



SB 2178: A Preemptive Strike to Strengthen the Lone Star Economy

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Key Points

- Currently it is very difficult for individuals to challenge local licensing laws, which require additional licensing requirements imposed on state-licensee holders by municipalities.
- SB 2178 institutes a judicial relief mechanism to make it easier for state licensees to challenge these types of local regulations and shifts the burden of proof onto local governments to prove that their licensing regulation is sufficiently related to public health and safety.
- If an individual is licensed to practice an occupation at the state level they typically should not be forced to submit to additional licensing requirements at the local level.

SB 2178 would provide a judicial relief mechanism for individuals bearing a state-issued occupational license who face additional licensing requirements in order to practice their trade at the local level. Under SB 2178, if an individual already bearing a state-issued license is forced to acquire a local occupational license by a municipality, that individual is given standing to bring suit against the municipality in district court. This is necessary because the current system makes it very difficult for individuals to effectively challenge local licensing laws.

In the current system, local licensing schemes are subject to rational basis scrutiny in the courts. Under rational basis scrutiny, a state licensee challenging a local ordinance bears the burden of proving that the regulation is not rationally related to a legitimate government interest and the court must presume that the government's justification for a licensing scheme is legally adequate.

SB 2178 would shift the burden of proof from the licensee to the municipality. If the individual can show by preponderance of the evidence that the local licensing regulation "substantially burdens the state licensee's right to engage in an occupation authorized by and regulated under state law," then the municipality is required to establish the necessity of their additional licensing requirements with "clear and convincing evidence," a heightened level of scrutiny which shifts the burden of proof onto local governments to prove that the regulation is sufficiently related to public health and safety ([SB 2178](#)).

If an individual is licensed to practice an occupation at the state level, there should be no reason for that individual to submit to additional licensing requirements at the local level. Startlingly, today nearly one out of every three occupations requires a license, a fivefold increase since 1950 ([Kleiner, 5](#)). Forcing some members of these already burdened occupations to obtain an additional license to work at the local level is doubly onerous and a cruel infringement upon their economic freedom. And it is difficult even to argue that this is done for the public safety, as these are licenses which the state has presumably already imposed requirements on for that very reason. Instead it seems clear that local occupational licensing is done to further limit competition in the marketplace at the local level.

While not a common occurrence in Texas yet, local licensing regulations have been creeping up around in several Texan cities while dramatically expanding around the United States as a whole. As cities throughout America attempt to obtain ever more control over their citizens, occupational licensing looks ever more attractive to local officials. An extreme example of this is Detroit. Detroit maintains its municipal licensing department and requires workers in the city to have licenses specifically for the city. An Institute for Justice report from right before the millennium stated, somewhat incredulously, that "the state of Michigan requires licenses for 205 occupations. An additional 60 or so occupations require licenses from the City of Detroit" ([Berliner](#)). These types of onerous regulations were

one of the prime drivers of Detroit's failure a decade later, a failure that was in many ways the result of massive municipal governmental intervention in the marketplace ([Detroit News](#)).

Unfortunately, Detroit appears not to have learned from its terrible troubles. A recent study by the Mackinac Center describes how Detroit still maintains dozens of additional occupational licenses and convincingly shows how occupational licenses in general, and in Michigan and Detroit specifically, do little to increase the health and safety of the public ([Skorup](#)).

Aside from Detroit many cities require local occupational licenses, including New Orleans, Portland, New York, and Chicago, among many, many others. Occupational licenses are generally a bad thing: they stifle competition, discourage entrepreneurship, artificially raise prices, and slow job growth. Indeed, occupations requiring a license grow approximately 20 percent slower than those that do not ([Summers, 5](#)).

Local occupational licenses have not become a major issue in Texas yet. However, they certainly have the potential to, and SB 2178 head this issue off. ★

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