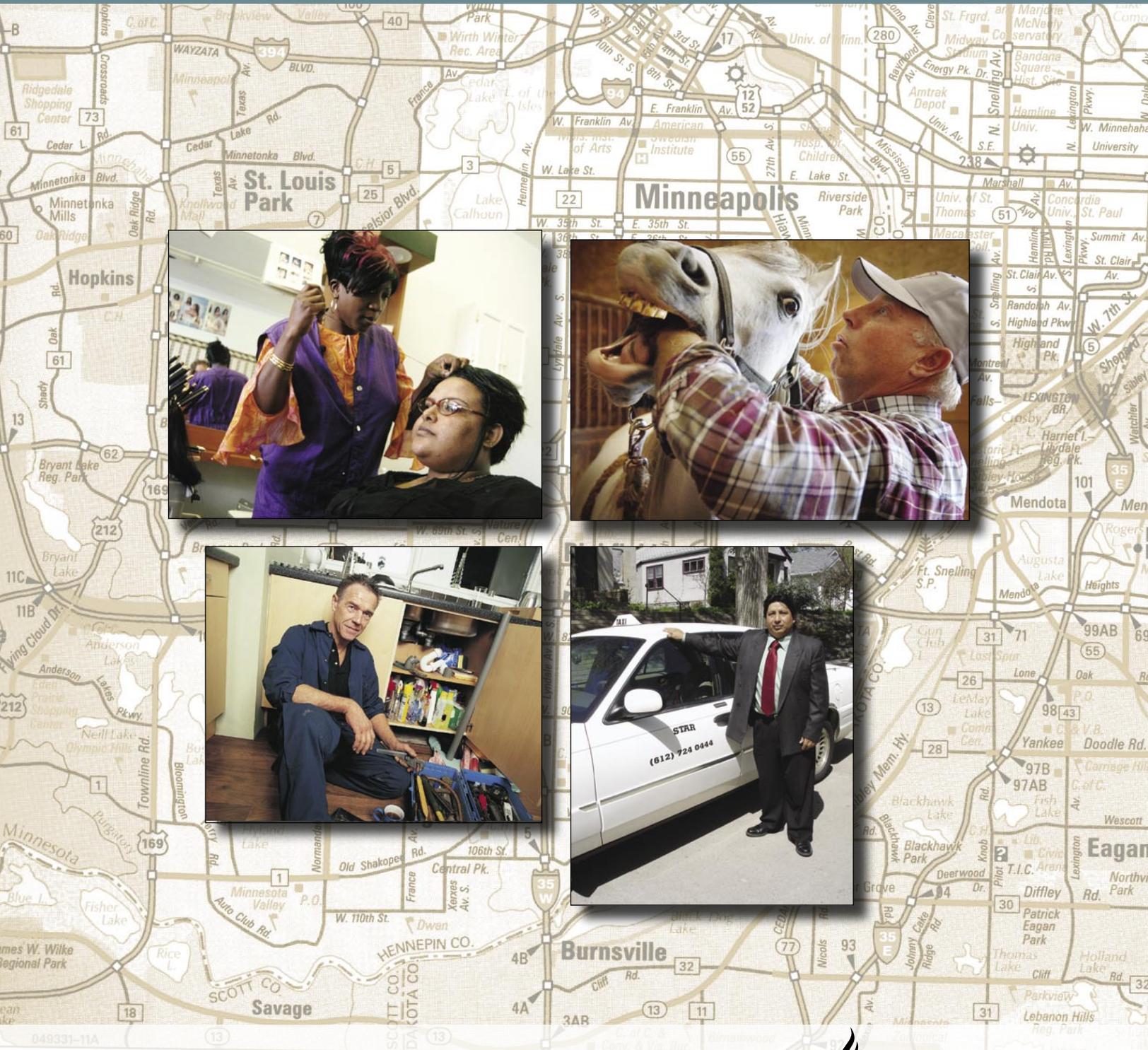


THE LAND OF 10,000 LAKES DROWNS ENTREPRENEURS IN REGULATIONS



By Nick Dranias



A Project of the Institute for Justice

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Executive Summary

Minnesotans who pursue entry-level occupations often drown in a sea of regulations. Even when enforced with civility and the kindest of intentions, too much red tape ensnares too many aspiring entrepreneurs. This study shows how Minnesota's government-imposed regulatory barriers block the path to the American Dream and how these barriers can be removed.

In an effort to gauge the nature and extent of occupational licensing and its effect on entrepreneurs of modest means, the Institute for Justice Minnesota Chapter has selected 11 occupations and small businesses for regulatory analysis.

Sign Hangers

In Minneapolis, sign hanger licenses are issued in a completely arbitrary manner. Any qualified applicant can be turned down for any reason (or no reason at all) and the consideration of many new or renewed applications is postponed for months at a time—or even indefinitely.

Horse Teeth Floaters

A government-created cartel in Minnesota prohibits competition among horse teeth filers, or floaters. Floating is a manual skill that can be learned with hands-on training and a basic understanding of horse skull anatomy—no anesthetics, invasive procedures or power tools are required. It is painless to the horse, relieves discomfort and maintains the horse's ability to chew properly. Yet all non-veterinarian entrepreneurs must be granted approval by a Board of Veterinary Medicine, be supervised by a veterinarian and obtain a license and pass a test from an international equine association. In Minnesota, however, it is illegal to gain the experience needed to obtain the license, and the required exam is offered in random locations, at random times, hundreds of miles from Minnesota. Further, applicants must be members of the association for at least nine months and receive sponsorship from an existing certified member, none of which are located in Minnesota.

Taxicabs

Three high government-imposed hurdles stand in the way of operating any taxi business in the City of Minneapolis: 1) the "taxi vehicle" license cap through which the government arbitrarily limits the number of cabs that can provide service; 2) the requirement to join a taxi "company, cooperative or association" as a precondition of holding any existing taxi vehicle license; and 3) the restricted issuance of new, reissued or temporary taxi vehicle licenses to "service companies." In practical effect, these barriers mean that the transportation needs of Minneapolis' burgeoning Latino community—and anyone else who wants basic neighborhood service—will remain unmet.

Household Goods Movers

To legally move household furniture from one residence to the next, a prospective mover must apply to the Minnesota Department of Transportation for a permit, which requires the applicant to demonstrate "that the area to be served has a need for the transportation services," in addition to financial responsibility and fitness through proof of insurance and disclosure of financial statements. The permitting process requires notice of the application to be given to "interested parties." This has been interpreted by MNDOT to allow existing moving companies to challenge the issuance of any new permit, thereby keeping out competitors.

Manicurists

In Minnesota it is a crime to clean, condition, shape, reinforce, color and enhance nails without a license. Anyone doing so risks misdemeanor charges and a possible jail sentence of up to 90 days. Would-be manicurists must undergo at least 350 hours of training (more than twice the hours required of paramedics) at an approved school at a cost of around \$3,000.

Estheticians

To moisturize and massage faces in Minnesota, prospective estheticians must undergo at least 600 hours of training. The cost is approximately \$4,850, and is followed by a State-sponsored licensing exam.

Cosmetologists

Would-be cosmetologists must pass a licensing exam after completing "a full course of training in a Minnesota licensed school of cosmetology, as indicated by documentation from the school, of at least 1,550 hours" (more than law school) at a cost approximating \$9,000. New cosmetologists are virtually indentured to established businesses in their respective industries because Minnesota law prohibits their services from being "provided in a place other than a licensed cosmetology salon, esthetician salon, manicurist salon, cosmetology school." Getting a salon license requires the employment of a licensed salon manager—an almost certainly insurmountable barrier for most new entrants.

Barbers

Minnesota law creates a guild-like regulatory system involving two classes of barbers: registered apprentices and registered barbers. Qualifying for licensure as a registered apprentice requires graduation from barber school at an approximate cost of \$7,800, 1,500 hours of training and exam passage. A registered apprentice still cannot perform barber services unless he is working under the “immediate personal supervision of a registered barber.” To become a registered barber an apprentice must obtain 12 months’ experience in barbering (consisting of not less than 1,500 hours of work experience), complete a “Related Home Study Course for Apprentice Barbers,” and pass another exam.

Flower Vendors

The Department of Licenses and Consumer Services maintains a list that it deems are flower cart-suitable locations in Minneapolis and ranks them by desirability. Each potential flower cart vendor must submit a completed license application, which is placed into a lottery. Each vendor whose name is drawn is then assigned a suitable location in decreasing order of desirability, until all locations are distributed. Everyone else must wait until next year. Even if a business attempts to renew a previously received flower cart license, no exceptions from the lottery exist. Licenses or locations are not freely transferable or exchangeable between vendors.

Mobile Food Cart Vendors

Every potential mobile food cart vendor must complete a Plan Review Application for the Minnesota Department of Health that includes a proposed menu and layout, including dimensions, mechanical schematics, construction materials, proposed equipment types, manufacturer and model numbers, installation specifications, further information describing custom equipment, information on water supply, waste disposal and plumbing in general, likely cart locations, and an operating schedule. The layout and design of food carts and mobile food units must comply with applicable National Sanitation Foundation International standards. After securing licensure from the State, a would-be entrepreneur is then faced with myriad local regulations.

Plumbers

Plumbing in Minnesota requires four years of practical plumbing experience, consisting of at least 7,000 hours of practical experience as an apprentice, and passage of a license examination. The City of St. Paul further requires any would-be plumber to take its very own Certificate of Competency test and otherwise comply with a duplicative licensing scheme.

Solution

The prolific rise of occupational regulation in Minnesota is best understood as political mischief. Fortunately, there is a homegrown solution to this problem. The Minnesota Sunrise Act of 1977 declares, “no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state.” It expressly requires the Legislature to engage in detailed fact-finding and cost-benefit analyses before imposing any new occupational regulation.

Since the Sunrise Act has not been applied consistently or effectively, careful judicial scrutiny should be invited. Accordingly, the Institute for Justice Minnesota Chapter will represent entrepreneurs who challenge Minnesota’s irrational barriers to entry and will urge the state judiciary to take the Sunrise Act’s pronounced public policy seriously, and to protect economic liberty by reviewing occupational licensing with an appropriately skeptical eye.

The Land of 10,000 Lakes Drowns Entrepreneurs In Regulations

By Nick Dranias

Introduction

In the Land of 10,000 Lakes, Minnesotans who pursue entry-level occupations often drown in a sea of 10,000 regulations. Even when enforced with civility and the kindest of intentions, too much red tape ensnares too many aspiring entrepreneurs. This study shows how Minnesota's government-imposed regulatory barriers block the path to the American Dream and how these barriers can be removed.

