

BUREAUCRATIC BARBED WIRE:
How Occupational Licensing
FENCES OUT
Texas Entrepreneurs

By Wesley Hottot - Institute for Justice Texas Chapter - October 2009



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Acknowledgments

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EXECUTIVE SUMMARY

Texas has historically celebrated economic liberty—the right to pursue your chosen occupation free from unreasonable government interference. But the state is increasingly restricting the economic liberty long enjoyed by its citizens.

The trouble is occupational licensing—when entrepreneurs must secure the government's permission before practicing a trade. This means Texans must often jump through a series of irrational, arbitrary and costly hoops merely to practice an innocuous trade, such as braiding hair or repairing a computer. The state now requires many entrepreneurs to obtain unnecessary and expensive education, wade through confusing and often conflicting administrative rules and pay harsh fees (and even face jail time) for the privilege of going into business. Occupational licensing is making it harder—much harder than it needs to be—for Texans to open a business, create well-paying jobs or switch careers.

The number of occupations licensed by the state of Texas has multiplied twelvefold in less than 65 years. There were only 43 non-alcohol-related trades that required licensure in 1945; today there are 514. These newly regulated industries include such diverse pursuits as athletic trainer, geoscientist, air conditioner technician, funeral director and mold assessor, among many others.

As is the case nationwide, these licenses are often designed to use government power to protect existing industries from competition rather than to protect the public. This report describes some of Texas' most ridiculous regulations and introduces readers to the entrepreneurs that they harm. Each entrepreneur represents countless other Texans who would build on their self-reliant hard work and ingenuity to support the Lone Star State's traditionally vibrant economy—if only the government would get out of the way.

Government is getting in the way of martial arts and gymnastics programs for kids. For nearly a decade, the Texas Department of Family and Protective Services has demanded that any facility that supervises kids for two hours or longer in a day must be licensed as a daycare. But daycare centers are required to follow highly restrictive procedures that make most afterschool gym activities impossible. Despite the growing childhood obesity problem, Texas is making it harder, if not impossible, to start a child exercise center where kids can flourish. If licensed as a daycare center, afterschool martial arts and gymnastics programs will be unable to operate as effective training facilities. Parental rights are also harmed when a child's afterschool options are determined by state bureaucrats. Texas should allow this vital industry to grow.

Government is imposing outrageous requirements on people who want to pursue harmless trades dealing with hair removal and braiding. Cosmetology is an important industry precisely because it has traditionally allowed those without a great deal of education or financial capital to launch their own businesses or new careers. But Texas' cosmetology laws are out of control. The state now regulates artificial hair (in the case of wig specialists), objects that cannot cut anyone (like the cotton thread used in eyebrow threading) and all-natural practices that do not even involve cutting (like hairbraiding). It is time for Texas to look in the mirror and reform its cosmetology laws. The state should abolish its regulation of eyebrow threaders, wig specialists and hairbraiders and trust Texans to determine who is qualified to beautify their hair, skin and nails.

Government is senselessly restricting entrepreneurs who provide important services for horse owners. The Texas State Board of Veterinary Medical Examiners is disturbing the state's tradition of animal husbandry by trying to license

the many ordinary Texans who provide important services for horses—services that veterinarians more often than not do not provide. The Vet Board has fought to apply the state’s veterinary medicine law to horse teeth “floating”—the practice of filing horses’ teeth—and horse massage—an important practice to maintain a horse’s well-being, just as it is for human athletes. Texas has more than a million horses, but only about 3,500 practicing veterinarians. When the government tries to limit vital forms of animal husbandry to licensed veterinarians (who are not taught horse teeth floating or massage), the government harms not only horse owners and entrepreneurs, but also the many horses who will no longer receive treatment. Texas should stop trying to regulate both horse teeth floaters and those who practice horse massage.

The government is even butting into fields like interior design in an effort to restrict competition and protect a politically active cartel. The regulation of arts professions, exposes the increasingly unwise and unconstitutional reach of Texas’ licensing laws. It is a sad comment on the Legislature’s priorities when government officials must be sued in federal court to vindicate

the right of interior designers to truthfully describe the services they offer to the public. It is sadder still when the regulated services, like interior design, are demonstrably safe and a government license exists only because a self-interested group of industry insiders convinced the Legislature to do its

bidding. Clearly, the arts are a matter of taste and individual Texans—not the government—should determine who is best able to help them make a new house a home or a new office a comfortable and pleasing place to work.

Likewise, the government has recently and needlessly imposed a one-size-fits-all approach to the diverse industries that can be described as “private security” firms. The Texas Private Security Board is charged with licensing traditional sleuths, gumshoes and bodyguards alongside locksmiths, alarm installers, guard dog trainers and computer technicians, to name only a few. But the convenience of regulating a diverse group of services under one agency and one law is not worth the headache it causes for entrepreneurs and their customers. The state should abolish its regulation of forensic analysts, computer repairmen and locksmiths.

Texas has taken occupational licensing too far. The only legitimate reason for imposing limits on Texans’ economic liberty is to protect the public at large from a real threat to health or safety. Too often, however, the real reason occupational licensing is imposed is to protect an existing industry from competition. Protecting industry insiders from competition is not a legitimate constitutional function of government. Texas should recommit itself to the cause of economic liberty and do away with its many unreasonable licensing regimes. Our state’s heritage of entrepreneurship hangs in the balance.

***Occupational licensing is making it harder
—much harder than it needs to be—for Texans
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jobs or switch careers.***

The Problem

Texas has a unique heritage of inspiring entrepreneurs. This is because historically the state has celebrated economic liberty—the right to pursue your chosen occupation free from unreasonable government interference.

For entrepreneurs, economic liberty represents their opportunity to open a business and succeed on their own merits. For consumers, it represents the opportunity to find the lowest cost, best service and the most creative solutions to their problems. Economic liberty is essential if the Lone Star State is to remain a beacon of entrepreneurship.

But the state of Texas is increasingly restricting the economic liberty long enjoyed by its citizens. The trouble is occupational licensing—when entrepreneurs must secure the government's permission before practicing a trade.¹ Before entrepreneurs can legally open their doors, the state increasingly requires them to obtain unnecessary and expensive education, waded through confusing and often conflicting administrative rules, pay harsh fees and even face jail time if they fail to comply.² Even if an entrepreneur can get her business up and running, Texas burdens her (and her employees) with continuing education, insurance and operational requirements. Occupational

licensing is making it harder—much harder than it needs to be—for Texans to open a business, create well-paying jobs or switch careers.

Economic liberty is threatened in Texas primarily because politically powerful cartels of private businesses now routinely go to the Legislature and demand state regulation as a means of closing out new competition.³ Specifically, cartels ask the government to license their trade, often simultaneously asking that anyone already practicing the trade be grandfathered in.⁴ This self-interested practice keeps new talent out of industries without guaranteeing any improvement in public safety, all the while artificially raising prices and reducing service and opportunity for everyone. This is particularly shameful in these difficult economic times.⁵ Cartels keep new talent from entering an occupation because they set up artificial barriers to entry in the form of licensing fees, irrelevant education requirements and arbitrary tests. At the same time, cartels often make the case that current practitioners do not need to comply with the same regulations. The cartelization of the Texas workforce—or the formation of industry “insider” clubs—is too-frequently indulged by lawmakers.

It is not that state government has no role to play in the marketplace. Texas' criminal law, tort law, and deceptive trade practice and consumer protection act⁶ each protect the public from frauds,

quacks and charlatans. Government also has a clear role to play in ensuring the safety and competence of some professions (for example, doctors),⁷ but lawmakers often do the bidding of industry insiders bent on eliminating competition rather than base new occupational licenses on legitimate public safety concerns.

In 1945, Texas regulated only 43 occupations that did not involve the sale or distribution of alcohol. At the beginning of the last legislative session (January 2009), the state regulated 514 occupations.



Because a number of recent licenses appear designed to protect existing industries from competition rather than protecting the public, we must ask ourselves, and our elected representatives, “What do we get for all these new requirements?”

This report describes some of Texas’ most ridiculous regulations and features the Texas entrepreneurs that they harm. Each entrepreneur represents countless other Texans who, if given the opportunity, would build on their self-reliant hard work and ingenuity to support the Lone Star State’s traditionally vibrant economy.

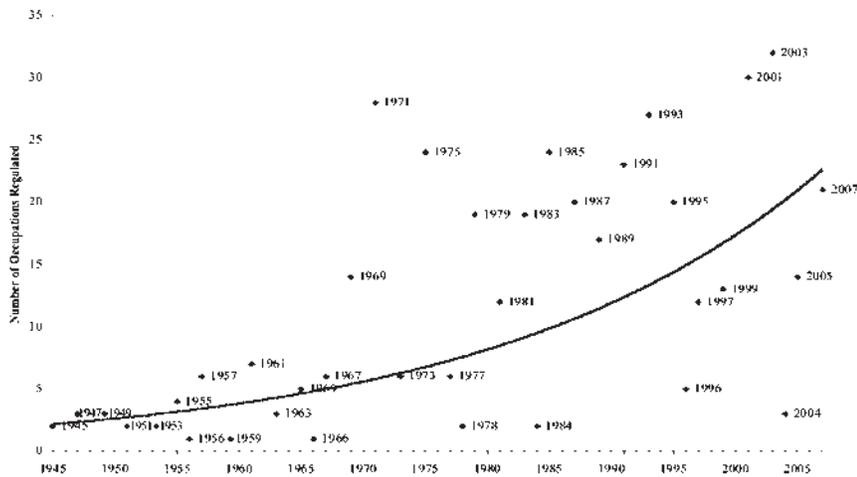
The Regulatory Climate in Texas

In 1945, Texas regulated only 43 occupations that did not involve the sale or distribution of alcohol.⁸ At the beginning of the last legislative session (January 2009), the state regulated 514 occupations.⁹ Stated differently, occupational regulation in Texas has multiplied 12 times in less than 65 years (see chart below). During the past five legislative sessions, an average of 15 new occupa-

tions were subjected to state regulation.¹⁰ These included such diverse trades as geoscientists,¹¹ air conditioner technicians,¹² vehicle storage facility employees¹³ and mold assessors.¹⁴ You already needed government permission to manufacture bedding for sale in the state—including pillows, quilts and sleeping bags¹⁵—or to work as a funeral director,¹⁶ athletic trainer¹⁷ or midwife.¹⁸

Nationally, occupational licensure has grown from about five percent of the workforce in the 1950s to as much as 30 percent of the workforce in 2006.¹⁹ Meanwhile, occupational licensing is growing at an exponential rate in Texas. One legislative committee, recognizing the problem, concluded that occupational licensing imposes barriers that prevent Texans from entering a host of trades and professions,²⁰ but that these barriers are largely artificial (they would not exist but for the government’s actions) and have little or no impact on improving public health or safety.²¹ Texas’ increasingly anti-entrepreneur regulatory climate is one of the main reasons why 8,000 fewer businesses opened in the state in 2008 than opened in 2007.²² In difficult economic times, the state should be fostering—not hindering—entrepreneurship.

Texas Occupational Licensing Trends (1945-2007)



This graph, produced by a committee of the Texas Legislature, shows the exponential growth of occupational regulation over the past 60 years.

Graphic: Texas House Comm. on Gov’t Reform Interim Report, p. 45 (81st Leg., Jan. 2009).

THREATENED INDUSTRIES

This report examines the state of regulations in five occupations that exemplify the struggle for economic liberty in Texas. These industries—child exercise centers, cosmetology, horse care, the arts and private security—have all recently been the focus of increased regulations, making the pursuit of these occupations more difficult and, in some cases, impossible. In their own way, each of these occupations is important to the state’s economy and the health and happiness of Texans. Unfortunately, these industries represent only the tip of the occupational licensing iceberg in Texas. Each legislative session, a new cartel arrives in Austin (while many cartels hungry for more power return) to mount lobbying efforts for new government regulation. The industries featured here do not represent a census of those gunning for government favors, but rather are representative of the bigger problem of occupational licensing, which continues to grow at a rate that is difficult for entrepreneurs, researchers and policymakers to follow.

Child Exercise Centers

When is a gym a daycare? This is an important question for the many gyms across the state that want to provide healthy and enjoyable activities for youngsters. Their struggle demonstrates that one-size-fits-all government regulations, no matter how well-intentioned, often do more harm than good.

For nearly a decade, the Texas Department of Family and Protective Services (DFPS)²³ has said that any facility that supervises kids for two hours or longer in a day must be a licensed daycare center.²⁴ A problem arises from the fact that daycare facilities are required to follow highly restrictive procedures that make most gym activities impossible.

The Texas daycare statute is overly broad, regulating any child supervision provided by a non-family member for more than seven children under the age of 14.²⁵ DFPS administrative rules further define “daycare” to include “care provided to school-age children before and/or after the customary school day.”²⁶ But daycare regulation comes with rules that were not designed with gyms in mind—requiring outdoor play



areas, a daily exercise requirement, immunizations and dozens of hours of annual daycare training, among myriad other requirements.²⁷ A regulated gym could not, for example, train kids on a large trampoline or rings hanging from the ceiling,²⁸ a martial arts facility could not have traditional training weapons.²⁹ If licensed as daycare centers, afterschool martial arts and gymnastics programs will be unable to operate as effective training facilities.

DFPS spent much of the past ten years inspecting afterschool exercise facilities and issuing warnings, citations and even cease-and-desist orders based on an ever-changing (and expanding) interpretation of Texas' daycare statute.³⁰ A number of martial arts facilities have attempted to comply with daycare regulations, but they have only met with frustration as state regulators insist on fundamental changes to their facilities and methods of instruction. The problem with Texas' daycare regulations is that they make private afterschool exercise programs impossible. The regulations are a classic example of government over-reach.

Dan Gonzalez

Dan Gonzalez is the owner, director and chief instructor of S.A. Kids Karate on the north side of San Antonio. Dan learned karate in its birthplace, on the island of Okinawa, when his father was stationed in Japan. Dan was a quiet, shy kid who was always being picked on, so his father suggested he try karate. "I hated every minute of it," he said. "The instructors didn't speak English. It hurt. We fought bare knuckle, bare foot, bare boned. No



Martial arts teaches discipline that children carry with them throughout their lives

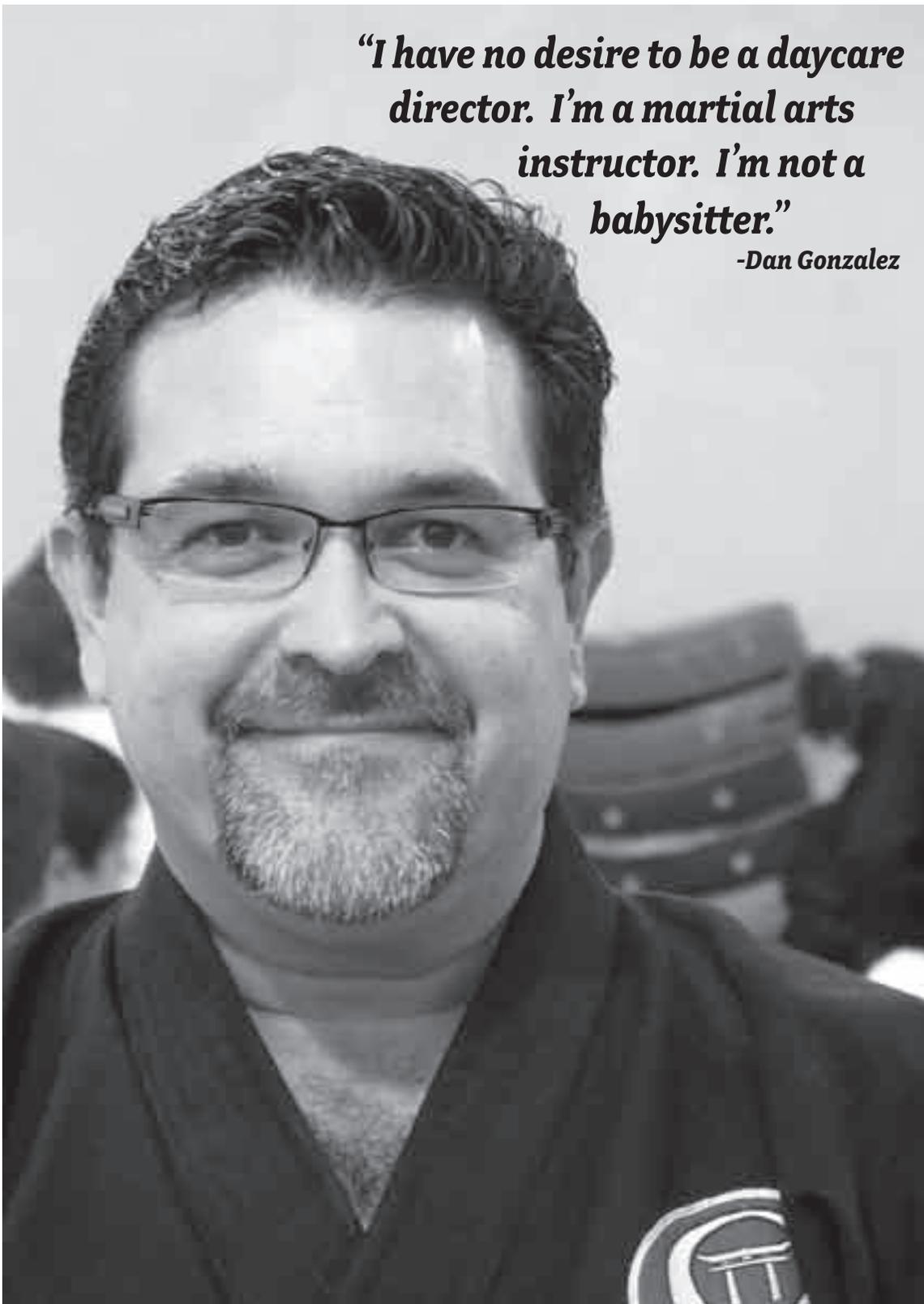
head gear. So it took a while before I started gaining some confidence where I actually liked it, but I've been doing it ever since."

