

Licensing of Foundation Repair Contractors

Bill Analysis: House Bill 613

by Marc Levin, director of the Center for Effective Justice

House Bill 613 (HB 613), by Representative Rob Orr, proposes to license a new occupation in Texas: foundation repair contracting.¹

The “dead-weight loss” to society from occupational licensing throughout the United States has been estimated at between \$34.8 and \$41.7 billion.² A 2012 report from the Institute for Justice ranked states by the average burden of their licensing requirements, and it named Texas the 17th most burdensome state in America.³

In many economic freedom indicators, Texas ranks at or near the top of the nation,⁴ but when it comes to the economic freedom to practice a profession, Texas’ ranking is mediocre.⁵

Bills like HB 613 are part of the problem. HB 613 creates new licenses which raise the cost of doing business, and consequently, raise prices for consumers. There is ample evidence that occupational licensing increases the prices of goods and services; there is scant evidence that it improves the quality.⁶ As economist Adam Ozimek has explained:

In medicine there are studies showing that malpractice insurance premiums aren’t lower in states with occupational licensing, which you would expect if licensing was increasing service quality. There is evidence that nurses provide providing [sic] primary care services as effectively as doctors. There are the studies showing that licensing and certification for teachers do not improve outcomes. This is unsurprising given that in most cases how one qualifies for a license is strongly influenced by or even directly set by some group representing the interests of the industry.⁷

No evidence has been presented to suggest that Texas consumers would benefit from HB 613. Indeed, existing evidence in other licensed occupations suggests that consumers would be harmed by the bill, as would small, independent business owners. The only entities who would surely benefit are large, powerful, pre-existing foundation repair companies because they are the ones who can afford to absorb the new costs and who are, therefore, “grandfathered” into a new professional guild.

In short, occupational licensing bills are often pitched as necessary for safeguarding consumer interests, but in reality, they serve to restrict competition in the marketplace.⁸

HB 613 proposes to create a mandatory licensing scheme for foundation repair contractors requiring that a contractor must:

- (1) carry insurance;
- (2) take an exam to obtain a license;
- (3) notify each municipality where the contractor works of his or her license; and
- (4) pay a fee.⁹

There are two types of licenses under this scheme, a master licensee (of which each company must have at least one) and journeyman licensee.¹⁰ To obtain a journeyman license, one must have worked for at least 24 hours under the supervision of a master licensee as a laborer. Violations of the new law or rules adopted under it will constitute a Class C misdemeanor.¹¹

Findings

Because there is ample evidence that occupational licensing increases the cost of services, and little evidence that it increases quality, the Legislature should reject a proposal to license foundation repair contractors.

continued on back

Texas Public Policy Foundation

Subchapter B of the bill also creates a seven-member advisory board to the Texas Department of Licensing and Regulation (TDLR) to decide upon the rules, fees, scope of the exam, etc.¹² The advisory board will of course contain existing foundation repair contractors (specifically, it provides that four members of the advisory board must be master licensees), and this further increases the risk that licensing requirements will be established with an eye towards reducing competition, not improving quality.

Admittedly, it is difficult to inspect the work done by a foundation repair contractor immediately. It also true defects in the contractor's work probably take longer to manifest. Nevertheless, these same arguments exist with regard to numerous occupations, and that does not abrogate the responsibility of consumers to do their due diligence.

Consumers may still obtain recommendations, ask for references, use Angie's List, etc.¹³

Perhaps the most legitimate concern of proponents of HB 613 is that contractors without insurance may guarantee a foundation repair but ultimately not be solvent when a foundation problem later arises.

This, however, could be addressed as it has been addressed in Pennsylvania, where contractors are simply required to register.¹⁴ Contractors could also be required either to:

- (1) provide proof of insurance or post a bond; or
- (2) notify customers before taking on a project that they are uninsured and have not posted a bond so no fallback mechanism exists if the foundation repair contractor is not in business at a future point in time.

Any of these solutions would be preferable to the licensing scheme currently proffered by HB 613. As it stands, the bill guarantees less competition and higher prices, but no evidence has been offered that it will improve quality. ★

¹ HB No. 613, 83rd Session (2013).

² Marc A. Levin, "The Preoccupation with Occupational Licensing," Texas Public Policy Foundation (May 2007) 1 citing Daniel Hammermesh, *Labor Demand* (Princeton University Press: 1993) 3.

³ Dick M. Carpenter II, Lisa Knepper, Angela Erickson, and John Ross, "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice (May 2012) 20.

⁴ See generally Chuck DeVore, *The Texas Model: Prosperity in the Lone Star State and Lessons for America* (Texas Public Policy Foundation 2012); "America's Future: California v. Texas," *The Economist* (9 July 2009).

⁵ The right to practice a profession is not merely a term of art; Texas courts have recognized a "vested property right in making a living." See *Smith v. Decker*, 158 Tex. 416, 420 (1958).

⁶ See Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, W.E. Upjohn Institute (1 June 2006) 8-10.

⁷ Adam Ozimek, "Who's Been Captured?," Modeled Behavior blog (21 Dec. 2010). Ozimek goes on to note that "In some cases [occupational licensing] can even worsen outcomes by driving people priced out of the market into the black market, where quality is very low due to informational problems caused by regulation pushing these markets into the shadows. It's difficult to develop a good or bad reputation when having any reputation whatsoever risks attracting law enforcement." Ibid.

⁸ See Adam B. Summers, "Occupational Licensing: Ranking the States and Exploring Alternatives," Reason Foundation (Aug. 2007) ii. ("While occupational licensing laws are billed as a means of protecting the public from negligent, unqualified, or otherwise substandard practitioners, in reality they are simply a means of utilizing government regulation to serve narrow economic interests. Such special-interest legislation is designed not to protect consumers, but rather to protect existing business interests from competition.")

⁹ See n. 1 at Subchapter C.

¹⁰ See *ibid* at § 1003.152.

¹¹ See *ibid* at § 1003.202(b).

¹² See *ibid* at Subchapter B.

¹³ See Ozimek, *Who's Been Captured?*

¹⁴ *Ibid*.