Background

Occupational regulation continues to proliferate across the nation. One economist estimates that occupational licensing nationally "reduces output through lost services annually by about \$38 billion."¹ As of 2004, "30 percent of the U.S. labor force works in a regulated occupation"² and "[m]ore than 18 percent of the workforce requires a license in order to legally do certain types of work."³ These percentages far exceed the 12.9 percent of occupations that are unionized.⁴

Minnesota is one of the most heavily regulated states in the nation. According to a survey in 2004, Minnesota was ranked 33rd out of 49 surveyed states in economic freedom.⁵ In the field of occupational regulation, Minnesota almost always imposes licensure (which makes it illegal to work in an occupation without meeting state standards) rather than less restrictive forms of regulation, such as certification (which only makes it illegal to use the name or title of a regulated occupation without meeting state standards).⁶ At least 93 categorically distinct occupations are currently licensed by the State of Minnesota.⁷ But if subclasses of licensure are included (such as "apprentice" or "master" licensure), Minnesota regulates over 180 occupations, making it the 13th most regulated state in the nation.⁸

Minnesota's regulatory regime reaches occupations that few other states touch. In 1999, the state regulated 31 occupations that were "regulated by fewer than nine other states."⁹ And Minnesota's regulatory regime continues to grow, with the total number of Minnesotans in a regulated occupation increasing 18.4 percent between 1998 and 2004.¹⁰

Studies indicate that the current level of occupational regulation in Minnesota reduces competition by excluding potential competitors, and correspondingly increases by up to 12 percent the incomes of service providers who are protected by government-imposed licenses.¹¹ This amounts to an unearned windfall of "between \$3 and \$3.6 billion" from consumers to members of regulated occupations, which reduces economic growth in Minnesota by "\$901 million to \$1.1 billion" annually.¹²

In an effort to gauge the nature and extent of occupational licensing and its effect on entrepreneurs of modest means, the Institute for Justice Minnesota Chapter has selected 11 occupations and small businesses for regulatory analysis:

1. **Sign Hangers**
2. **Horse Teeth Floaters/Filers**
3. **Taxicab Businesses**
4. **Household Goods Movers**
5. **Manicurists**
6. **Estheticians**
7. **Cosmetologists**
8. **Barbers**
9. **Flower Vendors**
10. **Mobile Food Cart Vendors**
11. **Plumbers**

These vocations do not naturally require huge amounts of financial capital or a great deal of formal education. Without the barrier of unreasonable regulation, they would attract large numbers of lower to middle-tier workers and entrepreneurs. But like too many other occupations, they are characterized by onerous regulations that lack any substantial connection to legitimate public health and safety concerns. By analyzing a sample of entry-level occupations, this study illustrates why any effort to encourage people to move from welfare to work and from poverty to wealth cannot ignore the regulatory hurdles blocking their path.

1. Sign of the Times

Sometimes licensing laws are like the customs of a secret society. For example, if you want to legally hang signs or erect billboards in Minneapolis, you might think the only requirement is to submit an application along with a fee, and proof of insurance and bonding.¹³ You would be sorely mistaken.

The Director of Licenses and Consumer Services and the City Council retain the power to issue or deny sign hanger/billboard erector licenses.¹⁴ But the ordinance does not delineate any criteria governing such decisions. Any qualified applicant can be turned down for any reason or no reason at all. Even more troubling, in the absence of ascertainable standards or processing deadlines, the consideration of many new or renewed applications is postponed for months at a time—or even indefinitely.

At the same time, the City's Zoning Inspector has unilaterally imposed competency testing on applicants—despite the repeal of such testing in 2002.¹⁵ Applicants, however, have no idea what they must show to receive his blessing because the Inspector does not maintain any written standards or guidelines—some are asked for photographs of past work, while others are asked to write essays about their qualifications. The accumulated uncertainty keeps many companies from bothering to apply for a license and also causes them to refer their jobs to an established group of local billboard/sign businesses, which seem to have little trouble renewing their licenses in a timely manner.



Fortunately, the model for successfully challenging the arbitrary power of local politicians and bureaucrats to control entry into a legitimate occupation has already been developed. In a lawsuit filed in 1997, the Institute for Justice succeeded in having a similar law struck down—enabling commuter van and jitney cab companies to overcome the sustained efforts of the New York City Council to protect its public transportation and licensed taxi and limousine monopoly from competition by means of arbitrary and standardless licensure laws. Building on this precedent, the Institute for Justice Minnesota Chapter has filed suit to stop Minneapolis from postponing or denying

licenses to people and businesses that meet the objective fee, insurance and bonding requirements of the City Code. Dahlen Sign Company versus City of Minneapolis is a direct challenge to licensing laws that give bureaucrats unconstrained authority to bar entry into legitimate occupations.

2. Don't Float that Horse

Sometimes the most arcane laws can best demonstrate how the regulatory state callously burdens ordinary citizens. No better example of unnecessary regulation exists in Minnesota than the deliberately exclusionary regulations placed on horse teeth “floaters.”

Horses suffer from a peculiar problem: their teeth continuously grow. And if their teeth are not filed down, or “floated,” they will lose the ability to chew or hold a bit comfortably. Such “floating” involves the filing down of sharp points from the cheek side of the upper teeth and from the tongue side of the lower teeth. It is a manual skill that can be learned with hands-on training and a basic understanding of horse skull anatomy. It is painless to the horse; more than that, it relieves discomfort. No anesthetics, invasive procedures or power tools are required, only a metal file, a wash bucket (with disinfectant) and common sense. Farmers and horse owners have practiced horse teeth floating for generations.

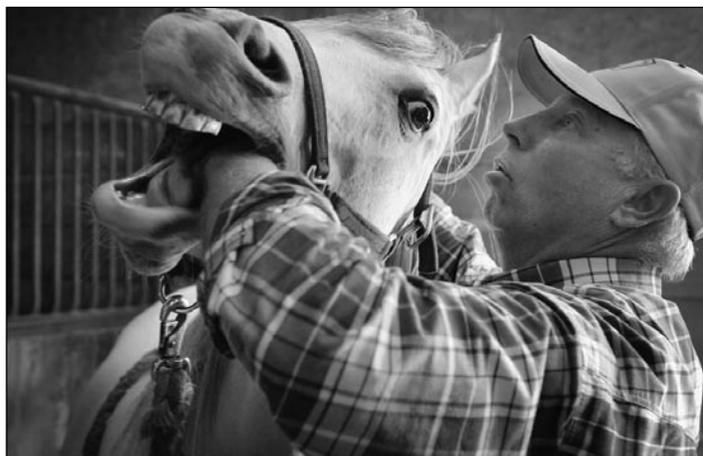
Horse teeth floating should be an entrepreneurial opportunity for rural Minnesotans. But, as discovered by Jim and Christopher Johnson of Hutchinson, Minnesota, the Minnesota Board of Veterinary Medicine has decided to regulate horse teeth filing as “the practice of veterinary medicine.” This means there are now only two ways to legally “float” horses in Minnesota: 1) comply with the newly enacted Minn. Stat. § 156.075; or 2) become a licensed veterinarian.

To legally file horse teeth under Minn. Stat. § 156.075, all non-veterinarians must first submit to the Board of Veterinary Medicine a written statement, signed by a licensed veterinarian experienced in equine medicine, that the applicant will be indirectly supervised by the veterinarian when filing teeth.¹⁶ Veterinarians thus control access to the occupation, and they have powerful incentives to refuse to sign such a letter—to avoid competition and minimize liability.

Even with a signed letter in hand, a non-veterinarian must next submit to the Board either: 1) proof of current certification from the International Association of Equine Dentistry (IAED)—no other private certification organization is recognized by the Board; or 2) “satisfactory evidence of being actively engaged in equine teeth floating for at least ten of the past 15 years” and having “generated at least \$5,000 annually in personal income from this activity.”¹⁷ But for entry-level horse teeth filers like Christopher Johnson, who lack ten years of experience in the field, the only option is acquiring IAED certification.

In order to become IAED-certified, a prospective floater must pass a practical exam.¹⁸ The IAED, however, will only allow access to the test upon presentation of “250 documented cases at the time of testing.”¹⁹ Because it is illegal in Minnesota for a non-veterinarian to file horse teeth without first being certified, it unclear how prospective floaters like Christopher Johnson would legally obtain the requisite amount of practical knowledge. Presumably, any law-abiding Minnesotan would need to build his case portfolio by furtively traveling to another state or country where horse teeth filing is unregulated.

Even if a prospective filer somehow obtained the necessary experience to take the IAED certification test, the timing and location of the test is hard to pin down. Past tests have been held on seemingly random dates in random locations, none of which have been within 300 miles of the State of Minnesota. The test locations have included Ocala, Fla., San Diego, Fort Worth, and Oxford, England. Notably, on June 10, 2005, in response to an email from the Institute for Justice Minnesota Chapter requesting information on when and where the next test would be, Richard O. Miller, the Treasurer of the IAED, emailed back: “I wish I could tell you exactly when and where, but we must wait for demand,



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geography, and somewhat, political climate, before making a decision. At best, we can say that it will be in May or June, 2006.” As of late April 2006, the IAED website reports the next certification test will be on June 22-24, 2006, in Chicago.²⁰

But Christopher Johnson couldn't get in the testing room even if he drove to Chicago to take the IAED certification test. That's because any candidate must first be a member of the IAED for nine months²¹ and “sponsored” by an existing IAED-certified member.²² Sponsorship is no mere formality; it requires an existing IAED-certified member “to evaluate the work the candidate does everyday in the field.”²³ Combined with the requirement to present “250 documented cases at the time of testing,” this barrier forces would-be horse teeth filers into apprenticeships with existing IAED members merely to gain access to the IAED certification test. As there are no IAED members located in

the State of Minnesota,²⁴ finding such a sponsor is next to impossible for Minnesotans like Christopher Johnson.

Minnesota's IAED certification requirement vests a private party with the unconstrained power of government to block access to the occupation of horse teeth filing. While Chris Johnson could pursue veterinary licensure, that regulatory regime is just as arbitrary because teeth filing is not taught as part of the required curriculum of any accredited veterinary college²⁵ and the only element of equine dentistry covered by the licensure exam involves the diagnosis of abnormal teeth.²⁶ At the same time, Minnesota law completely exempts from veterinary regulation “the dehorning of cattle and goats or the castration of cattle, swine, goats, and sheep, or the docking of sheep.”²⁷ Taken together, it is hard to find a more arbitrary or irrational regulatory regime.

But the regulation of taxis in Minneapolis is definitely a runner-up.

3. Mission Next-to-Impossible: Starting a Taxi Company in Minneapolis

Luis Paucar manages A New Star Limousine and Taxi Service, Inc. from an office near his Minneapolis corner grocery. His company fills an important niche because it provides dispatchers and drivers who are fluent in Spanish. In fact, as of November 2005, no licensed taxi service company in Minneapolis offered Spanish-speaking dispatchers and drivers. Paucar, however, is prohibited by Minneapolis' taxi ordinance from legally operating a taxi service within city limits. And on June 7, 2005, Minneapolis decided to crack down.