Dan earned a black belt after four years of training in Okinawa. By 1978, Dan was an assistant instructor at an Air Force base and teaching his own karate classes at a youth center in nearby Alamogordo, N.M.

In 1999, Dan left a successful job in the alarm business and, with a partner, opened an all-ages training facility in San Antonio. Dan designed an afterschool program and then a summer camp program for kids. That first summer, Dan and

“I have no desire to be a daycare director. I’m a martial arts instructor. I’m not a babysitter.”

-Dan Gonzalez



his partner had their first run-in with the Texas Department of Family and Protective Services.

The trouble began when Dan placed an ad in the newspaper for a karate summer camp. Soon after the ad ran, two inspectors from two different state agencies showed up within minutes of one another to tell him two different things. A DFPS inspector told Dan he was operating an illegal daycare. Minutes later a representative of the Texas Department of State Health Services came in, Dan said, “he was laughing and he said don’t pay any attention to that lady.” The Health Services inspector told Dan to get a youth camp license and the state would leave him alone.

A youth camp license is relatively easy to obtain. You describe your program, submit to an inspection and pay a \$250 fee.³¹

“It was more just making sure your facility was up to code,” said Dan, “just making sure you have the right amount of staff for your kids, and then do your thing whether it’s archery, horseback riding or anything.”

So Dan got the youth camp license.

A month later, he got a telephone call from a DFPS inspector wondering why he had not submitted an application for a daycare license. “You’re still running an illegal daycare operation,” the inspector told Dan. “We’re going to shut you down.”

Dan dutifully faxed over a copy of his youth camp license and pointed to the law that said a youth camp does not have to be licensed as a daycare.³² For a short while after that telephone call, Dan did not hear from DFPS.

S.A. Kids Karate opened its doors in 2001. Dan designed his business to build on his previous success with afterschool and summer camp programs. Putting together a sports-based program really made sense to Dan as an alternative to daycare, especially when he considered the life skills that martial arts teach—respect, courtesy, discipline and focus—and the growing child obesity problem.

Unfortunately, Dan’s previous efforts to avoid the state’s daycare rules somehow did not translate to S.A. Kids. When he ran an ad that read, “Tired of daycare? How about something new!” DFPS showed up to tell him that he was running an illegal daycare. Dan faxed them a copy of his youth camp

license, and this process repeated itself a number of times.

But by 2004, Dan received his last youth camp license. When he tried to submit his annual application for a youth camp license, a representative of the Department of State Health Services informed him that S.A. Kids could no longer qualify for the license because the Department and DFPS had agreed that martial arts facilities were no longer “youth camps.” DFPS agreed to give S.A. Kids an individual exemption from daycare licensing, but withdrew its exemption in 2008 after the Texas Attorney General warned that facility-by-facility exemptions are illegal.³³

Texas’ daycare law provides numerous common sense exemptions.³⁴ When the Texas Legislature returned to session in January 2009, Dan joined other martial arts and gymnastics entrepreneurs in Austin and successfully fought for a qualified exemption for child exercise centers and other skills-based programs.³⁵ Dan had many good reasons for fighting daycare regulation.

“First and foremost,” he said, “I have no desire to be a daycare director. I’m a martial arts instructor. I’m not a babysitter.”

Dan describes what he does as the antithesis of what a daycare does. For example, if he has a child who is acting up, he enforces discipline much like a football coach would.

He said, “As a daycare director, I cannot do that. I cannot yell at a child. As a football coach, I can make my players run laps around the field for not playing hard enough or missing practice. I should be able to do the same thing as a karate school instructor.”

Dan also points to the fact that advanced students use both mock and real weapons and all karate students are expected to spar.

Dan said, “As a daycare director, I would be committing crimes.”

There are high costs associated with complying with daycare regulations.

“I know one school that spent \$10,000 building an enclosed outdoor play area,” Dan said. “They never used it.”

Obviously children at a karate school do not need to go outside (in the Texas heat) to get exer-

cise, but Dan said the DFPS inspectors do not bend on the letter of the law.³⁶

Dan does not think it is the state's business to regulate private sports programs—afterschool or otherwise.

"I do see the need for safety," he said. "I would not be opposed to a minimum set of standards that said if you work with kids you need to make sure you don't have a criminal on staff, but as far as the state telling us how to run our program, I don't think that helps anyone."

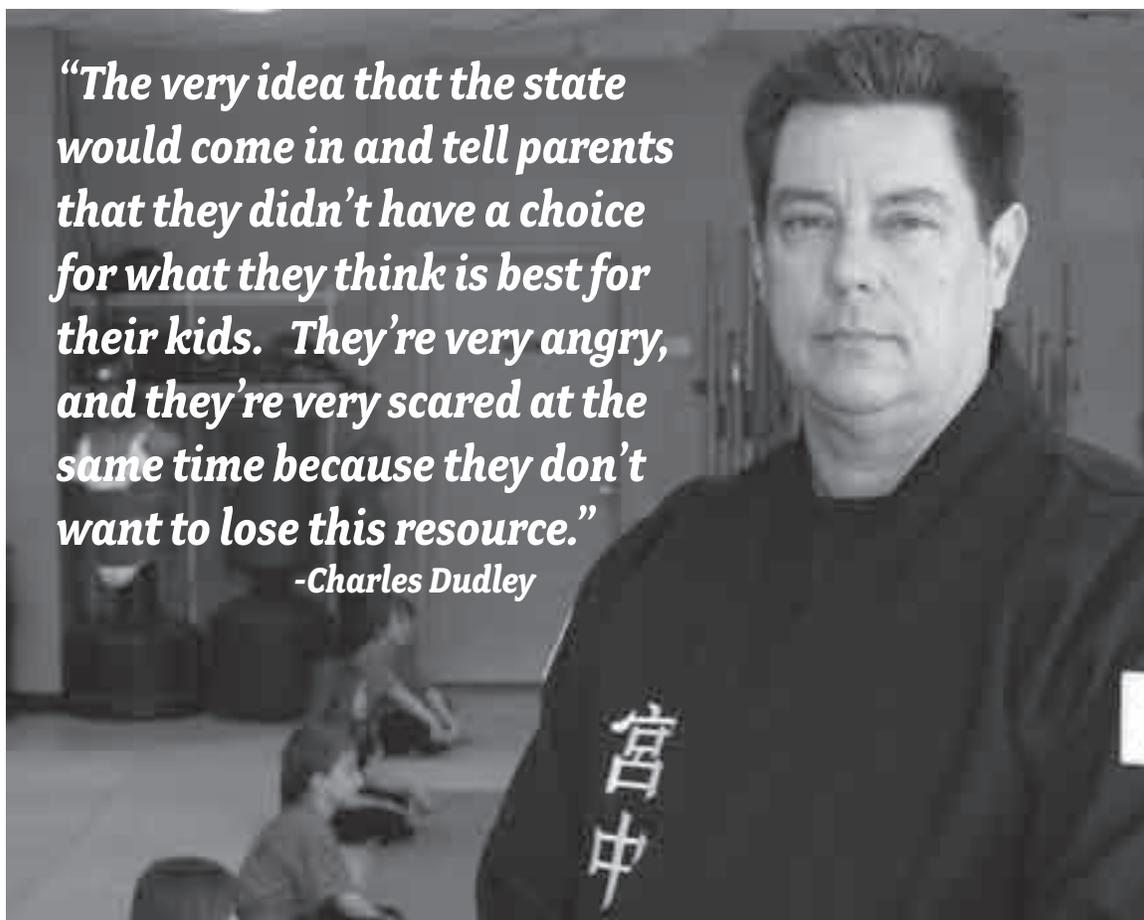
S.A. Kids already performs exhaustive background checks on employees and allows parents to decide if the school is the right fit for their children—giving them two free weeks of instruction during which the parents can observe the instructors and the effects on their child.

Asked what he thinks is at stake in the licens-

ing of martial arts programs, Dan said, without hesitation, parental rights: "The parent has the right to choose between a licensed daycare and a sports-based program. We have people who know nothing about martial arts, nothing about gymnastics, making rules about these types of programs, and there are too many disciplines out there for the state to be able to speak intelligently about, much less regulate, these types of programs. Parents are in the best position to decide for their kids."

Charles Dudley

Charles Dudley owns Kung Jung Mu Sul of Texas in San Antonio. Kung Jung Mu Sul, which teaches the Korean martial art of the same name, offers programs for parents and children as young as four years old.





Drills at Kung Jung Mu Sul of Texas require students to exercise and answer questions at the same time.

Charles said *kung jung mu sul* means “royal court martial art.” It grew out of the *hwarang* code among Korean nobles—a warrior code akin to knighthood in Western Europe and Japan’s *samurai* codes. The first and most important lesson in *hwarang* is discipline. It is a lesson that parents and kids can carry over into other parts of their lives.

“In order to educate,” Charles said, “you have to create the correct learning environment. And for a child to be able to resist peer pressure, to make correct choices, to honor their mother and their father, they have to have a framework.”

At Kung Jung Mu Sul, students practice fundamental movements as a group, led by instructors and a leadership team of students who have distinguished themselves with hard work. During drills, instructors call on students with construc-

tive criticism about their technique. They also ask questions on topics such as morality and math. It takes mental toughness to answer a series of questions while exercising. These mental and physical toughness drills are the heart of Charles’ program, which emphasizes simultaneous control of the mind and body.

Charles has been forced to display his own mental toughness and control during the past nine years, as he has done battle with the Texas Department of Family and Protective Services over the meaning of the state’s daycare licensing law. In 2000, DFPS inspectors showed up at the gym and told Charles he was running an illegal daycare because he was teaching children in the afternoon. Daycare, to Charles, means “warehousing children.” What did they want with him?

“They told me, ‘you need to go to our orientation and see what you’ve got to do to qualify to become a daycare.’ I went to the orientation. I sat through the whole thing, and they said nothing that had anything to do with anything that we do. So I went to the instructor, and I said, ‘I’m

confused.’” The instructor assured Charles he was exempt from daycare licensing. Her reaction was, “this is for daycare, you don’t need to be here,” Charles said. But three months later, DFPS returned to ask why he had not submitted an application for a daycare license. Charles, understandably confused, told the inspector about his conversation with the DFPS instructor, but to no effect.

“The state is a 900-pound gorilla,” Charles said. “The DFPS inspector walked into my place and she said, ‘Charles, if you don’t do what I tell you, I’m going to chain and padlock your door and I’m going to post a deputy sheriff out here, and if you try to come in, I’m going to have you arrested.’”

Charles, like almost all entrepreneurs, wants to comply with his legal obligations (the risk of not complying is too great). But he was understandably

“Right now we’re seeing childhood obesity go through the roof, but we keep removing all movement from our children’s lives. If sports programs are killed, they’re not going to have the opportunity for movement.”

-Beth Gardner



frustrated that two representatives of the same state agency told him the law two different ways. Charles took his fight to the Legislature. He asked Representative Frank Corte (District 122—San Antonio) to intercede and, soon after Corte threatened an investigation of DFPS, Charles received an individual exemption from the agency. Not satisfied with his own exemption from daycare regulation, Charles then worked to secure exemptions for dozens of gyms around Texas.

In July 2008, when the Texas Attorney General's Office said DFPS could not grant individual exemptions,³⁷ Charles knew his business was at risk. He called the Texas Department of State Health Services to apply for a youth camp license, but representatives informed him they would no longer grant youth camp licenses to child exercise centers.

Charles doggedly returned to the Legislature for the 2009 session. He joined Dan Gonzalez and Beth Gardner in successfully fighting for an exemption for programs teaching “a single skill, talent, ability, expertise, or proficiency,” so long as the program involves no other services (like tutoring, for example) and the business does not hold itself out to the public as a licensed daycare.³⁸

Charles' lobbying experience taught him who his enemies are, an important lesson in martial arts. It turned out the Texas Licensed Childcare Association (TLCCA) has worked hard behind the scenes to defeat any exemption for child exercise centers. This cartel is trying to protect its own profits, Charles suspects, by making it impossible for child exercise centers to exist. Alarmed by the growth of movement-based private programs for children, the TLCCA is attempting to stifle the competition.

Throughout Kung Jung Mu Sul of Texas' struggle with the DFPS and TLCCA, the parents of Charles' students became increasingly angry and scared.

“The very idea that the state would come in and tell parents that they didn't have a choice for what they think is best for their kids,” said Charles. “They're very angry, and they're very scared at the same time because they don't want to lose this resource.”

Indeed much of Kung Jung Mu Sul of Texas' appeal to parents is that it is an alternative to conventional daycare.

“We have many students here that have been kicked out of every daycare in San Antonio,” Charles said. “Here, they're fine because they know that we don't tolerate nonsense. It's not what we do. We teach them a better way, and now they're proud of themselves.”

Beth Gardner

Beth Gardner owns Heart of Texas Gymnastics in Temple. She started the gym in January 1999 after working as the preschool director for a large gymnastics program in Austin. She grew up in Houston and nearby Belton. When a previous gym owner wanted to sell all of his equipment, Beth jumped at the opportunity to start her own business.

Beth has been a gymnast since she was three. A gymnastics coach for more than 18 years, she got her own kids into the sport first because she had loved it so much as a child, and secondly because it teaches physical and mental skills that help kids grow into adults.

The skills children learn in gymnastics can carry over into any other sport because it teaches athletic fundamentals like balance, flexibility and hand-eye coordination. Additionally, gymnastics teaches discipline; it requires goal setting. The



Gymnastics not only teaches athletic fundamentals; it teaches goal-setting and mental discipline.

mental benefits of gymnastics are a big part of Beth's long-term goals for her students.

She said, "Since I've been a coach and done a lot of continuing training and research into our sport, I've found that lateral movement affects reading, sequencing affects math. There are so many offshoots of what we do that affect other areas of life—not just sports."

How would regulation as a daycare affect Heart of Texas Gymnastics? "It would kill my business," Beth said. "They call our uneven bars and balance beam 'unsafe climbing structures.'"

