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HOW-TO GUIDE

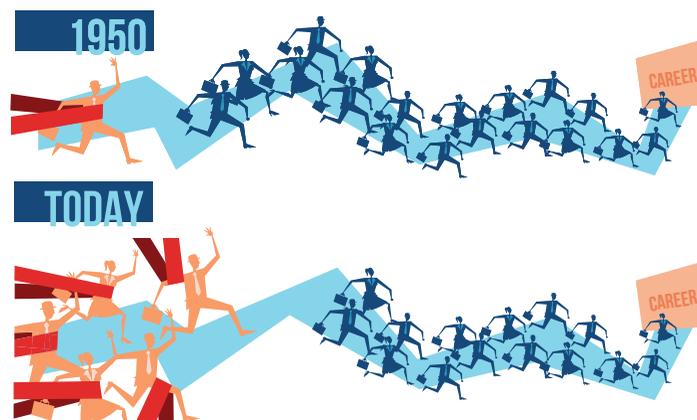
RIGHT TO EARN A LIVING ACT

INTRODUCTION

In April 2016, the Tennessee General Assembly passed the Right to Earn a Living Act. The new law instructs the legislature's government operations committees to conduct a thorough review of Tennessee's occupational licensing laws and offer recommendations for eliminating or scaling back those that are not necessary to protect the health and safety of consumers. This how-to guide can serve as a tool for committee members and other lawmakers as they conduct this analysis and work to prevent such needless mandates in the future.

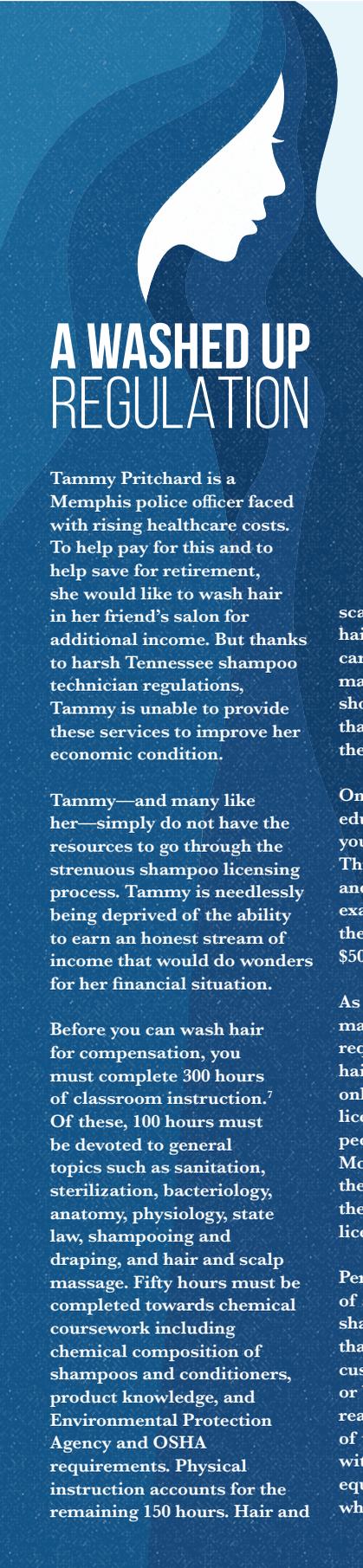
What is Occupational Licensing?

Occupational licensing is a form of regulation requiring individuals to receive government permission to do certain jobs. Historically, occupational licensing was limited to jobs that directly impacted consumers' health and safety. Yet today, 25 percent of the national workforce must acquire an occupational license from government, up from one in 20 in the 1950s.¹



The direction that Tennessee's occupational licensing laws and boards have taken has grossly expanded the original intent of protecting the public welfare. In fact, little to no research exists illustrating that licensing laws actually protect consumers' health and safety. Instead, the data indicates that occupational licensing actually harms consumers by increasing their costs, all the while reducing opportunities for workers. This is especially true for minorities and individuals with lower levels of education.²

Noted free market economist Adam Smith criticized occupational regulations harshly. He described licensing as a means to "limit the number of apprentices per master, thus ensuring higher earnings for persons in these occupations."³ Even the Obama Administration, not typically the biggest advocate for free market ideals, recently came to the conclusion that occupational licensing can impose sizable costs on job seekers and consumers, and that eliminating such irrational regulations would have a positive effect on the economy.⁴



A WASHED UP REGULATION

Tammy Pritchard is a Memphis police officer faced with rising healthcare costs. To help pay for this and to help save for retirement, she would like to wash hair in her friend's salon for additional income. But thanks to harsh Tennessee shampoo technician regulations, Tammy is unable to provide these services to improve her economic condition.