That day, a regular customer, who happens to be blind, telephoned A New Star and requested a taxi to pick her up from a location in Richfield and take her to a K-Mart in Minneapolis. A taxi was dispatched accordingly. After dropping his passenger off at the K-Mart, A New Star's driver was required by law to leave. Instead of abandoning his blind passenger to the rare and elusive licensed Minneapolis taxicab, A New Star's driver waited at the K-Mart to return his passenger home. And while assisting his blind customer back into his taxi, he was cited for operating a taxi in Minneapolis without a license. The officer ordered the passenger out of the car, and left her in the parking lot to fend for herself. Luis Paucar and his driver then spent the next six months in court battling the citation.

To this date, Paucar has been unable to obtain a license to operate his taxi business legally in Minneapolis. That's because three high hurdles stand in the way of operating any taxi business in the City of Minneapolis: 1) the “taxi vehicle” license cap through which the government arbitrarily limits the number of cabs that can provide service; 2) the requirement to join a taxi “company,

cooperative or association” as a precondition of holding any existing taxi vehicle license; and 3) the restricted issuance of new, reissued, or temporary taxi vehicle licenses to “service companies.” In practical effect, these barriers mean that the transportation needs of Minneapolis’ burgeoning Latino community—and anyone else who wants basic neighborhood service—will remain unmet.

The Minneapolis Taxi Ordinance’s first hurdle—the vehicle license cap—creates artificial scarcity in the taxicab market that bars entry by entrepreneurs like Luis Paucar. In Minneapolis, the government—rather than the riding public—decides how many taxis the market can support. The City caps the current number of renewable “regular” taxi vehicle licenses²⁸ at 343,²⁹ of which only 273 licenses predating October 1, 1995, can be bought and sold between taxi owners.³⁰ And while the Taxi Code seems to suggest this cap is flexible, an impenetrable mystery shrouds the authorization of additional licenses.

On the one hand, the Code seems to indicate that the City Council sets the number of authorized licenses independently of any application process.³¹ On the other hand, the Code appears to presume an application process whereby the City Council might be petitioned by someone like Luis Paucar to increase the number of authorized licenses.³² An application process to increase the number of authorized licenses, however, is not explicitly described in the ordinance, and the City has told the Institute for Justice Minnesota Chapter that no new license applications will be considered because all authorized licenses have been issued. The mystery of the missing application process is magnified by a portion of the Code that refers to a section that does not exist for “criteria of additional licenses;” namely, the curiously absent section “341.270(c).”³³

In short, there is no knowable process for prompting the issuance of additional taxi vehicle licenses. As a result, the license cap is a substantial barrier to entrepreneurs. In fact, the government-created scarcity of taxi vehicle licenses has reportedly pushed their price to \$25,000 each on the secondary market. But even if Luis Paucar could afford to buy an existing taxi vehicle license, he couldn’t buy one unless an existing taxi company let him join the “club.”

The Minneapolis taxi ordinance requires anyone who wishes to hold any taxi vehicle license to “be a member of a company, cooperative, or association” that advertises in the white and yellow pages, and operates at least 15 taxis under a common color and dispatching scheme (at least 8 of which must be licensed in the City of Minneapolis, with

not less than 15 taxis licensed by the City of Minneapolis after one year of operation).³⁴ The City’s taxi vehicle license application enforces service company membership by requiring any prospective licensee to first register with a recognized taxi organization and obtain the signature of its representative.³⁵

Nothing in the ordinance, however, directs an existing taxi “company, cooperative or association” to accept Luis Paucar’s membership, or otherwise sets standards governing the process by which someone like Luis could join their private organization. Therefore, the Minneapolis Taxi Code effectively gives incumbent taxi companies complete discretion to refuse membership. For obvious reasons, this second hurdle to starting a taxicab business could be insurmountable: Why, after all, would existing taxi companies invite competition from Luis Paucar.

Perhaps a creative entrepreneur like Luis might try to avoid the existing taxi fraternities by starting his own licensed service company. If he were successful, Luis would thereby gain access to new, temporary or reissued taxi vehicles licenses,³⁶ which could save him the substantial cost of buying existing taxi vehicle licenses. But, aside from the high application fee of \$1,188, the service company licensure hurdle is effectively insurmountable because the City has chosen to enforce an anti-competitive interpretation of the Code.

“...the license cap is a substantial barrier to entrepreneurs. In fact, the government-created scarcity of taxi vehicle licenses has reportedly pushed their price to \$25,000 each on the secondary market.”

To obtain “service company” licensure (and thereby gain access to new, temporary or reissued taxi vehicle licenses), the City has informed the Institute for Justice Minnesota Chapter that the applicant must first affiliate with at least 8 taxis that are already licensed by the City (and he must increase that number to 15 after one year of operation).³⁷ Of course, existing taxi companies can easily block someone like Luis from accumulating the requisite number of already-licensed taxis. Consider the following hypothetical.

Luis persuades John Doe, who holds a Minneapolis taxi vehicle license, to join New Star. But until New Star is licensed as a service company in Minneapolis, John Doe must maintain his existing affiliation with Vader Taxi, which is a licensed service company. At the same time, Luis is required to list John’s taxi vehicle license on New Star’s service company license application.³⁸ Of course, when New Star’s application is filed, John’s intention to join New Star becomes publicly known, and Vader Taxi ejects John Doe from membership. Vader also files a complaint with the City that John is no longer affiliated with an existing taxi “company, cooperative or association.” John then loses his taxi vehicle license.

Acting quickly, Luis offers to purchase a transferable Minneapolis taxi license from Ruth Roe. He then discovers that the City won't accept his license transfer application until he affiliates with an existing taxi "company, cooperative or association," and also obtains the signature of its representative on his application. This proves to be impossible. As a result, New Star's service company license application is denied because Luis cannot demonstrate that New Star is affiliated with at least eight taxis that are already licensed by the City of Minneapolis.

As shown, affiliating with at least eight taxis that are already licensed by the City can, in theory, be done by some combination of purchasing transferable licenses or enticing taxi vehicle licensees into a proposed service company. But, in practice, this means an existing taxi vehicle licensee, who might be enticed into Luis' new service company, must somehow maintain his current affiliation with an existing taxi company while Luis' license application is being processed. Similarly, to complete the purchase of any transferable taxi license, Luis would still need to become a member of an existing service company. Either way, existing taxi companies could effectively block the formation of the new service company by either refusing membership or by ejecting anyone who defects to a proposed new service company. To overcome these barriers, any entrepreneur would need to persuade a number of existing taxi companies to relinquish a significant market share to a prospective competitor. That's why starting a taxi company in Minneapolis is a near-impossible mission for entrepreneurs like Luis Paucar.³⁹



4. Movers Need Not Apply

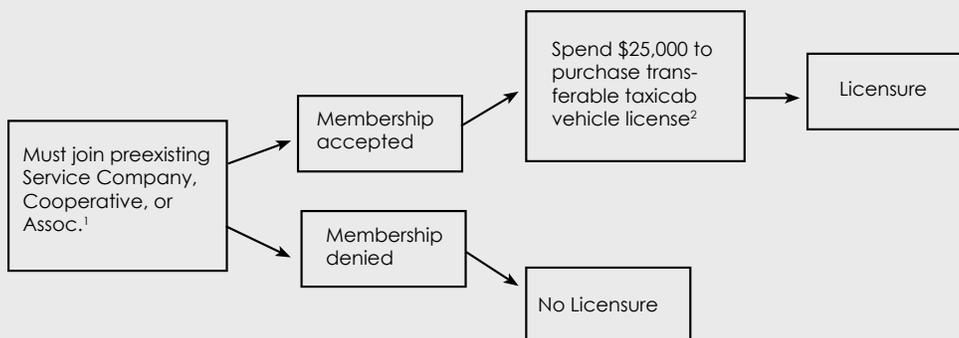
If you want to get into the transportation business, household goods would seem to be another perfect point of entry. All one would seem to need is a strong back, a reliable vehicle, basic insurance and a good work ethic. But such appearances can be deceiving.

In order to legally move household furniture from one residence to the next, a prospective mover must apply to the Minnesota Department of Transportation for a permit, which requires the applicant to demonstrate "that the area to be served has a need for the transportation services," in addition to financial responsibility and fitness through proof of insurance and disclosure of financial statements.⁴⁰ This sophisticated showing would be burdensome enough for entry-level entrepreneurs, but the law doesn't stop there.

As the regulatory *piece de resistance*, Minnesota's household goods permitting process requires notice of the application to be given to "interested parties."⁴¹ This has been interpreted by MNDOT to allow existing moving companies to challenge the issuance of any new permit, thereby keeping out competitors.

Upon receipt of such a "protest," the permitting process is instantly transformed into a contested lawsuit, in which an existing company can block competition by demonstrating to an administrative law judge that it offers "sufficient transportation services to meet fully and adequately" the needs identified by the applicant.⁴² To prevail over this challenge, an applicant needs to retain a skilled litigator and elicit sophisticated analyses from an expert in transportation economics. Start-up businesses, however, usually do not have the capacity to incur the costs and uncertainties of such litigation. Often, they choose to retreat upon the filing of a protest and operate underground (where they can't secure loans, legally hire employees or secure insurance). Consequently, one or more existing companies can quite effectively block competitive entry into

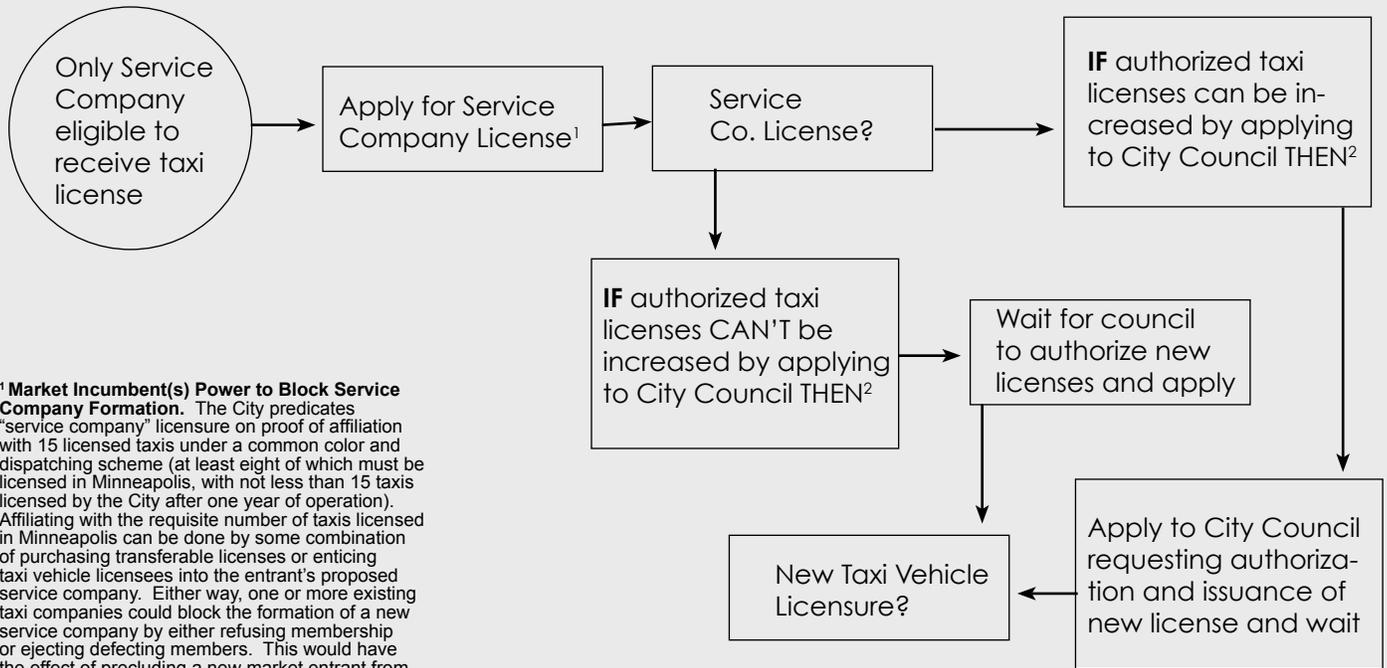
Purchasing a Transferable Taxi Vehicle License



