

*Reforming the*  
**LEGAL &  
REGULATORY  
SYSTEM**  
*in Louisiana*



Louisiana's current legal and regulatory environment stifles opportunities for job seekers and working families as more and more businesses move out of state in search of places with fairer, more predictable policies.

By nearly every standard measure, it is clear: Louisiana's civil justice system is broken. From laws that unfairly disadvantage defendants, to the stunning lack of impartiality exhibited by some elected judges presiding over civil cases, there is overwhelming evidence of systemic failure.

While Republican and Democratic lawmakers have avoided major reforms over the last two decades, the state's business and legal climate has continued to erode. Now, Louisiana faces a perfect storm of extremely high litigation costs, skyrocketing auto insurance rates, and no real prospect of relief in sight to bring much-needed balance to the state's currently lopsided legal system.

These and other factors contribute to the overwhelming perception that it is difficult, if not impossible, to get a fair shake in Louisiana. This long standing reputation as a legal swampland discourages companies, small businesses and entrepreneurs from expanding or relocating here and ultimately drives more people and jobs out of state.

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*The status quo is not working for Louisiana families and businesses.*”

In addition, the state's massive and inefficient regulatory environment serves as another major barrier to job creation and economic growth. Overly burdensome occupational licensing requirements artificially constrict the labor market and stand in the way of honest entrepreneurship, while excessive amounts of red tape force businesses to spend too much time and money on outdated and unnecessary regulatory processes.

The status quo is not working for Louisiana families and businesses. The economic statistics speak for themselves.

Louisiana is experiencing anemic job growth at a time when most of the country is thriving. The state unemployment rate<sup>1</sup> is consistently higher than the national average, and Louisiana was one of only nine states to suffer a net decrease in population<sup>2</sup> from July 2017 to July 2018. Data from the US Census Bureau shows Texas lead the nation in population growth in 2018 while thousands of workers and families left Louisiana in search of jobs and opportunities.<sup>3</sup>

Louisiana desperately needs policies that incentivize economic growth. Common sense legal and regulatory reforms will not only help to rebalance the scales of justice and bring jobs and opportunity back to Louisiana, they also offer a win-win for policymakers and businesses alike. Lower legal and regulatory compliance costs can provide an immediate economic stimulus without losses in tax receipts or an increase in government spending.<sup>4</sup>

Implementing these reforms will not be easy, but many benefits await citizens, entrepreneurs and business in the Pelican State, if our state leaders have the courage to act.

1 Department of Labor, Bureau of Labor Statistics, "State Employment and Unemployment- February 2019." <https://www.bls.gov/news.release/pdf/laus.pdf>

2 Census Bureau, "State Population Totals and Components of Change: 2010-2018," Table 5: Estimates of the Components of Resident Population Change for the United States, Regions, States, and Puerto Rico: July 1, 2017 to July 1, 2018. <https://www2.census.gov/programs-surveys/popest/tables/2010-2018/state/totals/nst-est2018-05.xlsx>.

3 Claire Osborn, "U.S. Census: Texas Again Leads in Population Growth," The Austin Statesman, December 24, 2018. <https://www.statesman.com/news/20181224/us-census-texas-again-leads-in-population-growth>

4 Ibid

## INTRODUCTION

An Opelousas man broke the lock off a gas connection to his home and illegally re-connected a line that was turned off for non-payment. He lit the stove, blew up his house, and then filed a lawsuit blaming the gas company for the accident.<sup>5</sup>

An Abbeville woman, who admitted to taking Lortab and Xanax before going shopping, sued a big-box retailer after running over her own foot with a shopping cart.<sup>6</sup> This absurd case made national news.

A Baton Rouge man sued the owners of a convenience store claiming he suffered terrifying hallucinations after smoking potpourri incense that was clearly labeled “not for human consumption.”<sup>7</sup>

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There was a time when such lawsuits would have been unimaginable, laughed at or quickly thrown out of court for lack of merit. But now they are taken seriously, especially in Louisiana, where plaintiffs’ attorneys seemingly write the rules and lawsuit abuse thrives.

While the litigation industry is booming, over-regulation and protectionist laws are making it even more difficult for businesses to succeed here. For instance, the Pelican State requires florists, interior designers, hair braiders and others to pay hundreds of dollars in fees and complete many hours of training in order to obtain occupational licenses to do their jobs legally. These regulations provide no benefit to the public, but they do drive entrepreneurs and job creators out of state.

This report analyzes the chronic and ongoing challenges in Louisiana’s legal and regulatory systems that must be addressed. The evidence of systemic failure is sobering. But the reforms recommended here provide a pathway to a better future. If implemented, these fundamental reforms would help transform Louisiana’s business, legal and regulatory climate and propel its economy forward, creating much-needed jobs and higher incomes.

The report is divided into four sections. The first provides a broad overview of Louisiana’s broken civil justice system. The second highlights specific legal reforms that should be enacted in the Pelican State to rebalance the scales of justice and ensure that everyone has access to fair and impartial courts. The third discusses the challenges stemming from the state’s massive and overly burdensome regulatory system and provides specific recommendations for reforms that would streamline government rules and restore the right to earn a living in Louisiana. The final section summarizes the findings and outlines a path to a better, brighter future.

## 1. LOUISIANA’S CURRENT LITIGATION CLIMATE

The goal of America’s civil justice system is to provide individuals and organizations with the means to obtain civil remedies for harm caused by others in the form of monetary damages and sometimes penalties. It is no secret, however, that the lit-

5 Jones v. Centerpoint Energy (2004). <https://cases.justia.com/louisiana/third-circuit-court-of-appeal/2011-ca-11-0002.pdf?ts=1406884518>

6 Associates Press, “Louisiana Woman Sues Walmart Over Rogue Rodent Attack,” Fox News, May 11, 2009. <https://www.foxnews.com/story/louisiana-woman-sues-walmart-over-rogue-rodent-attack>

7 Joe Cyan, Jr., “Man Files Suit Over ‘Incense,’” The Advocate, October 11, 2011. [https://www.theadvocate.com/baton\\_rouge/news/article\\_f74e289b-5e8b-5c32-ac64-ebef4cec3d66.html](https://www.theadvocate.com/baton_rouge/news/article_f74e289b-5e8b-5c32-ac64-ebef4cec3d66.html)

igation industry has transformed into big business over the last 50 years with the proliferation of lawyer advertising.

At \$429 billion annually, America now has the costliest legal system in the world. As a percentage of the economy, data shows the U.S. legal system costs over 150 percent more than the Eurozone average, and over 50 percent more than the United Kingdom.<sup>8</sup>

Of course, these excessive costs place an unnecessary burden on America's economy, but the deeper impact of the lawsuit industry hits hardest on taxpayers, small businesses and job creators.

