

114TH CONGRESS
2D SESSION

S. 3158

To promote economic opportunity for military families, to facilitate workforce attachment for military spouses in their chosen occupation across multiple geographical postings, to reduce barriers to work on military installations, to amend the District of Columbia Code to promote greater freedom in the practice of regulated occupations, to combat abuse of occupational licensing laws by economic incumbents, to promote competition, encourage innovation, protect consumers, and promote compliance with Federal antitrust law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 12, 2016

Mr. LEE (for himself and Mr. SASSE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To promote economic opportunity for military families, to facilitate workforce attachment for military spouses in their chosen occupation across multiple geographical postings, to reduce barriers to work on military installations, to amend the District of Columbia Code to promote greater freedom in the practice of regulated occupations, to combat abuse of occupational licensing laws by economic incumbents, to promote competition, encourage innovation, protect consumers, and promote compliance with Federal antitrust law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Alternatives to Licensing that Lower Obstacles to Work
 6 Act of 2016” or the “ALLOW Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MILITARY INSTALLATIONS

Sec. 101. Endorsement of occupational licenses and certifications issued by
 States for purposes of activities on military installations.

TITLE II—DISTRICT OF COLUMBIA OCCUPATIONAL LICENSING
 REFORM

Sec. 201. Short title.

Sec. 202. Statement of findings and purpose.

Sec. 203. Definitions.

Sec. 204. Policy regarding occupational licensure.

Sec. 205. Office of Supervision of Occupational Boards.

Sec. 206. Periodic analysis of occupational regulations.

Sec. 207. Freedom to engage in an occupation.

Sec. 208. Affirmative defense.

TITLE III—TOUR GUIDE SERVICES IN NATIONAL MILITARY
 PARKS, NATIONAL BATTLEFIELDS, NATIONAL BATTLEFIELD
 PARKS, NATIONAL BATTLEFIELD SITES, AND THE NATIONAL
 MALL AND MEMORIAL PARKS

Sec. 301. Tour guide services.

1 **TITLE I—MILITARY**
2 **INSTALLATIONS**

3 **SEC. 101. ENDORSEMENT OF OCCUPATIONAL LICENSES**
4 **AND CERTIFICATIONS ISSUED BY STATES**
5 **FOR PURPOSES OF ACTIVITIES ON MILITARY**
6 **INSTALLATIONS.**

7 (a) IN GENERAL.—For the purpose of establishing
8 an individual’s authorization to engage in an occupation
9 on a military installation located on land owned by the
10 Federal Government, the Federal Government endorses
11 occupational licenses and certifications granted by any
12 State, regardless of whether the military installation is lo-
13 cated in the issuing State, provided that—

14 (1) the license or certification is not expired, re-
15 voked, or suspended by the issuing State; and

16 (2) there are no outstanding enforcement ac-
17 tions against the individual brought by the licensing
18 board or certifying authority for that occupation in
19 the issuing State.

20 (b) SCOPE OF PRACTICE.—An individual relying on
21 subsection (a) for authorization to engage in an occupa-
22 tion is authorized to sell the same goods and services as
23 are covered by the occupational license or certification in
24 the issuing State.

1 (c) STATE DEFINED.—In this section, the term
2 “State” includes the District of Columbia.

3 **TITLE II—DISTRICT OF COLUM-**
4 **BIA OCCUPATIONAL LICENS-**
5 **ING REFORM**

6 **SEC. 201. SHORT TITLE.**

7 This title may be cited as the “District of Columbia
8 Occupational Licensing Reform Act”.

9 **SEC. 202. STATEMENT OF FINDINGS AND PURPOSE.**

10 Congress finds the following:

11 (1) The prevalence of occupational licensing has
12 increased dramatically in recent decades, in part be-
13 cause private interests have sought licensing in order
14 to limit competition.

15 (2) Occupational licensing often limits opportu-
16 nities for workers, frustrates entrepreneurs seeking
17 to introduce new business models, and raises prices
18 paid by consumers.

