

AMENDED IN ASSEMBLY MARCH 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1810**

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**Introduced by Assembly Member Norby**

February 21, 2012

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~~An act to add Section 37 to the Business and Professions Code, relating to professions and vocations. An act to amend Sections 19051 and 19060.6 of, and to repeal Section 19052 of, the Business and Professions Code, relating to custom upholsterers.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1810, as amended, Norby. ~~Professions and vocations: occupational regulations. Custom upholsterers.~~

*Existing law makes it unlawful for a person to advertise, solicit, or contract to manufacture, repair, or renovate upholstered furniture, as specified, without obtaining a custom upholsterer's license from the Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation within the Department of Consumer Affairs.*

*This bill would eliminate those provisions. The bill would make conforming changes.*

*Existing law requires a person who advertises, solicits, or contracts to repair or renovate upholstered furniture and who does not do the work himself or herself or have it done by employees to obtain a license as a retail furniture dealer.*

*This bill would eliminate that requirement.*

~~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 19051 of the Business and Professions*  
2     *Code is amended to read:*

3     19051. Every upholstered-furniture retailer, unless he or she  
4     holds an importer's license, a furniture and bedding manufacturer's  
5     license, a wholesale furniture and bedding dealer's license,~~a~~  
6     ~~custom upholsterer's license,~~ or a retail furniture and bedding  
7     dealer's license shall hold a retail furniture dealer's license.

8     (a) This section does not apply to a person whose sole business  
9     is designing and specifying for interior spaces, and who purchases  
10    specific amenable upholstered furniture items on behalf of a client,  
11    provided that the furniture is purchased from an appropriately  
12    licensed importer, wholesaler, or retailer. This section does not  
13    apply to a person who sells "used" and "antique" furniture as  
14    defined in Sections 19008.1 and 19008.2.

15    (b) This section does not apply to a person who is licensed as  
16    a home medical device retail facility by the State Department of  
17    Health Services, provided that the furniture is purchased from an  
18    appropriately licensed importer, wholesaler, or retailer.

19    *SEC. 2. Section 19052 of the Business and Professions Code*  
20    *is repealed.*

21    ~~19052. Every custom upholsterer, unless he or she holds a~~  
22    ~~furniture and bedding manufacturer's license, shall hold a custom~~  
23    ~~upholsterer's license.~~

1     *SEC. 3. Section 19060.6 of the Business and Professions Code*  
2 *is amended to read:*

3     19060.6. (a) ~~Except as provided in subdivision (b), every~~ *Every*  
4 *person who, on his or her own account, advertises, solicits or*  
5 *contracts to manufacture, repair, or renovate upholstered furniture*  
6 *or bedding, and who either does the work himself or herself or has*  
7 *others do it for him or her, shall obtain the particular license*  
8 *required by this chapter for the particular type of work that he or*  
9 *she solicits or advertises that he or she will do, regardless of*  
10 *whether he or she has a shop or factory.*

11     ~~(b) Every person who, on his or her own account, advertises,~~  
12 ~~solicits or contracts to repair or renovate upholstered furniture and~~  
13 ~~who does not do the work himself or herself nor have employees~~  
14 ~~do it for him or her but does have the work done by a licensed~~  
15 ~~custom upholsterer need not obtain a license as a custom~~  
16 ~~upholsterer but shall obtain a license as a retail furniture dealer.~~  
17 ~~However, nothing in this section shall exempt a retail furniture~~  
18 ~~dealer from complying with Sections 19162 and 19163.~~

19     ~~SECTION 1. Section 37 is added to the Business and~~  
20 ~~Professions Code, to read:~~

21     ~~37. (a) It is the intent of the Legislature to ensure that a person~~  
22 ~~may pursue a lawful profession or vocation free from unnecessary~~  
23 ~~regulations and protect against the misuse of occupational~~  
24 ~~regulations to reduce competition and increase prices to consumers.~~

25     ~~(b) Notwithstanding any other provision of law, a person shall~~  
26 ~~have a right to engage in a lawful profession or vocation without~~  
27 ~~the imposition of an occupational regulation that imposes a~~  
28 ~~substantial burden on a person, unless the state or other person~~  
29 ~~relying upon the occupational regulation demonstrates that the~~  
30 ~~state has a compelling interest in protecting against present and~~  
31 ~~recognizable harm to public health or safety, and the occupational~~  
32 ~~regulation is the least restrictive means of furthering that~~  
33 ~~compelling interest.~~

34     ~~(c) A person may bring an action for a declaratory judgment or~~  
35 ~~injunctive relief or other equitable relief for a violation of~~  
36 ~~subdivision (b).~~

37     ~~(d) A person may assert as a defense the right to engage in a~~  
38 ~~lawful profession or vocation in any judicial or administrative~~  
39 ~~proceeding to enforce an occupational regulation that violates~~  
40 ~~subdivision (b).~~