Safety is Beth's first priority in running her gymnastics program. Children have to master fundamental skills before moving on to more complicated skills.

"There are three kinds of readiness," said Beth. "They have to be ready physically. They have to be ready cognitively. And they have to be ready emotionally. If any of those components are not there, then a kid could get injured."

In more than ten years, Heart of Texas has never had a serious injury, nothing more than minor bruises.

Beth is active in USA Gymnastics and the Gymnastics Association of Texas—both private organizations that train coaches and staff. Private certifications cover "everything from customer relations to emergency plans," said Beth. These organizations work especially hard to study the sport of gymnastics and educate coaches on safety. Beth is personally on the road every weekend from June until October training coaches, and she's just one of the coaching educators.

Beth also works with a lot of special needs children. The pediatricians at a local hospital system send kids to Heart of Texas to augment their occupational and physical therapy. Beth has helped students with everything from dystonia (a neurological movement disorder) to cerebral palsy and autistic spectrum disorders.

"The cool thing about gymnastics," she said, "is that skill deconstruction—when we break down our skills into basic elements of movement—is the same thing they do in occupational and physical therapy."

Insurance companies do not cover occupational therapy and physical therapy for a lifetime. When parents can no longer afford medical therapy, they often turn to gymnastics because it can work wonders.

Beth worked with one young girl who had cerebral palsy.



“The way she was shaped,” said Beth, “she was in a backwards C with her feet touching the back of her head all the time. She had been in occupational therapy and physical therapy for five years. We were able to get her from a backwards C to walking.”

How would regulation as a daycare affect Heart of Texas Gymnastics?

“It would kill my business,” Beth said. “They call our uneven bars and balance beam ‘unsafe climbing structures.’ Our trampolines are not allowed on daycare premises.”³⁹

Additionally, Beth is concerned about the cost of complying with daycare licensing. She already screens her staff and trains them to respond to emergencies; why should she pay to send them through state programs?

Beth is also concerned about the epidemic of childhood inactivity.

“Right now we’re seeing childhood obesity go through the roof,” she said. “But we keep removing all movement from our children’s lives. If sports programs are killed, they’re not going to have the opportunity for movement.”

“I would just as soon government go away,” said Beth. “We, as an industry, encourage training and safety ourselves.” This last session, Beth joined Dan and Charles at the Legislature to oppose child care licensing for gymnastics facilities.

The state failed in its attempt to make regulated daycares out of child exercise centers only because these three extraordinary entrepreneurs—Dan, Charles and Beth—took enormous amounts of time away from their businesses, their families and the children they educate to challenge state regulators. Their victory was not total. Each of these facilities is now required to provide students with instruction in just one skill or talent (it is not at all clear if this means, for example, that you can teach gymnastics or only the balance beam), they cannot advertise as afterschool programs (which they are) and they must perform background checks of all employees using a statewide system (even though most already voluntarily perform more probing nationwide background checks).⁴⁰

Sports programs and child exercise centers offer kids an active lifestyle, and countless other mental and educational benefits, that cannot be found in daycare. The ten-year saga of child exercise centers in Texas serves as a cautionary tale of what happens when state regulators and a self-interested cartel work together to cut innovative businesses out of a vital industry. Clearly, parents—not state bureaucrats—are in the best position to decide what activities their children should participate in after school.

Cosmetology

Entrepreneurs have long been drawn to cosmetology because it involves low start-up costs and provides regular customers. In fact, the U.S. Bureau of Labor Statistics estimates that almost half of all cosmetologists are self-employed.⁴¹ Essentially, all one needs to be successful as a cosmetologist is practical experience, a good work ethic and a chair. Perhaps this is why the cosmetology industry is so bent on limiting who can practice the grooming trades, and thus compete with existing salons and barber shops. Their efforts have led to a patchwork of licensing laws nationwide that needlessly confuse one of the most commonplace professions in our economy.

In Texas, the law makes bizarre distinctions between cosmetology and barbering.⁴² Put simply, only barbers can treat a person's beard or moustache, while both cosmetologists and barbers can cut hair.⁴³ Both practices are defined very broadly.⁴⁴ The state's Sunset Advisory Commission has repeatedly questioned the need for regulating these industries at all, but the Commission has been successful only in recommending management changes.⁴⁵ Today the Texas Department of Licensing and Regulation (TDLR) is responsible for both professions.

Largely at the cosmetology industry's behest, TDLR has been expanding the class of services it regulates. In addition to the traditionally regulated

trades of hairstyling and barbering, Texas has expanded its cosmetology licensing requirements to a host of much more specialized industries. For example, Texas now licenses wig stylists, nail technicians, hand and foot masseuses, estheticians, shampooers and hairbraiders; confusingly, it regulates each under both its barbering *and* cosmetology statutes.⁴⁶

But cosmetology licensing is not easy to obtain. You need not only a high school diploma (or its equivalent),⁴⁷ you are generally required to spend 1,500 hours and no less than nine months at a state-approved beauty school.⁴⁸ These schools cost between \$7,000 and \$22,000,⁴⁹ not including the income that students necessarily lose when



they leave work for a period of nine months to a year and a half. On completing school, would-be cosmetologists must pay \$128 to a for-profit, out-of-state company in order to take a written and practical examination of their abilities.⁵⁰ If the examinee passes, he or she still must pay the state \$53 for a license.⁵¹ Some specialty licenses require fewer hours in beauty school, but otherwise carry the same requirements as a general cosmetology license.⁵² By comparison, peace officers (who are empowered to carry firearms, use force and arrest Texans) are only required to obtain a minimum 618 hours of training.⁵³

Nor is a cosmetology license easy to maintain. A cosmetologist must renew her license every two years.⁵⁴ Before renewing a license, she must complete six hours of state-approved continuing education classes.⁵⁵ The licensee is responsible for maintaining records of her continuing education credits for a minimum of two years.⁵⁶ Even assuming cosmetology and barbering should be regulated and that the state's regulations are reasonable (they are not), Texas is now stifling a host of safe, traditionally unregulated practices with truly irrelevant licensing rules.

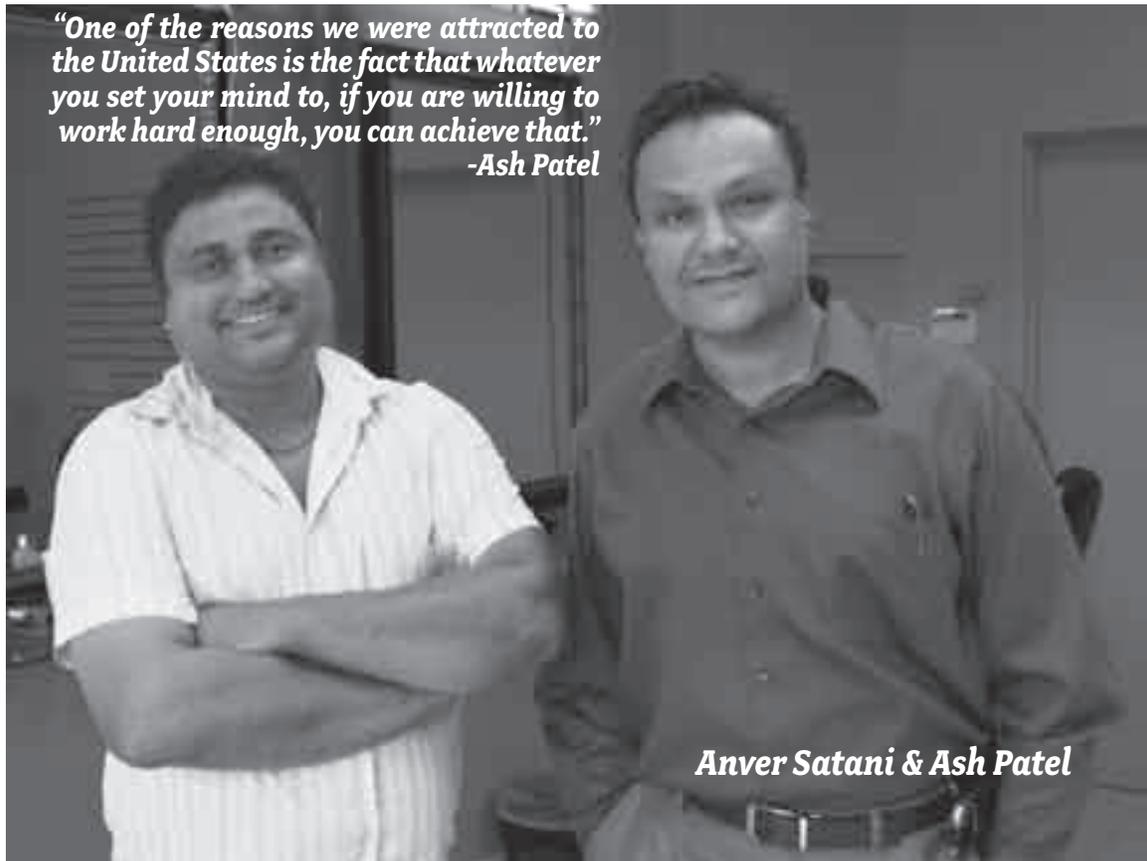
Eyebrow threading

Anver Satani and Ash Patel are Indian immigrants with a vision for eyebrow threading. Eyebrow threading is an all-natural grooming technique that uses nothing but cotton thread to



Eyebrow threading is an all-natural process that uses 100% cotton thread to remove unwanted facial hair

remove unwanted facial hair.⁵⁷ The practitioner tightly winds a single strand of thread, loops it, and then quickly brushes it along the face of a client, expertly removing individual hairs or shaping an entire brow.⁵⁸ One American newspaper described threaders as “play[ing] the part of cosmetic cowboy, lassoing out each hair with the looped ends of the thread.”⁵⁹



“One of the reasons we were attracted to the United States is the fact that whatever you set your mind to, if you are willing to work hard enough, you can achieve that.”
-Ash Patel

Anver Satani & Ash Patel

Eyebrow threading is a millenniums-old tradition in Asian countries and it has taken off recently in the United States.⁶⁰ Anver said that eyebrow threading is gaining popularity because it is inexpensive (between \$5 and \$25) and less painful than waxing. “This is a very exciting industry,” said Ash. “Mainstream Americans are recognizing it, loving it and coming back.”

Anver learned eyebrow threading as a boy growing up in Mumbai, India. Just over a year ago, he opened his first eyebrow threading business, Browz & Henna, in Austin. Browz & Henna quickly expanded to two other locations and Ash, a native of Jaipur, India, joined Anver as his partner. Some Browz & Henna customers drive more than a hundred miles for their services, though competition is increasing as the technique’s popularity grows.

After years of inaction, the Texas Department of Licensing and Regulation recently began

interpreting the state’s cosmetology licensing law to apply to eyebrow threading.⁶¹ The government’s position would require threaders to get either the standard cosmetology license, which requires 1,500 hours of training,⁶² or the state’s facialist specialty license, which requires 750 hours.⁶³ (Different inspectors, however, have disagreed over which license, if any, is necessary.) Even worse, many threading businesses and individual threaders have been fined thousands of dollars and told that they have two weeks to obtain one of the state’s various cosmetology licenses or stop operating.⁶⁴ Without any change in the law or administrative rules and without giving entrepreneurs an opportunity to comply, TDLR suddenly announced its regulation of eyebrow threading.

In May 2009, TDLR regulators visited Browz & Henna and charged one operator with performing cosmetology without a license and the business



with both employing an unlicensed individual and operating a beauty salon without a licensed supervisor. Anver had obtained a salon license from TDLR, but had no idea that eyebrow threading itself constitutes “cosmetology” in the eyes of regulators, making a license necessary for every employee.

“This is a very simple process,” Anver protested. “It does not require any dangerous instrument (such as sharp objects) or chemicals.”

Ash is skeptical that state regulators could even competently regulate threading.

“We can’t trust them because they don’t even know what threading is,” he said, “they cannot determine who is a good threader.”

Consumers gain nothing in terms of safety by the state’s regulation of eyebrow threading. Some American dermatologists view the practice as harmless,⁶⁵ while others have mild reservations about temporary redness, which would hardly justify state licensure.⁶⁶ In fact, dermatologists sometimes recommend eyebrow threading to patients with skin made sensitive by strong acne medications.⁶⁷ If the practice were in any way unsafe, you would expect there to be some discussion of injuries in the medical literature on eyebrow threading, but there is none.⁶⁸

Establishments like Browz & Henna must follow basic sanitation requirements.⁶⁹ The only thing consumers get out of increased eyebrow threading regulations is higher prices. Anver and Ash agree that if threaders are required to get irrelevant educations and maintain licenses at great expense, these costs will have to be passed on to their customers.

“One of the reasons we were attracted to the United States,” said Ash, “is the fact that whatever you set your mind to, if you are willing to work hard enough, you can achieve that.”

Even in the face of daunting licensing obligations, however, Ash remains optimistic.

“We have challenges in front of us, but we are convinced that there will be a way,” he said. “I’m sure the state will see the way and not choke entrepreneurs. I’m sure they will actually encourage entrepreneurs and help the economy.”

Wig salons

Both Texas’ cosmetology and barbering laws require a license for anyone who works with fake hair whether or not the fake hair is on a customer’s head.⁷⁰ Before obtaining a license, wig specialists are required to obtain 300 hours of education over no more than eight weeks and to pass both a written and practical examination.⁷¹ To renew a license, a wig specialist must complete six hours of continuing education classes.⁷² The purpose of these regulations is unclear, but their effect on wig salons is profound. What is clear is that to work at a wig business in this state, you are required to take two months off work and pay a private beauty school for training you don’t need and pay a private testing company for the privilege of demonstrating your skill.

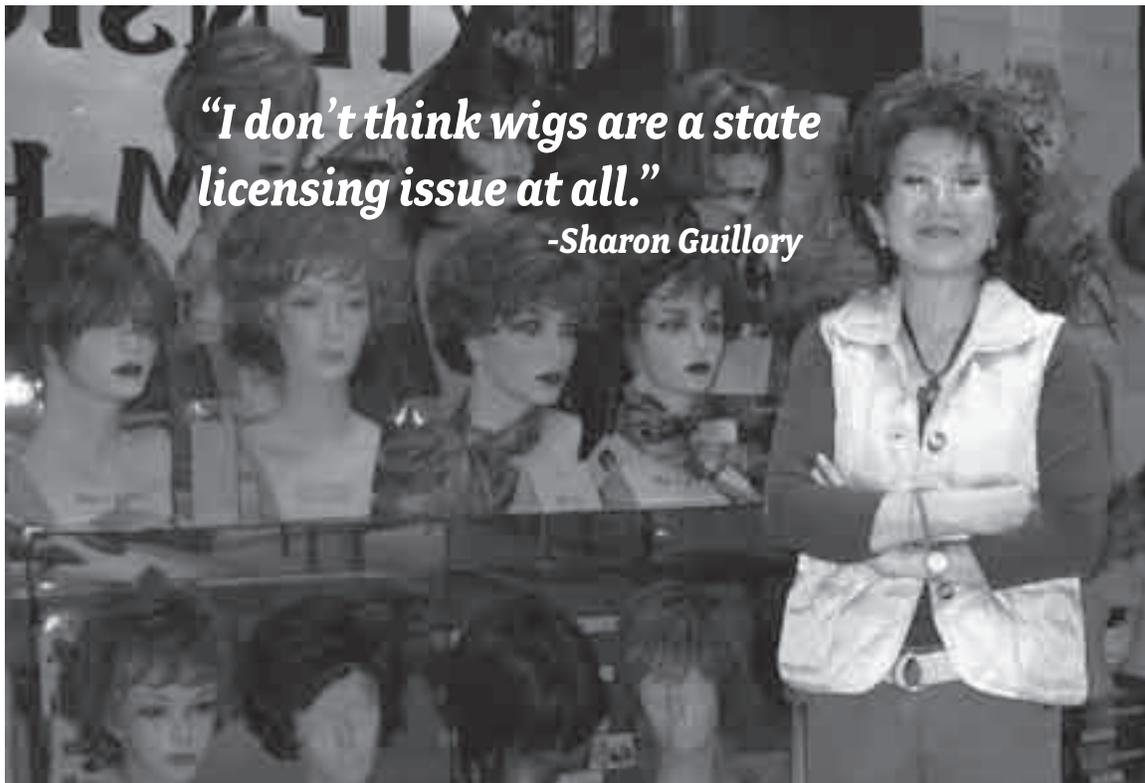
Sharon Guillory

Sharon Guillory owns and operates Dona’s Hair Systems in Fort Worth. Sharon has been working on artificial hair for more than 20 years. She recently left a successful business in Washington State, selling her wig salon and relocating to Texas to take advantage of the state’s warmer climate. Last January, Sharon bought Dona’s from a long-time wig specialist. She knows the business inside and out, so when the previous owner wanted to retire, Sharon jumped at the opportunity to go back into business for herself.

