welfare objective.

Proposed law provides that proposed law preempts any local law with a regulation contrary to one found to be unnecessarily burdensome pursuant to the provisions of proposed law.

Proposed law requires that the policy review be complete by Aug. 1, 2019, and that each agency articulate with specificity the public health, safety, or welfare objective served by each regulation. Proposed law further requires that by Jan. 1, 2020, each agency shall report its findings to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(Adds R.S. 37:41-47)