

- SUBJECT:** Sunset review of occupational licensing regulation
- COMMITTEE:** Government Efficiency and Reform — favorable, without amendment
- VOTE:** 7 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Taylor, Scott Turner, Vo  
0 nays
- WITNESSES:** For — Vikrant Reddy, Texas Public Policy Foundation; (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business; John Colyandro, Texas Conservative Coalition; David Mintz, Texas Apartment Association; Hector Uribe, Texas Independent Roofing Contractors Association, U.S. Hispanic Contractors Association, and Hispanic Contractors Association de Tejas)  
  
Against — (*Registered, but did not testify*: Trish Conradt, Coalition for Nurses in Advanced Practice; Michael Cunningham, Texas State Building and Construction Trades Council)
- DIGEST:** HB 86 would require the Texas Sunset Commission to use certain criteria when conducting a Sunset review of an agency that licensed an occupation or profession and would allow a lawmaker to submit for review and analysis any proposed legislation that would create a new or significantly modify an existing occupational licensing program.
- New review criteria.** HB 86 would require the Sunset Commission, in assessing an agency that licensed an occupation or profession, to consider:
- whether the licensing program served a meaningful, defined public interest and provided the least restrictive regulation to do so;
  - the extent to which the objective of the occupational license and regulation could be accomplished through market forces, private or industry certification and accreditation, or enforcement of other law;
  - the extent to which licensing criteria, if applicable, ensured that applicants had occupational skill sets or competencies that aligned with a public interest and the impact the criteria had on applicants,

especially those with moderate or low incomes seeking to enter the occupation; and

- the impact of the regulation, including the extent to which it stimulated or restricted competition and affected consumer choice and the cost of services.

**Preview of proposed legislation.** HB 86 also would allow legislators to request that the commission review and analyze proposed legislation that would create an occupational licensing program or significantly amend an existing one. The request would have to be submitted by December 31 of an odd-numbered year. The commission's chair could deny a request on the recommendation of the executive director.

In analyzing legislation that proposed creating an occupational licensing program, the commission would determine whether:

- unregulated practice of the occupation was inconsistent with the public interest;
- the public could reasonably be expected to benefit from an assurance of initial and continuing professional skills or competencies; and
- the public could be more effectively protected by means other than state regulation.

"Public interest" would be defined as protection from a present and recognizable harm to the public health, safety, or welfare, not including speculative threats or other non-demonstrable menaces. The term "welfare" would include the financial health of the public when the absence of governmental regulation unreasonably increased risk and liability to broad classes of consumers.

A report reviewing and analyzing legislation that proposed regulating an occupation would have to be submitted to the Legislature before the start of the next legislative session with the commission's findings on the need for and the type of regulation recommended. A report on proposed legislation that would amend an existing occupational licensing program would have to be submitted before the start of the next session with the commission's findings on the need for the legislation.

The bill would take effect September 1, 2013.

SUPPORTERS  
SAY:

HB 86 would help rein in the state's extensive occupational licensing requirements. Texas currently regulates more than 500 types of occupations. The Texas Department of Licensing and Regulation administers 29 of these occupations, from auctioneers to hair shampooers, while others are regulated by a long list of agencies and boards. All told, nearly one-third of the Texas work force works in a business or occupation regulated by the state.

HB 86 would pave the way for a reduction in these regulations by incorporating new criteria for evaluating occupational licensing during Sunset review and by enabling lawmakers to request review of proposed legislation – so-called "sunrise review" – on new licensing programs or major changes to existing ones. Similar approaches in other states have provided a check on the growth of occupational licensing.

Reducing unnecessary occupational licensing programs would mean fewer obstacles to new entrants to a profession. This would benefit the young and those with less education or low or moderate incomes. The average licensee in Texas pays \$304 in fees and must complete 326 days of training and two exams before qualifying for a license. Ex-offenders would gain from decreasing the burden of occupational licensing because agencies frequently bar those with criminal records, even for nonviolent crimes or crimes that occurred many years ago. High barriers to entry also stifle innovation because they limit participation from new professionals who otherwise might introduce new ideas and practices.

Many of the same functions performed by occupational regulation — upholding a standard of quality for professionals, providing consumers with information, and disciplining bad actors — could be performed through other means. Statewide and national industry associations frequently provide accreditation and opportunities for continuing education. Consumers may easily find information about the quality of goods and services from online and other sources. If consumers have been defrauded they have recourse through the courts and a number of laws that safeguard the public, such as the Texas Deceptive Trade Practices Act.

Some professions regulated in Texas are not regulated in other states and yet studies have found no significant gap in the quality of work. Studies have shown, however, that professionals benefit from occupational

licenses by earning 10 percent to 12 percent more than their unlicensed counterparts, a difference passed on to consumers in higher prices. The fees agencies charge licensees also are passed on to consumers.

HB 86 would not require lawmakers to seek reviews before proposing legislation related to occupational licensing, but merely would enable them to ask the Sunset Advisory Commission to evaluate prospective legislation. HB 86 also would refocus Sunset reviews on ensuring that occupational licensing programs did not serve just the interests of the regulated industry but upheld the public health, safety, and welfare.

**OPPONENTS  
SAY:**

HB 86 is unnecessary because the Sunset Commission already adequately reviews occupational licensing programs and has a statutory duty in Government Code, ch. 325 to recommend abolishing or continuing an agency's functions, including licensing programs. The state should err on the side of caution when the public's safety and welfare are at stake. Legislators should consider reforms of occupational licensing with the aim of strengthening and preserving, rather than dismantling, the regulatory structure.

Occupational licensing gives consumers a trustworthy standard of quality and provides the public a level of protection unmatched by industry certifications and accreditations. Agencies can take enforcement action against offenders with cease-and-desist orders, fines, and other sanctions, giving the state the power to establish serious deterrents against harmful professional negligence. Occupational licenses also give agencies the power to conduct comprehensive criminal records searches, defending citizens from dangerous or fraudulent actors.

Alternative licensing and accreditation programs may not be feasible for every industry. Some do not have organizations with a uniform standard for licensing or certification, forcing consumers to sort through a patchwork of standards and information. With state licensing, agencies seeking to protect the public can gather information about competing standards and accreditations and choose those that provide the highest level of assurance of practitioner competence.

Curtailing occupational licenses would be unfair to those investing time and money to pursue professional qualifications through education, on-the-job training, and examinations. Past and present practitioners of many

of these occupations have met a high standard of proficiency. New entrants not held to these same standards could fall below consumers' expectations.

**OTHER  
OPPONENTS  
SAY:**

HB 86 would not go far enough. The bill should require all new proposed occupational licensing programs and any significant changes to those programs to go through a preview or "sunrise review," rather than having this only as an option. Members of the Legislature interested in introducing or amending occupational regulations could be reluctant or otherwise fail to request an evaluation of prospective legislation.

Also, it could be infeasible for some lawmakers, such as those newly elected, to submit a request for a report from the Sunset Commission by December 31 of an odd-numbered year. Reports could be outdated by the time they were produced for the legislative session.