

TENNESSEE RIGHT TO EARN A LIVING ACT

(SB 2469; HB 2201)

SPONSORS: R. DANIEL; S. GREEN., EFFECTIVE APRIL 2016

- **(TENNESSEE IS CONSISTENTLY RANKED AS ONE OF THE MOST OVER REGULATED STATES)**

PREAMBLE


- **The right of individuals to pursue a chosen business, profession or occupation free from excessive government interference is a **FUNDAMENTAL** right;**

- **In recent years many regulations have exceeded a legitimate public purpose, arbitrarily limiting entry into occupations and reducing competition;**
- **Excessive regulation often impacts persons who have limited opportunity for economic advancement;**
- **Public interest to ensure that individuals have the opportunity to pursue legitimate entrepreneurial and occupational opportunities; to ensure that regulations of entry in occupations are demonstrably necessary and **NARROWLY** tailored to **LEGITIMATE** health, safety and welfare objectives;**



THE ACT

- ***Definitions:***

- “Entry Regulation”- a rule promulgated by a licensing authority for the purpose of regulating an occupational or professional group, including, but not limited to, any rule prescribing qualifications or requirements for a person’s entry, or continued participation, into a business, trade or occupation, or any policy or practice of a licensing authority implemented for the purpose of regulating a professional or occupational group
 - “Licensing Authority”(“LA”) - any state regulatory board, commission, council, or committee in the executive branch established by statute or rule that issues any license, certificate, registration, certification, permit, or other similar document, for the purpose of entry into, or regulation of, any occupational or professional group. (Does not include health boards).
 - (Tenn Code 4-5-501)
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***TURNOVER OF INFORMATION* FROM LICENSING AUTHORITIES TO GOVERNMENT OPERATIONS COMMITTEE(EVALUATES GOVERNMENT AGENCIES)**

- All to Government Operations by December 31, 2016;
- For time periods after January 1, 2018, in connection with sunset hearing, turnover of any subsequent entry regulations that have been promulgated after December 31, 2016;
- Additionally, the chairs of the Senate or the House Government Operations Committee may request a review of any entry regulation at any time; also Governor or Commissioner of agency may request review.
- Tenn Code 4-5-502(a)(1)-(4)

REVIEW OF REGULATIONS – DURING REVIEW, GOVERNMENT OP COMMITTEE SHALL CONSIDER WHETHER :

- The entry regulation is required by state or federal law;
- The entry regulation is **NECESSARY** to protect the public's health, safety, or welfare;
- The purpose OR effect of the regulation is to unnecessarily **INHIBIT COMPETITION** or **ARBITRARILY DENY ENTRY** into a business, trade of occupation;
- The purpose of the entry regulations is to could be accomplished by **LESS RESTRICTIVE** or **BURDENSOME** means(ex: certification, registration, bonding, insurance, inspections, or a civil action under the Tenn Consumer Protection Act);
- The entry regulations are outside of the scope of the LA's authority.
- Tenn Code 4-5-502(b)

- After review considering the above factors, if the reg is not required by law, and on a determination that any of the above factors exist, the Gov. Op. Committee may **Express Disapproval** of the entry regulation by voting to request that the LA amend or repeal regulation.
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- Once such a vote occurs, the **Notice of Disapproval** is filed with the Secretary of State, and the LA has an obligation, within **90 days, to initiate compliance** with the recommendation and **fails to comply with the request within a reasonable time**, the Gov. Op. Committee may request that the General Assembly **suspend any or all of the LA's rulemaking authority.**

- Tenn Code 4-5-502(d)
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EXPECTED CONTENTS OF A COMMITTEE REPORT

- All entry regulations submitted by the LA;
- A summary of each hearing, if any, conducted in connection with entry regulations
- Any recommendation that the Gov. Op. Committee might have to repeal or modify a regulation.

LIST OF THE BOARDS

- Under the report, we examined seventeen (17) professions including:
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- Accountants, Real Estate Appraisers, Real Estate Brokers and Agents, Barbers and Cosmetologists, Auctioneers, Licensing Contractors, Alarm System Contractors, the Athletic Commission, the Motor Vehicle Commission, Architects and Engineers, the POST Commission, Private Investigators, Land Surveyors, Funeral Directors and Embalmers, Private Probate, the Collection Services Commission, and Home Inspectors.

REALITY

- During consideration of the bill, some licensing authorities will try to escape the reach of the bill;
- The agencies will provide you with a mass of documents and regulations.;
- The legislative committee probably will not have time to begin review of the rules and regulations during session;
- Only those regulations that are promulgated by a “Licensing Authority” will be within the scope of the act. Department/agency regulations could be excluded;
- During committee consideration of the bill, some licensing authorities will try to escape the reach of the bill. Health?;

REALITY (CONTINUED)

- You must have adequate staff to properly review and begin evaluation of the regulations;
- To process all of the information and evaluate the regulations will take longer than you think. 5-8 months;
- The LAs will continue to resist;
- The recommendation process may be cumbersome. The Gov. Op. (evaluation) Committees, unless meeting jointly, must each agree to request repeal or modification of a regulation for it to happen. The chairs of the Senate and House committees must be enthusiastic and be “into it”;

AREAS OF BURDENSOME REGULATIONS:

- Education required
- Training Required
- Apprenticeship Required
- Fees
- Continuing Education

**MANY OF THE
OCCUPATIONAL LICENSING

REQUIREMENTS ARE SET
FORTH IN STATUTE.**



CONCLUSION

- An act such as the Right to Earn a Living Act can be effective to review and eliminate previously promulgated unnecessary rules and regulations only if adequate resources (time, patience, research staff, funding) are directed towards the effort and the chairs of the evaluation committees are enthusiastic and devoted to the effort.