Tammy—and many like her—simply do not have the resources to go through the strenuous shampoo licensing process. Tammy is needlessly being deprived of the ability to earn an honest stream of income that would do wonders for her financial situation.

Before you can wash hair for compensation, you must complete 300 hours of classroom instruction.⁷ Of these, 100 hours must be devoted to general topics such as sanitation, sterilization, bacteriology, anatomy, physiology, state law, shampooing and draping, and hair and scalp massage. Fifty hours must be completed towards chemical coursework including chemical composition of shampoos and conditioners, product knowledge, and Environmental Protection Agency and OSHA requirements. Physical instruction accounts for the remaining 150 hours. Hair and

scalp massage, hair and scalp care, rinsing foreign material from hair, and shop management are items that are covered in this half of the training.

Once you complete your educational requirements, you must take an exam. This exam has both a theory and practical section. The examination fee is \$140, and the license fee is an additional \$50.

As one might expect, the vast majority of states do not require a license to shampoo hair. Tennessee is one of only five states that require a license to do this job that most people do on a regular basis. Moreover, Tennessee ranks as the most burdensome state in the country for its shampoo licensing laws.

Perhaps the worst scenario of allowing an inexperienced shampooer to wash hair is that shampoo gets into a customer's eyes. A barbershop or beauty parlor has every reason to minimize the risk of this happening. Customers with shampoo in their eyes equal displeased customers, which means less business.

Onerous Licensing is Not the Tennessee Way

Tennessee prides itself on being a state that keeps regulation at bay. Yet according to a 2012 report by the Institute for Justice, Tennessee ranks thirteenth in the nation for its level of occupational licensing.⁵ In fact, of the 111 different jobs that require a license in Tennessee, 53 impact low- and moderate-income Tennesseans. As a result of these onerous licensing laws, 15,000 Tennesseans are unable to get a good job.

For those who can enter into these occupations, the costs are often staggering. It takes an average of 222 days and \$218 in fees to get licensed in Tennessee. While policymakers should be applauded for maintaining Tennessee's relatively low taxes and limited government spending, arbitrary laws like these that disproportionately harm the poor are simply deplorable.

Laws and rules impacting occupations are very important to small business owners. In a 2016 study published by the National Federation of Independent Business,

Further, a customer could bring legal action against a firm that is so reckless as to allow this to happen if it causes actual damage.

Shops will have to prepare their shampooers such that they are efficient and understand how to avoid these minimal risks, or else lose customers and potentially face lawsuits. Requiring 300 hours of classroom training and \$190 in fees needlessly limits the number of individuals who can earn money washing other people's hair. This is evidenced by the fact that only only three people have been able to get their license in the last three years.⁸ This law unnecessarily deprives people like Tammy Pritchard of their right to earn a living.

11 percent of small business owners find “obtaining licenses and permits” as a critical issue in operating their business. On a related topic, 33 percent said “unreasonable government regulations” is a critical issue, ranking this problem as No. 2 of 75 concerns.

In this guide, we have included some of the more absurd and draconian occupational licensing laws in Tennessee. Most of the careers we found to be impacted relate to lower income jobs. Individuals wishing to enter these fields often lack the resources to overcome the hurdles that the licensing process creates. Furthermore, the income they will receive once the license is granted may not be sufficient to justify the costs of obtaining it in the first place. These factors stifle entrepreneurship for those of meager means in our state.

How Do We Address the Problem?