Sharon’s passion is helping women who have lost their hair to chemotherapy treatment. Her shop in Seattle (one of the largest in Washington) was near a number of cancer treatment centers. Sharon became dedicated to the work of helping sick women find strength in themselves. “When a woman loses her hair,” she said, “it strips away her identity more than it does a man’s. It can be traumatic for a woman.”

It is about more than hair for her and her clients.

In Washington, Sharon did not need a license to run a wig salon. A hairstylist by training, Sharon



discovered that she preferred working with wigs. She sought out extensive private training from wig makers and distributors, training she did not (and could not) receive in cosmetology school.

The Texas Department of Licensing and Regulation was reasonable about Sharon's experience and training and granted her a reciprocal license that allows her to cut human hair (which she no longer does) as well as wig servicing (at which she is an expert). But Sharon still thinks it's a bad idea to license entrepreneurs who work exclusively on wigs.

"It shouldn't be the state license board's business," she said, "because we are working with fake hair."

To illustrate the difference between human cosmetology and wig servicing, Sharon said that chemotherapy patients often refuse to go to their regular hairdresser with a wig because hairdressers don't know what to do and the experience only underlines the patient's alienation from their former life. Sharon explains that most hairstylists are too

scared to touch a wig.

"It's totally different," she said. "If they make mistakes, it won't grow back."

Sharon is convinced that servicing artificial wigs is not a safety risk.

By contrast, Sharon admits that the bonding agents necessary for human hair systems (i.e., toupees) can be dangerous. Some people are sensitive to hair system glue, so a specialist has to know when not to use it. But this safety concern is addressed by the self-imposed policies of the product manufacturers. Hair system manufacturers refuse to sell their products to untrained retailers.

"When I order bonding glue, the first thing they ask me is to fax my license," she said. "It's not about wigs; you have to have some sort of a license like a cosmetology license, a barber's license, then [hair system manufacturers] will train you about the safety issues involved."

Manufacturers often go so far as to fly representatives to a hair system shop for on-site training



and observation. A customer's happiness with their product depends on private, not state government, regulation.

Government, according to Sharon, is not in a position to keep up with the rapidly evolving wig industry.

"It's definitely not a state issue," she insists. "I work with human hair too, so I know both sides of the issue. I don't think wigs are a state licensing issue at all."

Hairbraiding

Hairbraiding is, like eyebrow threading, an all-natural and traditional grooming technique that does not involve the use of chemicals, dyes or sharp objects. It is a business—some say rising to the level of an art form—predominately practiced by African-American women, many of whom learned braiding as little girls. The Institute for Justice has documented the irrational licensing of hairbraiding nationwide⁷³ and during the past 17 years has successfully challenged hairbraiding regulations in Arizona,⁷⁴ California,⁷⁵ the District of Columbia,⁷⁶ Minnesota,⁷⁷ Ohio⁷⁸ and Washington.⁷⁹

Unfortunately, Texas now takes the position that hairbraiding is the regulated practice of cosmetology and licenses it under both its barbering and cosmetology statutes.⁸⁰ But the trouble is not only that Texas regulates hairbraiding, it is the manner in which state officials went about communicating their arbitrary requirements to entrepreneurs. No case better illustrates the absurdity of hairbraiding regulation in Texas than that of Isis Brantley.

Isis Brantley

Isis Brantley owns Isis Natural Hairbraiding, Twisting, and Locs, located in the Oakcliff neighborhood in Dallas. She started braiding when she was nine, learning on the hair of her sisters, cousins and neighbors. For Isis, hairbraiding is a cultural art form. She believes African-American hair is often mistreated and even abused by conventional cosmetology practices—the use of chemicals, perms and dyes. The answer, she said, is for African-American women to exercise their God-given gift of natural hair care.

Like many entrepreneurs, Isis started out working in her home. She had ten years of professional braiding experience when, in 1995, she moved into her current storefront. Unfortunately, Isis was promptly cited by the state of Texas for practicing cosmetology without a license. But she does not cut hair. She does not treat hair, dye hair or perm hair. Her business is based on natural hair care techniques—methods African women have perfected over thousands of years, most of them unrecognizable to Americans and Europeans.

"This is an ancestral art form," said Isis. "I want to wear my hair in its natural state and I want to help other people to revive their hair as well. It's what we do as a people just like anybody else who has a tradition of grooming themselves. We have our own beauty secrets and our own beauty legacy."

Faced with a \$600 fine and a government command to close her business, Isis was forced to hire a lawyer. She looked up the state's licensing law and discovered that it did not include "braiding" in the definition of "cosmetology."⁸¹ But Isis did not stop there. She set up a board of hairbraiders around the state that was designed to challenge the Texas Cosmetology Commission's interpretation of its licensing statute. Shortly after Isis' board formed, the Commission backed down, announcing a moratorium on the regulation of hairbraiders.

The Commission's moratorium did not last long. In 1996, regulators put together a panel of stakeholders, including Isis, for the purpose of determining whether or not hairbraiding should be exempt from cosmetology licensing in Texas. When the decisive vote came, the braiders fell one vote shy. The administrative rules governing the practice of cosmetology were hastily rewritten to include hairbraiding and hair weaving.

"They put braiding with the weaving course," Isis said. "I was opposed to that because I'm not a hair weaver; I don't use a machine to sew hair on anybody's hair." The problem, Isis said, is, "They didn't understand what ancestral braiding is."

The new rules required braiders, whether experienced or not, to go to school and pay approximately \$3,000 for 300 credit hours of instruction. The curriculum included instruction in the safe use of relaxers, hair dyes and various other kinds of irrelevant chemicals.

“So, I said I’m not doing that either,” Isis said.

In June of 1997, Isis was the victim of a police sting at her shop. She was arrested for practicing hairbraiding without a license. Three undercover officers came into her shop, with two female officers posing as customers. Isis was handcuffed and taken away.

Isis went to trial and argued that the licensing law did not address her form of hairbraiding. She won. The state of Texas responded by suing Isis for practicing cosmetology without a license. Isis promptly countersued, but two years passed without any activity before the state sent Isis a notice in the mail that said they would be dropping the lawsuit. At that point, said Isis, “All I wanted was for the state to recognize this is my culture. This is something that I’ve always done, and I shouldn’t be required to take any unnecessary classes or have any license.”

In 2006, Isis finally got the recognition she was looking for. The Texas Department of Licensing and Regulation, which that year took over the functions of the Texas Cosmetology Commission, contacted her and

offered to grandfather her business—or exempt her personally—from the licensing law. After nine years of uncertainty, Isis was finally able to operate her business without any concern for unwanted and unnecessary cosmetology regulation. She proudly displays her cosmetology exemption on her shop’s wall beside a picture of her in handcuffs on the day of her arrest.

Even though she was out of the woods personally, Isis still did not back down.

“I stayed on the front line because I can’t see how someone is going to pay you thousands of dollars to learn something that they’ll never do,” she said. “We’ll never be cosmetologists.”

She made a hairbraiding instructional video, only to see it co-opted by beauty schools around the country.

Isis said, “These people are actually taking these innocent, desperate women’s money who want to operate legally, and they’re sitting at these schools watching my videotape and a couple other videotapes from Texas and waiting until the time passes by. They can’t teach them braiding.”

Isis has become an advocate for occupational freedom for natural hairbraiders around the country. She set up a website, www.naturallyisis.com, designed as a resource for hairbraiders faced with threats from state authorities. Now, Isis wants to start her own hairbraiding school, the first in the state.

Texas’ cosmetology laws are out of control. When the state regulates artificial hair (in the case of wig specialists) and objects that cannot cut anyone (like the cotton thread used in eyebrow threading), it is time for the government to take a look in the mirror. Cosmetology is an important industry precisely because it has traditionally allowed those without a great deal of education or financial capital to launch their own businesses or new careers. Significantly, everyone needs some professional grooming on a regular basis—whether it be a hair cut, a manicure or eyebrow shaping—so that consumers have as much or more expertise in judging the quality of grooming service than do regulators. Texas should trust Texans to determine who is qualified to beautify their hair, skin and nails. The state should repeal its regulation of eyebrow threaders, wig specialists and hairbraiders, and drastically reduce the number of hours required for hairstylists while offering hands-on alternatives to conventional beauty school.

**“I can’t see how
someone is going to
pay you thousands
of dollars to learn
something that
they’ll never do.”**

-Isis Brantley



Hairstyling

Clive Lamb owns and operates Clive and Co., a men's and women's hair salon near the Galleria shopping center in Dallas. He has been in the hairdressing business in Dallas for more than 24 years. Clive is also the presiding officer of the Texas Advisory Board on Cosmetology—a state agency providing policy guidance to the Texas Department of Licensing and Regulation. his story epitomizes the American Dream.

Born in London, England, Clive worked construction with his father as a young man.

"I didn't come from the most wealthy background," he said.

At age 16, Clive learned hairdressing at an English community college. From there, Clive rose quickly through London's high-end hairdressing industry—working first as a junior stylist, then as an instructor, then becoming the general manager of education for Jingles International.

But Clive was convinced that England's class system was holding him back.

"Whether or not you were accepted in society or certain areas of society depended on your accent," he said. By the time he moved to Dallas in 1985, Clive had eight years of hairdressing experience. "This is the land of milk and honey," he said. "And if you're going to make it anywhere in the world, this is the place to do it."

Becoming licensed to cut hair was a strange experience for Clive. In England, no one needs government permission to cut hair. Salons need business licenses, of course, and salons are subject to inspection by the health department, but it is up to customers to decide who can and cannot cut hair well. Although the concept of cosmetology licensure was foreign to Clive, the test he was supposed to take was even more bizarre. "It was prehistoric," he said. "It was hairdressing from the dark ages."

Because of Clive's experience as an apprentice, he believes in hands-on cosmetology training. He said, "I can tell you now, if one of my employees did one of those haircuts in the salon that they had to do to pass the state's test, they would probably be fired on the spot."

Clive would rather see parallel systems where students can learn the trade in a school or in a salon.

Since his appointment to the Advisory Board on Cosmetology in 2006, Clive has advocated for fewer regulations, especially in the areas of hairbraiding and hairstyling. During the most recent legislative session, he worked tirelessly, but to no avail, on a bill that would have created a specialty license for hairstylists and an apprenticeship option for cosmetology students.

"The rules and statutes have become far too complicated," Clive said. "I think too many beauty schools are looking to keep the rules and statutes in place because they see profit."



Horse Care

Occupational licensing negatively impacts the work of rural Texans just as it creates barriers for urban entrepreneurs. Of course, every community needs a hairstylist (see p. 23), a locksmith (see p. 35) and, in this day and age, a computer repairman (see p. 38). But Texas also has a long tradition of ordinary Texans helping one another raise healthy livestock. Everyone wins when owners are permitted to hire whomever they wish. This is especially true of Texas' approximately one million horses,⁸² which are more likely to receive treatment when no professional fees are involved.

Unfortunately, the Texas State Board of Veterinary Medical Examiners (known as the Vet Board) is disturbing the state's tradition of community-based horse care. The Vet Board has fought to apply the state's veterinary medicine statute to horse teeth "floating"—the practice of filing horses' teeth—and horse massage—an important practice to maintain a horse's well-being, just as it is for human athletes. Naturally, you cannot practice veterinary medicine in Texas without a license.⁸³ But what "veterinary medicine" means, however, is open to debate. Texas law defines veterinary medicine very broadly as the "diagnosis, treatment, correction, change, manipulation, relief, or prevention

of animal disease, deformity, defect, injury, or other physical condition[.]"⁸⁴ As anyone who has spent time on a working ranch can tell you, this definition is absurdly broad.

The public routinely does all sorts of things with large animals that fall within Texas' definition of "veterinary medicine." Those who drafted the licensing act tried to deal with that reality by creating numerous exemptions that make clear that practitioners other than veterinarians are qualified to take care of many aspects of an animal's health. The licensing law specifically exempts many forms of animal husbandry that are more dangerous than horse teeth floating or horse massage, including



castration, dehorning, tail docking, shoeing, (non-surgical) birthing, branding, artificial insemination, and “treating an animal for disease prevention with a nonprescription medicine or vaccine.”⁸⁵ Therefore the state does not regulate the removal of animal body parts, but goes out of its way to regulate horse teeth maintenance and massage.

Another absurdity of Texas’ law is that it does not apply to “the treatment or care of an animal *in any manner* by the owner of the animal, an employee of the owner, or a designated caretaker of the animal.”⁸⁶ This means a horse owner can have a totally inexperienced, untrained ranch hand float and extract his horse’s teeth, but the same horse owner may not hire an experienced, highly qualified practitioner who is not a veterinarian to do the same work simply because the more qualified individual is not a full-time employee.

Moreover, veterinarians typically do not learn to float horse teeth and never learn massage in vet school; they are rarely tested on proficiency in

equine teeth floating when they take their licensure exam and massage has never appeared on the exam. Texas A&M’s College of Veterinary Medicine and the 27 other veterinary schools and colleges in the United States offer a generally uniform curriculum of classroom, laboratory and clinical education that is designed to prepare graduates for the general practice of veterinary medicine. Texas A&M and the vast majority of the other 27 veterinary schools do not require students to take a single class in equine dentistry in order to graduate, although some schools offer electives.⁸⁷ Horse massage is not even an elective. Moreover, the average annual cost to attend Texas A&M is \$29,700 for Texas residents; that totals well over \$100,000 for the four years needed to graduate as a doctor of veterinary medicine.⁸⁸

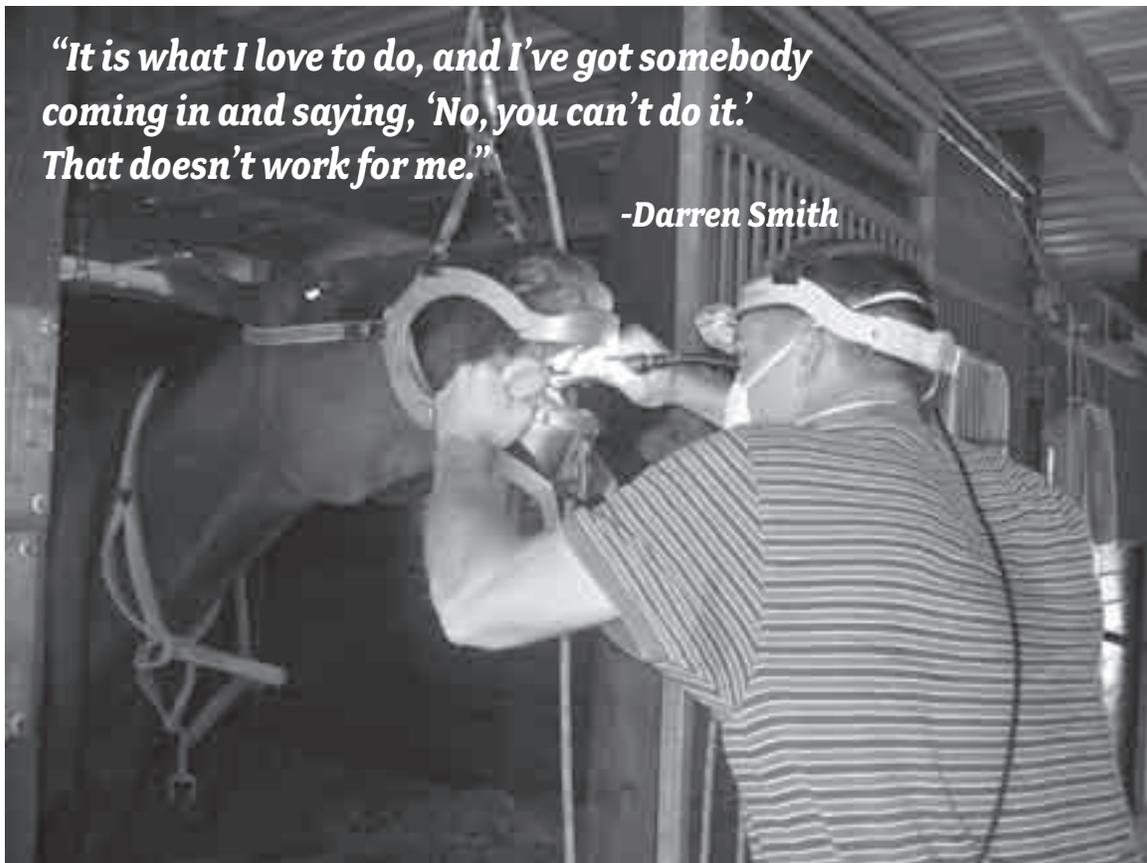
Forcing Texas’ equine professionals to spend more than \$100,000 and four years at veterinary school, where they will learn next to nothing about the work that they do, is ridiculous. Horse care



requires skill, experience and horsemanship, none of which come from vet school. The experience of horse teeth floaters and one horse masseuse in Texas epitomizes the trouble with occupational licensing. The legislature makes a broad grant of authority to a state agency, which interprets the law even more broadly, until another benign and self-regulating human activity requires hefty educational requirements and state fees. In the case of the Vet Board, this song and dance threatens the health of horses within the state. Horse owners—not the government—are in the best position to find knowledgeable and careful business people to treat their horses.