It goes without saying that when someone is responsible for damage or injury to another, they should be held accountable for their actions. Lawsuits should be used to ensure that wrongfully injured victims receive full and fair restitution. But when the legal system lacks transparency and accountability and laws are changed over time to allow and even encourage meritless litigation, lawsuit abuse thrives. Such is the case in Louisiana.

No matter how you measure it, the Pelican State's civil justice system is obviously troubled. The staggering cost of civil litigation is one of the root causes of job and revenue loss for the state of Louisiana. Excessive auto-related lawsuits have driven car insurance rates through the roof. Louisiana's legal and business climates are consistently ranked among the worst in the nation. The numbers tell the story.

## 1.1 Economic Costs

Excessive litigation affects the economy in numerous ways. The direct costs of resolving tort claims, whether in or outside the courtroom, are borne by individuals, businesses and governmental entities as parties to litigation. There are also many indirect costs, such as the increased costs of goods and services that are passed along to consumers. There are major opportunity costs as well. A litigious climate creates unpredictability that can discourage product research, innovation, new investments, job growth and business expansion.

Lawsuit costs are among the highest in the nation. Louisiana families and businesses paid nearly \$7 billion in expenses related to tort litigation in 2016. That translates to about \$4,000 per Louisiana household.<sup>9</sup>

In contrast, lawsuit costs averaged only \$2,765 per Alabama household. The following chart shows how lawsuit costs in Louisiana compared to those in other neighboring states.

### Lawsuit Costs Per Household in 2016

Alabama	\$2,765
Arkansas	\$2,857
Oklahoma	\$2,890
National Avg.	\$3,329

<sup>8</sup> David L. McKnight and Paul J. Hinton, "International Comparison of Legal Costs," US Chamber Institute for Legal Reform, May 2013, [https://www.instituteforlegalreform.com/uploads/sites/1/NERA\\_FULL.pdf?phpMyAdmin=RSSoXamn3rJRejyxTA3BwbQEj2](https://www.instituteforlegalreform.com/uploads/sites/1/NERA_FULL.pdf?phpMyAdmin=RSSoXamn3rJRejyxTA3BwbQEj2)

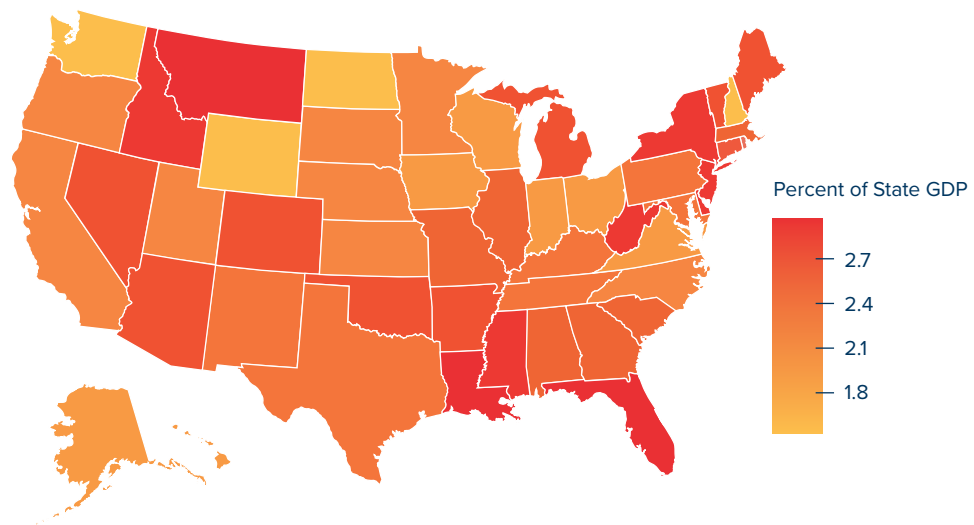
<sup>9</sup> David L. McKnight & Paul J. Hinton, "Costs and Compensation of the U.S. Tort System" US Chamber Institute for Legal Reform, October 2018, [https://www.instituteforlegalreform.com/uploads/sites/1/Tort\\_costs\\_paper\\_FINAL\\_WEB.pdf](https://www.instituteforlegalreform.com/uploads/sites/1/Tort_costs_paper_FINAL_WEB.pdf)

Texas	\$3,535
Georgia	\$3,631
Louisiana	\$4,015

Source: Costs and Compensation of the U.S. Tort System, October 2018

Tort costs and compensation account for 2.9% of the state's Gross Domestic Product (GDP). The heat map below shows how tort costs and compensation as a percent of GDP varies from state to state. At 2.9 %, Louisiana has one of the highest ratios of tort costs to GDP in the country.<sup>10</sup>

### Costs and Compensation of the Tort System as a Percent of GDP by State



Source: Costs and Compensation of the U.S. Tort System, October 2018<sup>11</sup>

## 1.2 Lost Jobs & Revenue

The staggering cost of civil litigation is one of the root causes of job and revenue loss for the state of Louisiana.

- It is estimated excess civil litigation costs Louisiana more than 15,000 jobs every year.<sup>12</sup>
- As of 2018, fiscal losses are estimated to be around \$76.4 million in state revenue and \$64.3 million to local governments.<sup>13</sup>

<sup>10</sup> Ibid

<sup>11</sup> McKnight & Hinton, "Costs and Compensation of the U.S. Tort System" US Chamber Institute for Legal Reform, October 2018. [https://www.instituteforlegalreform.com/uploads/sites/1/Tort\\_costs\\_paper\\_FINAL\\_WEB.pdf](https://www.instituteforlegalreform.com/uploads/sites/1/Tort_costs_paper_FINAL_WEB.pdf)

<sup>12</sup> The Perryman Group, "Economic Benefits of Tort Reform," Citizens Against Lawsuit Abuse, September 2018. [https://d3n8a8pro7vnmx.cloudfront.net/california/pages/59/attachments/original/1539267022/CALA\\_LA\\_Economic\\_Impact\\_Report\\_2018.pdf?1539267022](https://d3n8a8pro7vnmx.cloudfront.net/california/pages/59/attachments/original/1539267022/CALA_LA_Economic_Impact_Report_2018.pdf?1539267022)

<sup>13</sup> Stephanie Riegel, "Report: Excessive Civil Tort Costs Taking a Toll on Louisiana Economy," Business Report, January 15, 2019. <https://www.businessreport.com/article/report-excessive-civil-tort-costs-taking-toll-louisiana-economy>

### 1.3 Car Insurance & Auto Liability Lawsuits

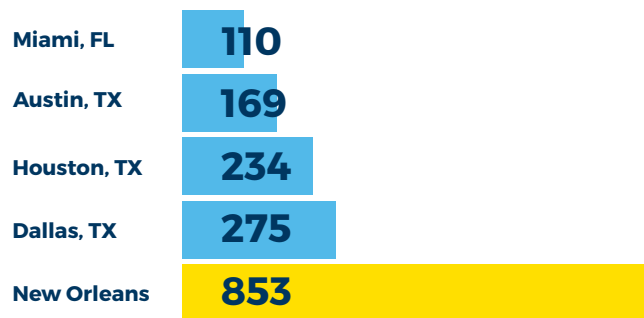
Louisiana is the least affordable state in the country for auto insurance.<sup>14</sup> The affordability index is the ratio of average expenditures on auto insurance to median household income. Louisiana's affordability index (2.64 percent) was the highest in the U.S. from 2011 to 2015.