First, we must begin by asking the tough questions. Defenders of occupational regulations will argue, despite empirical evidence to the contrary, that consumers would be at greater risk without government control over entry into these careers. A simple look into the relative difficulty of entry into certain jobs makes this explanation suspect. For instance, becoming a certified Emergency Medical Technician (EMT) in Tennessee can be done in six months.⁶ Becoming an auctioneer, however, requires completing an 80-hour educational program, followed by serving two years as an auctioneering apprentice, and finally another educational program of 30 hours. If consumer safety is the sole purpose of these licenses, why is it effectively four times easier to become licensed to perform medical procedures on people than to simply negotiate prices?

This guide should serve as a resource for policymakers who are serious about putting Tennesseans back to work. Unleashing entrepreneurship and allowing Tennesseans to earn an honest living requires a stern look at existing occupational licensing laws, rolling back those that are not absolutely necessary to protect consumer health and safety. It also requires continued vigilance against new proposals that would enact additional barriers to entering certain occupations.

STEMMING THE TIDE

WITH THE RIGHT TO EARN A LIVING ACT

Fortunately, the General Assembly now has a clear mandate to tackle the consequences of occupational licensing. The newly-enacted Right to Earn a Living Act notes that “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right” and that “the freedom to earn an honest living traditionally has provided the surest means for economic mobility.”⁹ As such, the law mandates that the House and Senate government operations committees conduct a thorough review of entry regulations that interfere with the right to earn a living.

The initial process will be as follows:

1. By December 2016, boards and commissions that require a license must submit all existing and pending entry regulations to the chairmen of government operations. This includes any and all activities that the boards or commissions currently characterize as licensed activity.
2. The committees are then free to hold hearings and study those entry regulations; alternatively, the governor or one of his commissioners may request that the committee review a particular occupational licensing regulation.

3. The committees may cast a vote requesting that the pertinent board or commission amend or repeal a given entry regulation if the committee finds that the regulation is not required by state or federal law and that it either:
 - a. Is unnecessary to protect public, health, safety, or welfare;
 - b. Unnecessarily inhibits competition;
 - c. Arbitrarily denies entry into an occupation;
 - d. Has an intended purpose that could be accomplished by less restrictive means; or
 - e. Is outside the scope of the pertinent board or commission's authority.
4. If the licensing agency fails to repeal or modify a regulation per the committees' request within 90 days, the committees may then vote to request that the full General Assembly suspend the agency's rulemaking authority.
5. After conducting their review, the government operations committees will issue a report to the full General Assembly on or before January 1, 2018 outlining its actions and offering opportunities to further scale back existing licensing laws and rules.

This first comprehensive review and report is not the end of the legislature's oversight, however. The Right to Earn a Living Act also requires the review of entry regulations in conjunction with the government operations committees' sunset reviews of boards and commissions. It is imperative that the committees take seriously this important oversight role both during the initial review throughout 2017, as well as on an ongoing basis.

IMPLEMENTING

THE RIGHT TO EARN A LIVING ACT

So, in practice, how do legislators conduct their responsibilities under the Right to Earn a Living Act? The outline below offers a step-by-step guide to making the most out of this important task. These steps are also provided in a checklist format in Appendix A.

What to Demand from Boards and Commissions

The new law requires all licensing authorities to submit existing and pending entry regulations to the committee no later than December 31, 2016.

WHAT IS A LICENSING AUTHORITY?

A licensing authority is any executive branch entity that issues licenses, certificates, registrations, certifications, permits or similar documents to a person wanting to enter an occupation or professional group, with the exception of health-related occupations.

WHAT IS AN ENTRY REGULATION?

This could be an actual rule promulgated by the licensing authority that regulates entry into or continued participation in a job, as well as any policy or practice by a licensing authority that impacts a person's entry or continued participation in a job.

LOCKED OUT OF A JOB

To become a locksmith in Tennessee, you need to be at least 18 years old.¹⁰ You must first engage in 30 hours of general education along with one hour for each of 10 specific categories, such as vehicle lock service, master keying, safe combination locks, etc. After this education, you must complete 40 hours of experience in general locksmithing, as well as 10 hours of automotive work and 10 hours of safe and vault work.