Horse teeth floating

Horse teeth grow throughout their lives; consider the expression, “long in the tooth,” an expression that started when discussing older horses. Because of the natural alignment of their jaws, horses also unevenly wear down their teeth. The problem is exacerbated in captivity because horses no longer eat rough grasses and do not pick up dirt and other materials with their food. As a result, horses’ teeth need to be filed, or “floated,” every six to 12 months in order to prevent or remove fang-like points on the horse’s molars, which can grow awkwardly into the animal’s gums.⁸⁹ These points may cause serious problems as they prevent



the horse from effectively grinding food using its natural circular chewing motion. This may prevent the horse from properly digesting food and may lead to reductions in the horse's weight and overall health.⁹⁰ The removal of points is relatively simple to accomplish, requiring hand-eye coordination and the ability to recognize straight or abnormally curved lines by feel or sight. One of the most important skills in floating is horsemanship—the ability to calm a horse so that the procedure goes smoothly. This service has typically been provided by various members of the public, including equine dental providers. This arrangement has served horses and horse owners well for hundreds of years, and it presents no legitimate health or safety concerns.

Members of the Vet Board, however, would like to make it that no one can practice floating without graduating from veterinary school and successfully passing the state's medical examination.⁹¹ Beginning in 2004, the Vet Board twice unsuccessfully tried to convince lawmakers to license horse teeth floating. In 2007, without any change in the law or administrative rules, the Vet Board took it upon itself to issue cease and desist letters to a number of successful floaters around the state. The Institute for Justice responded with a lawsuit against the Vet Board that seeks to vindicate the economic liberty of horse teeth floaters.⁹²

Darren Smith

Darren Smith has floated horses' teeth since he was 15 years old and he started his own floating business at 20. He owns Performance Dentistry, which provides horse teeth floating services around Texas and throughout the country. Darren is also the president of the International Association of Equine Dentistry, a worldwide organization that trains members for private certification.⁹³

Darren was drawn to horse teeth floating because it was a good business opportunity involving horsemanship and a lot of personal freedom. When he got started in the business, few people wanted to do the backbreaking work of manually

filing a horse's teeth, which can take hours. When power tools became available about ten years ago, Darren said there was an explosion in the business of equine dentistry because the tools made floating much easier.

Darren said licensed veterinarians do not want to perform horse teeth floating even with power tools because, relative to conventional veterinary practice, it is hard work with minimal financial return.

"In an advanced case, it's going to take anywhere from 35 to 50 minutes to work on one horse," he said. "In that time, a veterinarian could have made quadruple the amount of money and not shed a bit of sweat."

Horse teeth floaters do work closely with veterinarians, however, consulting with them on issues of equine dental health and often calling on them to sedate horses before more sensitive sessions. (Some of the horses Darren works on are worth more than \$100,000, so for the safety of the horses and for his own safety, he always has them sedated before floating their teeth.) Underlining the absurdity of Texas' veterinary medicine laws, the vets almost never show up to sedate a horse themselves, choosing instead to rely on the veterinary medicine law's exception for any owner or his employee, who can legally sedate a horse without a license.⁹⁴

Darren understandably bristles at the idea of having to go back to school to earn undergraduate and veterinary medicine degrees just to continue doing what he's done successfully for decades. "Why do I want to go through eight years of school when I'm not even going to learn about floating horses' teeth?" he asks. "They barely teach it in vet school, and what they do teach, I guarantee you I can do better than the professor."

Darren points to his spotless track record of working with horses without incident. (Although a horse once rolled over onto him, tearing his shoulder, Darren has never injured a horse.)

If the Vet Board is successful in making horse teeth floating the licensed practice of veterinary

medicine, Darren said horse owners will suffer. He also points to the overabundance of horses in Texas and the shortage of vets to take care of them.

He said, “They want to take us off the market for eight years to go and become a veterinarian when there are all of these horses out here who are not being helped.”

The horse owners that Darren works with uniformly oppose licensing. He said, “It’s no different from having a horseshoer come in. You’re not going to call your veterinarian to come out and shoe your horse or massage your horse. You’re going to call that person who does it every day.”

Darren joined the Institute for Justice in a legislative campaign this past session to add horse teeth floaters to the list of individuals exempted from Texas’ veterinary medicine law. That effort was unsuccessful, and the Institute’s lawsuit against the Vet Board remains pending.⁹⁵ Despite a disappointing legislative loss, Darren still thinks it is worth fighting state regulators over irrational licensing rules.

“This is what I do for a living,” he said. “It is what I love to do, and I’ve got somebody coming in and saying, ‘No, you can’t do it.’ That doesn’t work for me.”

Horse massage: Charlotte Morris

Charlotte Morris started Phoenix Body Works, a central Texas human and horse massage service based out of Cibolo, four years ago. Charlotte became interested in massage while training and competing as a nationally ranked triathlete. Having experienced the trade’s benefits first hand, she enrolled at Lauterstein-Conway Massage School in Austin following a successful athletic career.

At first, Charlotte was only interested in human massage. She got the required human massage license, but she was not satisfied with the state’s minimum education requirements so she took an extra 600 hours of instruction, followed by coursework in sports therapy and active release—a massage specialty. In school, she used her own thoroughbred as a model to test her skills. The horse, an older animal, had a lot of issues that

veterinarians could not address; and yet Charlotte began to see improvements. Soon after Charlotte started her full-time work as a human masseuse, friends started asking if she would work on their horses, too.

Charlotte grew up around horses. She owns and shows horses. The animals are one of her life’s great passions. But massage school had taught her nothing about horse massage. Learning on her own, Charlotte took a correspondence course on horse massage because there are not any horse massage schools in Texas. Charlotte discovered that horses benefit from body work just as much, if not more, than humans. Horses are often worked with too much weight on their backs, they may have suffered from an improper saddle fit and, like any human, a horse will sometimes strain one muscle and then compensate with the overuse of another. Charlotte studied horse anatomy and physiology and gave it a shot.

“I did a lot of my work for free my first year,” she said.

Charlotte began her commercial work on old lesson horses—lesson horses are older horses usually ridden by kids. They are probably the biggest problem cases, said Charlotte. “I was able to get the horses moving a lot better, fix problems with behavior. Then people started calling me all the time. Now my work is 90 percent horses.”

As a licensed human masseuse, Charlotte was careful to look for rules regarding horse massage, but she found none. No one from the various state licensing authorities had even heard of horse massage, let alone a horse massage license.

In the summer of 2008, Charlotte was featured in an *Austin American-Statesman* article about unusual jobs. The article prompted the Texas Board of Veterinary Medical Examiners to investigate Charlotte for the unlicensed practice of veterinary medicine.

Initially, Charlotte was able to negotiate what she thought was a reasonable compromise with the state authorities. She would only work on horses when she had prior approval from the animal’s veterinarian. The veterinarian did not have to be in the barn with her, but he or she had to know that





***“There is not a single
vet in the state of Texas,
that I know of, that does
this work.”***

-Charlotte Morris





the horse was receiving unlicensed bodywork from Charlotte. Though the arrangement was inconvenient for her customers, their veterinarians and herself, Charlotte saw some value in consulting an animal's doctor before addressing its most persistent physical problems.

But in December 2008, the Vet Board sent Charlotte another letter alleging that her website and the *Statesman* article both constituted an illegal advertisement for unlicensed veterinary services, namely Charlotte's "ability and willingness to perform equine massage therapy." Charlotte's surprise quickly turned to concern.

"I was scared," she said. "Number one, I didn't know whether I could even work anymore. I felt like I was in over my head at that point. Number two, I was very shocked because I thought it had been resolved. I was working under veterinary supervision. At that time, I thought that was what the Vet Board wanted."

Instead, Charlotte was called in front of the Vet Board so that state officials could consider whether or not to issue a cease and desist order. Charlotte was afraid her business

was in serious trouble, so she worked with the Institute for Justice to find pro bono representation for her hearing.

Faced with a team of lawyers ready to defend Charlotte's right to economic liberty, the Vet Board backed down. After threatening to take away Charlotte's livelihood, the board informally decided that she could continue to work under veterinary supervision. The board also required that she put a number of disclaimers on her website, regarding the fact that Phoenix Body Works does not offer veterinary services, and remove a section on the benefits of equine massage.

"I'll play by the rules," said Charlotte, "because I love what I do."

Charlotte insists that there is no physical danger to a horse when it is massaged.

"They're too big," she said. "They'll hurt you before you hurt them."

To a knowledgeable horse owner, the animals show pain just as clearly as a human, and Charlotte never pushes an animal beyond its pain threshold.

"A lot of people depend on me to keep their horses going and keep them healthy," she said. "There is not a single vet in the state of Texas, that I know of, that does this work."

Texas has over a million horses.⁹⁶ There are currently only about 3,500 veterinarians in the state,⁹⁷ not all of whom work on large animals. Licensing horse teeth floaters and horse masseuses as veterinarians poses not only a danger to economic liberty, but also a real danger to horses, who simply will not receive treatment if their owners must rely on veterinarians for every service. Texas government starts down a dangerous road when it expands the scope of veterinary medicine to include demonstrably safe practices that can be accomplished without the aid (and expense) of a veterinarian. The Legislature should therefore write clear exemptions into the veterinary medicine law for horse teeth floaters and horse masseuses.



Arts

In recent years, the absurdity of occupational licensing has put the state of Texas in the strange position of regulating arts businesses such as talent agencies⁹⁸ and interior designers.⁹⁹ And because you now need a permit to manufacture bedding for sale in the Texas,¹⁰⁰ there is even a question whether you can make and sell a quilt without state approval. But there is no discernable government interest in protecting consumers from the collaboration of a consumer and an artist. The case of Texas interior designers is exhibit A.

Interior design

Prior to the 2009 legislative session, you could practice interior design in Texas, but you could not legally tell anyone what you did for a living unless you had a government-issued license—that is, only government-approved interior designers could call themselves “interior designers.”¹⁰¹ In response to a federal lawsuit brought by the Institute for Justice,¹⁰² the state recently retreated from that position. Texas law now requires that only those who meet complicated requirements may call themselves “*registered* interior designers.”¹⁰³ Even

though the state’s control of the term “interior designer” may seem pointless to consumers, and it is, it has a profound impact on entrepreneurs who need to be able to tell their clients what they do.

Until recently, four states licensed the term “interior design” and “interior designer.”¹⁰⁴ This gives a strong advantage to industry insiders. When customers go looking for an “interior designer” on the Internet or in the phone book, they find only those businesses that have jumped through the government’s arbitrary hoops. These customers overlook many capable designers who do not meet the state’s requirements for what amounts to

a license to speak. Never mind that one of these designers may do the job better and at a more reasonable price than a state-approved designer.

Texas' requirements for using the term "registered interior designer" are not easy to meet. A designer has to apply to the Texas Board of Architectural Examiners for permission to take a licensing exam—an exam administered by a private, national credentialing body called the National Council for Interior Design Qualification (NCIDQ).¹⁰⁵ Just to sit for the exam, NCIDQ requires people to have six years combined college-level interior design education and work experience.¹⁰⁶ Texas likewise requires that applicants have six years combined experience and "approved interior design education."¹⁰⁷ Texas and NCIDQ require a minimum of two years of college-level education and a minimum of six months work experience under a licensed interior designer as part of that six-year combined total.¹⁰⁸

The exam and application process is expensive and time consuming. The cost of the exam alone can reach \$1,000—plus a \$100 fee to Texas for permission to take the exam—and it takes two days to finish.¹⁰⁹ If an aspiring designer passes the NCIDQ exam, he or she may then apply to the Texas Board of Architectural Examiners for an interior design registration. This involves an additional expense of at least \$355 for the initial application fee and an annual renewal fee of at least \$305.¹¹⁰ Keep in mind that until recently, anyone who used the term "interior design" was subject to the same requirements.

In November 2007, the Institute for Justice released a case study, *Designing Cartels*,¹¹¹ which documented a long-running campaign by the American Society of Interior Designers (ASID) and its state-level counterparts to expand regulation of interior designers in order to "increase the stature of the industry" and put would-be competitors out of business. That study showed that the nationwide push for more regulation of interior designers has come not from the public or the government, but from the cartel's efforts to obtain government protection from competition.¹¹² Subsequent Institute studies have documented how ASID and its allies in legislatures nationwide have worked to mislead the public and exclude minori-

ties from the interior design industry.¹¹³

This national effort has played out in Texas for nearly two decades. As recently as last session, lawmakers have spent vital time considering whether to transform the state's "title act"—restricting who can call themselves an "interior designer"—into a full-blown "practice act" that would make it a crime to provide interior design services without a state-issued license. Thankfully, these efforts have been defeated every time and lawmakers recently modified their unconstitutional restrictions on the term "interior design."

Fern Santini

Fern Santini is working to defeat industry insiders' efforts to regulate interior design in Texas. Fern lives in Austin and she has run her own interior design firm, Abode, for 16 years.¹¹⁴ She primarily helps homeowners make their spaces more vibrant, but has also worked on high-end commercial projects.

Fern does not believe any regulation of interior design is necessary because—like other interior designers—she does not draw plans and she is not responsible for ensuring that a structure is sound. Instead, Fern collaborates closely with the construction team on every project, acting as an advocate for her client's vision of their own living space and advising architects on points of interior layout and materials selection. Fern's job is to make new homes more livable. "My clients don't hire me to make sure that the air quality in the room is correct," she said, "They hire a HVAC guy to do that. They don't hire me to design sprinkler systems; they have a subcontractor that does that."

Fern has worked on projects like the Four Seasons Residence Tower in Austin. She has traveled around the world looking for materials and inspiration for her residential projects, one of which was featured in the book *Great Houses of Texas*.¹¹⁵ Fern does not have any formal interior design training and, as demonstrated by her success, such formal education would be not only unnecessary, but costly in terms of time and treasure. To be a registered interior designer, Fern would have to have had college-level education in interior design and an internship with a licensed designer. She could not have afforded it.





“The architects I’ve worked with want an artistic collaborator, not someone who learned a formula for design. They tend to view the licensed design community as technicians—people who are unable to think outside the box—instead of as designers.”