Key cost drivers of the state's high insurance rates include the high frequency of auto accidents that result in bodily injury claims and the propensity of Louisiana claimants to hire attorneys and file lawsuits. Simply put, when car accidents happen, Louisiana drivers are far more likely to hire a lawyer, file a lawsuit and claim that they are injured.

For example, in 2017, Louisiana had the highest frequency of bodily injury (BI) liability claims in the country (1.75 claims per 100 insured vehicles, which is almost double the countrywide rate of 0.90 claims per 100 insured vehicles).

In addition, a 2019 investigation by Fox 8's Lee Zurik also found that New Orleans is more litigious when it comes to auto liability lawsuits than other major cities.<sup>15</sup> In Miami, for example, personal injury attorneys filed 110 suits per 100,000 people, 169 in Austin, 234 in Houston, and 275 in Dallas. New Orleans is the outlier with 853 auto suits per 100,000 people.

Auto Liability Lawsuits Filed in Select Cities (Per 100,000 Residents)



Source: FOX 8 Investigates

This startling trend could explain why court cases involving auto accidents made up the largest share of Louisiana's tort system costs—adding up to nearly \$3.4 billion in 2016.<sup>16</sup>

<sup>14</sup> Insurance Research Council, "Louisiana Tops List of Least Affordable States for Auto Insurance Due to Frequent Claims and Litigation," Oct. 30, 2018. [https://www.insurance-research.org/sites/default/files/downloads/LouisianaCostDrivers News Release.pdf](https://www.insurance-research.org/sites/default/files/downloads/LouisianaCostDrivers%20News%20Release.pdf)

<sup>15</sup> Lee Zurik and Cody Lillich, "Is Louisiana's 'Legal Hellhole' to Blame for Sky-High Auto Insurance Rates?" Fox 8 News, Feb. 20, 2019. <http://www.fox8live.com/2019/02/21/zurik-is-louisianas-legal-hellhole-blame-sky-high-auto-insurance-rates/>

<sup>16</sup> McKnight and Hinton, "Costs and Compensation of the U.S. Tort System" US Chamber Institute for Legal Reform, October 2018. [https://www.instituteforlegalreform.com/uploads/sites/1/Tort\\_costs\\_paper\\_FINAL\\_WEB.pdf](https://www.instituteforlegalreform.com/uploads/sites/1/Tort_costs_paper_FINAL_WEB.pdf)

One of the major impacts of this excessive litigation is that it drives up the cost of car insurance.

- According to the latest data published by the National Association of Insurance Commissioners, Louisiana has the highest auto insurance in the country, averaging \$1,500.<sup>17</sup>
- Another recent study by Insure.com estimates Louisiana's auto insurance rates were 56 percent higher than the national average in 2018.<sup>18</sup>

## 1.4 Grades & Rankings

Louisiana's reputation as a legal swampland has persisted for years. Due to a perceived lack of fairness, abusive and excessive litigation practices by some plaintiffs' attorneys, and ongoing concerns about judicial integrity, our state courts are nationally known as one of the worst places in the country to be sued.

For instance, Louisiana ranked 50th out of 50 states in the 2017 Lawsuit Climate Survey: Ranking the States.<sup>19</sup> This biennial assessment of state liability systems conducted by Harris Interactive and released by the U.S. Chamber Institute for Legal Reform (ILR), measures how fair and reasonable litigation climates are perceived to be across the country, which states perform well or poorly in certain areas of civil litigation and how these nuances in a state's legal environment affect its economy.

Louisiana ranked dead last in seven of the 10 categories in the survey, including the perceived lack of judicial impartiality, having appropriate legal standards to keep junk science out of the courtroom, and the quality of its appellate review process. Orleans Parish also ranked as the fourth worst lawsuit jurisdiction in the nation.

In addition, many other national groups have questioned the state of Louisiana's legal and business climate.

- Louisiana received "Fs" for judicial accountability, executive accountability, legislative accountability, public access to information and ethics enforcement in the 2015 State Integrity Index—a comprehensive assessment of state government accountability and transparency conducted by the Center for Public Integrity.<sup>20</sup>
- Louisiana has ranked as one of the nation's worst "judicial hellholes" nine years in a row, according to annual reports published by the American Tort Reform Association.<sup>21</sup>
- Louisiana ranked as the worst state in the country by U.S. News & World Report in 2018, a ranking that draws on thousands of data points to measure how well states are performing for their citizens.<sup>22</sup>
- Louisiana's business climate ranked as the worst in the nation in 2017 by 24/7 Wall Street.<sup>23</sup>

“  
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17 Zurik and Lillich, "Is Louisiana's 'legal hellhole' to blame for sky-high auto insurance rates?" Fox 8 News, Feb. 20, 2019. <http://www.fox8live.com/2019/02/21/zurik-is-louisianas-legal-hellhole-blame-sky-high-auto-insurance-rates/>

18 Mark Vallet, "Car Insurance Rates by State, 2018 edition," Insure.com, Oct. 11, 2018. <https://www.insure.com/car-insurance/car-insurance-rates.html>

19 Harris Interactive, "2017 Lawsuit Climate Survey: Ranking the States," US Chamber Institute for Legal Reform, September 2017. <https://www.instituteforlegalreform.com/uploads/pdfs/Harris-2017-Executive-Summary-FINAL.pdf>

20 Mark Ballard, "Louisiana Gets F in 2015 State Integrity Investigation," The Center for Public Integrity, November 9, 2015. <https://publicintegrity.org/accountability/louisiana-gets-f-grade-in-2015-state-integrity-investigation/>

21 American Tort Reform Foundation, "2018/2019 Judicial Hellholes," December 2019. <http://www.judicialhellholes.org/wp-content/uploads/2018/11/judicial-hellholes-report-2018-2019.pdf>

22 U.S. News & World Report, "Best States Ranking," January 2019. <https://www.usnews.com/news/best-states/rankings>

23 Trey Thoelecke, "Why Louisiana Is the Worst State for Business," February 18, 2017. <https://247wallst.com/economy/2017/02/18/why-louisiana-is-the-worst-state-for-business/>

## 2. LEGAL REFORM

Louisiana's jarring reputation as a legal swampland should concern citizens, taxpayers, business owners and policymakers alike. Whether we like it or not, reputations matter, and the perception of our state's legal climate definitely affects when, where and how companies decide to invest and create new, well-paying jobs.

There are a myriad of ways Louisiana can reform its litigation policies to improve fairness, predictability and impartiality. Priority reforms that could have the most significant impact on rebalancing the scales of justice are highlighted below.