1 ~~(e) A person who brings an action or asserts a defense under~~  
2 ~~this section has the initial burden of proof to demonstrate that an~~  
3 ~~occupational regulation substantially burdens the person's right~~  
4 ~~to engage in a lawful profession or vocation.~~

5 ~~(f) If the person meets the burden of proof under subdivision~~  
6 ~~(e), the state or other person relying upon the occupational~~  
7 ~~regulation shall demonstrate by clear and convincing evidence that~~  
8 ~~the state has a compelling interest in protecting against present~~  
9 ~~and recognizable harm to the public health or safety, and that the~~  
10 ~~occupational regulation is the least restrictive means for furthering~~  
11 ~~that compelling interest.~~

12 ~~(g) A court shall liberally construe this section to protect the~~  
13 ~~right established in subdivision (b). A court shall make its own~~  
14 ~~findings of fact and conclusions of law. A court shall not grant~~  
15 ~~any weight to a legislative declaration of harm to the public health~~  
16 ~~or safety, or a declaration that the regulation is the least restrictive~~  
17 ~~means of furthering a compelling state interest.~~

18 ~~(h) For the purposes of this section, the following terms shall~~  
19 ~~have the following meanings:~~

20 ~~(1) (A) "Certification" is a voluntary program for which the~~  
21 ~~Legislature establishes the criteria to grant recognition to a person~~  
22 ~~who has met predetermined qualifications. The person who meets~~  
23 ~~the qualification may use "certified" as a designated title, or~~  
24 ~~advertise that the person holds a "certification." Using the title~~  
25 ~~"certified" or advertising the holding of a certification by a person~~  
26 ~~who has not met the qualifications is against the law.~~

27 ~~(B) A person who does not participate in the voluntary program~~  
28 ~~for certification or who does not meet the qualifications for~~  
29 ~~certification may, nonetheless, perform the lawful profession or~~  
30 ~~vocation for compensation.~~

31 ~~(2) "Court" means a court, administrative tribunal, or other~~  
32 ~~government agency acting in a judicial or quasi-judicial capacity.~~

33 ~~(3) (A) "Lawful profession or vocation" means a course of~~  
34 ~~conduct, pursuit, or profession that includes the sale of goods or~~  
35 ~~services that are not themselves illegal to sell irrespective of~~  
36 ~~whether the person selling them is subject to an occupational~~  
37 ~~regulation.~~

38 ~~(B) For the purposes of this section, "lawful profession or~~  
39 ~~vocation" shall not include the work of a person employed by the~~  
40 ~~government or acting as a legally recognized fiduciary.~~

1 ~~(4) “Least restrictive” occupational regulations include, from~~  
2 ~~least to most restrictive, (A) a provision for private civil action to~~  
3 ~~remedy consumer harm, (B) a provision requiring inspection related~~  
4 ~~to a lawful profession or vocation, (C) a provision requiring the~~  
5 ~~posting of a bond related to a lawful profession or vocation, (D)~~  
6 ~~certification as defined in this section, and (E) a license as defined~~  
7 ~~in this section.~~

8 ~~(5) “License” is a nontransferable authorization to perform a~~  
9 ~~lawful profession or vocation for compensation based on meeting~~  
10 ~~predetermined qualifications established by the Legislature, such~~  
11 ~~as (A) satisfactory completion of an approved education program,~~  
12 ~~and (B) acceptable performance on a qualifying examination or~~  
13 ~~series of examinations. It is unlawful for nonlicensed persons to~~  
14 ~~perform the profession or vocation for compensation. Licensing~~  
15 ~~is the most restrictive form of occupational regulation.~~

16 ~~(6) “Occupational regulation” means a statute, rule, ordinance,~~  
17 ~~practice, policy, or other government-prescribed requirement for~~  
18 ~~a person to engage in a lawful profession or vocation.~~

19 ~~(7) (A) “Professional registration” means a requirement~~  
20 ~~established by the Legislature pursuant to which a person (i)~~  
21 ~~submits notification pursuant to subparagraph (B) to a state agency,~~  
22 ~~and (ii) may use “registered” as a designated title. Professional~~  
23 ~~registration may include a requirement to post a bond related to a~~  
24 ~~lawful profession or vocation, but it does not include education or~~  
25 ~~experience requirements.~~

26 ~~(B) The notification shall include the person’s name and address,~~  
27 ~~the person’s agent for service of process, the location where the~~  
28 ~~person engages in the profession or vocation, and a description of~~  
29 ~~the service the person provides.~~

30 ~~(C) It shall be unlawful for a person to perform a lawful~~  
31 ~~profession or vocation for compensation while using “registered”~~  
32 ~~as a designated title, or advertising that he or she holds a~~  
33 ~~registration if he or she has not met the requirements of~~  
34 ~~professional registration.~~

35 ~~(8) “Substantial burden” means a legal or other regulatory~~  
36 ~~obstacle that imposes significant difficulty or cost on a person~~  
37 ~~seeking to enter into or continue in a lawful profession or vocation.~~  
38 ~~A substantial burden is a burden that is more than incidental.~~

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