

Protecting the Right to Earn a Living

ISSUE OVERVIEW

Of all the rights Americans cherish, the freedom to earn a living or enter a new profession receives the least protection under the law. Unfortunately, state regulatory agencies too often thwart the intent of their Legislature by applying onerous restrictions to business activities they have not been given statutory control over. These restrictions can prevent hardworking Americans from obtaining a job, often with little to no public health or welfare justification. Even worse, it can be costly and time-consuming for workers to challenge agency rules.

Fortunately, there is a better way. The Right to Earn a Living Act requires state regulatory agencies to show some legitimate public harm before an occupational regulation can prevent someone from working in a given profession. This commonsense approach cuts down on red tape and bureaucratic delays by ensuring that workers are not ensnared by vague or protectionist regulations.

HOW THE ACT WORKS

The Right to Earn a Living Act has two unique components. First, it requires each agency to conduct a comprehensive review within one year of all occupational regulations within their jurisdictions, and:

- (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),

If an agency finds any regulation that does not comply with this standard the agency is required to repeal or modify the occupational regulation, or make a recommendation to the legislature on how to repeal or modify the occupational regulation to ensure it meets the standard above.

Secondly, the Act ensures that workers have a fair pathway to challenge agency rules. If a regulation is on the books that violates the law, workers can petition the agency to repeal or modify the restriction. If the agency decides not to change or repeal the regulation, workers may challenge the agency's decision in court. To ensure the intent of the Legislature is preserved, the courts would rule in favor of the challenger if: (1) the challenged regulation burdens entry into or participation in an occupation or particular profession; and (2) the regulation is not "demonstrated to be necessary to specifically fulfill a public health, safety, or welfare concern."

This approach ensures that agencies are playing fair and that any and all occupational regulations have a legitimate justification before they can be used to limit an American's right to earn a living.

The Right to Earn a Living Act restores the proper balance between free enterprise and legitimate government regulation, ensuring that economic opportunity for all is not merely a promise, but a reality, and is now law in Arizona and Tennessee.