19 (3) Licensing should be imposed only to combat
20 real, substantial threats to public health or safety
21 and only where other less restrictive regulatory alter-
22 natives are insufficient to protect consumers and
23 serve the public interest.

24 (4) Regulators should consider a range of less
25 restrictive alternatives before enacting an occupa-

1 tional licensing regime, which may include inspec-
2 tions, bonding or insurance requirements, registra-
3 tion, and voluntary certification.

4 (5) Voluntary certification provides a particu-
5 larly significant alternative to licensure, as it allows
6 market participants to signal to consumers the at-
7 tainment of personal qualifications without limiting
8 entry into the marketplace.

9 (6) The failure of State governments to adopt
10 less restrictive alternatives to licensing has resulted
11 in significant costs to consumers and the broader
12 economy.

13 (7) By appropriately limiting occupational li-
14 censing in the District of Columbia, Congress in-
15 tends to promote economic opportunity in the Dis-
16 trict.

17 (8) By promoting economic opportunity in the
18 District of Columbia through the reform of occupa-
19 tional regulations, Congress intends to provide a
20 basic reform model that the States may follow.

21 **SEC. 203. DEFINITIONS.**

22 (a) IN GENERAL.—In this title:

23 (1) ATTORNEY GENERAL.—The term “Attorney
24 General” means the Attorney General for the Dis-
25 trict of Columbia.

1 (2) CERTIFICATION.—The term “certification”
2 means a voluntary program under which—

3 (A) a private organization or the govern-
4 ment grants nontransferable recognition to an
5 individual who meets personal qualifications es-
6 tablished by the private organization or the gov-
7 ernment;

8 (B) upon approval, an individual described
9 in subparagraph (A) may use “certified” as a
10 designated title; and

11 (C) a noncertified individual may perform
12 the lawful occupation for compensation but may
13 not use the title “certified”.

14 (3) COUNCIL.—The term “Council” means the
15 Council of the District of Columbia.

16 (4) COVERED BOARD.—The term “covered
17 board” means an occupational licensing board in the
18 District of Columbia.

19 (5) LAWFUL OCCUPATION.—The term “lawful
20 occupation” means a course of conduct, pursuit, or
21 profession that includes the sale of goods or services
22 that are not illegal to sell regardless of whether the
23 individual selling the goods or services is subject to
24 an occupational regulation.

1 (6) LEAST RESTRICTIVE REGULATION.—The
2 term “least restrictive regulation” means, from least
3 to most restrictive—

4 (A) market competition;

5 (B) industry or consumer-created ratings
6 and reviews;

7 (C) private certification;

8 (D) a specific private civil cause of action
9 to remedy consumer harm;

10 (E) a deceptive trade practice act;

11 (F) a regulation of the process of providing
12 the specific goods or services to consumers;

13 (G) inspection;

14 (H) bonding or insurance;

15 (I) registration;

16 (J) government certification;

17 (K) specialty occupational license for med-
18 ical reimbursement; and

19 (L) occupational license.

20 (7) OCCUPATIONAL LICENSE.—The term “occu-
21 pational license” means a nontransferable authoriza-
22 tion under law for an individual to perform a lawful
23 occupation for compensation based on meeting per-
24 sonal qualifications established by the District of Co-
25 lumbia government.

1 (8) SPECIALTY OCCUPATIONAL LICENSE FOR
2 MEDICAL REIMBURSEMENT.—The term “specialty
3 occupational license for medical reimbursement”
4 means a nontransferable authorization in law for an
5 individual to provide identified medical services and
6 qualify for payment or reimbursement from a gov-
7 ernment agency based on meeting personal qualifica-
8 tions established by the government.