¹ **Existing Taxi Company Veto Power.** Section 341.290(b)(1) states that any firm that wishes to hold a taxi vehicle license must "be a member of a company, cooperative, or association" that advertises in the white and yellow pages, and operates at least 15 taxis under a common color and dispatching scheme (at least eight of which must be licensed in the City of Minneapolis, with not less than 15 taxis licensed by the City of Minneapolis after one year of operation). Nothing in the ordinance compels such a company, cooperative or association to accept the membership of a prospective licensee.

² **Purchasing Transferable Licenses.** Sections 341.300(b), 341.305 and 341.655(a) provide that the current number of renewable "regular" taxi vehicle licenses is 343, of which only 273 licenses predating October 1, 1995, are transferable. The resulting artificial scarcity of taxi vehicle licenses has pushed the price of a transferable license to around \$25,000.

Gaining Access to New Taxi Vehicle Licenses



¹ **Market Incumbent(s) Power to Block Service Company Formation.** The City predicates “service company” licensure on proof of affiliation with 15 licensed taxis under a common color and dispatching scheme (at least eight of which must be licensed in Minneapolis, with not less than 15 taxis licensed by the City after one year of operation). Affiliating with the requisite number of taxis licensed in Minneapolis can be done by some combination of purchasing transferable licenses or enticing taxi vehicle licensees into the entrant’s proposed service company. Either way, one or more existing taxi companies could block the formation of a new service company by either refusing membership or ejecting defecting members. This would have the effect of precluding a new market entrant from forming a licensed service company, which is a prerequisite to gaining access to new, temporary, or reissued taxicab vehicle licenses.

² **Mysterious Taxi Vehicle License Application Process.** It is unclear whether a prospective licensee may petition the City Council to issue additional licenses. On the one hand the ordinance states that at least once every 24 months, the City Council “must” review the current status of taxi service in city and determine if “public convenience and necessity” warrant additional licenses in light of various factors; this language implies that the number of authorized licenses is determined by the City Council independently. On the other hand, the ordinance states that the City Council “may” increase the number of authorized licenses based on various factors concerning the qualifications of the “applicant.” The mysterious nature of this process is magnified by section 341.300(b)(1), which refers to a non-existent section, namely “341.270(c),” for “criteria of additional licenses,” and the fact that the City has told the Institute for Justice Minnesota Chapter that no new license applications will be considered.

the household goods market. And for many years, that’s just what Bester Brothers Transfer and Storage Company did.

Between 1992 and 2004, Bester Brothers prevented numerous startup businesses from obtaining a household goods moving permit by filing protests and by actively litigating against the issuance of new permits.⁴³ Despite the fact that new ownership has curtailed such practices, Bester’s history of aggressive protest tactics appears to have successfully chilled entry into the industry. In fact, during the summer of 2005, the Institute for Justice Minnesota Chapter discovered that less than two-thirds of household goods movers in the Twin Cities area had successfully obtained a permit. Many reputable businesses have chosen to risk fines for operating without a permit, rather than running the regulatory gauntlet.

Fortunately, instead of mounting a wholesale crackdown on movers forced underground by anticompetitive regulations, MNDOT appears to have focused its resources on enforcing safety standards and anti-fraud measures. In discussions with IJ-MN, MNDOT officials seem genuinely reluctant to divert regulatory resources away from consumer protection

and towards economic protectionism. One can only hope such common sense will last, but the underlying problem remains: the existing licensure scheme treats the right to work in an ordinary occupation as a privilege that can be withheld by the government at the will of existing market players. The public would be better served if the regulatory system simply presumed individuals had the right to pursue a productive livelihood, especially when it enhances competition in the relevant market.

5. Manicurists: Clip It and Get Nailed

The State of New Hampshire recently arrested a computer programmer named Mike Fisher for disobediendly manicuring “nails without a license” in front of the Concord offices of the Board of Barbering, Cosmetology and Esthetics.⁴⁴ Fisher was convicted of a criminal misdemeanor and received a 30-day suspended sentence.

Likewise, in Minnesota, it is a crime to clean, condition, shape, reinforce, color and enhance nails without a license.⁴⁵ Anyone doing so risks misdemeanor charges and a possible jail sentence of up to 90 days.⁴⁶ Undoubtedly,

the threat of disproportionate criminal punishment is used as a tool for enforcing a needlessly burdensome licensing process.

The foundation of the problem, however, is not any enforcement mechanism; it is regulation that goes well beyond legitimate concerns for public health and safety, and instead purposefully creates a barrier to entry for the poor and politically disenfranchised. To practice nail hygiene and beautification, any would-be manicurist must undergo a course of training of at least 350 hours at an approved school⁴⁷ at a cost of around \$3,000.⁴⁸ Such training includes 50 hours of instruction in “the sciences of anatomy, dermatology, and chemistry,” electricity and lights, sanitation, safety procedures, and “elementary service skills.”⁴⁹ In addition, 150 hours of clinical instruction must be received in “applied sciences and skills,” including the completion of 50 manicures, ten applications of artificial nails, of which three must be “sculptured applications on the nail.”⁵⁰ The remaining 150 hours are not allocated to any particular course and seem to be nothing more than an extra dollop of training for good measure—perhaps to ensure that prospective manicurists undergo more than twice the 120 hours required of basic level emergency medical (paramedic) technicians (EMT-B).⁵¹ But this beefed-up barrier to entry merely hints at the burdens to come.

6. Estheticians

There’s more to a facial than meets the eye. To be licensed as an esthetician, and thereby gain the “privilege” of being able to moisturize and massage faces for a living in Minnesota, a prospective licensee must undergo a course of training of at least 600 hours.⁵² The first 120 hours focus on the sciences of anatomy, dermatology, and chemistry as related to skin care; electricity and light; sanitation; safety procedures related to the practice of skin care; laws pertaining to the regulation of the practice of skin care; and elementary service skills.⁵³ Thereafter, a prospective licensee must undergo 200 hours of clinical training in applied science and skills in the cleaning, conditioning, shaping, reinforcing, coloring, and enhancing of the skin quality through the use of facials and makeup.⁵⁴ During this time, each prospective licensee is required to complete at least 60 facials or makeup applications.⁵⁵ The balance of 280 hours are presumably focused on the same sorts of training as the first 320 hours, but the administrative rules and statute do not furnish specific guidance. The tuition of this training regime has been reported to be approximately \$4,850, and is followed by a state-sponsored licensing exam.⁵⁶

“The public would be better served if the regulatory system simply presumed individuals had the right to pursue a productive livelihood, especially when it enhances competition in the relevant market.”

By contrast, intermediate level emergency medical technicians (EMT-I) in Minnesota are required to receive no more than 400 hours of training to treat traumatic hemorrhaging, insert and monitor IV tubes and fluids, intubate patients undergoing respiratory failure, and perform many other critical first responder health services in extreme stress environments.⁵⁷

7. The Great Wall of Cosmetology

After being sued by the Institute for Justice in April 2005, the Minnesota Board of Barber and Cosmetologist

Examiners acknowledged the irrationality of forcing hair braiders, like Lillian Anderson of Minneapolis, through irrelevant cosmetology training as a precondition of working in a harmless profession. Lillian and many others may now freely braid hair without fear of criminal prosecution by the Board. But the Board has yet to remedy the absurdities interwoven throughout the cosmetology regulations it is charged to enforce.

Would-be cosmetologists must vault barriers that are much higher than those faced by manicurists and estheticians.⁵⁸ They must pass a licensing exam after completing “a full course of training in a Minnesota licensed school of cosmetology of at least 1,550 hours”⁵⁹ at a cost approximating \$9,000.⁶⁰ By comparison, an X-Ray machine operator is required only to pass an exam that covers radiation safety, the proper use of equipment, film processing, and quality control techniques.⁶¹ And an explosives dealer license, which permits the manufacturing, assembly, warehousing and storage of explosives, is available to anyone who fills out an application, passes a test, and is approved by the commissioner of public safety.⁶²

If we lived in a world of reasonable regulation, perhaps one might see the government demanding only a few hours of basic safety and sanitation training imposed by law—leaving the market to sort out subjective evaluations of who performs “good” and “bad” hairstyling. But, in Minnesota, the statutory minimum of 1,550 hours of training includes 420 hours of instruction in “theory and sciences,” including “240 hours . . . in the sciences of anatomy, dermatology, trichology, manicuring, and chemistry as related to cosmetology; electricity and light; sanitation; safety procedures related to the practice of cosmetology; and Minnesota Statutes and rules which pertain to the regulation of the practice of cosmetology; and elementary service skills.”⁶³ The required balance of “1,130 hours” must be focused “in applied science and

skills in shampooing, scalp and hair conditioning, hair design and shaping, chemical hair control, hair coloring, hair styling, facials, and makeup, and manicuring and nail care;” this includes 300 shampooing exercises in 50 hours of clinical instruction, 150 hair condition exercises in 80 hours of clinical instruction, 75 hair design shaping exercises in 150 hours of clinical instruction, 60 chemical hair control exercises (including 6 chemical relaxing exercises) in 200 hours of clinical instruction; 50 hair coloring exercises in 100 hours of clinical instruction; 300 hair styling exercises in 200 hours of clinical instruction; 60 facials and makeup application exercises in 200 hours of clinical instruction; and 50 manicure exercises (including application of artificial nails) in 150 hours of clinical instruction.⁶⁴ Taken together, more hours are required to graduate from cosmetology school than from law school, not to mention any level of emergency medical technician certification.



another exam and paying one more \$120 license fee).⁷⁰ This requirement effectively bars new licensees from freely competing with existing businesses for nearly a year and a half after licensure, unless they have the unlikely financial capacity to hire a salon manager. Minnesota’s regulatory regime thereby ensures that cosmetology schools furnish existing salons with a steady supply of non-competitive labor. In sum, anyone who aspires to open a salon in Minnesota as a self-employed cosmetologist needs to spend a year in cosmetology school, another year and a half working for someone else, and at least \$9,510 in tuition and administrative fees. This is too steep a hill for many entrepreneurs to climb.