You'll then have to pass an examination. Once you have passed the exam, you will need to provide fingerprints, for which the fee is \$38. Other fees include \$75 for the application, \$25 for the license, and \$25 for the identification card. If you want to add a higher classification to your license, that will cost you \$25 per classification. The license must be renewed every two years, which costs \$175 and requires 12 hours of continuing education.

These regulations undoubtedly discourage many from engaging in this career

Questions to Ask in Hearings

Now that the committees have obtained all relevant entry regulations, the next step is to hold hearings to gain a better understanding about those regulations, and to ensure that they exist to protect consumers' health and safety, not to protect some in an industry from competition.

The following questions can assist the government operations committees in their reviews of entry regulations. Committees that are reviewing new proposed licensing regulations can also use a variation of these questions for their own analyses:



Origin and Necessity of the Rule

- How did the rule, policy, or practice originate?
- What specific risks were being addressed by the regulation to protect consumers' health or safety, and what data points existed at the time of its adoption?
- Which parties supported and opposed the regulation, and what justifications did they offer at that time?
- Did the agency receive consumer feedback, industry feedback, or both?
- What studies or review has the agency conducted since the regulation's enactment to determine whether it is in fact protecting consumers' health or safety?
- Did the agency consider less restrictive means to regulate the occupation, such as certification, registration, bonding or insurance, inspections, or actions under the Consumer Protection Act?
- If the activity was not being conducted in exchange for pay, was that considered?



Complaints and Enforcement

- How many complaints has the board, commission, or department received the past three years?
- How many are consumer complaints and how many are from within the regulated industry?
- What licensing enforcement mechanisms already exist or are being proposed, and how often are they used?
- What was the program's revenue per license the past three fiscal years, excluding civil penalty revenue? What were the total and average amounts, by year, of civil penalty revenue received by the program for the past three fiscal years?
- What were the details of the top 10 most

path. Those who benefit from these laws are the established locksmiths who want to limit competition and the government bureaucracy that administers the rules. If you hire a locksmith who shows up and cannot do the job properly, you can simply refuse to pay him. Then, if you so desire, you can spread the news that this particular firm has incompetent employees. You can write bad reviews on Yelp and Google. If the locksmith damages your lock, you can demand that the firm compensate you, or else take them to court.

A locksmith firm has a strong incentive to ensure that all its employees are well trained and will not damage customers' locks, as a good reputation is vital for a business to survive. The company may provide in-house training or allow for another party to train its employees, but the government need not micromanage this process. Private firms are able to ensure that their employees are sufficiently trained and likely in a far more efficient manner than the current regulations allow. This seems to work well in most states, as Tennessee is one of only 13 states that require locksmiths to acquire licenses.

egregious violations of the regulation during the past three fiscal years?

- How many people have been cited for not having a license?
- Is it a crime to perform the activity without a license?
- How many formal hearings have been conducted the past three years?
- What is the method the board or commission uses to assess civil penalties?
- Does the program offer alternative disciplinary options or warnings—like agreed citations, letters of warning, or alternative dispute resolutions rather than fines—to allow individuals to restore good standing?
- Are there existing remedies for misrepresentation of work or fraud in Tennessee's Consumer Protection Act? What information exists at the Better Business Bureau, and to what extent does caveat emptor play a role in any alleged discretions?
- What type of outreach or communication is done to educate the public, consumers, or license holders on common complaints?



Impact of Regulation: Costs, Licensing and Education Requirements, and Fees

- What impact has the rule had on consumers' costs? Has it impacted the cost of doing business, and if so, how much?
- How much have your fees or fines risen over each of the past 10 years? How much were the fees initially, and how much are they today?
- Are there additional fees above licensure?
- How many individuals have been affirmatively denied a license to enter the occupation(s) regulated by the agency? And for what reasons were those licenses denied?
- How many new applications have been received, by year the past three fiscal years, and what is the total number of licenses granted the past three fiscal years?
- Do the licensing fees and penalties from this regulation generate general operations funding to your agency?
- What are the educational requirements (hours necessary, one-time, or on a recurring schedule)? Can the licensing and education be conducted online or is travel necessary?
- What occupational licensing do Tennessee's eight bordering states specifically require in this field, if anything? Compare and contrast any fees and educational requirements with those bordering states.

