

THE OCCUPATIONAL LICENSING CONSUMER CHOICE ACT

Model legislation by the Texas Conservative Coalition Research Institute

Summary: The Occupational Licensing Consumer Choice Act (“the Act”) is model legislation that provides consumers with the right to choose a worker who best serves their needs irrespective of whether that person holds an occupational license from the state of [STATE]. It provides that business owners, entrepreneurs, and workers in professions otherwise licensed by the state of [STATE] may operate without an occupational license if they disclose that fact to prospective consumers. Workers and entrepreneurs subject to regulatory enforcement may assert such disclosure as a defense to action related to enforcement of occupational licensing laws and regulations.

Section 1. Purpose

The Purpose of the Act is to:

- (A) Protect workers from unnecessary and burdensome licensing regulations that do not address a legitimate, evidence-based, health and safety issue in the least burdensome way.
- (B) Increase market competition by allowing consumers to make informed decisions in hiring the workers they choose;
- (C) Empower industry groups, trade organizations, and similar private associations to self-regulate without the participation of government; and
- (D) Make regulators more efficient by shifting resources away from enforcing occupational licensure to better focus on regulating for the purposes of protecting health and safety.

Section 2. Definitions

The following definitions apply in this Act:

- (A) “Lawful occupation” means a service, profession, or line of work in the sale of goods or services that is not otherwise illegal irrespective of whether the occupation requires an occupational license in order to operate.
- (B) “Occupational license” means any requirement under a state authority to obtain a license, permit, registration, certificate, or other evidence of state authority in order to work in a lawful occupation.
- (C) “State authority” means any state agency, department, board, commission, or other governing body with state authority, and includes executive and administrative officers of such bodies.
- (D) “Licensing regulation” means any statute, rule, ordinance, policy, enforcement practice or action, or any other action by a state authority to require a license in order to work in a lawful occupation.
- (E) “Agreement for service” means a verbal or written contract to provide the services of a lawful occupation for consideration.
- (F) “Non-license disclosure” means a disclosure that a person is working in a lawful occupation without an occupational license. A non-license disclosure must include the following elements:

- (1) A conspicuous statement that the person is not licensed by a state authority;



- (2) The physical address and phone number where the person may be contacted;
- (3) The printed name and dated signature of the person engaged in the lawful occupation; and
- (4) The printed name and dated signature of the consumer entering the agreement for service.

A non-license disclosure may include the name of any industry group, trade organization, or association to which the individual belongs, along with a statement that the person is certified, recognized, or otherwise issued a qualification by such a group, trade organization, or association.

Section 3. The freedom to work without a state-issued occupational license

(A) A person otherwise required to hold an occupational license issued by a state authority has a right to operate in the state of [STATE] without an occupational license if that person provides a non-license disclosure to consumers before entering an agreement for service.

(B) A person otherwise subject to an occupational license requirement may not be denied, and is entitled to, any benefit provided to a person who holds an occupational license so long as the person makes a non-license disclosure to a consumer before entering an agreement for service.

(C) A state authority must disclose on its internet website and all written or digital and online application forms for occupational licenses that a person has a right to operate in the state of [STATE] without an occupational license otherwise required if a non-license disclosure is made to potential consumers before entering an agreement for service.

(D) This Act shall not be construed to impose any requirement on workers engaged in a lawful occupation that is not the subject of licensing regulation by a state authority.

Section 4. Defense and relief

(A) It is a defense to any licensing regulation, civil or criminal, by a state authority for the purpose of enforcing an occupational license requirement on a person engaged in a lawful occupation if the person properly made a non-license disclosure in the agreement for service that is the subject of such enforcement.

(B) Production of a non-license disclosure signed by both parties shall require immediate dismissal with prejudice of any licensing regulation, civil or criminal, by a state authority for the purpose of enforcing an occupational license requirement on a person engaged in a lawful occupation.

(C) A person that prevails in asserting a defense under Section 4(A) shall be entitled to reasonable costs and attorney's fees incurred in asserting such a defense.

Section 5. Exemptions

Section 6. Supremacy clause

The provisions of this Act supersede all other statutory provisions of the state of [STATE].

