

HOUSE BILL 1670

By Lynn

AN ACT to enact the "Tennessee Economic Civil Rights Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This shall be known and may be cited as the "Tennessee Economic Civil Rights Act".

SECTION 2.

(a) The legislature hereby finds and declares that:

(1) The right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right;

(2) The freedom to earn an honest living traditionally has provided the surest means for economic mobility;

(3) In recent years, many regulations of entry into businesses and professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition;

(4) The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed; and

(5) It is in the public interest:

(A) To ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition;

(B) To provide the means for the vindication of this right; and

(C) To ensure that regulations of entry into businesses and professions are demonstrably necessary and carefully tailored to legitimate health, safety, and welfare objectives.

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Agency" shall be broadly construed to include the state, all units of state government, and all units of government, and shall exclude no entity established under the constitution or laws of the state or established by any entity which was itself established under the constitution or laws of the state;

(2) "Entry regulations" mean any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice, or other provision relating in a market, or the opportunity to engage in any occupation or profession;

(3) "Public service restrictions" mean any law, ordinance, regulation, rule, policy, fee, condition, test, permit, administrative practice or other provision, the effect of which is to exclude or limit the use of private firms from providing public services under the supervision of agencies, with or without the support of public subsidy or user fees;

(4) "Welfare" shall be narrowly construed to encompass protection of members of the public against fraud or harm. This term shall not encompass the protection of existing businesses or agencies, whether publicly or privately owned, against competition; and

(5) "Subsidy" means taxes, grants, user fees or any other funds received by or on behalf of an agency.

SECTION 4. All entry regulations with respect to businesses and professions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

SECTION 5. All public service restrictions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.

SECTION 6.

(a) Within one (1) year of the effective date of this act, every agency shall conduct a comprehensive review of all entry regulations within their jurisdictions, and for each such entry regulation it shall:

(1) Articulate with specificity the public health, safety, or welfare objective(s) served by the regulation; and

(2) Articulate why the regulation is necessary to serve the specified objectives.

(b) To the extent the agency finds that any regulation does not satisfy the standard set forth in Section 4, it shall:

(1) Repeal the entry regulation or modify the entry regulation to conform to the standard of Section 4 of this act if such action is not within the agency's authority to do so; or

(2) Recommend to the legislature actions necessary to repeal or modify the entry regulation to conform to the standard of Section 4 of this act if such action is not within the agency's authority.

(c) Within fifteen (15) months of the effective date of this act, each agency shall report to the legislature on all actions taken to conform with this section.

SECTION 7.

(a) Within one (1) year of the effective date of this act, every agency shall establish a routine private participation process with respect to the public services under its jurisdiction. Such process shall be implemented within eighteen (18) months of the effective date of this act and require that:

(1) Private companies be permitted to perform public services that can be produced without subsidy. An agency may establish reasonable requirements with respect to notice of entry and exit;

(2) Private companies be permitted to periodically and fairly compete for contracts to perform public services that cannot be produced without subsidy; and

(3) Private companies not be precluded from commercially producing any service under the jurisdiction of the agency which is not included in subdivision (a)(1) or subdivision (a)(2).

(b) The competitive process required by subdivision (a)(2) shall be designed to allow the maximum extent of participation by private firms of all sizes and shall:

(1) Rely upon multiple contracts wherever feasible; and

(2) Not include any provisions or arrangements that have the effect of limiting competition or precluding participation except as necessary to achieve the standard set forth in Section 5.

(c) Every agency shall have the authority to establish reasonable standards of customer service with respect to public services under subdivision (a)(1) and subdivision (a)(2) above.

(d) Every agency shall recommend to the legislature actions necessary to repeal or modify any public service restriction to conform to the standard set forth in Section 5 if such action is not within the agency's authority.

(e) Within fifteen (15) months of the effective date of this act, each agency shall report to the legislature on all actions taken to conform with this section.

SECTION 8.

(a) Any person may petition an agency to repeal or modify an entry regulation into a business or profession within its jurisdiction.

(b) Within ninety (90) days of a petition being filed pursuant to subdivision (a), the agency shall either repeal the entry regulation, modify the regulation to achieve the standard as set forth in Section 4, or state the basis for the agency's determination that the regulation conforms with the standard set forth in Section 4.

(c) Any person may petition an agency to repeal or modify a public service restriction within its jurisdiction.

(d) Within ninety (90) days of the filing of a petition pursuant to subsection (c), the agency shall either establish the requirements of Section 7, to be implemented within nine (9) months thereof, or state the basis for the agency's determination that the public service restriction conforms with the standard set forth in Section 5.

SECTION 9.

(a) Notwithstanding any other law to the contrary, an agency shall not award or extend any franchise that has the effect of conflicting with either Section 4 or Section 5.

(b) Notwithstanding any other law to the contrary, an agency shall not execute or extend any contract provision, including any labor contract provision that has the effect of conflicting with Section 4 or Section 5 of this act.

(c) The provisions of this act shall not be implemented in any manner that violates the prohibition against impairment of contract obligations as contained in article I, § 20 of the Constitution of Tennessee.

SECTION 10.

(a) When a petition filed pursuant to Section 8 has not been favorably acted on by an agency, the person filing such petition challenging an entry regulation or public

service restriction may file an action in a court of general jurisdiction. Such may be filed ninety (90) days after the initial filing.

(b) A plaintiff shall prevail in the challenge of an entry regulation as provided in subsection (a) if the court finds by a preponderance of evidence that the challenged entry regulation on its face or in its effect burdens:

(1) The creation of a business;

(2) The entry of a business into a particular market; or

(3) Entry of a business into a profession or occupation; and:

(A) The challenged entry regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives; or

(B) Where the challenged entry regulation is necessary to the legitimate public health, safety, or welfare objectives, such objectives can be effectively served by regulations less burdensome to economic opportunity.

(c) A plaintiff shall prevail in the challenge of a public service restriction if the court finds by a preponderance of the evidence that the public service restriction either on its face or in its effect, limits participation by private companies in the provision of public services or other services under the jurisdiction of the agency, and:

(1) The challenged public service restriction is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives; or

(2) Where the challenged public service restriction is necessary to fulfill legitimate public health, safety or welfare objectives, such objectives can be effectively served by restrictions that allow greater private participation.

(d) Upon a finding for the plaintiff, the court may enjoin further enforcement of the challenged entry regulation or public service restriction, and shall award reasonable attorney's fees and costs to the plaintiff.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.