

SECOND REGULAR SESSION

HOUSE BILL NO. 3082

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DAVIS.

6749H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 1, RSMo, by adding thereto one new section relating to government restrictions on the ability of a person to earn a living.

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

Section A. Chapter 1, RSMo, is amended by adding thereto one new section, to be known as section 1.340, to read as follows:

1.340. 1. This section shall be known and cited as the "Missouri Entrepreneurial Freedom Restoration Act".

2. The general assembly finds and declares the following:

(1) The right of individuals to pursue a chosen business interest, occupation, trade, or profession free from arbitrary, unreasonable, or excessive government interference is a fundamental right;

(2) The original public meaning of Article I, Section 2 and Article I, Section 10 of the Constitution of Missouri enshrined the right to earn a living as a fundamental right. These constitutional provisions recognized that the right to earn a living is deeply rooted in the history and tradition of Missouri and of this nation, the common law, and natural law;

(3) Nevertheless, in Williamson v. Lee Optical, Inc., 348 U.S. 483 (1955) and the Slaughter-house Cases, 83 U.S. 36 (1872), the U.S. Supreme Court virtually eliminated the requirement that the government justify burdens on the right to earn a living despite its enshrinement in the Fourteenth Amendment to the Constitution of the United States. This state's courts have largely followed suit in interpreting the right to earn a living under the Constitution of Missouri, thereby leaving it unprotected;

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.

18 **(4) Overly burdensome restrictions on the right to earn a living impede**
19 **economic growth, hinder job creation, and limit consumer choices without promoting**
20 **public health, safety, or welfare;**

21 **(5) Heightened judicial review requiring the government to justify the burdens it**
22 **imposes on the right to earn a living provides a workable test for striking sensible**
23 **balances between the right to earn a living and competing government interests in**
24 **public health, safety, and welfare; and**

25 **(6) Economic protectionism is never a valid government interest and cannot**
26 **justify burdens on the right to earn a living.**

27 **3. The purposes of this section are:**

28 **(1) To restore judicial protection of the right to earn a living by requiring courts**
29 **to apply heightened judicial review to government restrictions that unnecessarily**
30 **burden the right to earn a living;**

31 **(2) To promote economic opportunity, competition, and individual freedom by**
32 **removing unnecessary restrictions on pursuing a livelihood in businesses, occupations,**
33 **professions, and trades; and**

34 **(3) To provide a claim or defense to individuals when the government**
35 **unnecessarily burdens their right to earn a living.**

36 **4. The provisions of this section apply to all state and local laws, and**
37 **implementation of those laws, whether statutory or otherwise, and whether adopted**
38 **before or after the enactment of this section. State and local laws adopted after the**
39 **enactment of this section are subject to this section unless such law explicitly excludes**
40 **such application by reference to this section.**

41 **5. The right to earn a living in the businesses, professions, occupations, and**
42 **trades of life is the very essence of personal freedom and opportunity. The state of**
43 **Missouri recognizes it as a fundamental right and nothing in this section shall be**
44 **construed to authorize any governmental body to burden the right to earn a living.**

45 **6. State and local governments, including their branches, departments, agencies,**
46 **instrumentalities, and officials, or other persons acting under the color of state or local**
47 **law, shall not burden a person's exercise of their right to earn a living unless the**
48 **requirements of subsection 7 of this section are met. Government restrictions that**
49 **burden the right to earn a living without satisfying subsection 7 of this section constitute**
50 **a violation of this section, making the governmental body liable for legal and equitable**
51 **relief.**

52 **7. Government restrictions that burden the right to earn a living do not violate**
53 **this section if the governmental body demonstrates through clear and convincing**
54 **evidence that:**

55 **(1) Applying the burden to the person is necessary to protect public health,**
56 **safety, or welfare;**

57 **(2) Applying the burden to the person is the least restrictive means to achieve the**
58 **law's stated purpose; and**

59 **(3) Alternative mechanisms, such as voluntary certification or less restrictive**
60 **regulatory measures, could not achieve the stated government interest without**
61 **unnecessarily restricting entry into the occupation.**

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63 **As used in this subsection, the term "welfare" shall be narrowly construed to mean only**
64 **the protection of the public against fraud or physical or psychological harm. "Welfare"**
65 **shall not mean the protection of businesses or agencies, whether publicly or privately**
66 **owned, against competition.**

67 **8. A person whose right to earn a living has been burdened in violation of this**
68 **section may assert that violation as a claim for relief in a court of competent jurisdiction**
69 **in this state and as a defense in any judicial or administrative proceeding. A court may**
70 **issue declaratory, injunctive, or other equitable relief and nominal damages to any**
71 **person who proves a violation of this section.**

72 **9. A person intending to engage in a specific business, profession, occupation, or**
73 **trade but hindered from working by a burden on the right to earn a living, whether**
74 **currently engaged in a specific business, profession, occupation, or trade, shall have**
75 **standing to bring a claim or defense asserting a violation of this section without being**
76 **required to first apply for, obtain, or be denied a relevant occupational license or**
77 **certification.**

78 **10. A person asserting a claim for nominal damages for a violation of this section**
79 **has standing to challenge restrictions alleged to burden the right to earn a living**
80 **protected by this section. The asserted harm shall arise directly from the lawful practice**
81 **of the occupation itself, and not from independent criminal or unlawful conduct by third**
82 **parties.**

83 **11. A regulation shall not be justified on the basis of moral disapproval,**
84 **generalized psychological impact, or the desire to discourage lawful but disfavored**
85 **conduct. Evidence offered by the government to justify a regulation shall demonstrate a**
86 **substantial causal relationship, and not mere correlation or statistical association,**
87 **between the regulation and the prevention of the asserted harm.**

88 **12. A regulation shall not be deemed necessary if the asserted harm is already**
89 **addressed through existing criminal, civil, or administrative law unless the government**
90 **proves by clear and convincing evidence that such existing law is inadequate.**

91 **13. The court shall award reasonable attorney's fees and costs to any person who**
92 **proves the government violated this section.**

93 **14. Nothing in this section supersedes or preempts any existing cause of action**
94 **that a person may have under the federal or state constitutions, any statute, or the**
95 **common law. This section instead provides an additional layer of protection for the**
96 **right to earn a living.**

97 **15. If any provision of this section or its application to any person or**
98 **circumstances is held invalid, the invalidity does not affect other provisions or**
99 **applications of this section that can be given effect without the invalid provision or**
100 **application.**

101 **16. The state of Missouri hereby waives sovereign immunity as to nominal**
102 **damages up to one dollar for each claim for any act by a state or local government**
103 **official that violates this section by unlawfully burdening the right to earn a living.**
104 **Further, any government official who, through act or omission, unlawfully burdens the**
105 **right to earn a living by enforcing restrictions found to violate this section is liable for**
106 **nominal damages up to one dollar for each claim and is not entitled to qualified**
107 **immunity or any other type of immunity for nominal damages.**

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