- Does comparative state or national data exist on consumer pricing for the product or service in Tennessee?
- How many total states license the activity, and how many impose a less restrictive method of regulating the industry? Did the agency consider less restrictive means to regulate the occupation, including certification, registration, bonding or insurance, inspections, or enforcement under the Consumer Protection Act?
- Are there for-profit schools that teach the required curriculum? How much do they cost? How long does it take for a person to get the required educational hours? How much of the required educational curriculum is “practical,” that is, the person just doing the job in a school setting. Why can’t that person get the practical training on-the-job, where he or she is getting paid for work instead of paying to work.



Board Role

- What is the organizational chart of the board, and how many program staff are serving?
- How many board members are serving and how long have each of those board members served?
- How many vacancies exist on the board, and for how long have they existed?
- What was the total number of board meetings held by year for the past three fiscal years?
- What was the board attendance percentage during the last year? Have any members of the board served more than two terms, and if so, who and how many?
- What percentage of the board or commission is made up of participants in the field? What percentage is made up of consumers?
- How many of the people on the board or commission own shops that sell the licensed product or service? How many own schools that teach the required educational curriculum for a potential licensee?

How to Implement Less Restrictive Means

One of the most important aspects of the Right to Earn a Living Act is the focus on less restrictive regulations. Licensing is not the only way to protect consumers’ health and safety. In fact, there are numerous tools at policymakers’ disposal when it comes to balancing the protection of consumers with the right to earn a living.

Other, less restrictive means of protecting consumers often strike a better balance, allowing people to get a good job while also advancing consumer health and safety. During the course of their review, the committees should carefully consider whether any existing entry regulation could be replaced with one of the following less restrictive means.

MARKET COMPETITION & SELF-REGULATION:

Generally, market competition will suffice at protecting consumers. Markets tend to self regulate, providing consumers with information needed to make informed decisions. For example, ridesharing and short-term home rental services allow consumers and providers of those services to rate one another. Consumers can see these reviews, and both providers and consumers can be barred from using these services if they receive consistently poor ratings. This ensures quality and protects future consumers from bad actors.

CONSUMER PROTECTION ACT:

The state has a consumer protection law that seeks to prevent deceptive practices. Oftentimes, the Consumer Protection Act alone can provide consumers with the adequate resources to protect themselves from unscrupulous actors.

INSPECTIONS:

This type of regulation lies at the heart of consumer health and safety, allowing a government agency to inspect to ensure that health codes are met. For example, chefs are not required to obtain a license in Tennessee even though they handle food and could easily make a person sick if they do not handle it properly. However, their kitchens are subject to health inspectors to ensure public health and safety, a less restrictive but perhaps even more effective means to regulate chefs.

BONDING OR INSURANCE:

Many jobs require the practitioner to obtain a bond or insurance in order to participate in the trade. This ensures that if harm or damage is done, consumers can recoup their losses either from the person directly (in the form of bonding) or one's insurance company. Locksmiths, for example, could be required to obtain a bond or a certain level of insurance coverage, so that if they damage a person's property, that person can recoup the costs associated with that damage.

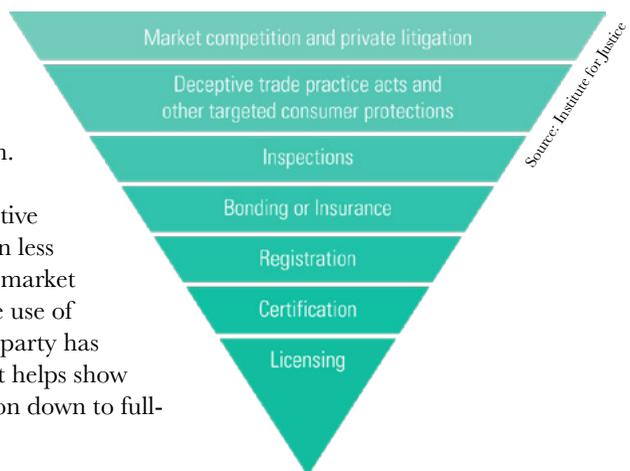
REGISTRATION:

This requires a person to file his name and address with the pertinent government agency. Registration allows consumers to see who is holding themselves out as a practitioner in a given occupation, see a description of that person's services, and know where he can receive service of process if they ever have to take legal action against that person.