8. The Barber’s Guild

The State of Minnesota next requires prospective cosmetologists to pass a written and practical exam.⁶⁵ The results of the exam are communicated within two to four weeks.⁶⁶ By that time, and in addition to their substantial tuitions, the prospective cosmetologist will have paid \$260 in administrative fees, including: \$20 for a Certificate of Identification, \$150 for a School Original Application, and \$90 for the exam.⁶⁷ But even if a license is granted, the regulatory rigmarole continues.

Like licensed manicurists and estheticians, new cosmetologists are virtually indentured to established businesses in their respective industries. This is because Minnesota law prohibits their services from being “provided in a place other than a licensed cosmetology salon, esthetician salon, manicurist salon, or cosmetology school.”⁶⁸ And not just anyone can get a salon license, let alone start a licensed school.

In the State of Minnesota, getting a salon license requires the employment of a licensed salon manager—an almost certainly insurmountable hurdle for most new entrants. In addition, there is the payment of yet another fee of \$130, as well as compliance with numerous other salon-related regulations.⁶⁹

Even if a new cosmetologist proposed to act as her own manager, obtaining a salon manager’s license requires 2,700 hours of practical experience (in addition to passing

A barbering career was once a critical first step into the economic mainstream. Like cosmetologists, barbers cut, shave, style and groom hair. Unlike cosmetologists, barbers do not perform manicures. This distinction translates into lower barriers to entry than those faced by prospective cosmetologists; however, the barriers remain high enough to substantially block market entry.

Rather than setting public health and safety requirements, and letting consumers decide who is the best barber, Minnesota law creates a guild-like regulatory system involving two classes of barbers: registered apprentices and registered barbers. Qualifying for licensure as a registered apprentice requires completion of ten grades of school, graduation from barber school, and exam passage.⁷¹ The first requisite presents a slightly lower barrier to entry than the high school degree or GED equivalency required of cosmetologists. Graduation from barber school likewise requires slightly fewer hours of training: as opposed to the 1,550 hours required of cosmetologists, 1,500 hours of training are required of registered apprentices. These 1,500 hours include 281 classroom hours and 1,219 practical hours covering scientific fundamentals for barbering; hygiene; the hair, skin, muscles, and nerves; structure of the head, face and neck; elementary chemistry relating to sterilization and antiseptics; diseases of the skin, hair, and glands; massaging and manipulating the muscles of the face and neck; haircutting; shaving; trimming the beard; bleaching, tinting and dyeing the hair; and the chemical straightening of hair.⁷² The cost of this schooling is approximately \$7,800, which is close to the tuition charged by cosmetology schools.⁷³

Mirroring a newly licensed cosmetologist who needs a salon manager, a registered apprentice still cannot perform barber services unless he is working under the “immediate personal supervision of a registered barber.”⁷⁴ And to become a registered barber, an apprentice must obtain 12 months’ experience in barbering (consisting of not less than 1,500 hours of work experience), complete a “Related Home Study Course for Apprentice Barbers,” and then pass another exam.⁷⁵ This requirement is significantly less than the 2,700 hours of work experience required of a licensed cosmetologist to become a licensed manager. But it is still significant enough to protect registered barbers from competition by registered apprentices for as long as a year after graduation.

Taken together, anyone who wants to establish his own barbershop⁷⁶ would need to spend a year in barber school, another year as an apprentice, and at least \$8,060 in tuition and administrative fees.⁷⁷ Much like the cosmetology licensing scheme, the barbering licensing regime in Minnesota is expensive enough to completely block entry, and, for those who can afford the cost, it effectively delays competitive entry by at least two years. In the final analysis, African hair braiders, like Lillian Anderson, may be free to practice their art, but would-be cosmetologists and barbers are still bound by irrational and anti-competitive occupational regulations.

9. The Flower Cart Lottery

Not all licensing schemes are aimed at protecting established businesses and trades from competition. Sometimes licensing is just plain anti-business. Minneapolis, for example, has created a bizarrely counterproductive regulatory regime governing flower cart vendors. In Minneapolis, the right to sell flowers from a cart hinges on the whims of Lady Luck. The Department of Licenses and Consumer Services maintains a list of what are deemed flower cart-suitable locations in Minneapolis and ranks them by desirability.⁷⁸ Each potential flower cart vendor must submit a completed license application by March 1st, which is placed into a lottery.⁷⁹ Each vendor whose name is drawn is then assigned a suitable location in decreasing order of desirability, until all locations are distributed.⁸⁰ Everyone else must wait until next year.

Even if a business attempts to renew a previously received flower cart license, no exceptions from the lottery exist.⁸¹ And licenses or locations are not freely transferable or exchangeable between vendors.⁸² Instead, the flower cart lottery blithely casts economic expectations to the wind, destroying the efficacy of business planning and the possibility of sustainable entrepreneurial success.

10. No Hot Dogs Allowed

For any entrepreneur wishing to enter the food service business, a mobile food unit⁸³ or cart⁸⁴ would seem to be

the way to go. The natural cost in starting a food cart business is almost entirely limited to the cost of building a cart, stocking it with food, and purchasing related equipment. However, Minnesota has chosen to trump these naturally minimal economies of scale by mandating that mobile food units and food carts comply with complicated design and restaurant licensing regulations.⁸⁵ As such, the licensing of food carts reveals the regulatory state’s typical “one-size-fits-all” approach, which saws-off the lowest rungs on the economic ladder.

Because mobile food units and carts are regulated as restaurants, every potential vendor must begin the application process by completing a Plan Review Application and returning it to the Minnesota Department of Health.⁸⁶ The application must include, for example, a proposed menu, proposed layout, including dimensions, mechanical schematics, construction materials, proposed equipment types, manufacturers and model numbers, installation specifications, further information describing custom equipment, information on water supply, waste disposal and plumbing in general, likely cart locations, and an operating schedule.⁸⁷ Additionally, the layout and design of food carts and mobile food units must comply with applicable National Sanitation Foundation International standards, which have been incorporated by reference into the applicable administrative code.⁸⁸ Among many other requirements, food carts must have fire protection for grease, an exhaust system to remove cooking smells, and a waste retention tank with 15 percent larger capacity than the water supply tank, and an umbrella (if the cart is located outside).⁸⁹

Even after securing licensure from the State, a would-be entrepreneur is then faced with myriad local regulations similar to those faced by flower cart vendors, including similar location restrictions.⁹⁰ For example, in Minneapolis, applicants must submit a proposed location for their carts. The locations are limited. Food carts are not permitted where they “substantially impair the movement of pedestrians or vehicles.”⁹¹ Food carts must also keep more than 50 feet away from an intersection, or three feet from any curb, and a food cart cannot be directly in front of a commercial entry way.⁹² Finally, there can be only one food cart in any given location, and vendors cannot swap their locations or transfer their licenses without City approval.⁹³ Taken together with State regulations, it is plain that Minneapolis imposes regulations on food vendors that effectively bar entry by the very people to whom the occupation should be open.

Although these requirements may address public health and safety concerns implicated by full-service restaurants, it obviously makes no sense to apply them blindly to businesses that perform only low-risk food preparation, such as hot dogs, tacos, gyros, cotton candy, roasted peanuts or Italian ice, and essentially operate as mobile vending machines. For example, the need to address sophisticated standards like those promulgated by the

private “National Sanitation Foundation” would undoubtedly confound many entry-level entrepreneurs. To ensure regulatory compliance, they would be forced to hire professional consultants—which, in most cases, would be beyond their reach. As a result, by failing to differentiate reasonably between more and less risky business models, Minnesota law closes the mobile food vending business to the very individuals who most need the opportunity this occupation could provide.

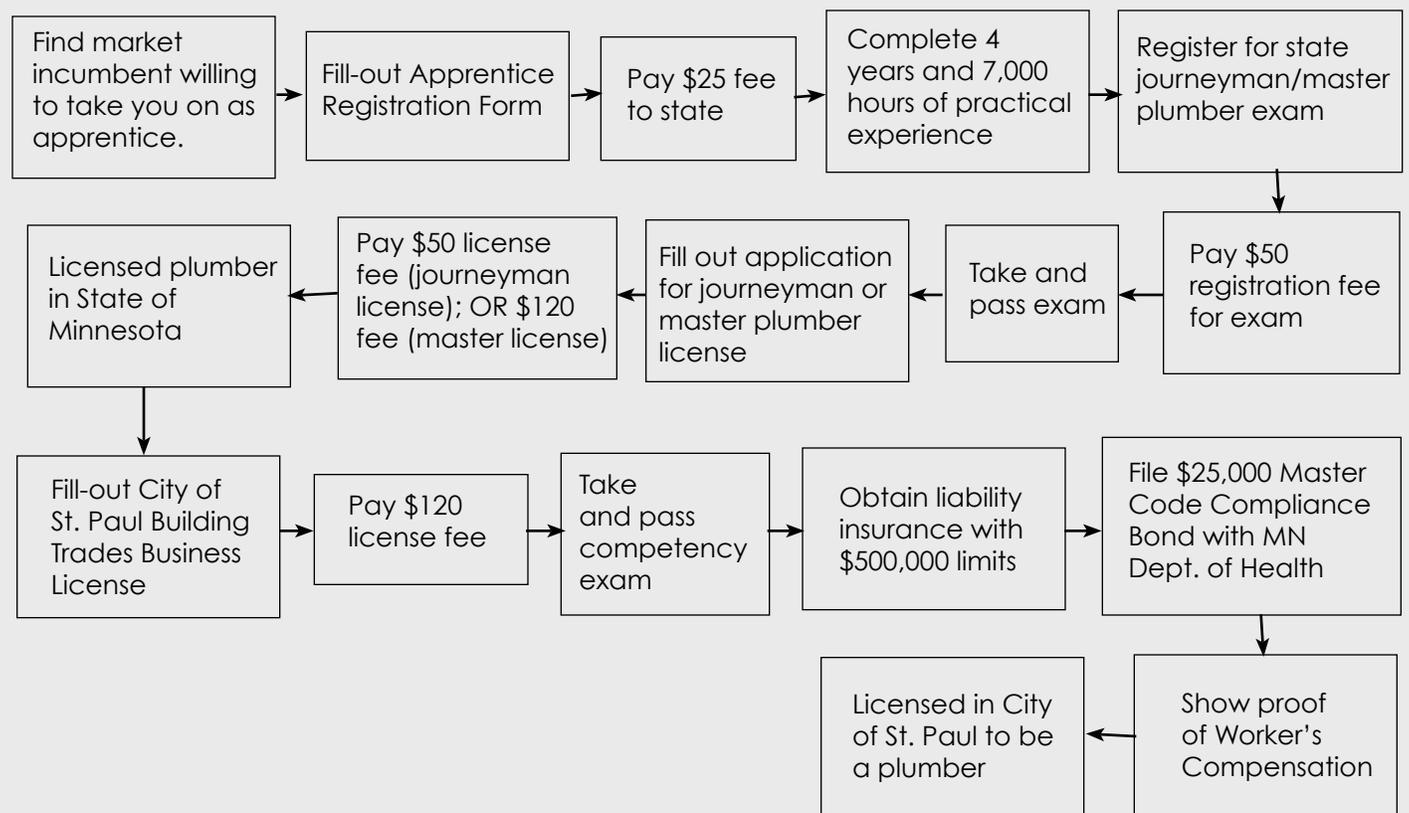
11. Plumbing the Depths of Bureaucracy

Most people are familiar with plumbers. They are knights in shining armor when drains are clogged or a new appliance needs installing. Consumers expect a certain level of professionalism and competency from plumbers. However, no reasonable person would expect a would-be plumber to pass two comprehensive licensing schemes that cover the same subject matter in order to legally unclog that pesky sink in Minnesota’s capital city. Unfortunately, that is precisely what must be done to work legally as a plumber in the City of St. Paul.

