

SENATE BILL NO. 1439

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

5911S.011

KRISTINA MARTIN, Secretary

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
2 one new section, to be known as section 1.340, to read as
3 follows:

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

3 2. The general assembly finds and declares the
4 following:

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

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

16 (3) Nevertheless, in *Williamson v. Lee Optical, Inc.*,
17 348 U.S. 483 (1955) and the *Slaughter-house Cases*, 83 U.S.

18 36 (1872), the U.S. Supreme Court virtually eliminated the
19 requirement that the government justify burdens on the right
20 to earn a living despite its enshrinement in the Fourteenth
21 Amendment to the U.S. Constitution. This state's courts
22 have largely followed suit in interpreting the right to earn
23 a living under the state constitution, thereby leaving it
24 unprotected;

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

29 (5) Heightened judicial review requiring the
30 government to justify the burdens it imposes on the right to
31 earn a living provides a workable test for striking sensible
32 balances between the right to earn a living and competing
33 government interests in public health, safety, and welfare;

34 (6) Economic protectionism is never a valid government
35 interest and cannot justify burdens on the right to earn a
36 living.

37 3. The purposes of this section are:

38 (1) To restore judicial protection of the right to
39 earn a living by requiring courts to apply heightened
40 judicial review to government restrictions that
41 unnecessarily burden the right to earn a living;

42 (2) To promote economic opportunity, competition, and
43 individual freedom by removing unnecessary restrictions on
44 pursuing a livelihood in businesses, occupations,
45 professions, and trades;

46 (3) To provide a claim or defense to individuals when
47 the government unnecessarily burdens their right to earn a
48 living.

49 4. The provisions of this section apply to all state
50 and local laws, and implementation of those laws, whether
51 statutory or otherwise, and whether adopted before or after
52 the enactment of this section. State and local laws adopted
53 after the enactment of this section are subject to this
54 section unless such law explicitly excludes such application
55 by reference to this section.

56 5. The right to earn a living in the businesses,
57 professions, occupations, and trades of life is the very
58 essence of personal freedom and opportunity. The state of
59 Missouri recognizes it as a fundamental right and nothing in
60 this section shall be construed to authorize any
61 governmental body to burden the right to earn a living.

62 6. State and local governments, including their
63 branches, departments, agencies, instrumentalities, and
64 officials, or other persons acting under the color of state
65 or local law, shall not burden a person's exercise of their
66 right to earn a living unless the requirements of subsection
67 7 of this section are met. Government restrictions that
68 burden the right to earn a living without satisfying
69 subsection 7 of this section constitute a violation of this
70 section, making the governmental body liable for legal and
71 equitable relief.

72 7. Government restrictions that burden the right to
73 earn a living do not violate this section if the
74 governmental body demonstrates through clear and convincing
75 evidence that:

76 (1) Applying the burden to the person is necessary to
77 protect public health, safety, or welfare;

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

80 (3) Alternative mechanisms, such as voluntary
81 certification or less restrictive regulatory measures, could
82 not achieve the stated government interest without
83 unnecessarily restricting entry into the occupation.

84 As used in this subsection, the term "welfare" shall be
85 narrowly construed to mean only the protection of the public
86 against fraud or physical or psychological harm. "Welfare"
87 shall not mean the protection of businesses or agencies,
88 whether publicly or privately owned, against competition.

89 8. A person whose right to earn a living has been
90 burdened in violation of this section may assert that
91 violation as a claim for relief in a court of competent
92 jurisdiction in this state and as a defense in any judicial
93 or administrative proceeding. A court may issue
94 declaratory, injunctive, or other equitable relief, and
95 nominal damages to any person who proves a violation of this
96 section.

97 9. A person intending to engage in a specific
98 business, profession, occupation, or trade but hindered from
99 working by a burden on the right to earn a living, whether
100 or not currently engaged in a specific business, profession,
101 occupation, or trade, shall have standing to bring a claim
102 or defense asserting a violation of this section without
103 being required to first apply for, obtain, or be denied a
104 relevant occupational license or certification.

105 10. A person asserting a claim for nominal damages for
106 a violation of this section has standing to challenge
107 restrictions alleged to burden the right to earn a living
108 protected by this section.

109 11. The court shall award reasonable attorney fees and
110 costs to any person who proves the government violated this
111 section.

112 12. Nothing in this section supersedes or preempts any
113 existing cause of action that a person may have under the
114 federal or state constitutions, any statute, or the common
115 law. This section instead provides an additional layer of
116 protection for the right to earn a living.

117 13. If any provision of this section or its
118 application to any person or circumstances is held invalid,
119 the invalidity does not affect other provisions or
120 applications of this section that can be given effect
121 without the invalid provision or application.

122 14. The state of Missouri hereby waives sovereign
123 immunity as to nominal damages up to one dollar for each
124 claim for any act by a state or local government official
125 that violates this section by unlawfully burdening the right
126 to earn a living. Further, any government official who,
127 through act or omission, unlawfully burdens the right to
128 earn a living by enforcing restrictions found to violate
129 this section is liable for nominal damages up to one dollar
130 for each claim and is not entitled to qualified immunity or
131 any other type of immunity for nominal damages.

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