CERTIFICATION:

This is the practice of adding "certified" (or sometimes "registered," though not to be confused with registration above) before certain terms, otherwise known as a titling act. These titling acts convey to consumers that the person has undergone additional training or practice. For example, one must complete additional requirements to call herself a "registered interior designer," though she does not have to obtain a license to practice interior design. Thus, unlike licensure, certification is voluntary and does not limit a person's entry into a given occupation; it merely limits the title that can be used to describe oneself within that occupation.

Committee members should seek to impose the least restrictive method of regulation on those in an occupation that also allows for the proper amount of consumer protection. Thus, the above alternatives should be viewed as moving from the least restrictive to the most restrictive. In addition, even less restrictive means of regulation involve market competition, or self-regulation, and the use of private civil actions in court when one party has harmed another. The chart to the right helps show the preference, from market competition down to full-blown licensure.



THE DAMAGE IS MORE THAN SKIN DEEP

According to information in the Beauty Schools Directory and Department of Labor Statistics, “One of the fastest growing careers in the United States is the field of aesthetics, or professional skin care. The U.S. Bureau of Labor Statistics estimates job growth of 25 percent by the year 2020 nationwide, and nearly 30 percent in Tennessee.”¹¹

Despite rapid growth that indicates a demand for skin care services, there are burdens placed on those wanting to enter the field. On top of that, the growth is only open to those who are privileged enough to buy into the profession. All totaled, one must pay fees of \$240.¹² Furthermore, the 750 hours of training is no small amount of time to give up for say, a single mother, or someone working full-time or who has multiple jobs.

If you worked eight hours a day, five days a week on this training, you would not be done until April Fool’s day if you began before Christmas. But, let’s assume that a single mother or two-job holder wants this training. Perhaps she can only work four-hour days, or 20 hours a week. This training would take these individuals more than half a year. This 750-hour requirement may seem like a reasonable number to legislators and regulators until it is considered from the perspective of those who do not have much time to spare.

What the Committee Report Should Cover

Once the committee has conducted its review of all submitted entry regulations, held hearings with the pertinent boards and commissions, and considered which entry regulations should be repealed or modified, it is time to compile a report for the full General Assembly. The report is due no later than January 1, 2018 and should include the following items, which are also offered in a checklist format in Appendix B.

- The full list of entry regulations submitted by each agency, including what activity those regulations cover.
- A summary of each hearing associated with those entry regulations.
- Any recommendations that the agency repeal or modify a regulation, the committees’ reason for such recommendation (and a suggested less restrictive means to regulate that occupation), and any agency response thereto.
- For those that cannot be repealed or modified by the agency because it is required by state or federal law, a recommendation for repeal or modification to the full General Assembly, along with the committees’ reason for such recommendation and a suggestion for a less restrictive means to regulate that occupation.

How to Conduct Ongoing Sunset Review Hearings

While the bulk of the government operations committees’ work is complete upon submission of the full report above, its role in reviewing entry regulations continues. The Right to Earn a Living Act directs the committees to obtain new entry regulations in advance of each agency’s sunset hearing. The committees should consider the same evaluation process outlined in this how-to guide to determine whether those new entry regulations are necessary or whether they could be replaced with a less restrictive method for protecting consumers. Careful attention should be paid to new entry regulations on an ongoing basis, so that Tennesseans’ right to earn an honest living is not overlooked in ensuing years.

How to Recognize and Prevent Passing Unnecessary Licensing Laws in the Future

Despite the evidence that licensing laws frequently fail to protect consumer safety, those who would benefit economically from such laws continue to urge lawmakers to pass new licensing schemes. In the 109th General Assembly, there were numerous proposed bills to enact a new licensing requirement on top of the 111 that already exist. Inevitably, those who will seek to shelter themselves from competition will continue to pursue licensing laws to do so.