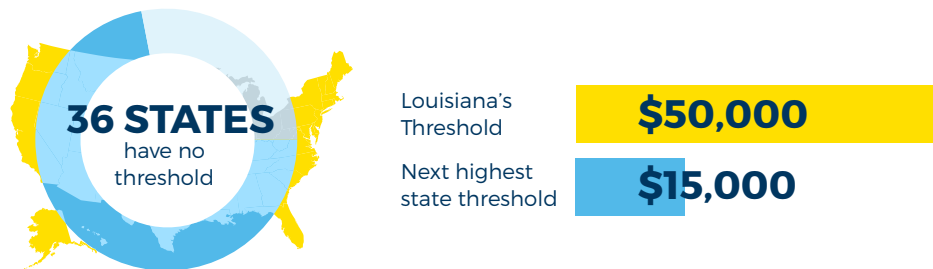
### 2.1 Eliminate the Jury Trial Threshold

There are many troubling aspects of Louisiana's legal system that contribute to the perception that it is difficult, if not impossible, for some to get a fair shake in Louisiana courts.

One of the most significant policies in need of reform is a unique law, known as the jury trial threshold, which dictates that in civil cases, any claim under \$50,000 must be decided by a judge.<sup>24</sup> This unnecessary barrier for obtaining a jury trial in Louisiana allows elected judges to decide the outcome of the overwhelming majority of small civil lawsuits. This puts a lot of power in the hands of elected judges and it takes citizens out of the process.

This unusually high threshold also illustrates one of the many ways that Louisiana's laws are far outside the mainstream. An analysis of civil jury trial threshold limits for all 50 states found the vast majority of states (36) have no threshold for civil jury trials,<sup>25</sup> and among the 14 states that do, Louisiana's threshold is, by far, the highest in the nation. At \$50,000, Louisiana's jury trial threshold is roughly 28 times higher than the national average<sup>26</sup> and nearly two and a half times higher than the next closest state.<sup>27</sup>

#### Civil Jury Thresholds in the United States



<sup>24</sup> Code of Civil Procedure 1732. Baton Rouge, LA: Louisiana Legislature, 2013 <http://www.legis.la.gov/legis/law.aspx?d=111290>

<sup>25</sup> Property Casualty Insurers Association of America, "Infographic: #Heads Up: Insurance Claims on the Rise," 2017. [https://www.la.gov/docs/default-source/documents/propertycasualty/lpic/presentation/infographics-pci-la.pdf?sfvrsn=4c2b7452\\_0](https://www.la.gov/docs/default-source/documents/propertycasualty/lpic/presentation/infographics-pci-la.pdf?sfvrsn=4c2b7452_0)

<sup>26</sup> Reducing Access to the Courts: The Impact of Louisiana's Jury Trial Threshold. Baton Rouge, LA: Louisiana Lawsuit Abuse Watch, 2012 [http://www.law.org/docs/ReducingAccessToTheCourts\\_FINAL.pdf](http://www.law.org/docs/ReducingAccessToTheCourts_FINAL.pdf).

<sup>27</sup> Ibid, PCIA Infographic, 2017. [https://www.la.gov/docs/default-source/documents/propertycasualty/lpic/presentation/infographics-pci-la.pdf?sfvrsn=4c2b7452\\_0](https://www.la.gov/docs/default-source/documents/propertycasualty/lpic/presentation/infographics-pci-la.pdf?sfvrsn=4c2b7452_0)



This encourages unnecessary and sometimes meritless litigation, and it also increases the cost of everyday goods and services—especially when it comes to our car insurance rates.

Like citizens in the majority of states, Louisianans should have the freedom to choose a jury trial. Legislative reforms to eliminate the jury trial threshold and bring our state back into alignment with the rest of the country are long overdue.

## 2.2 Enact Venue Reform

Currently, Louisiana's lax venue laws allow for "forum shopping," a tactic often used by plaintiffs' lawyers to win verdicts in friendly locations. Reforms are needed to establish proper venue and discourage forum shopping in civil litigation by requiring plaintiffs' attorneys to file cases in the jurisdiction where the alleged injury occurred.

For years, defense litigators have expressed concerns about the Orleans Parish Civil District Court (CDC) for the outsized role it plays in civil litigation, particularly in cases involving alleged exposure to asbestos/silica.

Plaintiffs' lawyers seemingly flock to Orleans Parish CDC, seeking plaintiff-friendly judges and rulings that often allow meritless claims to proceed and can result in excessive damage awards. Meanwhile, defendants find themselves dragged to a distant, inconvenient and expensive forum that often has little or no connection to the dispute.

Mike Carter, president of Monroe Rubber & Gasket Co., a family-owned business based in Shreveport, LA since 1975, exemplifies the devastating impact this abusive practice can have on small business owners. Mike has been hauled into court in New Orleans countless times over the last decade and subjected to a staggering number of asbestos lawsuits, despite the fact that his company has never manufactured an asbestos product.

All told, Mike has been sued more than 100 times by more than 2,000 individual plaintiffs—many of whom were represented by the same personal injury lawyer.<sup>28</sup> Today, almost all of the lawsuits filed against Mike's company have been dismissed without merit. Nevertheless, he's been forced to spend more than \$2.5 million dollars in legal fees and thousands of hours in court far away from his home in North Louisiana defending his small business against meritless claims.

This is not the way our legal system is supposed to work. Lawmakers should strengthen Louisiana's venue laws to preclude lawyers from unreasonable forum shopping in state courts.

## 2.3 Improve Transparency in Asbestos Litigation

Civil litigation over personal injury claims due to alleged asbestos exposure has exploded over the last 45 years. Billions of dollars have been paid to hundreds of thousands of claimants.<sup>29</sup> Many companies with significant liability for asbestos-relat-

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28 Faces of Lawsuit Abuse, "Family Business Facing More Than 100 Lawsuits Teeters on the Brink," 2016. "<http://www.facesoflawsuitabuse.org/2016/03/family-business-facing-more-than-100-lawsuits-teeters-on-the-brink/>

29 Lloyd Dixon, Geoffrey McGovern and Amy Coombe, "Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts," RAND Corporation, 2010. "[https://www.rand.org/pubs/technical\\_reports/TR872.html](https://www.rand.org/pubs/technical_reports/TR872.html)

ed injuries have filed for bankruptcy, resulting in the creation of a massive asbestos bankruptcy trust system, which pay claims on behalf of bankrupt defendants.

An analysis by the Government Accountability Office estimates there are more than 60 different asbestos bankruptcy trusts managing an estimated \$36.8 billion in assets.<sup>30</sup> Many of these trusts are run by the same plaintiffs' attorneys who profit from them, essentially allowing the fox to guard the hen house. Furthermore, a lack of coordination between these privately funded trusts and the civil litigation system allows some claimants and their attorneys to "double dip"—or recover twice for the same injury. This systemic lack of transparency and oversight enables abuse.

