

## The Preoccupation with Occupational Licensing

by **Marc Levin, Esq.**

Director, Center for Effective Justice

- Regulating new occupations effectively means creating more crimes because the default general criminal penalty of a Class A misdemeanor under Occupations Code, §165.151 for violating any rule under the Occupations Code is applicable.
- In addition to expanding the scope of criminal penalties, subjecting an occupation to government regulation reduces competition among providers, often causing higher prices and lower productivity. Consumer choice can also be compromised because of standardization, as demonstrated by the cases of African hairbraiders denied cosmetology licenses.<sup>1</sup>
- A University of Minnesota study of occupational licensing in the states found that “occupational licensing reduces employment growth in states that are licensed relative to those that are not regulated.” States that licensed dietitians and nutritionists, respiratory therapists, and librarians (about half) experienced 20 percent lower employment growth in these fields from 1990 to 2000.<sup>2</sup>
- UT-Austin Economics Professor Dan Hammermesh estimated that the “deadweight loss” to society from occupational licensing is between \$34.8 and \$41.7 billion per year.<sup>3</sup>
- Market mechanisms ranging from word-of-mouth to the Better Business Bureau to the website Angieslist.com where visitors can see how other consumers rated all sorts of repairmen and contractors have proven successful in helping consumers select qualified providers of goods and services.
- The Sunset Commission Occupational Licensing Model recommended that “Criminal penalties should exist only for agencies overseeing practices that can have dire consequences on the public health and welfare.”<sup>4</sup> Surely, that does not include interior designers and automotive estimators.
- The following legislation would expand the scope of occupational licensing and therefore the scope of criminal penalties:
  - HB 463: Creates a licensing and regulatory scheme with criminal penalties for air conditioning and refrigeration contractors.
  - HB 689: Creates a licensing and regulatory scheme with criminal penalties for landmen.
  - HB 703: Creates a licensing and regulatory scheme with criminal penalties for lactation consultants.
  - HB 1281: Creates a licensing and regulatory scheme with criminal penalties for certain journeymen and apprentice sheet metal workers, including requiring 8,000 hours of work experience and authorizing a detailed state written exam with questions on federal air quality standards.

900 Congress Avenue  
Suite 400  
Austin, TX 78701  
(512) 472-2700 Phone  
(512) 472-2728 Fax  
[www.TexasPolicy.com](http://www.TexasPolicy.com)

- HB 1985 and SB 832: Creates a licensing and regulatory scheme with criminal penalties for interior designers, including up to a \$5,000 fine per day for each day a violation of state rules occurs. The Institute for Justice has studied this issue and in Nevada and found that a similar licensing scheme has made it a crime for a person not licensed as an interior designer to help a friend rearrange furniture. George Will has also editorialized against this scheme as an effort to restrict competition.<sup>5</sup>
- HB 2211 and SB 1120: Creates a licensing and regulatory scheme with criminal penalties for automotive shops, automotive technicians, and automotive service writers, advisors, and estimators.
- HB 2764: Creates a licensing and regulatory scheme with criminal penalties for swimming pool and spa installers.
- Occupational licensing also creates barriers to ex-offenders who have been rehabilitated and seek to be productive citizens. The *Austin American-Statesman* reported earlier this year that the Department of Public Safety's Private Security Bureau in 2006 alone "cited an unacceptable criminal history to summarily deny nearly 10,000 applicants the opportunity to work in one of the 16 professions it regulates," including locksmiths and guard dog trainers.<sup>6</sup>
- Despite contrary rulings by several administrative law judges, the Bureau refuses to reinstate highly respected lifelong locksmiths whose licenses were revoked for petty crimes decades ago, insisting instead that any criminal offense no matter how ancient is an automatic disqualifier. The *Statesman* documented that some of these locksmiths ironically worked for DPS and local police departments, receiving excellent reviews for their performance.
- Two bills would address this problem. Working with the Foundation, Senate Criminal Justice Chairman John Whitmire filed Senate Bill 1750 that would rectify this problem by allowing applicants for occupational licenses who are otherwise qualified, but are denied because of a prior offense, to obtain a provisional license that would be valid for six months. The license would become permanent after that time assuming the person was not revoked from probation or parole and did not violate any occupational rules. The bill excludes applicants who committed a 3(g) offense, which includes murder, rape, and the other most serious violent crimes, and sexually violent offenders. Also excluded are those who committed an offense in the last five years that directly relates to the duties and responsibilities of the occupation.
- House Bill 3203 would specifically solve the problem concerning occupations regulated by the Private Security Bureau. House Bill 3203 would limit the Bureau's authority to deny and revoke licenses to Class B misdemeanor offenses or greater that relate to the person's fitness to perform the occupation. This standard recognizes that, while a thief is not suited to be a locksmith, someone convicted of minor alcohol or drug possession offense years ago, and who has been law abiding locksmith for years, should not have their livelihood destroyed by state regulators.★

<sup>1</sup> See <http://www.ij.org/publications/other/national-hairbraiding.html>.

<sup>2</sup> See <http://www.ftc.gov/be/seminardocs/050515kleiner.pdf>.

<sup>3</sup> Hammermesh, Daniel, 1993. *Labor Demand*, Princeton, New Jersey. Princeton University Press. Chapter 3.

<sup>4</sup> See <http://www.sunset.state.tx.us/licensemodel05.pdf>.

<sup>5</sup> See <http://www.townhall.com/content/g/12b9cee4-9ee2-458a-bcc7-dab5f0a845d0>.

<sup>6</sup> See <http://www.statesman.com/news/content/news/stories/local/02/18/18locksmith.html>.