Any time lawmakers are confronted with a new licensing law or additional regulations to existing licensing laws, they should carefully review the changes and thoroughly question the proponents about the true motivation behind such proposal. The “Questions to Ask” section above offers a good starting point for lawmakers to understand why a new licensing regulation is being proposed and whether it should be enacted to protect health or safety.

CRIMINALIZING COMPASSION

Martha Stowe grew up riding horses on her grandparents’ ranch in Colorado. She and her husband moved to Tennessee 18 years ago for his music career. She began working with horses again, opening a training and boarding facility. Soon thereafter, her husband spent a tour in Afghanistan with the Army for 18 months. Shortly before he departed, he had arranged for Martha to receive a Myo Fascial Release (MFR) massage for an old horseback-riding related neck injury she sustained as a child. MFR is a very specific massage technique. For the first time in her life, Martha’s pain from her old injury ceased, motivating her to look into the practice and begin training in MFR for her horses.

For the next two years, she used the MFR technique to help her own horses and those that boarded at her farm. By the time her husband returned from the war, her business was booming and she was overwhelmed running both her career, farm, and household. Her husband was mentally exhausted from the war and struggled with war-related challenges that required

therapy and rest. Due to all of these factors, the couple decided that Martha would become the primary breadwinner for their household, while her husband ran the farm.

That all came to a halt when the state board of Veterinary Medicine sent her a cease and desist letter, alleging that Martha’s horse massage therapy was the practice of veterinary medicine. Martha cares deeply for her horses and those of her clients, but she is clearly unable and uninterested in spending years in veterinary school at a cost of more than \$100,000. So she now faces losing the business she has worked so hard to build. Martha’s story shows that the issue of occupational licensing is not limited to just the existence of licensing laws for jobs that should not require a license. It also involves overzealous and powerful boards that can, with the wave of a wand, put real-life Tennesseans like Martha out of business. Martha was living the American Dream, and compassionately helping horses in the process. The government should protect that, not destroy it.

DEEPER REFORMS

TO PROTECT THE RIGHT TO EARN A LIVING ACT

The Right to Earn a Living Act is a great first step at protecting Tennesseans' ability to climb the economic ladder free from unnecessary and perhaps unconstitutional regulation. However, a recent decision by the U.S. Supreme Court underscores the need for even more reforms to ensure that occupational regulations are indeed designed to protect consumers' health and safety, not used as a blunt instrument to impede competition.

In *North Carolina Board of Dental Examiners v. Federal Trade Commission*, the Supreme Court held that if a state licensing board is made up predominantly of those in the occupation the board regulates, it may violate federal anti-trust laws. Such violations may invoke treble damages (three times ordinary damages) and even criminal sanctions. It is important that the General Assembly review all state licensing agencies and determine whether these agencies are controlled by individuals regulating their peers in their own profession. Care should be taken to reduce the number of interested parties and increase the number of disinterested consumers serving on the boards. Further, care should be taken to ensure that, even if properly constituted, these boards are both necessary in their existence and do not use their authority to pass anti-competitive regulations. It is also important for the General Assembly to ask whether the existing composition of a board is required as a matter of state law.

CONCLUSION

The ability to follow one's desired career path without encountering unnecessary government hurdles is an essential freedom. It is, after all, what Thomas Jefferson meant when he spoke in the Declaration of Independence of the right to pursue happiness. The licensing regulations we detailed in this report need to be diminished if not repealed altogether if we are to preserve that right. And the legislature, starting with the government operations committees, should fully embrace its role in stemming the tide of unnecessary occupational licensing laws.

Training programs will likely still exist in many of these fields even without government mandates. But that training will have to be chosen by the market, which will make it far more efficient and less bureaucratic. As long as a properly functioning legal system exists, the market can self-regulate. While there is a stronger case to be made for government regulation of occupations in the medical field, none of the fields in this report fall into that category. The risk of a bad haircut or a slow talking auctioneer is not sufficient reason for government to micromanage professions.