9 (9) OCCUPATIONAL REGULATION.—The term
10 “occupational regulation”—

11 (A) means a statute, rule, practice, policy,
12 or other law requiring an individual to possess
13 certain personal qualifications to use an occupa-
14 tional title or work in a lawful occupation;

15 (B) includes a regulation requiring reg-
16 istration, certification, or an occupational li-
17 cense; and

18 (C) does not include a business license, fa-
19 cility license, building permit, or zoning and
20 land use regulation except to the extent that
21 such a law regulates an individual’s personal
22 qualifications to perform a lawful occupation.

23 (10) PERSONAL QUALIFICATIONS.—The term
24 “personal qualifications” means criteria related to
25 an individual’s personal background and characteris-

1 tics, including completion of an approved educational
2 program, satisfactory performance on an examina-
3 tion, work experience, other evidence of attainment
4 of requisite skills or knowledge, moral standing,
5 criminal history, and completion of continuing edu-
6 cation.

7 (11) REGISTRATION.—

8 (A) IN GENERAL.—The term “registra-
9 tion” means a requirement that an individual
10 give notice to the District of Columbia govern-
11 ment that—

12 (i) may include—

13 (I) the individual’s name and ad-
14 dress;

15 (II) the individual’s agent for
16 service of process;

17 (III) the location of the activity
18 to be performed; and

19 (IV) a description of the service
20 the individual provides;

21 (ii) does not include personal quali-
22 fications; and

23 (iii) may require a bond or insurance.

24 (B) USE OF TITLE.—

1 (i) REGISTERED INDIVIDUALS.—Upon
2 the receipt of notice described in subpara-
3 graph (A) by the District of Columbia gov-
4 ernment from an individual, the individual
5 may use “registered” as a designated title.

6 (ii) NONREGISTERED INDIVIDUALS.—
7 A nonregistered individual may not per-
8 form the occupation for compensation or
9 use “registered” as a designated title.

10 (12) SUPERIOR COURT.—The term “Superior
11 Court” means the Superior Court of the District of
12 Columbia.

13 (b) RULES RELATING TO USE AND CONSTRUCTION
14 OF TERMS.—

15 (1) CERTIFICATION AND REGISTRATION.—As
16 used in this title, the terms “certification” and “reg-
17 istration” shall not be construed to be synonymous
18 with the term “occupational license”, notwith-
19 standing their use in other provisions of the law of
20 the District of Columbia.

21 (2) RELATION TO OTHER PROVISIONS OF
22 LAW.—The use of the terms “certification”, “cer-
23 tified”, “registration”, and “registered” in other
24 provisions of the law of the District of Columbia to
25 mean an individual is required to meet certain per-

1 sonal qualifications to work legally shall be con-
2 strued for the purposes of this title as requiring an
3 individual to meet the requirements of an occupa-
4 tional license.

5 **SEC. 204. POLICY REGARDING OCCUPATIONAL LICENSURE.**

6 It is the policy of the District of Columbia that—

7 (1) occupational licensing laws should be con-
8 strued and applied to increase economic opportunity,
9 promote competition, and encourage innovation;

10 (2) regulators should displace competition
11 through occupational licensing only where less re-
12 strictive regulation will not suffice to protect con-
13 sumers from present, significant, and substantiated
14 harms that threaten public health, safety, or welfare;
15 and

16 (3) an occupational licensing restriction should
17 be enforced against an individual only to the extent
18 the individual sells goods and services that are in-
19 cluded explicitly in the statute or Municipal Regula-
20 tion that defines the occupation's scope of practice.

21 **SEC. 205. OFFICE OF SUPERVISION OF OCCUPATIONAL**
22 **BOARDS.**

23 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—There shall be established
2 an Office of Supervision of Occupational Boards (re-
3 ferred to in this section as the “Office”) in—

4 (A) the office of the Attorney General; or

5 (B) another appropriate agency of the Dis-
6 trict of Columbia government.

7 (2) RULE OF CONSTRUCTION.—For the pur-
8 poses of this title, if individual Offices are estab-
9 lished within multiple agencies, the term “Office”
10 shall be construed to refer to both the singular and
11 the plural.

