SECOND REGULAR SESSION

HOUSE BILL NO. 2312

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HILL.

5818H.01I D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 324, RSMo, by adding thereto one new section relating to occupational regulation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A.  Chapter 324, RSMo, is amended by adding thereto one new section, to be known as section 324.027, to read as follows:

324.027.  1. The provisions of this section shall be known and may be cited as the "Occupational Regulation Defense Act".

2. For purposes of this section, the following terms mean:

   (1) "Certification", a voluntary program in which the state or a political subdivision grants nontransferrable recognition to an individual who meets personal qualifications established by the state or a political subdivision. Upon approval, an individual may use the term "certified" as a designated title. A noncertified individual may perform the lawful occupation for compensation but shall not use the title of "certified";

   (2) "Lawful occupation", a course of conduct, pursuit, or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to occupational regulation;

   (3) "Occupational license", a nontransferable authorization for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by the state or any of its political subdivisions. An individual who does not possess an occupational license shall not perform the occupation for compensation;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.
(4) "Occupational regulation", any law, rule, practice, or policy that allows an individual to use an occupational title or work in a lawful occupation. Such term includes registration, certification, and occupational license, but does not include a business license, facility license, building permit, or zoning and land use regulation except to the extent such licenses, permits, or regulations pertain to an individual's qualifications to perform a lawful occupation;

(5) "Personal qualifications", criteria established by the state or any of its political subdivisions related to an individual's personal background including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education;

(6) "Registration", a requirement to give notice to the state or any of its political subdivisions 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, and a description of the service the individual provides. "Registration" does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use "registered" as a designated title. A nonregistered individual shall not perform the occupation for compensation or use "registered" as a designated title. "Registration" is not transferable;

(7) "Specialty occupational license for medical reimbursement", a nontransferable authorization in law for an individual to qualify for payment or reimbursement from the state or a political subdivision for the nonexclusive provision of medical services based on meeting personal qualifications established by the legislature. A private company may recognize this credential. An individual regulated under another occupational regulation may provide similar services for compensation and reimbursement, and an individual who does not possess this specialty license may provide the identified medical services for compensation and reimbursement, but the nonlicensed individual shall not qualify for payment or reimbursement from the state or from a political subdivision of the state;

(8) "Substantial burden", 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.

3. There is hereby established a defense against the enforcement of any occupational regulation. An individual may assert a defense against the enforcement of an occupational regulation in an administrative proceeding or judicial proceeding. An individual who asserts a defense against the enforcement of an occupational regulation shall have the initial burden of proving by clear and convincing evidence that an
occupational regulation substantially burdens the individual's right to pursue a lawful occupation.

4. (1) If the individual meets the burden of proof in subsection 3 of this section, the state or political subdivision shall demonstrate by clear and convincing evidence that the state or political subdivision has an important interest in protecting against present and recognizable harm to the public health or safety and that the occupational regulation is substantially related to and the least restrictive means for furthering that important governmental interest. In determining whether an occupational regulation is the least restrictive means to further the government's interest, the court shall consider the requirements imposed by the regulation.

(2) For purposes of this subsection, "Least restrictive means of furthering an important governmental interest" means, from least to most restrictive:

(a) Market competition;
(b) Third-party or consumer-created ratings and reviews;
(c) Private certification;
(d) Voluntary bonding or insurance;
(e) A provision for private civil action in small-claims or district court to remedy consumer harm;
(f) Deceptive trade practice act;
(g) Mandatory disclosure of attributes of the specific good or service;
(h) Regulation of the process of providing the specific good or service;
(i) Inspection;
(j) Bonding;
(k) Insurance;
(l) Registration;
(m) Government certification;
(n) Specialty occupational license for medical reimbursement; and
(o) Occupational license.

5. Nothing in this section shall be construed to create a cause of action against the state or political subdivision, or to require the state or political subdivision to contract with an individual who is not licensed, certified, or registered with the state or political subdivision.

6. The provisions of this section shall not apply to an individual who is a government employee or who is required to be licensed under state law in order to comply with federal law.