

HB 1158'S PROMISE: MORE ARKANSAS JOBS, LOWER ARKANSAS PRICES



By Dan Greenberg

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The Arkansas General Assembly has an historic opportunity to lower prices for consumers and create more jobs – by reforming occupational regulation through Rep. Richard Womack's HB 1158.

This bill does just one thing: it provides a defense for aspiring workers and entrepreneurs when regulators call them into court. The defense created by HB 1158 protects Arkansans from regulators who wrongly enforce licensing laws in ways that go beyond what the legislature intended.

HB 1158 has no effect on any reasonable regulation that protects health and safety. In fact, it likely won't have any immediate large-scale effect at all. What it would likely do is allow people to defend themselves against unreasonable or anti-competitive occupational regulatory enforcement that cannot be justified on health or safety grounds when a less restrictive regulation – such as inspections or bonding – is available. Regrettably, Arkansas's economy has been victimized by excessive and overzealous occupational regulation more than almost any other state in America. *In 2012, the Institute for Justice determined that the state of Arkansas has the second most burdensome set of barriers to job entry in the nation and is the fifth most extensively licensed state in the nation.* In short, although Arkansas should be a land of opportunity, it is instead a land of licensure.

Here are just a few examples from the Institute for Justice's report, *License to Work*, about the way that our state regulates people out of work:

- Most states don't regulate plant nursery workers or landscape contractors. Arkansas is one of the two states in the nation that requires the purchase of a license by those who want to transplant trees or shrubs.
- Most states don't regulate funeral attendants. Arkansas is one of the nine states that requires the purchase of a license by people whose job it is to dim the lights, escort mourners, and move caskets.
- Arkansas workers arguably don't need to have five years worth of education and experience to be a drywall contractor. With respect to residential drywall contractors, Arkansas charges three times as much as any other state for licensure and fees. Putting up drywall in Arkansas requires more contractor time and

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education than just about any other state – we are tied for worst place with Maryland.

- Thirty-four states require licensure to work as a door repair contractor. But two-thirds of those 34 licensing states require no education or training. With respect to door repair, Arkansas has the most burdensome occupational regulations in the nation. Here in Arkansas, we demand five years of education and training before you can lawfully agree to repair an automatic door.
- Arkansas requires much more education and experience in order to be a manicurist than almost any other state – 140 days lost – which gives us the second most burdensome set of requirements for manicurists in the nation. We require less than a quarter of this time to serve as an emergency medical technician (namely, 28 days). Think about the demands that we make of emergency medical technicians, then think about the demands that we make of manicurists. Does it really take 140 days – four times as much education and experience – to learn how to give a manicure?

In short: Arkansas is close to the top of the list of job-destroying regulations. We need to be at the top of a different list. Arkansas should be at the top of the list when it comes to job creation and economic freedom. Regrettably, our state's overzealous occupational regulators serve as a blockade between those who want to work and their goal of economic opportunity.

HB 1158 provides an escape from this regulatory morass. It gives those who want to work for a living just one thing: their day in court. It would establish in state law that every Arkansan has the right to practice a legal occupation, in much the same way as Rep. Bob Ballinger's proposed Conscience Protection Act (HB 1228, which the House passed Friday, 72-20) would statutorily protect religious freedom. When people who want to work are foiled by unreasonable regulations, HB 1158 allows you to defend your right to make an honest living before a judge. Notably, the bill doesn't create a new ground for suit or a new cause of action: it only creates a new defense.

HB 1158'S CAREFUL, CONSERVATIVE REFORM PLAN

HB 1158 would provide a defendant who faced a regulatory penalty an additional defense, but only if that defendant could show in court that some specified rule or regulation makes doing his or her job very difficult or very costly. It is only then that a regulatory agency would have to defend the regulation. To put it another way: if a defendant can't initially demonstrate in court that the requirement is unreasonable, this bill would have no regulatory consequence at all. Indeed, here is the only effect this bill might ever have: if the defendant wins, he or she would get to continue working, because

this bill provides for no damages. Because the ruling applies only to that defendant, and not to third parties, this is a regulatory reform that will not create large-scale, immediate deregulatory disruption. Indeed, HB 1158 is arguably a more careful and conservative approach than broad-based deregulatory changes.