12 (b) ACTIVE SUPERVISION.—

13 (1) IN GENERAL.—The Office shall be respon-
14 sible for exercising active supervision over each cov-
15 ered board to ensure compliance with the policies
16 under section 204.

17 (2) DUTIES.—In exercising active supervision
18 over covered boards under paragraph (1), the Office
19 shall independently—

20 (A) play a substantial role in the develop-
21 ment of a board’s rules and policies to ensure
22 they benefit consumers and do not serve the
23 private interests of providers of goods and serv-
24 ices regulated by the board;

1 (B) disapprove the use of any board rule
2 or policy and terminate any enforcement action,
3 including any such action pending on the date
4 of enactment of this Act, that is inconsistent
5 with section 204;

6 (C) exercise control over each board by re-
7 viewing and affirmatively approving only rules,
8 policies, and enforcement actions that are con-
9 sistent with section 204; and

10 (D) use the analysis conducted under sec-
11 tion 206 and conduct reasonable investigations
12 to gain additional information, including about
13 less restrictive regulatory approaches, to pro-
14 mote compliance with section 204.

15 (3) INDEPENDENCE.—In exercising active su-
16 pervision over covered boards under paragraph (1),
17 the Office shall be staffed by not less than 1 attor-
18 ney who does not provide general counsel to any
19 board.

20 (c) REVIEW AND APPROVAL OF PROPOSED REGU-
21 LATORY ACTIONS.—

22 (1) IN GENERAL.—The Office shall review and
23 approve or reject any rule, policy, enforcement ac-
24 tion, or other occupational licensure action proposed
25 by each covered board before the board may adopt

1 or implement the rule, policy, enforcement action, or
2 other occupational licensure action.

3 (2) EXPLICIT APPROVAL REQUIRED.—For pur-
4 poses of paragraph (1)—

5 (A) approval by the Office shall be re-
6 quired to be explicit; and

7 (B) silence or failure to act shall not con-
8 stitute approval.

9 (d) COMPLAINTS.—

10 (1) RIGHT TO FILE COMPLAINT.—A person who
11 is a resident of or has a license to operate a business
12 in the District of Columbia may file a complaint to
13 the Office about a rule, policy, enforcement action,
14 or other occupational licensure action of a covered
15 board that the person believes is inconsistent with
16 section 204.

17 (2) RESPONSE.—Not later than 90 days after
18 the date on which the Office receives a complaint
19 filed under paragraph (1), the Office shall—

20 (A) investigate the complaint;

21 (B) identify remedies and instruct the
22 board to take action, where appropriate; and

23 (C) respond in writing to the complainant.

24 (3) APPEAL.—

1 (A) IN GENERAL.—There shall be no right
2 to appeal a decision of the Office under para-
3 graph (2) unless—

4 (i) the challenged rule, policy, enforce-
5 ment action, or other occupational licen-
6 sure action would prevent the complainant
7 from—

8 (I) engaging in a lawful occupa-
9 tion; or

10 (II) employing or contracting
11 others for the performance of a lawful
12 occupation; and

13 (ii) the complainant has taken mate-
14 rial steps in an attempt to take an action
15 described in subclause (I) or (II) of clause
16 (i).

17 (B) SUPERIOR COURT.—Any appeal au-
18 thorized under subparagraph (A) shall be to the
19 Superior Court.

20 (e) REVIEW BY ATTORNEY GENERAL.—

21 (1) RIGHT TO REQUEST REVIEW.—Any member
22 of the Council may request that the Attorney Gen-
23 eral review—

24 (A) a rule, policy, enforcement action, or
25 other occupational licensure action of a covered

1 board that the member believes is inconsistent
2 with section 204;

3 (B) the active supervision of a covered
4 board by the Office; or

5 (C) the response of the Office to a com-
6 plaint under subsection (d).