In recent years, both courts and researchers have documented a shocking pattern of widespread misuse throughout the asbestos bankruptcy trust system. In fact, the double dipping is so rampant the United States Department of Justice recently took the extraordinary step of filing a Statement of Interest in the asbestos-related case involving Kaiser Gypsum Co. in the United States Bankruptcy Court for the Western District of North Carolina, urging the court to create a fair and transparent trust for the bankrupt manufacturer.<sup>31</sup> The Department stated:

***“Alarming evidence has emerged of fraud and mismanagement inside asbestos trusts. Asbestos victims should feel certain that they will receive compensation when they are promised it, but fraudulent claims and mismanagement call that promise into question.”***

***“In addition, the United States and all who depend on Medicare are harmed when Medicare is not reimbursed for treatment costs that have been paid by trust funds. With today’s Statement of Interest, the Department sends a clear message that we will not tolerate fraudulent conduct that cheats asbestos victims and the United States.”***

The abuses noted by the DOJ and many others have spawned reforms. In the past six years, fifteen states have enacted trust transparency laws.<sup>32</sup>

Louisiana lawmakers should consider legislative reforms to increase transparency in asbestos litigation in the Pelican State as well. By simply requiring plaintiffs who claim injuries related to asbestos or silica exposure to disclose at least 90 days before trial all existing or potential claims against a trust or a fund, lawmakers can help to ensure that jurors receive appropriate information about the entirety of a plaintiff's claimed exposure history and the amount of compensation a plaintiff may have already received as they seek to determine the true causes of the alleged harm and apportion fault accordingly.

It is important to note, reform legislation will not prevent asbestos claimants from recovering from multiple sources. Indeed, there may be instances where some in-

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30 United States Government Accountability Office, Report to the Chairman, Committee on the Judiciary, House of Representatives, "Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts," 2011. <https://www.gao.gov/new.items/d11819.pdf>

31 United States Department of Justice, "Justice Department Files Statement of Interest in New Asbestos Trust Proposal," September 2018. <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-new-asbestos-trust-proposal>

32 See Ariz. Rev. Stat. § 12-782 (2018); Iowa Code §§ 686A.1–9 (2018); Mich. Code Ann. § 600.3010–3016 (2018); Miss. Code §§ 11-67-1 to -15 (2018); N.D. Cent. Code §§ 32-46.1-01 to -05 (2018); Ohio Rev. Code Ann. §§ 2307.951–954 (West 2018); Okla. Stat. tit. 76, §§ 81–89 (2018); S.D. Codified Laws §§ 21-66-1 to -11 (2018); Tenn. Code §§ 29-34-601 to -609 (2018); Tex. Civ. Prac. & Rem. Code Ann. §§ 90.051–058 (West 2018); Utah Code §§ 78B-6-2001 to -2010 (2018); W. Va. Code §§ 55-7F-1 to -11 (2018); Wis. Stat. § 802.025 (2018); N.C. Gen. Stat. Ann. Sess. § 1A-1, Rule 26(b); Kan. Stat. Ann. §§ 60-4912–4918 (2018).

dustrial workers were exposed to asbestos in multiple ways. These reforms would not prevent alternative settlements and claims. That information would simply be disclosed to the courts prior to trial so that judges and juries can use it to properly compensate asbestos claimants.

## 2.4 Cap Non-Economic Damages

In Louisiana, plaintiffs can be awarded three types of damages: economic, non-economic and punitive.<sup>33</sup> As the name suggests, economic damages are awarded to reimburse economic loss, non-economic damages are used to financially compensate for subjective loss and punitive damages, which are only awarded in special cases specified in Louisiana law, are awarded to punish defendants and discourage similar behavior in the future.

While getting a reasonable calculation of economic loss is relatively straightforward, it is much more difficult to calculate non-economic damages which includes the more subjective aspects of loss and harm, such as emotional distress, pain and suffering, loss of companionship, and many more. To ensure huge damages aren't awarded frivolously, many states have capped the amount that can be awarded.<sup>34</sup>

While Louisiana does cap the amount of non-economic damages awarded during medical malpractice suits,<sup>35</sup> it still lags behind many other states that cap non-economic damages awarded in other kinds of civil cases. According to the American Legislative Exchange Council (ALEC), limiting non-economic damages to \$250,000 has had the effect of tempering insurance premiums and encouraging economic activity in other states.<sup>36</sup> Louisiana should consider enacting the Full and Fair Noneconomic Damages Act.<sup>37</sup>

## 2.5 Increase Judicial Transparency

A whole series of judicial miscues, ranging from laughable to outrageous to downright criminal, has emerged in Louisiana over the last two decades. In the early 2000s, a sprawling FBI investigation, dubbed "Operation Wrinkled Robe," made national news. Ultimately, the investigation ensnared one federal judge, four state judges and dozens of well-known attorneys and bail bondsmen, all of whom took part in an illegal kickback scheme at the parish courthouse.<sup>38</sup> Louisiana Federal District Court Judge G. Thomas Porteous Jr., was found guilty on four articles of impeachment and removed from the bench in 2010, marking the first time the U.S. Senate ousted a federal judge in more than two decades.<sup>39</sup>

These and many other instances of influence peddling, cronyism and corruption function like a cancer that is slowly eroding public trust and confidence in the

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33 Center for Justice and Democracy, "Fact Sheet: Caps On Compensatory Damages: A State Law Summary," June 2017. <https://centerjd.org/content/fact-sheet-caps-compensatory-damages-state-law-summary>

34 International Association of Defense Counsel, "Noneconomic Damages: A State-By-State Survey of Limiting Caps and Their Constitutionality," IDAC Committee Newsletter, June 2014. [http://www.iadclaw.org/assets/1/19/Product\\_Liability\\_June\\_2014.pdf](http://www.iadclaw.org/assets/1/19/Product_Liability_June_2014.pdf)

35 La. Rev. Stat. Ann. § 40:1299.42(B) (2011).

36 American Legislative Exchange Council, "The State Legislator's Guide: Tort Reform Boot Camp," 2011. <https://www.alec.org/app/uploads/2015/11/TortReformBootCampGuideFinal.pdf>

37 American Legislative Exchange Council, "The Full and Fair Noneconomic Damages Act," 2017. <https://www.alec.org/model-policy/full-fair-noneconomic-damages-act/>

38 Times Picayune Staff Report, "2003: Operation Wrinkled Robe Catches Jefferson Parish Judge," Times Picayune, January 16, 2012. [http://www.nola.com/175years/index.ssf/2012/01/2003\\_operation\\_wrinkled\\_robe\\_c.html](http://www.nola.com/175years/index.ssf/2012/01/2003_operation_wrinkled_robe_c.html)

39 Jennifer Steinhauer, "Senate, for Just the 8th Time, Votes to Oust a Federal Judge," New York Times, December 8, 2010. <https://www.nytimes.com/2010/12/09/us/politics/09judge.html>

state's legal system. Since 2000, at least ten Louisiana judges have been removed or resigned their seat on the bench due to judicial misconduct. Many others have been sanctioned.<sup>40</sup>

According to a review of state Supreme Court judicial misconduct opinions, more than 40 Louisiana judges have been publicly disciplined by the high court for violating their oaths or abusing their authority over the last decade.<sup>41</sup> Just as troubling are the many allegations of judicial misconduct that are never properly investigated or publicly reported due to the secretive practices of the Louisiana Judiciary Commission.