The most likely effect of HB 1158, in the event that a defendant won his or her case, is that it might occasionally convey to a regulatory agency that it needs to go back to the drawing board and come up with a new regulation that genuinely protects health and safety. If a defendant conducts a successful defense, rulemakers have plenty of time to produce appropriate regulations, because (to repeat) the successful defense in question only applies to that one defendant.

THE FEAR TACTICS OF HB 1158'S OPPONENTS

Opponents of this bill have produced an avalanche of misinformation. For instance, when speaking to the House Public Health Committee, the head of the state board of public accountancy (Jimmy Corley) told the committee that the bill would allow people without CPAs to hold themselves out as CPAs. Corley was wrong: such conduct is specifically disallowed by the bill.

A representative of the state bar association, Arkadelphia lawyer Tom Curry, also repeatedly misled the Public Health Committee. Curry claimed that, under HB 1158, lawyers and CPAs would no longer need a license; apparently, Curry had failed to read the portion of HB 1158 that exempted fiduciaries entirely from its scope. (Lawyers and CPAs are fiduciaries.) Curry then built upon this misunderstanding by informing the committee that the portion of the bill that affected the regulation of lawyers was likely unconstitutional. (Again, the bill's exemption for fiduciaries ensures that it does not affect attorney licensure in any way.) Curry then mistakenly argued that, if HB 1158 passed, that "this legislature gives up the right to regulate professions and occupations," despite the fact that HB 1158 expressly provides a method for the legislature to regulate professions and occupations. Curry also falsely claimed that the bill before the committee would expressly require the government to demonstrate a "compelling state interest" when reviewing regulations (language which triggers the highest level of judicial scrutiny); Curry was flatly wrong, because the bill in question contained no such language. Finally, Curry groundlessly claimed that regulatory boards would be unable to penalize rule-breakers if the bill passed, a conclusion which cannot reasonably be drawn from HB 1158. Curry's repeated misrepresentations before the Public Health committee serve as something like a symbol of the misinformation campaign on HB 1158 that special interest groups have presented to lawmakers.

Another witness before the committee – electrician David Stevens – argued against the bill by explaining that regulations controlling the licensure of electricians are

designed to protect the consumer. Stevens then provided an example of Arkansas's consumer protections: he explained that anyone who wants to move to Arkansas from another state and become a licensed electrician has to demonstrate 16,000 hours of on-the-job training. To put it another way, Stevens put forth the *eight years of job experience* that is required by Arkansas law in this case prior to being allowed to work as an electrician as a *defense* of the existing system. No doubt, Stevens honestly believes that this eight-year requirement is the best way to protect the consumer; however, those who are genuinely concerned about consumer welfare might instead conclude that an eight-year barrier to entry is the kind of overregulation that harms both workers and consumers by creating labor shortages and higher prices.

Admittedly, some lobbyists oppose this bill. Some people will always oppose any deregulatory measure, for much the same reason that a businessperson will not particularly like the result when a second businessperson offers a competitive product or service. Few businesspeople really want competition, and some businesspeople might even look favorably on regulations that push competitors out of markets. But if there is another reason to oppose this bill beyond antipathy towards the competitive prices and services that consumers are entitled to, HB 1158's opponents appear unable to provide it.

CONCLUSION

Even President Obama, hardly an advocate of unfettered free markets, recently proposed \$15 million in new federal spending to study the economic impact of occupational licensing. The recognition that overzealous occupational regulation can sometimes have a destructive force is a bipartisan concern; it reflects acceptance of the reality that sometimes government can grow too big and regulate too much. We live in a state in which overregulation is commonplace, and in which relief for those who are overregulated is rare and intermittent. Occasional regulatory relief for one particular profession is welcome, but such relief creates its own problem if it persuades lawmakers that the blight of overregulation has been addressed. Policymakers should remember that the decline of occupational freedom is a systemic problem that will not be resolved with proposals that free up only one line of work. A consensus is forming that occupational overregulation is a nationwide problem: HB 1158 is a careful and conservative solution to occupational overregulation's erosion of employment opportunity and consumer welfare in Arkansas.

Dan Greenberg, a lawyer and former state legislator, is president of the Advance Arkansas Institute.