In addition to market competition, there are less restrictive means to regulate various occupations in a way that protects consumers. If the market alone fails to ensure the health and safety of consumers, lawmakers and regulators should consider other options such as voluntary certification, registration, bonding and insurance, inspections, deceptive trade practice laws, and private civil action in courts. These methods can protect consumers while still preserving Tennesseans' right to earn an honest living.



About NFIB

NFIB is the nation's leading small business association, with offices in Washington, D.C. and all 50 state capitals. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB gives small- and independent-business owners a voice in shaping the public policy issues that affect their business. NFIB's powerful network of grassroots activists sends its views directly to state and federal lawmakers through our unique member-only ballot, thus playing a critical role in supporting America's free enterprise system. NFIB's mission is to promote and protect the right of our members to own, operate and grow their businesses. More information about NFIB is available at www.NFIB.com.



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Guarantee of Quality Scholarship

The Beacon Center of Tennessee is committed to delivering the highest quality and most reliable research on Tennessee policy issues. The Center guarantees that all original factual data are true and correct and that information attributed to other sources is accurately represented. The Center encourages rigorous critique of its research. If an error ever exists in the accuracy of any material fact or reference to an independent source, please bring the mistake to the Center's attention with supporting evidence. The Center will respond in writing and correct the mistake in an errata sheet accompanying all subsequent distribution of the publication, which constitutes the complete and final remedy under this guarantee.

APPENDIX A

IMPLEMENTING THE RIGHT TO EARN A LIVING ACT

Did the agency submit all pertinent entry regulations prior to its deadline?

- Yes
- No

Did the government operations committee hold a hearing to address those entry regulations?

- Yes
- No

Did the committee determine that the regulation can be modified or repealed by the agency because it is not required by state or federal law and (only one must be checked):

- Is unnecessary to protect consumer health or safety.
- Serves to unnecessarily inhibit competition.
- Arbitrarily denies entry into the occupation.
- Could be accomplished by a less restrictive means.
- Is outside the scope of the agency's authority.

If there is there a less restrictive means to regulate those in the occupation short of full-blow licensure, which method should be considered (in order from least to most restrictive)?

- Market Competition
- Private Civil Actions in Court
- Consumer Protection Act
- Inspections
- Bonding/Insurance
- Registration
- Certification

Can the agency itself repeal or modify the entry regulation to comply with the committees wishes?

- Yes (If yes, the committee should vote to request the repeal or modification.)
- No (If no, the committee should consider including the repeal or modification recommendation in its report to the full legislature.)

APPENDIX B

REPORTING TO THE GENERAL ASSEMBLY

The Government Operations Committee report should include the following:

- A full list of all entry regulations submitted by each agency.
- A summary of the committee hearings for each agency.
- A list of recommendations made to the agency for which entry regulations should be repealed or modified; the less restrictive means of regulation the occupation suggested; and, if applicable, the agency's response to the recommendation.
- A list of recommendations made to the General Assembly for entry regulations that cannot be modified or repealed directly by the agency, along with the committees' suggestion for a less restrictive means of regulating the occupation.

Endnotes

1 Jeffery Zients and Betsy Stevenson, “Trends in Occupational Licensing and Best Practices for Smart Labor Market Regulation.” White House Blog, July 28, 2015. <https://www.whitehouse.gov/blog/2015/07/28/trends-occupational-licensing-and-best-practices-smart-labor-market-regulation>.

2 Dick Carpenter and Lee McGrath, “The Balance Between Public Protection and the Right to Earn a Living.” Institute For Justice, January 2014. http://ij.org/wp-content/uploads/2015/03/resource_brief_070214RASTERb.pdf.

3 Edward Timmons and Anna Mills, “Bringing the Effects of Occupational Licensing into Focus: Optician Licensing in the United States.” Mercatus Center, February 2015. <http://mercatus.org/sites/default/files/Timmons-OpticianLicensing.pdf>.

4 “Occupational Licensing: A Framework for Policymakers.” White House Policy Report, July 2015. https://www.whitehouse.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

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