-Fern Santini

Fern worked her way through college cleaning offices and waitressing. She went to work the Monday after graduation.

“My mom couldn’t have afforded to have supported me to do a two-year internship,” she said. Nor does she think you need a degree in interior design to be successful in her business. She said, “The architects I’ve worked with want an artistic collaborator, not someone who learned a formula for design. They tend to view the licensed design community as technicians—people who are unable to think outside the box—instead of as designers.”

The state’s registration program is not a good indicator of the quality of an interior designer for the ignorant consumer. The way to find an appropriate designer is to review their previous work and rely on references. For high-end projects, customers often find their designers by reviewing national publications, which Fern said do not care about credentials at all. “The only thing they care about is your work,” she said.

A practice act, which would make it a crime to provide interior design services without a state-issued license, would have put Fern (and her firm’s four other employees) out of work. Hoping to help the next generation of designers, Fern worked with

the Institute for Justice during the 2009 legislative session to defeat the interior design industry’s attempt to pass a practice act in Texas. Pointing out that school debt is far more crushing today than it was in the 1970s, Fern said “I think anyone that has talent should be able to have the opportunity that I had.”

The regulation of arts professions, such as interior design, exposes the increasingly unwise and unconstitutional reach of Texas’ licensing laws. It is a sad comment on the state’s priorities when officials must be sued in federal court in order to allow entrepreneurs to truthfully describe the services that they offer to the public. It is sadder still when the regulated services, like interior design, are demonstrably safe and a government license exists only because a self-interested group of industry insiders convinced the Legislature to do its bidding. Clearly, the arts are a matter of taste and individual Texans—not the government—should determine who is best able to help them make a new house a home or a new office a comfortable and pleasing place to work. The state has no legitimate interest in regulating interior design and other arts professions; lawmakers are therefore obliged to reject all future efforts to limit access to these industries.

Private Security

When you ask the average Texan what private security services are, they will tell you they involve police functions—like staking out a person’s residence or working as a bodyguard—when they are performed by a private individual. But perusing Texas’ private security statute, it seems lawmakers set out to craft a “catch-all” occupational license. In addition to private security guards¹¹⁶ and private investigators,¹¹⁷ the law covers locksmiths,¹¹⁸ alarm installers,¹¹⁹ electronic access device companies,¹²⁰ armored cars¹²¹ and guard dog trainers.¹²² The private security law even applies to computer forensic analysts and computer repairmen.¹²³ Each of these trades is defined very broadly, giving regulators too much discretion to determine who is and who is not required to obtain a license before going into business.

The problem with licensing forensics analysts, computer repairmen, locksmiths and so many others as private security providers is that they become subject to a host of unnecessary pre-qualifications and occupational requirements. For example, no one can get a private security license if they have been convicted of certain misdemeanors (including drunk driving) within the past 10 years, or if they have been convicted of a felony within the past 20 years.¹²⁴ The fact that the crime may be entirely unrelated to the individual’s

chosen occupation is irrelevant.¹²⁵ An applicant must successfully complete an examination officially administered by the Private Security Board,¹²⁶ which has actually contracted with a private, out-of-state entity to administer the exam. A licensee must submit his or her fingerprints,¹²⁷ undergo a criminal background check,¹²⁸ maintain liability insurance¹²⁹ and complete continuing education requirements.¹³⁰

Much of the trouble stems from the law’s incredibly broad definition of what constitutes a regu-



lated “investigation,” which includes, among other things, obtaining information related to a person’s “identity, habits, business, occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character[.]”¹³¹ According to this definition, you need an investigations license in Texas to act as an employment recruiter or journalist (both are routinely employed to obtain information related to a person’s occupation, knowledge, efficiency, reputation and/or character). This too-broad definition has been a repeated source of confusion.

In 2004, the Texas Attorney General had to issue an opinion clarifying that paralegals were not subject to private investigator licensing.¹³² Later, the *Texas Bar Journal* ran a feature discussing whether expert witnesses need private investiga-

tions licenses in Texas.¹³³ But recently, the statute has been rewritten to make it even more confusing.

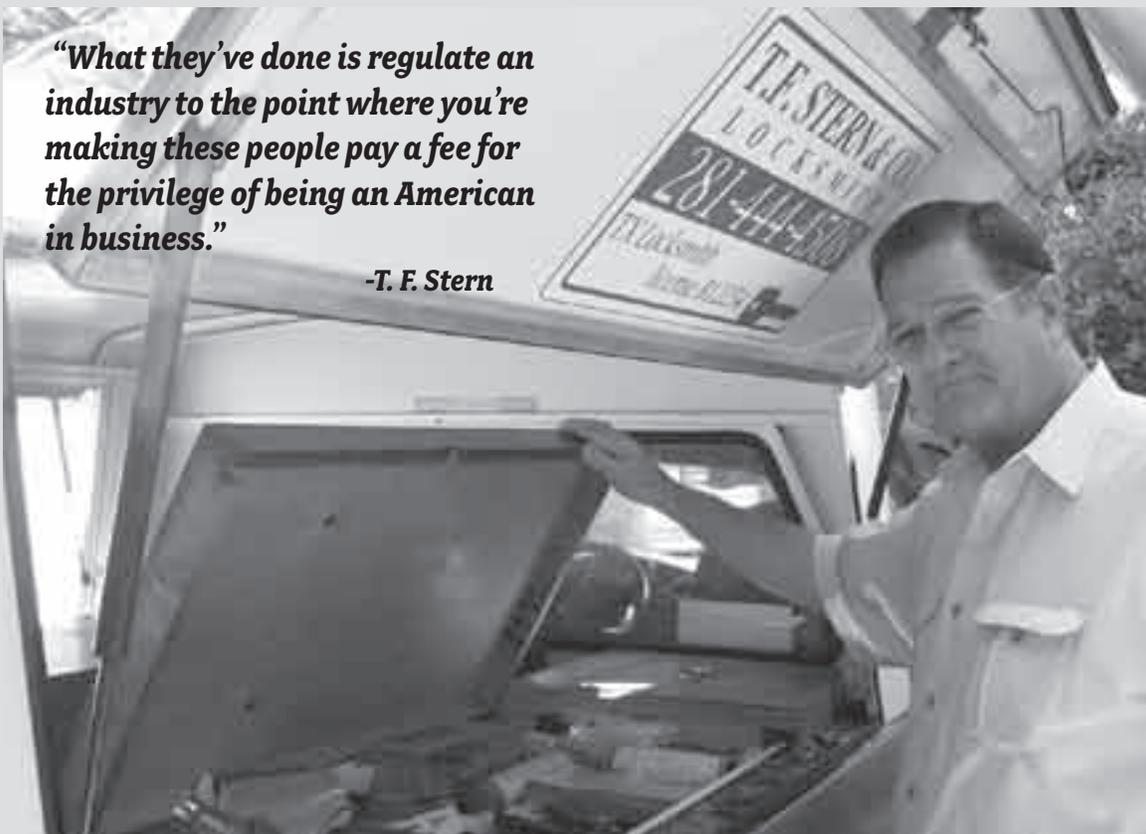
Locksmiths

T. Fraser Stern (“T.F.” to his friends) is a locksmith in Houston working exclusively on cars and trucks. He patrolled the streets of the nation’s fourth-largest city from 1971 to 1992 as an officer with the Houston Police Department. Off-duty on Saturdays, T.F. learned locksmithing by working as an unpaid apprentice. In 1978, he started a locksmithing business of his own.

When T.F. left the police force in 1992, he and his wife began running their mobile locksmith business, T.F. Stern & Co., full time.

“What they’ve done is regulate an industry to the point where you’re making these people pay a fee for the privilege of being an American in business.”

-T. F. Stern



Texas began regulating locksmiths in 2004. The state, for convenience, lumps locksmiths in with all other private security occupations—including guard dog trainers, alarm installers and surveillance specialists. Each of these occupations is required to take the same private security examination and so-called “continuing education” classes, which T.F. complains are run by private companies—often his competitors—and completely useless.

T.F. has his private investigations license. He did not see any way around it even though he already had the extensive training and insurance necessary to work with large automobile dealers. But T.F. has become a vocal opponent of locksmith licensing. “We were just fine for the first 25 years,” he said. “What they’ve done is regulate an industry to the point where you’re making these people pay a fee for the privilege of being an American in business.”

Forensic analysis

Under a 2007 amendment to the Texas Occupations Code, any business that accesses non-public computer files to gather information about the causes of events or the conduct of persons is deemed to have conducted an “investigation” and must therefore have a private investigator’s license.¹³⁴ The law’s broad definition of “investigation” means that much (if not all) of modern computer work requires a private investigations license. Every licensed investigations company, even sole proprietorships, must be managed by an individual who has completed either a criminal justice degree or a three-year apprenticeship under a licensed investigator.¹³⁵ Each licensed investigator must also submit his or her fingerprints to the FBI and pay a \$441 licensing fee.¹³⁶ Such requirements make absolutely no sense to impose on computer technicians, yet that is exactly what the state law does.

For example, a technician in Texas cannot correct a virus infection without investigating the causes of events—namely, how the computer become infected—nor can a technician investigate what a third-party may have done on a computer—that is to say what a hacker or a child may have

done on the system. To conduct such work without a license and report back to the customer is a criminal act not only for the computer tech, but also for the customer who has hired him. The law punishes consumers who knowingly use someone who does not have a private investigations license to perform anything deemed to be an “investigation” in the eyes of the government.¹³⁷ Amazingly, consumers are subject to the same harsh penalties as entrepreneurs—criminal penalties of up to one year in jail and a \$4,000 fine; civil penalties of up to \$10,000¹³⁸—just for having a trusted service provider do what he or she may have done routinely for years. The owner of a computer should not be put at risk of jail time for paying someone to help him maintain his property.

The Texas Private Security Board has made the situation worse. It quickly interpreted the 2007 amendments to the private investigations statute to apply to computer repair and network systems analysis.¹³⁹ When the computer industry in Texas rightfully bombarded the Board with questions, it issued a further clarification: “Computer repair or support services should be aware that if they offer to perform investigative services . . . they must be licensed as investigators.”¹⁴⁰ This was not helpful advice from the regulators.

The American Bar Association (ABA) agrees that Texas’ private investigations law goes too far. In August 2008, the ABA passed a resolution condemning states’ attempts to regulate the computer industry as private investigators because it stands in the way of both reliable computer work and the collection of evidence for use in court. The resolution reads in part:

[T]he American Bar Association urges State legislatures, State regulatory agencies, and other relevant government agencies or entities to refrain from requiring private investigator licenses for persons engaged in: computer or digital forensic services or in the acquisition, review, or analysis of digital or computer-based information . . . for purposes of obtaining or furnishing information for evidentiary or other purposes[.]¹⁴¹



A report by ABA Science & Technology Law Section accompanied the ABA's resolution. The report calls Texas lawmakers to task, finding, "Texas state licensing requirements are not based upon a determination of qualifications, skill, or education In fact, such laws may do a disservice because they may give consumers, corporations, and other members of the public and business community a false assurance that a licensed private investigator is qualified to do computer forensic work."¹⁴² The report notes that Texas, Georgia, North Carolina, Rhode Island, Michigan and New York have adopted laws that are "particularly aggressive" with regard to the "monetary and criminal penalties" they attach to the unlicensed practice of computer forensics.¹⁴³

Texas lawmakers attempted to correct the problem during the 2009 legislative session, but only made the law more confusing. The new law says that the repair or maintenance of a computer does not constitute a licensed "investigation," but only if the technician (1) has no intent to tell the customer what he found, (2) the discovery of any non-public information is accidental *and* (3) the technician intends only to diagnose (not, for example, to prevent) a computer problem.¹⁴⁴ This new law does nothing to help Texas' computer entrepreneurs or their customers; the state still requires the entrepreneur to get a private investigator's license before looking into the most common computer problems (for example, the cause of a virus) or telling a customer what happened on his system; and it is still illegal to hire an unlicensed computer repairman.¹⁴⁵

Computer work may look like an occupation with relatively low barriers to entry, yet suddenly (and unnecessarily) it has been put out of reach of most entrepreneurs because of the state's requirement for a post-secondary degree or three years of experience.

Andrew Rosen

Andrew Rosen is the president of ASR Data Acquisition & Analysis, a forensics investigations firm in Cedar Park.¹⁴⁶ He is one of the world's leading experts on the science of computer forensics, having developed the industry's leading investiga-

tions software, Expert Witness (now sold under the name EnCase). He has trained local and national law enforcement, including FBI agents. He has lectured and testified in just about every state in the country. After more than 20 years as a computer forensics scientist, Andrew was surprised to discover he needed a private investigations license to operate in Texas.

"The state is essentially putting a tax stamp on a bottle of snake oil."

-Andrew Rosen

Andrew's business depends on his ability to qualify as an expert witness in court. He was one of the first computer forensic specialists to get a private investigations license because he was concerned that he would be asked about licensure in an expert witness qualification hearing. Andrew felt like he had to get a private investigations license. But he does not see the point of Texas' qualification requirements. Andrew has never been rejected as an expert, despite being entirely self-taught. He is fond of saying, "I went to the same flight school Orville and Wilbur Wright attended." Always on the cutting edge of his industry, there has never been anyone qualified to teach, let alone graduate Andrew.

What's more, the test Andrew took to qualify as a private investigator did not test his knowledge of computer forensics. "I don't believe the words 'computer' or 'data' or 'evidence' or 'chain of custody' or any of the things that are the basic tenants of contemporary data forensics were addressed at all," said Andrew. "This is giving someone a license to do something that they have never had to demonstrate knowledge, experience or proficiency in."

Even if the state did a better job of testing new computer forensics investigators, Andrew doubts that bureaucrats would be able to keep up with developments in the industry. "The field is evolving exponentially faster than the judiciary can keep up," he said. That is why courts need expert wit-

nesses to help them understand mountains of digital evidence. Because Texas says that any private investigator, whether a trained forensics analyst or not, is now qualified to do computer investigations, Andrew reasonably fears “there are now people who have absolutely no skill, knowledge or experience who are licensed to do something that our democracy, our judicial system, depends on more and more frequently.”

Licensing computer forensics experts is not, in Andrew’s estimation, the solution.

He said, “I believe that that is a dangerous thing to do because I believe that regulation stifles innovation and growth. I think it is exclusionary. It starts to become a good ol’ boys club where innovation is not embraced, where there is not a level playing field with regards to scientific discovery.”

Computer forensic licensing simply does nothing to ensure competency.

As Andrew said, “I don’t see where people who have the power to enact these restrictions have done any kind of due diligence or really informed themselves about the real and potential consequences.” The disconnect between Texas’ stated purpose of protecting evidence for use in court and its qualification requirements for a private investigations license are frustrating to true experts like Andrew. He said, “The state is essentially putting a tax stamp on a bottle of snake oil,” referring to the state’s motivation to collect occupational licensing fees. He concluded, “They have not evaluated the claims that their licensees make to people who would hire them. There has been no investigation into their competency, their professionalism, any of that, and yet they are taxing the tonic that is sold out of the back of the wagon. And you could have anything in that little glass bottle.”

Computer repair

Although some practitioners dispute the wisdom of licensing locksmiths and forensics investigators under Texas’ private security law, there should be little debate that a private investigator’s license for computer repair technicians strains reason. Not only does it erect a barrier for consumers to oversee their own computer repair decisions, it is a fundamentally ill-conceived public policy to

require computer repair technicians to secure three years of post-secondary education or a three-year apprenticeship with a private investigator to start a business.

David Norelid

David Norelid is a senior at the University of Houston. He started Citronix Tech Services in 2003 after friends and family in Florida, who relied on him to keep their computers running, encouraged him to go into business. David was the kind of high school student who would take something apart and rebuild it with improvements. For example, he turned one of the sun visors in his car into a video game system for passengers. David has always been a guy who could make things work.

Through Citronix.net, David now offers virus and spyware updates, information about the computer industry, and a full range of computer services. When David moved to Houston for college, restarting Citronix was easy; he just changed the address on his website and printed some new business cards. David is a one-man show—he helps his customers with spyware, pop-ups and virus cleanup, data backup and recovery, hard drive transfers and networking, among many other services.

