



## HB 552: A Defense for Economic Rights

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### Key Points

- Nearly 30 percent of occupations require a license. Many of these occupations present no harm to consumers and the licensing requirements are quite arbitrary.
- There is currently no affirmative defense for individuals in Texas who face prosecution for practicing an occupation without a license.
- HB 552 would put in place an affirmative defense for these individuals, requiring licensing authorities to prove in court via a preponderance of evidence that the licensing requirements they have in place are “necessary to fulfill the purpose and intent of the statute authorizing the occupation’s regulation” ([HB 552, 2](#)).

Currently no affirmative defense exists for individuals in the state of Texas who are prosecuted for practicing an occupation without a license. This is a problem which HB 552 corrects by putting in place a legal mechanism affording an affirmative defense to individuals who are practicing occupations such as barbering or cosmetology without a license. If the person charged with practicing without a license can prove in court, with a preponderance of evidence, that the licensing requirements and regulations imposed by the state burden them substantially, then HB 552 would require that the state agency responsible for the licensing requirement show that the regulations they have mandated are “necessary to fulfill the purpose and intent of the statute authorizing the occupation’s regulation” ([HB 552, 2](#)). Put simply, HB 552 shifts the onus onto the licensing authorities, requiring them to prove that the rationale behind their licensing requirements is to safeguard the interests of the state, not to limit competition.

The number of occupations requiring a license has increased fivefold from the 1950s, a rise which several studies have shown limits the growth rate of individual occupations as well as the economy as a whole ([Kleiner, 5](#)). In light of these negative economic effects due to the proliferation of licensing laws, instituting a statutory way to nullify arbitrarily imposed licenses which exist not to protect the consumer, but rather to block competition and control prices, needs to be a priority for the Lone Star State.

In Texas, the legal saga of traditional African hair braider Isis Brantley is well-known. In 1998 she was arrested during an undercover sting by police officers for braiding hair without a cosmetology license ([Brantley, 2014](#)). After successfully challenging that requirement in court Brantley opened up a school to teach traditional hair braiding to others. Much to her surprise the state declared that this school constituted a barber’s school and that if Brantley did not have a barber-instructor’s license her students would not be able to work as hair braiders. Brantley took the state to federal court over this finding and in 2015 U.S. District Court Judge Sam Sparks found that the Texas licensing law failed to “advance public health, public safety, or any other legitimate government interest” before concluding that there is a “logical disconnect inherent in a scheme which contemplates the existence of hair braiding schools but makes it prohibitively difficult for a hair braiding school to enter the market in hair braiding instruction” ([Gershman](#)).

Of course, Brantley’s multiple court battles fighting arbitrary and counter-productive licensing laws were long and costly, and would have been significantly more difficult for her without non-profit legal representation. HB 552 addresses that issue, and the legal mechanism this legislation puts in place will greatly help future Isis Brantleys, streamlining the judicial process in licensing and over-regulation cases and giving state licensing authorities a clear bar to meet in order to establish the necessity of their licenses and show how they protect the public welfare, not license holders’ bottom lines. ★

## References:

- Brantley, Isis. 2013. "[Hairbraiding Is the Latest Civil Rights Struggle](#)." *Huffington Post Blog*, October 11. Updated January 23, 2014.
- Gershman, Jacob. 2015. "[Texas Hair-Braider Who Fought Licensing Rules Wins in Court](#)." *Wall Street Journal*, January 8.
- [HB 552](#). 2017. Introduced. 85th Texas Legislature (R).
- Kleiner, Morris M. 2016. [Reforming Occupational Licensing Policies](#). Brookings Institution.

## About the Author



**J.D. Rimann** joined the Texas Public Policy Foundation as a research analyst in January 2017. Originally from Round Rock, TX, J.D. completed his undergraduate work at the University of Southern Mississippi, where he majored in history, political science, and English. He volunteered in Sierra Leone, Togo, and Congo-Brazzaville with the Christian humanitarian organization Mercy Ships; served as a Texas Governor's Fellow in 2014; and interned in the office of U.S. Congressman John Carter prior to joining the Foundation.

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