To become a plumber in St. Paul, you must first be licensed by the State of Minnesota.⁹⁴ This generally requires four years of practical plumbing experience, consisting of at least 7,000 hours of practical experience as an apprentice,⁹⁵ and passage of a license examination.⁹⁶ In other words, an already-licensed plumber must be convinced to supervise you, as an apprentice, at the risk of creating future competition for his own business. Obviously, for reasons other than the difficulty of the state licensure exam, this requirement might prove a formidable barrier to entering the St. Paul market.

The City of St. Paul next requires any would-be plumber to take its very own Certificate of Competency test⁹⁷ and otherwise comply with a duplicative licensing scheme that further stifles competition in the plumbing industry (and, of course, collects extra fees⁹⁸). Thus, the City of St. Paul will deem you “competent” to be a plumber only after you find a market incumbent who is willing to invite future competition, put in four years of apprenticeship, take two very similar tests, fill out numerous forms, and pay upwards of \$315 in city and state fees. Rocket science seems easy by comparison.

Plumber Licensing in the City of St. Paul



Conclusion

What do Minnesotans get in exchange for this gargantuan state and local regulatory system that goes beyond legitimate concerns for public health and safety, squashes competition and bars access to entry-level jobs and businesses? The short answer is: we get nothing determinable.⁹⁹ For this reason, the prolific rise of occupational regulation is best understood as political mischief.

Despite talk about protecting the public, the only certainty about licensure is that it manufactures political patronage jobs in the regulatory bureaucracy and reduces competition by restricting free entry into an occupation—thereby bestowing unearned profits upon those who are already licensed.¹⁰⁰ Not surprisingly, politicians and members of the occupations seeking to be protected from competition—not consumers—typically seek new and expanded occupational regulations.¹⁰¹

Over time, absurd regulations corrode the moral fiber of the occupation's rank-and-file, who come to view the law as a kind of hazing ritual—"Sure the law doesn't make sense, but if I had to go through it, so should you!" And licensing boards (being dominated by members of the occupation) usually focus regulatory resources on prosecuting unlicensed providers rather than complaints against licensees.¹⁰²

The fact that regulatory agencies can be "captured" by regulated occupations to "fence out" competitors is well established.¹⁰³ As early as 1977, the Minnesota Department of Administration declared: "[w]e believe it inappropriate for the state to delegate its police power to organizations which have the potential to be controlled by private interests."¹⁰⁴ And as recently as 1999, Minnesota's Legislative Auditor reported that the State's licensure of water conditioner installers and contractors in municipalities with populations in excess of 5,000¹⁰⁵ "is not related to any public purpose, but has remained in statute since 1933 largely because of the vested interests of various plumbing and water conditioning businesses, unions, and professional organizations."¹⁰⁶ In fact, several studies have reported that "political influence and funding of licensing initiatives by the professions are the most important factors influencing whether an occupation becomes regulated by the states."¹⁰⁷ Fortunately, Minnesota has a homegrown solution to the problem of regulatory capture.

Solution: Enforce the Sunrise Act

The Minnesota Sunrise Act of 1977¹⁰⁸ declares the "state's policy on occupational regulation."¹⁰⁹ It states, without qualification or limitation, that "no regulation shall be imposed upon any occupation unless required for the safety and well being of the citizens of the state."¹¹⁰ The Act recognizes the problems with occupational regulation by requiring "the least restrictive mode of regulation to be used."¹¹¹ And the Act expressly requires the Legislature to engage in detailed fact-finding and cost-benefit analyses before imposing any new occupational regulation.¹¹²

Despite the State's pronounced skepticism towards occupational regulation, none of the regulatory regimes discussed in this study advance the "least restrictive mode of regulation." None are, in fact, "required" for the "safety and well being of the citizens of the state." All are best explained as the product and playground of special interests.

As this study illustrates, the policy of the Sunrise Act has not been "applied consistently or effectively."¹¹³ In fact, regulatory agencies and the Legislature actively evade the mandatory text of the Sunrise Act by adopting the below-the-radar tactic of expanding the scope of occupational

regulations that predate the Act to include historically unregulated occupations.

As discussed previously, the practice of filing-down horse teeth was considered an unregulated, non-veterinary skill for generations. But beginning in the 1990s, the American Association of Equine Practitioners (AAEP) and the American Veterinary Medicine Association (AVMA), which are trade associations of licensed veterinarians, began actively lobbying legislatures and regulatory agencies throughout North America to classify horse teeth "floating" and "equine dentistry" as the "practice of veterinary medicine."¹¹⁴ Their plain intent was to restrict the occupation of filing-down horse teeth to licensed veterinarians, whose regulatory regime predates the Sunrise Act. And while AVMA and AAEP met with mixed success elsewhere,¹¹⁵ their lobbying efforts ultimately succeeded in Minnesota.¹¹⁶

Similarly, it appears that a movement is afoot to restrict the installation of computer network cables, television or speaker wires to licensed electricians—the first step towards such regulation was made when "power limited technicians" became regulated in 2002 as an electrician sub-classification under Minnesota's Electrical Act.¹¹⁷ State-approved continuing education courses for licensed "power limited technicians" already hint at this incremental

"...politicians and members of the occupations seeking to be protected from competition—not consumers—typically seek new and expanded occupational regulations."

move by indicating that students will “review coaxial, Cat 5, HVAC and/or speaker wiring.”¹¹

If this practice of incrementally evading the Sunrise Act continues in the legislative and executive branches, many other unregulated occupations will soon be caught in the red tape of irrational regulation—which is precisely what the Act was intended to prevent. And yet, such disregard for the spirit, policy and text of the Act actually presents an opportunity for others to act more responsibly.

Although the Sunrise Act does not create a private cause of action, it does establish that the Legislature itself has rejected the otherwise presumptive legitimacy of occupational regulation. This naturally invites careful judicial scrutiny of such laws. Indeed, Minnesota state courts have long inquired into “the reasonableness of a legislative enactment” because they recognize abdicating from such responsibility would “exalt the police power above all constitutional restraints, relegate the judicial branch to a position entirely subordinate to the legislative will, and ultimately put an end to American constitutional government.”¹¹⁹ Accordingly, as an important constraint on the otherwise unbroken stride of Minnesota’s regulatory Leviathan, the Institute for Justice Minnesota Chapter will represent entrepreneurs who challenge these irrational barriers to entry. The state judiciary, in turn, will have the opportunity to take the Act’s pronounced public policy seriously, and to protect economic liberty by reviewing occupational licensing with an appropriately skeptical eye.

Endnotes

¹ Morris M. Kleiner, *Our Guild-Ridden Economy*, Wall St. J., Oct. 15, 2005, at A7.

² Alexandra Broat et al., *Rethinking Occupational Regulation: A Program Evaluation Report 2*, 20 (Dec. 2004) (prepared for the State of Minnesota Office of the Legislative Auditor).

³ Morris M. Kleiner, Nat'l Bureau of Econ. Research, *Occupational Licensing and the Internet: Issues for Policy Makers 1* (October 1, 2002); see also Morris M. Kleiner, *Occupational Licensing*, 14 J. Econ. Persp. 189, 190 (Fall 2000).

⁴ Kleiner, *Occupational Licensing and the Internet*, supra note 3, at 1.

⁵ Amela Karabegovic et al., Fraser Inst., *Economic Freedom of North America: 2004 Annual Report 32* (IJ-MN is using the 2004 Annual Report because the 2005 report omitted measurement of occupational regulation from its rankings).

⁶ Broat, supra note 2, at 16.

⁷ Id. at 16, 34, 43.

⁸ State of Minn. Office of the Legis. Auditor, *Occupational Regulation: A Program Evaluation Report xiii* (Feb. 1999).

⁹ Id.

¹⁰ Broat, supra note 2, at 13, 19.

¹¹ Id. at 20-21; Morris M. Kleiner, *Regulating Occupations: the Growth and Labor Market Impact of Licensing*, Persp. on Work (Labor and Employment Relations Association), Winter 2005, at 40-41 (citing H. Ham & Morris M. Kleiner, *Regulating Occupations: The Impact of Licensing on Earnings* (2004) (Paper presented at the Empirical Personnel Economics Workshop at the Nat'l Bureau of Economic Research, Cambridge, MA)); Kleiner, *Occupational Licensing and the Internet*, supra note 3, at 2; Robert T. Kudrle & Morris M. Kleiner, *Does Regulation Affect Economic Outcomes? The Case of Dentistry*, 42:3 J. L. & Econ. 547-82 (2000) (finding practitioners in the most regulated states earn 12 percent more than those in the least regulated states).

¹² Broat, supra note 2, at 3, 13, 22.

¹³ Minneapolis, Minn., Code of Ordinances, title 13, ch. 277, § 277.2500.

¹⁴ Id. § 259.30.

¹⁵ Id. § 277.2490, 277.2495 (repealed July 26, 2002).

¹⁶ Minn. Stat. § 156.075(1)(b) (defining "indirect supervision" as "a veterinarian must be available by telephone or other form of immediate communication").

¹⁷ Minn. Stat. § 156.075(2).

¹⁸ <http://www.iaeqd.org/certificationinformation.php?fid=101&fm=5> (last visited April 23, 2006).

¹⁹ <http://www.iaeqd.org/nextcertification.php?sid=188&sm=1> (last visited April 23, 2006).

²⁰ <http://www.iaeqd.org/certfall2005.php?sid=118&sm=2> (last visited April 23, 2006).

²¹ <http://www.iaeqd.org/nextcertification.php?sid=188&sm=1> (last visited April 23, 2006).

²² <http://www.iaeqd.org/certificationsponsor.php> (last visited April 23, 2006).

²³ Id.