7 (2) RESPONSE.—Not later than 180 days after
8 the date on which the Attorney General receives a
9 request under paragraph (1), the Attorney General
10 shall—

11 (A) investigate the activity requested to be
12 reviewed;

13 (B) identify remedies and instruct the cov-
14 ered board to take action, where appropriate;
15 and

16 (C) respond in writing to the requesting
17 member.

18 **SEC. 206. PERIODIC ANALYSIS OF OCCUPATIONAL REGULA-**
19 **TIONS.**

20 (a) ESTABLISHMENT OF COMMITTEE.—The Chair-
21 man of the Council shall establish a legislative committee
22 or subcommittee composed exclusively of current Council
23 members to analyze occupational regulations (in this sec-
24 tion referred to as the “committee”).

25 (b) DUTIES.—

1 (1) IN GENERAL.—The committee shall be re-
2 sponsible for reviewing proposed legislation to im-
3 pose or modify an occupational regulation to ensure
4 compliance with the policies under section 204.

5 (2) SPECIFIC DUTIES.—In reviewing proposed
6 legislation under paragraph (1), the committee—

7 (A) may require—

8 (i) the proponents of the legislation to
9 submit evidence of present, significant, and
10 substantiated harms to consumers in the
11 District; and

12 (ii) information from other persons
13 knowledgeable about the applicable occupa-
14 tion, labor economics, or other relevant
15 factors;

16 (B) shall determine whether the legislation
17 satisfies the policy under section 204(2) of
18 using the least restrictive regulation necessary
19 to protect consumers from present, significant,
20 and substantiated harms that threaten public
21 health, safety, or welfare;

22 (C) shall evaluate the effects of the legisla-
23 tion on opportunities for workers, consumer
24 choices and costs, general unemployment, mar-

1 ket competition, governmental costs, and other
2 effects;

3 (D) shall compare the legislation to wheth-
4 er and how other jurisdictions regulate the ap-
5 plicable occupation; and

6 (E) shall issue a report to the Council as-
7 sessing and proposing modifications, if any, to
8 the legislation on a timely basis.

9 (3) REQUIRED VOTE BY COUNCIL.—The Coun-
10 cil may not enact legislation to impose or modify an
11 occupational regulation before the Council has spe-
12 cifically voted to adopt or reject any modification to
13 the regulation proposed by the committee under
14 paragraph (2).

15 (c) ANNUAL REVIEW.—

16 (1) IN GENERAL.—Beginning on January 1,
17 2018, the committee shall conduct an annual review
18 of the regulations of approximately 20 percent of the
19 occupations subject to regulation within the District
20 of Columbia to improve compliance with this title.

21 (2) FULL REVIEW.—During the 5-year period
22 beginning on January 1, 2018, and during each 5-
23 year period thereafter, the committee shall review all
24 occupational regulations within the District of Co-
25 lumbia.

1 (3) INFORMATION.—In carrying out the review
2 under this subsection, the committee may require in-
3 formation from a covered board, the members of a
4 covered board, and other persons.

5 (d) REPORT.—Beginning on January 1, 2019, the
6 committee shall submit to the Chairman of the Council
7 and the Attorney General an annual report on the findings
8 of the reviews carried out under subsection (c) that in-
9 cludes suggested changes to occupational regulations to
10 improve compliance with this title.

11 **SEC. 207. FREEDOM TO ENGAGE IN AN OCCUPATION.**

12 (a) IN GENERAL.—An individual may engage in a
13 lawful occupation without being subject to occupational
14 regulations that are—

15 (1) arbitrary; or

16 (2) unnecessary and substantially burdensome.

17 (b) PROHIBITION.—The District of Columbia and
18 any covered board within the District may not require an
19 occupational license, certification, or registration for a
20 person, or impose any other occupational regulation that
21 imposes a substantial burden on a person, unless the Dis-
22 trict government demonstrates that—

23 (1) the government has an important interest in
24 protecting against present and recognizable harm to
25 public health, safety, or welfare; and

1 (2) the regulation is substantially related to
2 achievement of the important government interest
3 described in paragraph (1).

