



**MARC LEVIN, DIRECTOR
CENTER FOR EFFECTIVE JUSTICE**

January 25, 2008

Ms. Karen Latta
Project Manager, Texas Department of Agriculture Review
Sunset Advisory Commission
1501 North Congress Ave., 6th Floor, Robert E. Johnson Building
Austin, TX 78701

Dear Ms. Latta

Since March 2005, the Center for Effective Justice at the Texas Public Policy Foundation has provided research and information to Texas policymakers on our state's criminal justice system. The Foundation is a 501(c)3 non-profit, non-partisan research institute guided by the core principles of individual liberty, personal responsibility, private property rights, free markets and limited government.

I am writing to request that you and the Commission look into the whether there are unnecessary, and unnecessarily excessive, criminal laws relating to agriculture enforced by the Texas Department of Agriculture (TDA) and whether some of the occupations regulated by TDA with criminal penalties require continued government regulation or would be better left to market processes. I think the questions raised in this letter are particularly relevant to your ongoing study given that the TDA has submitted policy issues to the Commission that propose expanding penalties and regulations.

First, here are a few examples of what we believe are problematic criminal provisions in the Agriculture Code:

- Agriculture Code, Chapter 76: Class A misdemeanor (up to a year in jail) to use, handle, store, or dispose of a pesticide in a manner that injures vegetation, crops, wildlife, or pollinating insects and a third degree felony (up to 10 years in prison) for repeat offenses.
- Agriculture Code, Chapter 14: 2nd Degree Felony (up to 20 years in prison) for operating a grain warehouse without a license and violating certain rules applicable to grain warehouses.
- Agriculture Code, Chapter 95: Class B misdemeanor (up to 180 days in jail) if a person delivers or receives for transportation, transports, or sells citrus fruit that has been treated with coloring matter.

We would like the Commission to consider whether these and similar offenses in the Agriculture Code are necessary and whether, if these types of activities need regulation at all, they should be converted to civil penalties or the punishment level should be reduced. We would also like the Commission to look into whether the default criminal negligence culpable mental state is sufficient for these and similar offenses in the Agriculture Code. It is important that honest farmers, ranchers, and agricultural workers not face the possibility of being put behind bars, or even face the collateral consequences of a conviction in regard to future private sector employment and state licensing, for conduct that was unintentional.

We would note that the Sunset Commission Occupational Licensing Model recommends that “Criminal penalties should exist only for agencies overseeing practices that can have dire consequences on the public health and welfare.”¹

Second, we would like the Commission to study whether all of the occupations regulated by the TDA should continue to be subject to government control. In particular, we question whether florists and those who market perishable products should have to register and receive a license from the TDA. According to the website www.careerinfonet.org, the vast majority of states do not regulate florists. In regard to the perishable products license, we would also ask the Commission to consider whether it is unnecessarily broad. **According to the TDA website, “a person, packer, handler, dealer, processor or warehouseman may not receive or handle Texas grown fruits or vegetables without a license.”** It should be examined whether this type of license is necessary at all, and secondly, whether individuals who handle only very small quantities of produce must be regulated. In addition to civil penalties, violating either of these licensing schemes is a Class C misdemeanor. While the maximum penalty is only \$500, a person can be jailed for failing to appear or pay and the person may be required to answer in the affirmative on future job applications that ask whether the person has been convicted of any non-traffic offense.

Similarly, we would request that the Commission examine whether there is a continuing need for the TDA to issue certificates for “rose grading” or whether the free market can adequately judge the quality of roses, just as it does for all other flowers which do not have grades assigned to them by the state government. It would also be instructive to consider whether other states grade roses and, if not, whether there residents and consumers suffer in any way as a result of a lack of government micromanagement in this area.

Likewise, we would ask the Commission to study whether the TDA should continue licensing grain warehouses or whether the market and legal system can sufficiently regulate this industry. Additionally, if the sole justification for continued regulation of grain warehouses is to assure financial stability, it should be considered whether a less bureaucratic approach of simply requiring warehouses to post a bond and/or maintain a certificate of insurance would be sufficient. This would likely save state funds now being expended on unnecessary inspections and paperwork processing.

¹ See <http://www.sunset.state.tx.us/licensemodel05.pdf>.

Finally, I am enclosing a policy brief entitled “The Preoccupation with Occupational Licensing” that we published, which highlights the cost of licensing schemes such as these and possible alternatives.² It notes that 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.”³ **Furthermore, 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.**⁴

We would note that Governor Rick Perry recently assembled a council to examine the state’s competitiveness in recognition that government overregulation can reduce the innovation of our state’s entrepreneurs and productivity of our workforce. It is through the accomplishments of the private sector--not bureaucratic controls and the overcriminalization of commercial transactions--that Texas has become a global leader in agriculture and can remain on the forefront in this field.

I would be most appreciative if you could share this letter with your colleagues and the appointed members of the Commission. Thank you for your consideration and please don’t hesitate to let me know if we can provide further information to assist the Commission on these issues.

Best Regards,



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² See <http://www.texaspolicy.com/pdf/2007-05-PB23-licensing-ml.pdf>.

³ See <http://www.ftc.gov/be/seminardocs/050515kleiner.pdf>.

⁴ Hammermesh, Daniel, 1993. Labor Demand, Princeton, New Jersey. Princeton University Press. Chapter 3.