The stunning and recurrent lack of good judgment displayed by some members of the Louisiana judiciary is truly troubling, as is the lack of discipline and oversight exercised by the courts when allegations of corruption surface.

Former Louisiana District Court Judge J. Robin Free, for instance, developed a national reputation as a repeat offender due to serious ethical transgressions he committed while serving on the bench over the last two decades. Over this time, Free refused to recuse himself from cases in which he had clear conflicts of interest. He accepted lavish gifts from personal injury lawyers trying cases in his court. He abused his contempt authority in formal legal proceedings and made inappropriate comments toward women. In each instance, Free received a small slap on the wrist from higher ups in the judiciary, but the sanctions were kept largely out of public view and he was always allowed to return to the bench. Free finally stepped down from the bench voluntarily in 2017,<sup>42</sup> and he will soon start collecting lucrative retirement payments paid for by Louisiana taxpayers.

Sunlight is a great disinfectant, and the Louisiana judiciary needs a lot more of it. Transparency reforms should be enacted to ensure that members of the state judiciary are more accountable to taxpayers. Judges should be required to file personal financial disclosure statements online like every other elected official in the state. Currently, judges are required to file personal financial disclosure statements annually with the Office of the Judicial Administrator.<sup>43</sup> However, the process for obtaining these allegedly public records can be expensive and overly burdensome. Making them available online would provide a much greater level of transparency. Judges routinely express security concerns as the main reason why these records are not already online. However, the current forms specifically instruct judges not to disclose their home addresses or the addresses of employers from whom they receive income outside of the State or Political Subdivision.

In addition to making the personal financial disclosure statements of Louisiana's elected judges available online, legislation to establish greater transparency in judicial misconduct proceedings is desperately needed. Uniform requirements for annual financial reporting on the operations of state courts are imperative. Reforms are also needed to improve judicial efficiency and ensure that cases are randomly assigned to judges by creating an electronic system for filing cases online.

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40 American Tort Reform Foundation, "2017/2018 Judicial Hellholes," December 2017. <https://www.judicialhellholes.org/2017-2018/executive-summary/>

41 Amy Julia Harris, "When Louisiana's Repeat Offenders Are Judges," Reveal from The Center for Investigative Reporting, July 14, 2016. <https://www.revealnews.org/article/when-louisianas-repeat-offenders-are-judges/>

42 Terry Jones, "Suspended Judge J. Robin Free Resigns After Accusations of 'Bizarre' Behavior, Harassing Deputies," The Advocate, June 23, 2017. [https://www.theadvocate.com/baton\\_rouge/news/communities/westside/article\\_ffbea082-585a-11e7-8fc8-93dcfaceb0c3.html](https://www.theadvocate.com/baton_rouge/news/communities/westside/article_ffbea082-585a-11e7-8fc8-93dcfaceb0c3.html)

43 Office of the Judicial Administrator Supreme Court of Louisiana, "Personal Financial Disclosure Statement," p. 2. [https://www.lasc.org/rules/supreme/Instructions\\_to\\_Personal\\_Financial\\_Disclosure\\_Fom.pdf](https://www.lasc.org/rules/supreme/Instructions_to_Personal_Financial_Disclosure_Fom.pdf)

Passing these reforms will not be easy. Plaintiffs' lawyers, as a whole, are the largest political contributors in Louisiana, spending more on elections than any other interest group.<sup>44</sup> A lot of their contributions go directly to judges. Working together, the judiciary and the trial bar function as a powerful force that has been largely successful in defeating reform efforts at the State Capitol over the last two decades.

As the data demonstrates, Louisiana lawmakers can no longer afford to look the other way on these important issues. It is long past time to implement comprehensive legal reform in the Pelican State. The status quo is unacceptable and unaffordable.

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## **SPOTLIGHT: GOVERNMENT-BACKED LAWSUITS TARGETING PRIVATE ENTITIES**

Louisiana's business and legal climates consistently rank among the worst in the nation, as jobs and opportunities continue to flee the state in search of places with fairer, more predictable policies. The state's heavy tax burden is already enough to discourage companies from coming and doing business here. But state leaders in Baton Rouge are making matters worse by pursuing a fruitless litigation strategy that only further discourages job creators from investing in Louisiana.

Louisiana's government-backed suits against private entities are part of a growing national trend. Across the country, states and municipalities are hiring private plaintiffs' attorneys to bring high-profile lawsuits seeking billions of dollars for widespread harms allegedly caused by corporate misconduct. Some state and local governments sue health care companies for alleged harms due to security data breaches,<sup>45</sup> while others sue in an attempt to blame oil and natural gas companies for global climate change.<sup>46</sup>

In Louisiana, the state government and a handful of local governments have joined forces with high-powered plaintiffs' lawyers to take aim at the oil and natural gas industry, which is one of the top providers of jobs and revenue in the Pelican State. From Plaquemines to Cameron parishes, state and local leaders are pursuing litigation against energy producers, alleging that oil and gas operations are driving coastal erosion, despite the fact that there is little-to-no evidence to support their claims.

To date, a total of 43 lawsuits have been filed by private plaintiffs' attorneys working on behalf of six Louisiana parishes and the City of New Orleans. The suits, targeting more than 200 companies assert that oil and natural gas operators violated the terms of their state issued coastal use permits and those violations are the primary cause of coastal land loss.<sup>47</sup>

The Louisiana Department of Natural Resources is acting as a plaintiff in the litigation

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<sup>44</sup> Louisiana Lawsuit Abuse Watch, "The Trial Lawyer Money Trail: Exposing the Influence of Personal Injury Lawyers on Louisiana Politics," September 2015. [http://llaw.org/wp-content/uploads/2015/10/LLAW\\_AnnualReport1.pdf](http://llaw.org/wp-content/uploads/2015/10/LLAW_AnnualReport1.pdf)

<sup>45</sup> Jessica Davis, "12 States Sue Business Associate for 2015 Health Data Breach," Health IT Security, December 4, 2018. <https://healthitsecurity.com/news/12-states-sue-business-associate-for-2015-health-data-breach>

<sup>46</sup> John Schwatz, "New York Sues Exxon Mobil, Saying It Deceived Shareholders on Climate Change," October 24, 2018. <https://www.nytimes.com/2018/10/24/climate/exxon-lawsuit-climate-change.html>

<sup>47</sup> Jonathan J. Fox and Dana M. Douglas, "The Coastal Zone Management Act Litigation Removed to Federal Court Again," The Energy Law Blog, June 28, 2018. <https://www.theenergylawblog.com/2018/06/articles/energy-litigation/the-coastal-zone-management-act-litigation-removed-to-federal-court-again/>

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in spite of the fact that they issued the permits; they have broad regulatory enforcement powers to enforce the terms of those permits; and, perhaps most importantly, they themselves have not investigated the allegations or found evidence of widespread permit violations.