4 (c) LIMITATION.—Nothing in this section shall be
5 construed to—

6 (1) create a right of action against the District
7 government or a private party; or

8 (2) require the District government or a private
9 party to do business with an individual who is not
10 licensed by, certified by, or registered with the Dis-
11 trict government.

12 **SEC. 208. AFFIRMATIVE DEFENSE.**

13 (a) RIGHT TO ASSERT DEFENSE.—

14 (1) IN GENERAL.—An individual may assert as
15 a defense in any administrative or judicial pro-
16 ceeding to enforce an occupational regulation that
17 the standard required under section 207 has not
18 been met.

19 (2) INITIAL BURDEN OF PROOF.—An individual
20 who asserts a defense under this section has the ini-
21 tial burden of proof that the occupational regulation
22 being enforced substantially burdens the individual's
23 right to engage in a lawful occupation.

24 (3) GOVERNMENT'S BURDEN OF PROOF.—If an
25 individual meets the burden of proof under para-

1 graph (2), the District of Columbia government shall
2 be required to demonstrate by clear and convincing
3 evidence that—

4 (A) the occupational regulation in question
5 advances an important government interest in
6 protecting against real, substantial threats to
7 public health, safety, or welfare; and

8 (B) the regulation is substantially related
9 to achievement of the important government in-
10 terest described in subparagraph (A).

11 (b) SUPERIOR COURT.—

12 (1) IN GENERAL.—The Superior Court shall
13 liberally construe this title to protect the right estab-
14 lished under section 207.

15 (2) REQUIREMENTS.—In reviewing an alleged
16 violation of the right established under section 207,
17 the Superior Court—

18 (A) shall make its own findings of fact and
19 conclusions of law;

20 (B) may not rely on legislative findings of
21 fact presented in admissible form to the Supe-
22 rior Court; and

23 (C) may not grant any presumption to leg-
24 islative determinations—

1 (i) of harm to public health, safety, or
2 welfare; or

3 (ii) that the occupational regulation in
4 question is substantially related to achieve-
5 ment of the important government interest
6 described in subsection (a)(3)(A).

7 **TITLE III—TOUR GUIDE SERV-**
8 **ICES IN NATIONAL MILITARY**
9 **PARKS, NATIONAL BATTLE-**
10 **FIELDS, NATIONAL BATTLE-**
11 **FIELD PARKS, NATIONAL BAT-**
12 **TLEFIELD SITES, AND THE**
13 **NATIONAL MALL AND MEMO-**
14 **RIAL PARKS**

15 **SEC. 301. TOUR GUIDE SERVICES.**

16 (a) IN GENERAL.—Chapter 1033 of title 54, United
17 States Code, is amended by adding at the end the fol-
18 lowing:

19 **“§ 103307. Tour guide services**

20 “(a) IN GENERAL.—A person providing tour guide
21 services for a fee within a national military park, national
22 battlefield, national battlefield park, or national battlefield
23 site or outdoor portions of the National Mall and Memo-
24 rial Parks, including the Lincoln Memorial and the Jeffer-

1 son Memorial, shall not be required to obtain a license,
2 certification, or permit of any kind to provide the services.

3 “(b) APPLICATION OF CERTAIN RESTRICTIONS.—In
4 imposing any restriction on the scope, duration, and man-
5 ner of access to or within the boundary of an area de-
6 scribed in subsection (a) for the purposes of providing tour
7 guide services, the Secretary shall ensure that the restric-
8 tions apply equally to all persons providing, or attempting
9 to provide, tour guide services, without regard to employ-
10 ment by, or a contractual relationship with, the Service.”.

11 (b) CLERICAL AMENDMENT.—The table of sections
12 for chapter 1033 of title 54, United States Code, is
13 amended by inserting after the item relating to section
14 103306 the following:

“103307. Tour guide services.”.

○