²⁴ http://www.iaeqd.org/listmembers.php?map=map&del=North_America (last visited April 23, 2006).

²⁵ In order to obtain accreditation from the American Veterinary Medical Association (AVMA), there is no specific requirement that a veterinary school include a course on equine dentistry or floating in its curriculum. See http://www.avma.org/education/cvea/coe_pp.pdf (last visited October 10, 2005). Significantly, the only place equine dentistry is mentioned as a curriculum requirement on AVMA's website is in connection with the accreditation requirements of Veterinary Technician Schools. Even there, floating is mentioned as an optional curriculum requirement. http://www.avma.org/education/cvea/cvtea_pp.pdf, Appendix I, p. 6 (note lack of asterisk, which denotes a required course) (last visited October 10, 2005). IJ-MN has been unable to identify a single veterinary college where horse teeth floating is part of the required or "core" curriculum. See, e.g., <http://www.cvm.uiuc.edu/admissions/curriculum.html> (last visited October 10, 2005); http://www.cvm.ncsu.edu/studentservices/dvm_program (last visited October 10, 2005); <http://www.vetmed.vt.edu/Organization/Academic/DVMCurric.asp> (last visited October 10, 2005).

²⁶ The National Board of Veterinary Medical Examiners has refused to provide IJ-MN with copies of past exams, but has posted descriptions of its exam at <http://www.nbvme.org/specifications.html> (last visited October 10, 2005) and <http://www.nbvme.org/activities.html> (last visited October 10, 2005).

²⁷ Minn. Stat. § 156.12, subd. 1.

²⁸ The City Council can also issue additional nonrenewable "temporary" licenses in excess of the foregoing limits without holding a hearing on public convenience and

necessity for “the temporary operation of additional taxis or other vehicles for hire, for a period not exceeding one year, for the purpose of conducting studies, collecting information, and testing new services or fare structures . . . but the number of such additional vehicles shall not exceed . . . 30, for any one study or test program.” Minneapolis, Minn., Code of Ordinances, title 13, ch. 341, § 341.320.

²⁹ Id. § 341.300(b).

³⁰ Compare id. § 341.655(a) with § 341.305.

³¹ The City Council’s determination relative to the issuance of new taxi vehicle licenses must: “take into consideration the level and quality of service being provided by existing taxi operators; whether additional competition would improve the level and quality of service or the degree of innovation in delivery of services; the impact upon the safety of vehicular and pedestrian traffic; the impact upon traffic congestion and pollution; the available taxi stand capacity; the public need and demand for service; the impact on existing taxi operators; and such other factors as the city council [sic] may deem relevant.” Id. § 341.270(a).

³² The ordinance states: “[i]n determining whether to increase the authorized number of taxi licenses, and in determining which applicants should be awarded such additional licenses, the city council [sic] may consider the financial capability and responsibility of the applicant; the applicant’s prior experience in the taxi business; the level and quality of taxi service provided by the applicant in the past . . . the experience and competence of the applicant’s drivers; the applicant’s prior record of compliance with the taxi ordinance . . . the applicant’s prior record of service complaints . . . the vehicles proposed to be licensed by the applicant; the applicant’s prior experience in providing neighborhood service, and such other factors as the city council [sic] may deem relevant.” Id. § 341.270(b) (emphasis added).

³³ Id. § 341.300(b)(1).

³⁴ Id. § 341.290(b)(1).

³⁵ Specifically, the city’s taxi vehicle license application states that it “must be signed by a taxicab organization representative,” and it includes a signature space for a “taxi organization representative” under the heading of “this application has been registered with the appropriate taxi organization and is approved.” The City has explained to IJ-MN that the referenced “taxi organization representative” must be from a previously existing taxi “company, cooperative, or association,” and not the applicant itself.

³⁶ Id. §§ 341.300(b)(2), 341.300(c), 341.305, 341.310, 341.310.

³⁷ This anti-competitive interpretation is supported by the Code’s definition of a “service company” as “[t]he company which, for each group of taxicab owners operating under

a common color scheme, provides common services and facilities such as radio dispatching, color rights, advertising, telephone listings, maintenance, insurance, credit accounts, driver assignments, and record keeping.” Id. § 341.010. Likewise, section 341.960(a), (d), (j) and (m) seem to predicate “service company” licensure on responsibility for an existing fleet of licensed taxis and drivers.

³⁸ The city’s service company license application requires the applicant to furnish a “list of cabs operating under this color scheme and the shifts each cab is on duty.”

³⁹ To test the rigidity of the City’s regulatory regime, A New Star applied on March 15, 2006, for a service company license and eight temporary taxi licenses, but without the requisite affiliation(s) with any existing licensed taxi company. As expected, the same day, Kathleen Hartzler at the Minneapolis Department of Licenses and Consumer Services rejected the applications, stating that the City “did not work with” A New Star Taxi and that, as a result, she couldn’t take the applications. Subsequently, on March 22, 2006, the City Council independently scheduled a public convenience and necessity hearing for later this spring. The following day, at IJ-MN’s urging, Grant Wilson at the Department of Licenses and Consumer Services agreed to consider A New Star’s applications in connection with that hearing. At this time, there is still no indication that the City Council will change its regulatory labyrinth, much less grant A New Star any license to compete in Minneapolis.

⁴⁰ Minn. Stat. § 221.121, subd. 1(b).

⁴¹ Id.

⁴² Id.

⁴³ See, e.g., Petition of B&C Ltd. Piano Movers (June 18, 2004); Petition of Michael Wiggin d/b/a Move Right Movers (September 24, 1996); Petition of Robert John Rendall d/b/a Rendall’s Moving (July 13, 1994); Petition of Minneapolis & Warehouse Co. (July 14, 1992).

⁴⁴ Johanna Maranto, “NH outlaw manicurist says mission accomplished,” New Hampshire Independent Media Center (available at <http://nhhindymedia.org/newswire/display/2361/index.php>) (last visited January 11, 2006).

⁴⁵ Minn. Stat. § 155A.07.

⁴⁶ Minn. Stat. §§ 155A.16 (stating “[a]ny person who violates any of the provisions of sections 155A.01 to 155A.16 is guilty of a misdemeanor”), 609.03 (stating a misdemeanor carries with it the possible penalty of up to 90 days in jail in addition to a \$1,000 fine).

⁴⁷ Minn. R. 2642.0150, 2644.0530.A.

⁴⁸ Compare Cosmetology Training Center, Cosmetology Course (2005 Prices), <http://www.cosmetologytrainingcenter.com/cost.htm> (last visited Aug. 27, 2005) with Cosmetology

Careers Unltd., Class Dates & Cost, <http://www.coscareers.com/660463.html> (last visited Aug. 27, 2005).

⁴⁹ Minn. R. 2644.0530.B.

⁵⁰ Id. R. 2644.0530.C, D.

⁵¹ Minn. Stat. § 144E.28, subd. 1(1); <http://www.nhtsa.dot.gov/people/injury/ems/nsc.htm> (last visited February 13, 2006).

⁵² Minn. Stat. § 155A.07; Minn. R. 2644.0520.

⁵³ Minn. R. 2644.0520.A.

⁵⁴ Id. R. 2644.0520.C, D.

⁵⁵ Id. R. 2644.0520.D.1.

⁵⁶ See Esthology, <http://www.vicibeautyschool.com/Instituteweb/education/esthology.htm> (last visited Aug. 27, 2005).

⁵⁷ See Minn. Stat. § 144E.28, subd. 1(1); <http://www.nhtsa.dot.gov/people/injury/ems/EMT-I/disk1/Appendix%20A.htm> (last visited February 13, 2006).

⁵⁸ Significantly, Minnesota law fences-out licensed manicurists and estheticians from the field of cosmetology. Particularly, despite their respective 350 and 600 hour training courses, licensed manicurists and estheticians only receive 300 and 550 hours of credit respectively toward a cosmetologist license, if they choose to pursue one. Minn. R. 2642.0610. Furthermore, licensed manicurists and estheticians are prohibited from working in their professions while they pursue their cosmetology license. Id. R. 2644.0560. This requires licensed manicurists and estheticians to abandon their existing clients as a condition of seeking a cosmetology license. These barriers to mobility can be a powerful deterrent to successful manicurists and estheticians further developing their skills to compete with established cosmetologists.

⁵⁹ Minn. R. 2642.0140, 2642.0150.

⁶⁰ Compare Cosmetology Training Center, Cosmetology Course (2005 Prices), <http://www.cosmetologytrainingcenter.com/cost.htm> (last visited Aug. 27, 2005) with Cosmetology Careers Unltd., Class Dates & Cost, <http://www.coscareers.com/660463.html> (last visited Aug. 27, 2005).

⁶¹ Minn. Stat. § 144.121, subd. 5; Minn. RR. 4730.5000 et seq.

⁶² Telephone interview with Jon Nisja, Fire Safety Supervisor, MN State Fire Marshal Division, Minnesota Department of Public Safety (February 13, 2006); see also Minn Stat. §§ 299F.71 et seq.; Minn. R. 7500.0550.

⁶³ Minn. R. 2644.0510.

⁶⁴ Id.

⁶⁵ Minn. R. 2642.0140.

⁶⁶ Minn. Dep't of Employment & Econ. Dev., Cosmetologist, Salons & School, <http://mnsbao.com/licenses/NameResults.asp?LicenseID=5437> (last visited Aug. 27, 2005).

⁶⁷ Minn. Stat. § 155A.045, subd. 1(b), (c).

⁶⁸ Id. § 155A.08; Minn. R. 2642.0350.

⁶⁹ Leaving aside the salon manager requirement, obtaining salon licensure requires proof of worker's compensation coverage and "continued professional liability insurance coverage of at least \$25,000 for each claim and \$50,000 total coverage for each policy year for each operator." Minn. Stat. §§ 176.182, 155A.08, subd. 2(5). Together with a completed application, the salon licensee must also disclose proof of corporate filing, applicable partnership agreement, or a certificate of assumed name; next, a prospective salon licensee must furnish a copy of an appropriate salon floor plan, including measurements, provide signed authorizations by city zoning and building inspectors, provide certification that a licensed manager is employed at the salon, and provide a MN state tax I.D. number. Minn. R. 2642.0360, subp. 1 ("There shall be at least 120 square feet of work space exclusive of any restroom, reception, or supply area for a one-practitioner cosmetology salon, 110 square feet of work space for a one-practitioner esthetician salon, and 100 square feet of work space for a one-practitioner manicure salon. There shall be at least 50 additional square feet of work space for each additional licensee simultaneously on duty in a cosmetology salon or an esthetician salon, and at least 35 additional square feet of work space of each additional licensee simultaneously on duty in a manicure salon."), 2642.0310, subp. 2; Minn. Dep't of Employment & Econ. Dev., Cosmetologist, Salons & School, <http://mnsbao.com/licenses/NameResults.asp?LicenseID=5437> (last visited August 30, 2005).

⁷⁰ Minn. Stat. § 155A.03, subd. 6; Minn. R. 2642.0390, 2642.0400, subp. 6, 2642.0160.