Using this questionable legal approach to attack one of the state's largest employers won't help foster job and economic growth. Instead, it will put thousands of jobs at risk at a time when Louisiana can least afford it.

A report published by LSU's Center for Energy Studies found that similar energy-related litigation has cost state and local municipalities an estimated \$6.8 billion in revenue and 30,000 new jobs.<sup>48</sup> These are high-paying jobs and lucrative oil and gas industry investments that would have come to Louisiana, but went elsewhere because of our legal climate.

These depressing indicators serve as a constant reminder that Louisiana is at a critical crossroads: survive or thrive? If Louisiana's economy is going to truly recover from many months of real GDP decline, the energy industry is going to be key to the turnaround.

Louisiana lawmakers must emphasize policies that remove barriers to jobs and opportunity in the state. Rather than pursuing a failed and economically harmful litigation strategy against one of the state's largest job providers, Louisiana leaders should be focused on creating a legal environment that is hospitable to job creators.

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### 3. REGULATORY REFORM

As the labor market continues to strengthen across the United States, Louisiana lags behind. In January 2019, according to the Bureau of Labor Statistics, the unemployment rate<sup>49</sup> in Louisiana was 4.9%—more than a full percentage point higher than in bordering states Alabama and Texas<sup>50</sup> (3.8 % and 3.7%) and higher than the national average (4.0%).

In addition, Louisiana has lagged behind its neighbors in job creation,<sup>51</sup> increasing employment from January 2018 to January 2019 by just 0.5 %, compared to a 1.4 % and 2.4 % increase in Alabama and Texas respectively.<sup>52</sup> Although there are a number of factors that contribute to the state's anemic economic growth—including unstable tax and legal climates—one often overlooked factor is excessive regulation.

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48 LSU Center for Energy Studies, "The Impact of Legacy Lawsuits on Conventional Oil and Gas Drilling in Louisiana," February 2012. [https://www.lsu.edu/ces/presentations/2012/DISMUKES\\_LEGACY\\_RPT\\_02-28-12\\_FINAL.pdf](https://www.lsu.edu/ces/presentations/2012/DISMUKES_LEGACY_RPT_02-28-12_FINAL.pdf)

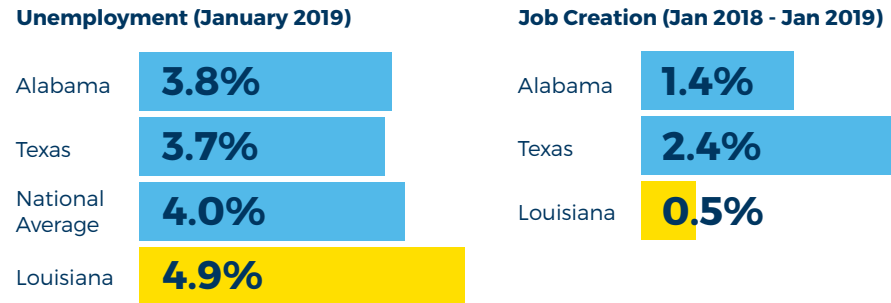
49 U.S. Bureau of Labor Statistics, "Louisiana Economy at a Glance," March 22, 2019. <https://www.bls.gov/eag/eag/la.htm>

50 U.S. Bureau of Labor Statistics, "Texas Economy at a Glance," March 22, 2019. <https://www.bls.gov/regions/southwest/texas.htm#eag>

51 U.S. Bureau of Labor Statistics, "State and Metro Area Employment, Hours, & Earnings: Change in Total Nonfarm Employment by State, Over-The-Month and Over-The-Year, Seasonally Adjusted," March 22, 2019. [https://www.bls.gov/web/laus/statewide\\_otm\\_oty\\_change.htm](https://www.bls.gov/web/laus/statewide_otm_oty_change.htm)

52 Ibid.

## Unemployment & Job Creation in Louisiana as compared to its neighbors



The Pelican Institute recognizes the need for smart government regulations that provide important societal benefits, such as ensuring workplace safety and protecting public health. However, it is clear that Louisiana's massive and overly burdensome regulatory system isn't working the way it should. Over many decades, state government has built a complex web of rules and regulations that make it difficult, if not impossible, for businesses and entrepreneurs to thrive.

Louisiana, for instance, is the only state in the country that requires florists to obtain an occupational license before they are allowed to arrange flowers for consumers.<sup>53</sup> Louisiana also requires government permission slips for interior designers, hair braiders, eyebrow threaders, tree trimmers and many other occupations that pose no risk to public health and safety.

Meanwhile, overregulation and protectionist laws dating back to the 1930s are negatively impacting growth in the craft beer brewing industry, which is thriving across the country but still lags in Louisiana. When compared to other states and the District of Columbia, Louisiana ranks 49 out of 51 for the number of breweries per capita of adults 21 and older.<sup>54</sup>

The status quo is no longer acceptable. In order to compete on the national and international stage, Louisiana must implement wholesale reforms to create a modern and responsible regulatory process administered by an accountable state government that functions properly with predictable timelines and solution-oriented practices.

The human toll of over-regulation is one that we can no longer afford to pay. Overly burdensome government rules often raise prices on basic goods and services, which can have a disproportionate impact on people with low incomes. They can slow economic growth and impede new business formation. When excessive regulations force businesses to spend too much time or money on inefficient regulatory processes, or when new projects get delayed because firms don't understand how to comply with antiquated or overly complicated rules, jobs and opportunities are lost as a result.

<sup>53</sup> Pelican Institute, "Restoring the Right to Earn a Living: A Common-Sense Solution to Occupational Licensing Job Barriers," March 2018. [https://pelicaninstitute.org/wp-content/uploads/2018/03/PEL\\_RighttoEarn\\_Final\\_WEB.pdf](https://pelicaninstitute.org/wp-content/uploads/2018/03/PEL_RighttoEarn_Final_WEB.pdf)

<sup>54</sup> Megan Wyatt, "Why Does Craft Brewing Still Lag in Louisiana?" The Daily Advertiser, September 17, 2016. <https://www.theadvertiser.com/story/news/local/louisiana/2016/09/16/why-does-craft-brewing-still-lag-louisiana/87750820/>

Louisiana's burdensome regulations and state government overreach hinder our ability to create quality jobs for hard-working Louisiana families. Regulatory reforms that limit strict government oversight, save businesses time and money and eliminate red tape are necessary to prevent more jobs and opportunity from fleeing Louisiana to neighboring states currently experiencing economic booms.