David relies on Citronix to support him while he is in school and, although he hopes to expand the business after graduation, right now he enjoys his business the way it is. Being a sole proprietor keeps overhead low and David has the opportunity to work on new computer problems as they come up. He is weary of becoming a manager mostly because he wants to keep going out on all the interesting jobs.

In the summer of 2008, David was surprised to learn that the state of Texas wants him to get a private investigations license to do work he has been doing for over five years without any problem. Looking into the “causes of events” or the “actions of persons,” David said, is an unavoidable part of modern computer repair. Virus cleaning involves investigating the “causes of events,” he said, because the customer wants to know why a private computer has stopped working. “That’s my bread and butter. That’s 50 percent of my business.”





When a company asks him to look at its private network and help identify and defend against an online intruder, David becomes concerned that he is conducting an investigation into the “actions of persons.” Never in his wildest dreams did he think he would need a private investigations license to work on computers.

David is also worried that entrepreneurs may accidentally become ensnared in the state’s private investigations laws by offering harmless computer repair assistance.

Last year, David joined the Institute for Justice Texas Chapter in a lawsuit challenging the state’s authority to regulate computer repair.¹⁴⁷ The lawsuit seeks to vindicate the right of computer repair businesses and consumers to engage in harmless, everyday transactions free from unreasonable government control. The investigation of a consumer’s private equipment and data should not require a license. In response to David’s lawsuit, state officials have back-peddled, telling the media that they never intended to regulate computer repair, this

despite their actions against firms like Best Buy. The state has provided no assurances that the law does not apply to David's work, and he has to press on in a state of uncertainty about his obligations.

Asked what would happen to Citronix if the computer repair law is upheld, David said, "I would probably have to go for a desk job somewhere because Citronix wouldn't be profitable anymore. The license would add overhead that I can't cover. Those computer guys who do end up getting licensed have to pass that cost on to their customers."

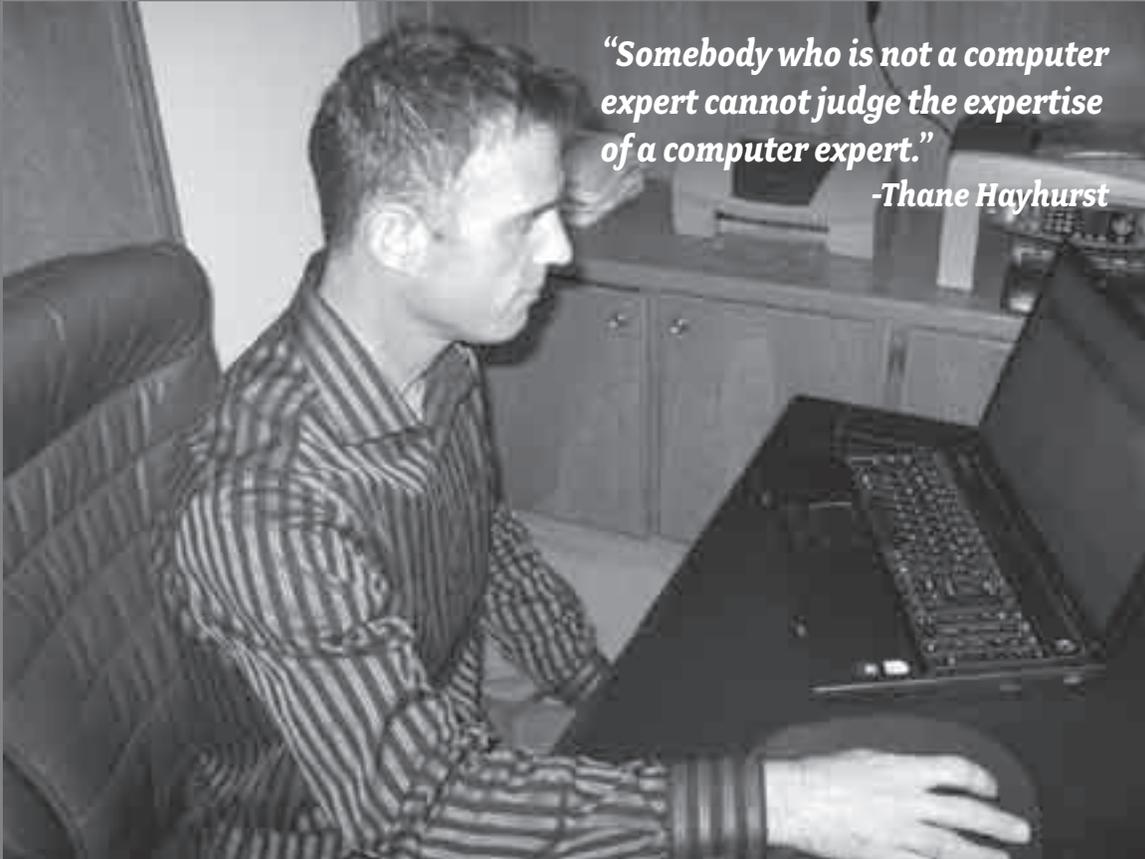
Thane Hayhurst

Thane Hayhurst owns a successful information technology firm, iTalent Consulting, in Dallas. iTalent employs six technicians and provides full-service solutions to computer problems. iTalent also provides staff for short-term and long-term information

technology assignments. For example, Thane recently helped design a login system for schools that will link their software to the National Sex Offender Registry. Over time, Thane hopes to build his business to 100 employees. Texas' private investigations law stands in his way.

Thane started his first computer repair business, Kiwi Computer Services, in 1992, just a year after moving to the United States from New Zealand. Thane has family in Texas, but asked why he relocated to the United States, he said simply, "America is the land of opportunity." Thane ran Kiwi—a reference to his New Zealander origins—until 1998, when he sold his client lists in order to focus on growing a series of IT consulting and recruiting businesses. In 2006, Thane started iTalent. He and his employees continue to provide computer repair and monitoring services.

The state's private investigations law affects the daily operations of Thane's information technology business.



"Somebody who is not a computer expert cannot judge the expertise of a computer expert."

-Thane Hayhurst



He said, “There is almost nothing that happens on a daily basis where we are not either determining the causes of events or the actions of people.” He added, “Basically the state is telling every single IT person that they cannot do their job because any IT firm can’t go out there and do work anymore unless there’s a manager on staff that is a private investigator.”

Thane takes the law seriously, and it detracts from what he can accomplish as an entrepreneur.

One area on which Thane would like to focus iTalent’s resources is network auditing—reviewing the security measures designed to protect computers from online intruders.

“Right now, if I place a system administrator with any company in town as my consultant, they are not allowed by this law to do any of the kind of work that would involve reporting back to the company on who deleted all their emails, for example, or why there was any kind of crime or hacking or even stealing money from the company.”

Thane believes private investigators are not qualified to do the work of an IT specialist. However, the state has made it a crime for anyone other than a private investigator to report on the conduct of third-persons (someone other than the computer owner) or even the causes of events. Thane and his employees cannot say *why* something happened, or who caused the problem, without running afoul of these regulations. The law, Thane said, “does not really have anything to do with the computer and information side of private investigations. Most private investigators are doing surveillance or criminal investigative work or finding people, not digging into the bits and bytes of a computer system.”

Thane does not think the state can effectively regulate the computer industry because it is changing too rapidly and is far too complex. He said, “Somebody who is not a computer expert cannot judge the expertise of a computer expert. If the government is so good at determining the qualifications for someone to do a job, the government would be a lot more efficient than it is today.”

Because iTalent provides IT recruiting services to organizations and businesses, Thane knows a thing or two about hiring technology profession-

als. He said, “There are people who are really good at doing computer work, and then there are people who are really good at passing certain exams. There’s a huge difference in somebody who has a certification and somebody who’s been doing IT work for the last five to 10 years and is really good at it. So, simply having a board that administers an exam doesn’t mean you’re going to get somebody that can actually do the work.”

“The private security law impacts my ability to get the kind of business that I want in this land of freedom,” said Thane. “We are not in the land of ‘we have to do what we’re told,’ or ‘we’re afraid of being put in prison or sued,’ it’s supposed to be the land of the free.”

In June 2008, Thane joined the Institute for Justice Texas Chapter, David Norelid (see p. 38), and Thane’s long-time client Erle Rawlins in a challenge to Texas’ private security law and the Private Security Board’s application of that law to computer repair businesses.¹⁴⁸ The case remains pending in Travis County District Court.

Faced with local and national criticism of its computer forensic and repair licensing rules, Texas has dug in its heels and passed a still more confusing law. Sadly, this is par for the course; once government decides that it will regulate a given human endeavor—like the simple repair of a computer—officials often refuse to admit they did not understand the industry or were wrong to regulate it in the first place. Entrepreneurs and customers are then left to fend for themselves under ambiguous and sometimes oppressive rules.

The term “private security” can be used to describe many different services.¹⁴⁹ Texas has unfortunately taken a one-size-fits-all approach to this diverse industry. The same agency (Texas’ Private Security Board) is charged with licensing traditional sleuths, gumshoes and bodyguards alongside locksmiths, alarm installers, guard dog trainers and computer technicians to name only a few. But the convenience of regulating a diverse group of services under one agency and one statute is not worth the headache it causes for entrepreneurs and their customers. The regulation of computer forensics, locksmiths and computer repair should be abolished.

CONCLUSION

It is easy, too easy, to forget that our government is one of limited powers designed to protect the rights of its citizens.¹⁵⁰ Texas has a tradition of honoring individual liberties that perhaps runs deeper than that of any other state in the union. But today Texas government is threatening one of the core freedoms of its people: the right to economic liberty—the right to earn an honest living in the occupation of one’s choice without arbitrary or excessive government regulation. This trend must be stopped.

The problem of occupational licensing is not rhetorical or abstract by any measure. The ability of Texans to start a new career—in cosmetology, for example—is greatly limited by the state’s mine field of occupational regulations, fees and burdensome education requirements. If Texans cannot legally work, they cannot provide for their families and build a foundation for a better community. If new businesses cannot open, consumers cannot find low-cost or improved solutions to their problems. Further, the businesses that do manage to open must pass considerable regulatory costs on to their customers.

Overregulation is far worse than no regulation. If there were no occupational regulations, Texans would still be protected from incompetent and dishonest business people through the state’s criminal law, tort law and deceptive trade practice, and consumer protection act.

The only legitimate reason for imposing limits on our economic liberty through occupational licensing is to protect the public from a real threat to health or safety. Too often, however, the real reason occupational licensing is imposed is to protect an existing industry from competition. Protecting industry insiders from competition is not a legitimate constitutional function of government. Texas should recommit itself to the cause of economic liberty and do away with its many unreasonable licensing regimes. Our state’s heritage of entrepreneurship hangs in the balance.

Recommendations

- The Texas Legislature should do away with state regulation of eyebrow threaders, wig specialists and hairbraiders. The unregulated practice of these cosmetology occupations poses no threat to the health and safety of Texans and the state’s current regulations serve only to exclude competent professionals from the workforce and raise prices for everyone.
- Lawmakers should drastically reduce the number of hours required to become a licensed cosmetologists in Texas from 1,500 hours to 500 hours or less. Getting a cosmetology license is far too expensive and the only group that benefits from the intensive instruction at state-approved beauty schools are the beauty schools themselves.
- The Legislature should write clear exemptions into the veterinary medicine law for horse teeth floaters and horse masseuses. The law was never designed to outlaw animal husbandry practices by lay people and, further, it is irrational to allow individuals to dock tails and castrate animals but not tend to their teeth and muscles.
- The Legislature should exempt computer forensics and repair specialists from the private security law. The unregulated practice of computer forensics and computer repair do not endanger the health or safety of Texans. Further, the Private Security Board is not equipped to regulate the fast-changing computer industry.
- Texas’ sunset legislation should be expanded to cover individual occupational licenses, not just the agencies that administer them. This would mean that each license would periodically come up for review and, absent an affirmative act by the Legislature to reauthorize it, the license would automatically be repealed.



- Texas' Sunset Advisory Commission should comprehensively review the various occupational licenses currently in effect and make recommendations to the Legislature on which of these licenses can be eliminated.
- The Sunset Advisory Commission should also review the administrative rules that state agencies have used to expand their occupational licensing authority and recommend changes where necessary to bring the agencies' rules in line with the intended scope of their authorizing statutes.
- The governor should introduce a "ridiculous regulation" hotline and encourage Texans to complain about unduly burdensome actions of state agencies.

Today Texas government is threatening one of the core freedoms of its people: the right to economic liberty—the right to earn an honest living in the occupation of one's choice without arbitrary or excessive government regulation. This trend must be stopped.

ENDNOTES

(All Internet content was current as of October 1, 2009.)

- 1 *E.g.*, Texas House Comm. on Gov't Reform Interim Report, p. 45 (81st Leg., R.S., Jan. 2009) (quoting Sidney Spector & William Frederick, *Occupational Licensing Legislation in the States*, p. 5 (Council of State Governments, 1952) (occupational licensing is "the granting by some competent authority of a right or permission to carry on a business or do an act which otherwise would be illegal"); Adam B. Summers, *Occupational Licensing: Ranking the States and Exploring Alternatives*, pp. 1-2 (Los Angeles, CA: Reason Found., Policy Study 361, 2007) ("[i]f you want to work, more and more often you have to seek permission from the government").
- 2 Texas House Comm. on Gov't Reform Interim Report, pp. 45-48 (81st Leg., R.S., Jan. 2009).
- 3 A cartel is a group of businesses that "join together to control a product's production or price." BLACK'S LAW DICTIONARY (8th ed. 2004). A cartel is by definition a special interest. That is to say, the cartel does not consider the interests of everyone; it thinks only about the financial interests of its members.
- 4 Grandfathering refers to "a statutory or regulatory clause that exempts a class of persons or transactions because of circumstances existing before the new rule or regulation takes effect." BLACK'S LAW DICTIONARY (8th ed. 2004).
- 5 Texas House Comm. on Gov't Reform Interim Report, pp. 48-50 (81st Leg., R.S., Jan. 2009).
- 6 Tex. Bus. & Com. Code § 17.41 *et seq.*
- 7 Milton Friedman, *Capitalism and Freedom*, at 149-160 (Univ. of Chicago Press 2002 [orig. 1962]) (arguing doctors and hospitals would provide superior health services in the absence of medical licensure and the influence of the American Medical Association cartel).
- 8 Texas House Comm. on Gov't Reform Interim Report, p. 44 (81st Leg., R.S., Jan. 2009).
- 9 *Id.*
- 10 *Id.*
- 11 Tex. Occ. Code § 1002.001 *et seq.*
- 12 Tex. Occ. Code § 1302.001 *et seq.*
- 13 Tex. Occ. Code § 2303.001 *et seq.*
- 14 Tex. Occ. Code § 1958.001 *et seq.*
- 15 Tex. Health & Safety Code §§ 345.041-.101.
- 16 Tex. Occ. Code § 651.001 *et seq.*
- 17 Tex. Occ. Code § 451.001 *et seq.*
- 18 Tex. Occ. Code § 203.001 *et seq.*
- 19 Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, p. 1 (Kalamazoo, MI: Upjohn Institute, 2006); Morris M. Kleiner & Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing*, p. 4, 7 (Bonn, Germany: Institute for the Study of Labor, Discussion Paper No. 3675, Aug. 2008).
- 20 Texas House Comm. on Gov't Reform Interim Report, pp. 45-48 (81st Leg., R.S., Jan. 2009).
- 21 *Id.* at 48-50.
- 22 *Cf.* Texas Comptroller of Public Accounts, *Fiscal Notes*, Publ'n No. 96-369, June/July 2009, p. 3 (documenting decline in new businesses).
- 23 DFPS's responsibilities were previously carried out by a predecessor agency, the Texas Department of Protective and Regulatory Services. In the interest of readability, the current name, DFPS, is used throughout this report to represent both the current and predecessor agency.
- 24 40 Tex. Admin. Code § 745.117(2) (programs teaching a single "talent, ability, expertise, or proficiency" for less than two hours a day are exempt from daycare licensing).
- 25 Tex. Hum. Res. Code § 42.002(7).
- 26 40 Tex. Admin. Code § 745.33.
- 27 *E.g.*, Tex. Hum. Res. Code §§ 42.041-.063; 40 Tex. Admin. Code §§ 746.4301, 746.2707.
- 28 40 Tex. Admin. Code § 746.4603(3) (prohibiting trampolines greater than four feet in diameter or more than twelve inches above a padded surface).
- 29 40 Tex. Admin. Code § 746.3707.
- 30 Chapter 42, Tex. Hum. Res. Code.
- 31 Tex. Hum. Res. Code § 42.041(b)(5) (exempting regulated "youth camps"); <http://www.dshs.state.tx.us/youthcamp/YCappINSTRUCT.shtm> (application requirements).
- 32 Tex. Hum. Res. Code § 42.041(b)(5).
- 33 Tex. Atty. Gen. Op. GA-0649 (July 2008).
- 34 Tex. Hum. Res. Code § 42.041(b)(1)-(16) (exempting bible camps and any "facility that is operated in connection with a shopping center," among others).
- 35 Tex. Occ. Code § 42.041(b)(18) (SB 68, 81st Leg., R.S., § 3) newly exempts any program:
 - (A) in which a child receives direct instruction in a single skill, talent, ability,