⁷¹ Minn. Stat. § 154.06.

⁷² Id. § 154.07; Minn. R. 2100.6000.

⁷³ Interview with Peg Schmidt of Minnesota School of Barbering (July 15, 2005) (stating tuition is \$7,875); Interview with Jean of Moler Barber School (July 15, 2005) (stating tuition is \$7,730).

⁷⁴ Minn. Stat. § 154.03.

⁷⁵ Id. § 154.05; Minn. R. 2100.1300.

⁷⁶ Barbering may only be performed within a registered barber shop. Minn. Stat. § 154.01(c). An application for barber shop registration must be submitted at least 30

days prior to the scheduled shop opening date and must include a proposed floor plan consistent with the following constraints: 1) barber chairs must be spaced not less than five feet apart center to center; 2) there must be a sink or lavatory for every two barber chairs; 3) if hot and cold running water is not within five feet of a barber chair, a room must be included for the cleaning of barber implements; and 4) a partition wall must be erected between other businesses, residences, and the barbering area, with the sole exception of a beauty shop. Id. § 154.20; Minn. R. 2100.7100, 2100.7600, 2100.7700.

⁷⁷ In addition to tuition, a prospective licensee must anticipate spending up to \$260 on administrative fees, including a \$60 fee for the apprentice examination and certificate, a \$75 fee for the home study course, a \$65 fee for the registered barber examination and certificate, a \$60 fee for the initial shop registration. Minn. Stat. § 154.18(b)(1); Minn. R. 2100.9300.

⁷⁸ Minneapolis, Minn., Code of Ordinances, title 13, ch. 331, § 331.70(b).

⁷⁹ Id. § 331.70(a).

⁸⁰ Id. § 331.70(b).

⁸¹ Id. § 331.70(c).

⁸² Id. § 331.90(b), (d).

⁸³ A mobile food unit is defined as “a food and beverage service establishment that is a vehicle mounted unit, either motorized or tailored, operating no more than 21 days annually at any one place or is operated in conjunction with a permanent business licensed ... and readily movable, without disassembling, for transport to another location.” Minn. Stat. § 157.15, subd. 9.

⁸⁴ A food cart is defined as “a food and beverage service establishment that is a non-motorized vehicle self-propelled by the operator.” Minn. Stat. § 157.15, subd. 6.

⁸⁵ Starting a Food Business in Minnesota, Dairy and Food Inspection 2003, Minnesota Department of Agriculture, <http://www.mda.state.mn.us/dairyfood/startingfoodbiz.pdf> (last visited July 27, 2005), at 35.

⁸⁶ Plan Review Application, Environmental Health division, Environmental Health Services, Minnesota Department of Health, State of Minnesota, <http://www.health.state.mn.us/divs/eh/food/license/prapp.pdf> (last visited August 30, 2005), at 27.

⁸⁷ Id.

⁸⁸ Minn. R. 4626.0505B(2), (17), 4626.1850, 4626.1860.

⁸⁹ Id. R. 4626.1850 (incorporating by reference R. 4626.0505, 4626.1035, 4626.1135 to 4626.1175, 4626.1180

to 4626.1220, 4626.1475). Mobile food units must also include additional features, like mechanical refrigeration, pressurized water facilities, and the separation of the food preparation and cooking areas by “an impervious shield or by a separation distance to ensure customer safety and to prevent food contamination by customers.” Id. R. 4626.1860 (incorporating by reference R. 4626.0505, 4626.0895 to 4626.0905, 4626.1035, 4626.1135 to 4626.1175, 4626.1180 to 4626.1220, 4626.1475). Such carts sell for well over \$2,000 according to Vending Carts International, <http://www.precisioncarts.com/> (last visited April 23, 2006).

⁹⁰ See, e.g., St. Paul, Minn., Legis. Code § 331A.02 (2005); Minneapolis, Minn., Code of Ordinances title 10, ch. 188, §§ 188.480, 188.510 (2005).

⁹¹ Minneapolis, Minn., Code of Ordinances title 10, ch. 188, § 188.510(2)(c) (2005).

⁹² Id.

⁹³ Id.

⁹⁴ Minn. Stat. § 326.40. Anyone contracting to do plumbing work under state law must also pay an annual license fee and provide evidence of a \$25,000 code compliance bond, as well as “evidence of public liability insurance, including products liability insurance with limits of at least \$50,000 per person and \$100,000 per occurrence and property damage insurance with limits of at least \$10,000.” Id. § 326.40 subd. 2, 5.

⁹⁵ Minn. R. 4715.3140. The required hours must be divided among the following plumbing phases accordingly: 2,000 hours of water distribution system installation; 2,000 hours of drain, waste, and vent system installation; and the remaining hours may be in any aspect of plumbing work as defined by the code. Id. It should be noted that it is possible to become a master plumber without first having the apprenticeship of four years if instead you have five years of practical experience and one of the following: 1) a current MN journeyman plumber license; 2) five years of verifiable experience in business as a plumbing contractor in MN; or 3) a master plumber license from another state where the requirements of the licensing jurisdiction are equivalent to those of MN. Id.

⁹⁶ Id. RR. 4715.3140, 4715.3170.

⁹⁷ St. Paul, Minn., Legis. Code § 369.04(b).

⁹⁸ Id. § 369.03.

⁹⁹ Fed. Trade Comm’n & U.S. Dep’t of Justice, Improving Health Care: A Dose of Competition 2:27 (July 2004) (observing “[e]mpirical studies have found that licensing regulation increases costs for consumers. There are fewer studies on the impact of licensure on quality, and these studies have found mixed results. One study found that licensure requirements can reduce the likelihood of adverse

outcomes and increase quality of care. Another study found that consumers in states with tougher licensure requirements do not receive higher quality care, because the resulting increase in the price of care limits consumer access. A third study found that licensure benefits the segment of consumers who place more emphasis on quality”).

¹⁰⁰ Jonathan H. Adler, Cato Institute, Cato Policy Analysis No. 200 (December 22, 1993) (citing Kenneth Chilton & Murray Weidenbaum, *Government regulation: The Small Business Burden*, 1982 *J. Small Bus. Mgmt.* 4 (January)); see also State of Minn. Office of the Legis. Auditor, *supra* note 8, at 4-5 (citing Carolyn Cox and Susan Foster, *Federal Trade Comm’n, The Costs and Benefits of Occupational Regulation v* (1990)).

¹⁰¹ Charles J. Wheelan, *Politics or Public Interest? Licensing and the Case of Respiratory Therapists*, *Persp. on Work* (Labor and Employment Relations Association), Winter 2005, at 43; Broat, *supra* note 2, at 18-19; Kleiner, *Occupational Licensing and the Internet*, *supra* note 3, at 189, 191; State of Minn. Office of the Legis. Auditor, *supra* note 8, at 6.

¹⁰² State of Minn. Office of the Legis. Auditor, *supra* note 8, at xviii, 6-7; Stanley J. Gross, Cato Institute, *Professional Licensure and Quality: The Evidence*, Cato Policy Analysis No. 79 (December 9, 1986), at <http://www.cato.org/pubs/pas/pa079.html>.

¹⁰³ State of Minn. Office of the Legis. Auditor, *supra* note 8, at x, 4-6 (observing “[a] risk of occupational regulation is that it will be used to ‘fence out’ competitors”); Karabegovic, *supra* note 5, at 9 (“In many cases restrictions on entry into a profession serve little public benefit; they may be enacted for the benefit of the regulated group, which is able to maintain a monopoly on certain types of work so that other individuals may not freely contract with whom they might choose. These laws often protect the interests of “insiders” from potential competition.”); Melvin D. Barger, *Occupational Licensure Under Attack*, *The Freeman* (April 1975) (citations omitted) (quoting the chairman of the FTC as saying that occupation licensing hasn’t prevented fraud, incompetence, or price gouging. Barger also cites a U.S. Labor Department study of state licensing boards that found occupational licensing laws are “riddled with faults ... fraught with chaotic and inequitable rules, regulations and requirements and prone to restrictive and exclusionary practices as a result of pressures exerted by special-interest groups . . .”).

¹⁰⁴ State of Minn. Dep’t of Admin., *Occupational Licensing Boards and Host Departments in Minnesota*, 127-8 (1977).

¹⁰⁵ Minn. Stat. § 326.60, subd. 1.

¹⁰⁶ State of Minn. Office of the Legis. Auditor, *supra* note 8, at 97.

¹⁰⁷ Kleiner, *Occupational Licensing*, *supra* note 3, at 189,

199 (citing Elizabeth Graddy, *Toward a General Theory of Occupational Regulation*, 72:4 *Soc. Sci. Q.* 676-95 (1991)); Charles J. Wheelan, *Politics or Public Interest? An Empirical Examination of Occupational Licensure*, (unpublished manuscript, University of Chicago 2005); see also Broat, *supra* note 2, at 52-58; Wheelan, *supra* note 101, at 43 (finding support for the “political theory of licensure” that “the propensity of a given state to license respiratory therapists will be positively related to the political strength of the state’s respiratory therapists and negatively related to the political strength of the state’s hospitals”).

¹⁰⁸ Minn. Stat. §§ 214.001 et seq.

¹⁰⁹ State of Minn. Office of the Legis. Auditor, *supra* note 8, at xiv, 50.

¹¹⁰ *Id.* at xv (emphasis added).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ State of Minn. Office of the Legis. Auditor, *supra* note 8, at xviii, 50-51; Broat, *supra* note 2, at 2-3 (observing “Minnesota’s occupation regulation policy was still being applied in an ineffective and inconsistent manner”).

¹¹⁴ <http://www.amscheqdentistry.com/articles/archives/00000010.html> (last visited December 14, 2005).

¹¹⁵ Licensing of horse teeth filers has been enacted in Nebraska, Louisiana and Idaho. Idaho Code § 54-2103 (2005); La. Rev. Stat. § 37:1514 (2005); Neb. Rev. Stat. § 71-1,154(2) (2005). But this past summer, Virginia joined Illinois, Maryland, Connecticut, and Vermont in exempting floaters from regulation. ILCS § 225, 115/4(15) (2005); MD. Stat. § 2-301(g)(8) (2005); CT. Stat. § 20-197 (2005); 26 Vt. Stat. § 2403(2) (2005).

¹¹⁶ Minn. Stat. § 156.075.

¹¹⁷ Minn. Stat. § 326.242, subd. 3d.

¹¹⁸ <http://training.mnwest.edu/manufacturing-applied-technology/power-limited-technician> (last visited December 14, 2005).

¹¹⁹ *Pavlik v. Johannes*, 259 N.W. 537, 540-41 (Minn. 1935); see also *Everything Etched, Inc. v. Shakopee Towing, Inc.*, 634 N.W.2d 450, 453 (Minn. Ct. App. 2001) (observing Minnesota courts require the proponent of a statute’s constitutionality to establish “a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals”).

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