

ASSEMBLY BILL

No. 1810

Introduced by Assembly Member Norby

February 21, 2012

An act to add Section 37 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 1810, as introduced, Norby. Professions and vocations: occupational regulations.

Existing law provides for the licensure and regulation of various professions and vocations by state agencies. Under existing law, protection of the public is the highest priority for those state agencies in exercising their licensing, regulatory, and disciplinary functions.

This bill would provide a person with a right to engage in a lawful profession or vocation without the imposition of an occupational regulation, as defined, that imposes a substantial burden on a person unless the state or other person relying upon the occupational regulation demonstrates that it has a compelling interest in protecting against harm to the public health or safety, and the occupational regulation is the least restrictive means of furthering that interest. The bill would authorize a person to bring an action for declaratory judgment or equitable relief for a violation of that right. The bill would also authorize a person to assert as a defense the right to engage in a lawful profession or vocation in a proceeding to enforce a violation of that right. The bill would declare the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 37 is added to the Business and
2 Professions Code, to read:
3 37. (a) It is the intent of the Legislature to ensure that a person
4 may pursue a lawful profession or vocation free from unnecessary
5 regulations and protect against the misuse of occupational
6 regulations to reduce competition and increase prices to consumers.
7 (b) Notwithstanding any other provision of law, a person shall
8 have a right to engage in a lawful profession or vocation without
9 the imposition of an occupational regulation that imposes a
10 substantial burden on a person, unless the state or other person
11 relying upon the occupational regulation demonstrates that the
12 state has a compelling interest in protecting against present and
13 recognizable harm to public health or safety, and the occupational
14 regulation is the least restrictive means of furthering that
15 compelling interest.
16 (c) A person may bring an action for a declaratory judgment or
17 injunctive relief or other equitable relief for a violation of
18 subdivision (b).
19 (d) A person may assert as a defense the right to engage in a
20 lawful profession or vocation in any judicial or administrative
21 proceeding to enforce an occupational regulation that violates
22 subdivision (b).
23 (e) A person who brings an action or asserts a defense under
24 this section has the initial burden of proof to demonstrate that an
25 occupational regulation substantially burdens the person’s right
26 to engage in a lawful profession or vocation.
27 (f) If the person meets the burden of proof under subdivision
28 (e), the state or other person relying upon the occupational
29 regulation shall demonstrate by clear and convincing evidence that
30 the state has a compelling interest in protecting against present
31 and recognizable harm to the public health or safety, and that the
32 occupational regulation is the least restrictive means for furthering
33 that compelling interest.
34 (g) A court shall liberally construe this section to protect the
35 right established in subdivision (b). A court shall make its own
36 findings of fact and conclusions of law. A court shall not grant
37 any weight to a legislative declaration of harm to the public health

1 or safety, or a declaration that the regulation is the least restrictive
2 means of furthering a compelling state interest.

3 (h) For the purposes of this section, the following terms shall
4 have the following meanings:

5 (1) (A) “Certification” is a voluntary program for which the
6 Legislature establishes the criteria to grant recognition to a person
7 who has met predetermined qualifications. The person who meets
8 the qualification may use “certified” as a designated title, or
9 advertise that the person holds a “certification.” Using the title
10 “certified” or advertising the holding of a certification by a person
11 who has not met the qualifications is against the law.

12 (B) A person who does not participate in the voluntary program
13 for certification or who does not meet the qualifications for
14 certification may, nonetheless, perform the lawful profession or
15 vocation for compensation.

16 (2) “Court” means a court, administrative tribunal, or other
17 government agency acting in a judicial or quasi-judicial capacity.

18 (3) (A) “Lawful profession or vocation” means a course of
19 conduct, pursuit, or profession that includes the sale of goods or
20 services that are not themselves illegal to sell irrespective of
21 whether the person selling them is subject to an occupational
22 regulation.

23 (B) For the purposes of this section, “lawful profession or
24 vocation” shall not include the work of a person employed by the
25 government or acting as a legally recognized fiduciary.

26 (4) “Least restrictive” occupational regulations include, from
27 least to most restrictive, (A) a provision for private civil action to
28 remedy consumer harm, (B) a provision requiring inspection related
29 to a lawful profession or vocation, (C) a provision requiring the
30 posting of a bond related to a lawful profession or vocation, (D)
31 certification as defined in this section, and (E) a license as defined
32 in this section.

33 (5) “License” is a nontransferable authorization to perform a
34 lawful profession or vocation for compensation based on meeting
35 predetermined qualifications established by the Legislature, such
36 as (A) satisfactory completion of an approved education program,
37 and (B) acceptable performance on a qualifying examination or
38 series of examinations. It is unlawful for nonlicensed persons to
39 perform the profession or vocation for compensation. Licensing
40 is the most restrictive form of occupational regulation.

- 1 (6) “Occupational regulation” means a statute, rule, ordinance,
2 practice, policy, or other government-prescribed requirement for
3 a person to engage in a lawful profession or vocation.
- 4 (7) (A) “Professional registration” means a requirement
5 established by the Legislature pursuant to which a person (i)
6 submits notification pursuant to subparagraph (B) to a state agency,
7 and (ii) may use “registered” as a designated title. Professional
8 registration may include a requirement to post a bond related to a
9 lawful profession or vocation, but it does not include education or
10 experience requirements.
- 11 (B) The notification shall include the person’s name and address,
12 the person’s agent for service of process, the location where the
13 person engages in the profession or vocation, and a description of
14 the service the person provides.
- 15 (C) It shall be unlawful for a person to perform a lawful
16 profession or vocation for compensation while using “registered”
17 as a designated title, or advertising that he or she holds a
18 registration if he or she has not met the requirements of
19 professional registration.
- 20 (8) “Substantial burden” means a legal or other regulatory
21 obstacle that imposes significant difficulty or cost on a person
22 seeking to enter into or continue in a lawful profession or vocation.
23 A substantial burden is a burden that is more than incidental.