- expertise, or proficiency;
- (B) that does not provide services or offerings that are not directly related to the single talent, ability, expertise, or proficiency;
- (C) that does not advertise or otherwise represent that the program is a child-care facility, daycare center, or licensed before-school or afterschool program or that the program offers child-care services;
- (D) that informs the parent or guardian:
- (i) that the program is not licensed by the state; and
 - (ii) about the physical risks a child may face while participating in the program; and
- (E) that conducts background checks for all program employees and volunteers who work with children in the program using information that is obtained from the Department of Public Safety[.]
- Two other measures were considered and rejected. See HB 1393 (81st Leg., R.S.) & HB 601 (81st Leg., R.S.).
- 36 40 Tex. Admin. Code § 746.4301-4315.
- 37 Tex. Atty. Gen. Op. GA-0649 (July 2008).
- 38 Tex. Occ. Code § 42.041(b)(18) (text at n. 35 above).
- 39 40 Tex. Admin. Code § 746.4603(3) (prohibiting trampolines greater than four feet in diameter or more than twelve inches above a padded surface).
- 40 Tex. Occ. Code § 42.041(b)(18) (text at n. 35 above).
- 41 <http://www.bls.gov/oco/ocos169.htm#training>.
- 42 Eric Dexheimer, "A turf war over shaving: barbers, cosmetologists debate the right to wield a razor," *Austin American-Statesman*, Sept. 14, 2009, at Sec. A, p. 1. Online at <http://www.statesman.com/news/content/news/stories/local/2009/09/14/0914barber.html>.
- 43 Tex. Occ. Code §§ 1601.002(1), 1602.002(a).
- 44 Tex. Occ. Code §§ 1601.002(1) (defining treating a person's mustache or beard as, in part, "arranging, beautifying, coloring, processing, shaving, styling, or trimming" for compensation), 1602.002(a) (defining treating a person's hair as, in part, "arranging, beautifying, bleaching, cleansing, coloring, curling, dressing, processing, shampooing, shaping, singeing, straightening, styling, tinting, or waving" for compensation).
- 45 *Sunset Staff Report*, Feb. 2004, at 1 (Commission recommended abolishing both barber and cosmetology licensing in 1979 and again in 1991). Online at: <http://www.sunset.state.tx.us/79threports/tsbbe/summary.pdf>.
- 46 Tex. Occ. Code §§ 1601.002(1)(A)-(K), 1602.002(a)(1)-(11).
- 47 Tex. Occ. Code § 1602.254(b)(2).
- 48 Tex. Occ. Code § 1602.254(b)(3).
- 49 Texas House Comm. on Gov't Reform Interim Report, p. 47 (81st Leg., R.S., Jan. 2009); Eilene Zimmerman, *As Beauty Schools Grow, Chemistry Joins Curlers*, *NEW YORK TIMES*, June 7, 2009 at BU10, online at: http://www.nytimes.com/2009/06/07/jobs/07beauty.html?_r=1.
- 50 <http://www.license.state.tx.us/cosmet/cosmetexam.htm#candidateinfo>.
- 51 16 Tex. Admin. Code § 83.80(a).
- 52 *E.g.*, Tex. Occ. Code §§ 1602.256 (manicurists required to complete 600 hours of training), 1602.257 (facialists required to complete 750 hours of training).
- 53 Eric Dexheimer, "A proliferation of police agencies in Texas," *Austin American-Statesman*, August 23, 2009 (citing Texas Commission on Law Enforcement Executive Director Timothy Braaten. Online at <http://www.statesman.com/news/content/region/legislature/stories/2009/08/23/0823peaceofficers.html>).
- 54 Tex. Occ. Code § 1602.351.
- 55 16 Tex. Admin. Code § 83.25(e).
- 56 16 Tex. Admin. Code § 83.25(i).
- 57 Helen R. Bickmore, ed., *Milady's Hair Removal Techniques: A Comprehensive Manual* (Thomson Learning, 2004) p. 79-81.
- 58 Bickmore, *Hair Removal Techniques*, n. 57 above; Belen Aranda-Alvarado, *Past Plucking? Weary of Wax? Try Eyebrow Threading*, *WASHINGTON POST*, Dec. 12, 2004, at M09, online at <http://www.washingtonpost.com/wp-dyn/articles/A53756-2004Dec9.html>; Kristin Larson, *Keep an eye on the thread*, *CHICAGO TRIBUNE*, April 21, 2004, at Sec. C, p. 3.
- 59 Tamara Ikenberg, *Unwanted hair can be thrown for a loop without chemicals*, *BALTIMORE SUN*, Feb. 13, 2000, at Sec. N, p. 1.
- 60 Katya Kazakina, *Noticed: An Age-Old Way to Arch Your Brows*, *NEW YORK TIMES*, Nov. 24, 2002, at Sec. 9, p. 11, online at <http://www.nytimes.com/2002/11/24/style/noticed-an-age-old-way-to-arch-your-brows.html>; Quynh-Giang Tran, *Ancient technique raising—and*

- shaping—area eyebrows, CHICAGO TRIBUNE, Sept. 9, 2001, at Sec. C, p. 2.
- 61 <http://www.license.state.tx.us/cosmet/cosmetstratplan.htm> (as early as July 2005, TDLR was encouraged, and declined, to take a position on eyebrow threading's status under state licensing laws).
- 62 Tex. Occ. Code § 1602.254.
- 63 Tex. Occ. Code § 1602.257.
- 64 Open records request of June 10, 2009 on file with the Institute for Justice Texas Chapter.
- 65 E.g., Lisa Millegan, *Threading Different Way to Get Rid of Facial Hair*, MODESTO BEE, Jan. 11, 1998, at F-1 (“[i]t seems to me this is a cultural way of plucking hair [...] I see nothing dangerous about it [...] it would be just like taking a tweezer and plucking out a hair”).
- 66 E.g., Katya Kazakina, *Noticed: An Age-Old Way to Arch Your Brows*, NEW YORK TIMES, Nov. 24, 2002, at Sec. 9, p. 11, online at <http://www.nytimes.com/2002/11/24/style/noticed-an-age-old-way-to-arch-your-brows.html> (“threading can cause redness and irritation”).
- 67 Bickmore, *Hair Removal Techniques*, n. 57 above (threading “does not traumatize the skin” and is a “good alternative for those unable to tolerate waxing”); Kazakina, n. 66 above (describing threading as “the best inexpensive hair removal alternative for patients who take Accutane or use topical retinoid creams”).
- 68 E.g., Richard F. Wagner, Jr., Mamdouh M. Abdel-Gawad & Ibrahim A. Abdel-Hamid, *Khite: a non-Western technique for temporary hair removal*, 36 International Journal of Dermatology 217 (1997); Michael J. Scott, Jr., Michael J. Scott, III & Anola M. Scott, *Epilation*, 46 Cutis 216-17 (1990).
- 69 Tex. Occ. Code §§ 1602.301, .302; 16 Tex. Admin. Code § 83.71.
- 70 Tex. Occ. Code §§ 1601.002(1)(J), 1601.251, 1602.002(a)(4), 1602.251.
- 71 16 Tex. Admin. Code § 83.20(b), (c).
- 72 16 Tex. Admin. Code § 83.25(e).
- 73 Valerie Bayham, *A Dream Deferred: Legal Barriers to African Hairbraiding Nationwide*, online at <http://www.ij.org/1534>.
- 74 <http://www.ij.org/829>.
- 75 <http://www.ij.org/835>.
- 76 <http://www.ij.org/2211>.
- 77 <http://www.ij.org/790>.
- 78 <http://www.ij.org/850>.
- 79 <http://www.ij.org/845>.
- 80 Tex. Occ. Code §§ 1601.002(1)(K), 1602.002(a)(2).
- 81 Braiding has since been added to Texas’ barbering and cosmetology laws. See Tex. Occ. Code §§ 1601.002(1)(K), 1602.002(a)(2).
- 82 Texas State Historical Association, Handbook of Texas, “Horse and Mule Industry,” online at <http://www.tshaonline.org/handbook/online/articles/HH/athju.html>.
- 83 Tex. Occ. Code § 801.251.
- 84 Tex. Occ. Code § 801.002.
- 85 See Tex. Occ. Code § 801.004(2).
- 86 See Tex. Occ. Code § 801.004(1) (emphasis added).
- 87 Required curriculum at Texas A&M’s College of Veterinary Medicine available at <http://www.cvm.tamu.edu/dcvm/Curriculum/CurrOverView.shtml>.
- 88 Tuition and other costs to attend Texas A&M’s College of Veterinary Medicine available at <http://www.cvm.tamu.edu/dcvm/admissions/tuition.shtml>.
- 89 Manuel G. Himenes Jr., DVM, “Understanding Your Horse’s Teeth” (2002) available at http://www.aep.org/health_articles_view.php?id=28.
- 90 *Id.*
- 91 Tex. Occ. Code § 801.252.
- 92 <http://www.ij.org/650>.
- 93 <http://www.iaedonline.com/>.
- 94 Tex. Occ. Code § 801.004(1).
- 95 <http://www.ij.org/650>.
- 96 Texas State Historical Association, Handbook of Texas, “Horse and Mule Industry,” online at <http://www.tshaonline.org/handbook/online/articles/HH/athju.html>.
- 97 Texas Veterinary Medical Association, about TVMA, https://secure.tvma.org/About_TVMA/index.phtml.
- 98 Tex. Occ. Code § 2105.051.
- 99 Tex. Occ. Code §§ 1051.001, 1053.151.
- 100 Tex. Health & Safety Code §§ 345.041-.101.
- 101 Former Tex. Occ. Code §§ 1051.001, 1053.151 (2008) *superceded by* Tex. Occ. Code §§ 1051.001, 1053.151 (2009).
- 102 <http://www.ij.org/1239>.
- 103 Tex. Occ. Code §§ 1051.001, 1053.151 (emphasis added).
- 104 <http://www.ij.org/1240> n. 2 (listing Connecticut, Florida, Illinois and Oklahoma). Connecticut, Illinois and Oklahoma each have changed their laws in response to



- pressure from the Institute for Justice and local entrepreneurs. Florida is currently enjoined from enforcing its title restriction, also a result of an IJ challenge to its interior design law. See <http://www.ij.org/2724>.
- 105 http://www.tbae.state.tx.us/HowToRegister/InteriorDesigners_RegByExam.shtml.
- 106 <http://www.ncidq.org/exam/examreq.htm>.
- 107 Tex. Occ. Code §§ 1053.154, .155; 22 Tex. Admin. Code §§ 5.31, 5.51.
- 108 22 Tex. Admin. Code § 5.51(b).
- 109 <http://www.ncidq.org/exam/appins.htm>; <http://www.ncidq.org/exam/examinfo.htm>.
- 110 www.tbae.state.tx.us/documents/FeeSchedule.pdf.
- 111 <http://www.ij.org/1529>.
- 112 <http://www.ij.org/1240>.
- 113 *Designed to Exclude: How Interior Design Insiders Use Government Power to Exclude Minorities & Burden Consumers* (February 2009); *Designed to Mislead: How Industry Insiders Mislead the Public About the Need for Interior Design Regulation* (September 2008); both available at <http://www.ij.org/2722>.
- 114 <http://www.fernsantini.com/>.
- 115 Lisa Germany, *Great Houses of Texas* (Abrams 2008).
- 116 Tex. Occ. Code §§ 1702.102, .108.
- 117 Tex. Occ. Code §§ 1702.101, .104.
- 118 Tex. Occ. Code §§ 1702.102, .1056.
- 119 Tex. Occ. Code §§ 1702.102, .105.
- 120 Tex. Occ. Code §§ 1702.1025, .1055.
- 121 Tex. Occ. Code §§ 1702.102, .106.
- 122 Tex. Occ. Code §§ 1702.102, .109.
- 123 Tex. Occ. Code § 1702.104(a)(1).
- 124 Tex. Occ. Code § 1702.113(a)(2).
- 125 Tex. Occ. Code § 1702.113(e).
- 126 Tex. Occ. Code § 1702.117.
- 127 Tex. Occ. Code § 1702.110.
- 128 Tex. Occ. Code § 1702.282.
- 129 Tex. Occ. Code §§ 1702.123-.124.
- 130 Tex. Occ. Code § 1702.308.
- 131 Tex. Occ. Code § 1702.104(a)(1)(B).
- 132 Tex. Atty. Gen. Op. GA-0275 (Nov. 2004) (concluding exception from investigations licensing for attorneys engaged in the practice of law, Tex. Occ. Code § 1702.324(b)(9), applies to paralegals).
- 133 Joseph L. Lanza, “Should Your Next Expert Witness Be A Licensed Private Investigator,” *Texas Bar Journal*, February 2005, pp. 118-26.
- 134 Tex. Occ. Code §§ 1702.101, .104; H.B. 2833 (80th R.S. 2007); modified by H.B. 2730 (81st R.S. 2009).
- 135 Tex. Occ. Code § 1702.114(a); <http://www.txdps.state.tx.us/psb/forms/forms/PSB-27-GeneralInstructionsforC-L.pdf>.
- 136 Tex. Occ. Code § 1702.110 *et seq.*; <http://www.txdps.state.tx.us/psb/forms/forms/PSB-27-GeneralInstructionsforC-L.pdf>.
- 137 Tex. Occ. Code §§ 1702.386.
- 138 Tex. Occ. Code § 1702.381, 386(b), .388(b).
- 139 Opinion Issued in Response to Questions from Industry and Public, Texas Private Security Board, August 21, 2007,” http://www.txdps.stste.tx.us/psb/psb_opin_sum.htm.
- 140 Opinion Issued in Response to Questions from Industry and Public, Texas Private Security Board, October 18, 2007,” http://www.txdps.stste.tx.us/psb/psb_opin_sum.htm.
- 141 ABA Resolution 301 (August 2008), available online at: <http://www.abanet.org/dch/committee.cfm?com=ST202003>.
- 142 *Id.* at 12.
- 143 *Id.*
- 144 Tex. Occ. Code § 1702.104(b)(1)-(3); H.B. 2730 (81st Leg., R.S.).
- 145 Tex. Occ. Code § 1702.386.
- 146 <http://www.asrdata.com>.
- 147 <http://www.ij.org/2188>.
- 148 <http://ij.org/2188>.
- 149 U.S. Bureau of Labor Statistics, 2008-09 Occupational Outlook Handbook, Private Detectives and Investigators; online at <http://www.bls.gov/oco/ocos157.htm>.
- 150 *E.g.*, Tex. Const. art. 1, § 2 (“[a]ll political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit”); U.S. Const. amends. IX, X (“[t]he enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people” and “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

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