### 3.1 Restore the Right to Earn a Living in Louisiana

An occupational license is a permission slip to work in one's chosen field. In order to obtain this permission slip, governments can require individuals to pass exams, pay fees, complete minimum levels of education and training, and meet a variety of other entry requirements.

This form of government regulation has been among the fastest growing labor market institutions in the United States since World War II.<sup>55</sup> In the early 1950s, only about five percent of U.S. workers were required to obtain an occupational license in order to do their jobs legally. Today, roughly one in four jobs require government permission.<sup>56</sup>

The purported purpose of occupational licensing laws is to protect public safety and improve the quality of consumer goods and services. However, there is a growing body of evidence that suggests licensing imposes significant costs on society while doing little to improve outcomes.

For example, a comprehensive report performed by the Obama White House found little evidence that licensing actually improves service, quality, health and safety.<sup>57</sup> Meanwhile, numerous economic studies have demonstrated that licensing reduces employment growth and limits job opportunities, especially for low-income individuals. Estimates suggest licensing costs the national economy more than 1.7 million jobs and \$6.2 billion in losses every year.<sup>58</sup>

These expensive yet unnecessary licenses serve as an arbitrary barrier that can block low-income individuals from entering a profession or starting a new business. That reduces economic opportunity and further compounds the negative effects of over regulation. Such is the case in the Pelican State.

Louisiana's occupational licensing requirements are among the most burdensome in the United States. The Mercatus Center at George Mason University ranks Louisiana as the sixth-worst state in the country for occupational freedom.<sup>59</sup> The Institute for Justice (IJ) also ranks Louisiana as the sixth most broadly and onerously licensed state in the country.<sup>60</sup> State regulators require aspiring entrepreneurs to obtain licenses in 77 of the 102 lower-income occupations studied by IJ. On average, the state requires \$360 in fees, 202 days of education and roughly two exams to obtain a license to work in the lower-income occupations IJ studied.

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55 Morris M. Kleine, "Discussion Paper: Reforming Occupational Licensing Policies," The Hamilton Project, January 2015.

[http://www.hamiltonproject.org/assets/legacy/files/downloads\\_and\\_links/reforming\\_occupational\\_licensing\\_morris\\_kleiner\\_final.pdf](http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/reforming_occupational_licensing_morris_kleiner_final.pdf)

56 Dick Carpenter and Lisa Knepper, "License to Work: A National Study of Burdens from Occupational Licensing, 2nd Ed.," Nov. 2017, at 21.

57 "Occupational Licensing: A Framework for Policymakers," Obama White House Archives, July 2015. [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

58 Morris M. Kleine, Ph.D. and Evgeny S. Vorotnikov, Ph.D., "At What Cost: State and National Estimates of the Economic Costs of Occupational Licensing," Institute for Justice, November 2018. [https://ij.org/wp-content/uploads/2018/11/Licensure\\_Report\\_WEB.pdf](https://ij.org/wp-content/uploads/2018/11/Licensure_Report_WEB.pdf).

59 Cato Institute, "Freedom in the 50 States," 2018. <https://www.freedominthe50states.org/occupational/louisiana>.

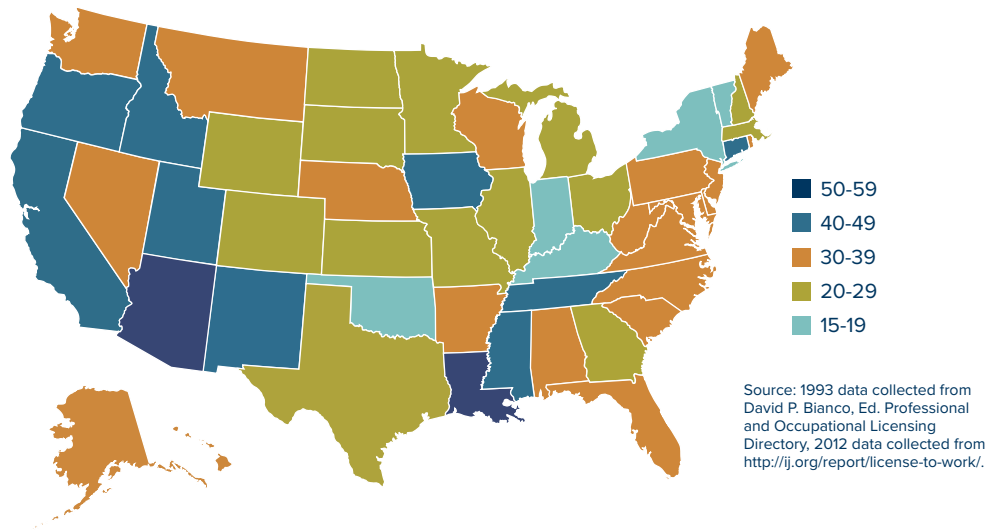
60 Institute for Justice, "The Costs of Occupational Licensing," November 2018. <https://ij.org/report/at-what-cost/costs-of-occupational-licensing/>



Growth in occupational licensing has been widespread across the country, but the percentage of workers licensed varies widely across the 50 states and the District of Columbia. One recent study estimates that more than 22% of Louisiana workers are required to obtain a license—one of the highest rates in the country.<sup>61</sup>

Another study found Louisiana had the largest increase in newly licensed low-income occupations in the United States—creating new licensure requirements for 59 low-income professions over a 20-year period.<sup>62</sup> Oklahoma and Kentucky, on the other hand, experienced the lowest growth of only 15 newly licensed low-income occupations over the same period.

### Growth in Low-Income Occupational Licensing, 1993-2012



Source: License to Work: A National Study of Burdens from Occupational Licensing <sup>63</sup>

This explosive growth in the number of low- and moderate-income licensed occupations is associated with declines in upward economic mobility and increases in income inequality. On average, economic mobility declined by 3.5% as the number of low- and moderate-income occupations grew from 1993 to 2012. This is even more pronounced in Louisiana, where the estimated impact of excessive licensing on economic mobility is nearly double the national average.<sup>64</sup>

Simply put: Louisiana's onerous and unusual licensing requirements make it harder for citizens to obtain employment and discourage some from participating in the job market altogether. They stand in the way of honest employment and the opportunity to provide for a family.

61 Morris M. Kleiner, Ph.D. and Evgeny S. Vorotnikov, Ph.D., "At What Cost: State and National Estimates of the Economic Costs of Occupational Licensing," Institute for Justice, November 2018. [https://ij.org/wp-content/uploads/2018/11/Licensure\\_Report\\_WEB.pdf](https://ij.org/wp-content/uploads/2018/11/Licensure_Report_WEB.pdf).

62 Edward Timmons, Brian Meehan, Andrew Meehan, and John Hazenstab, "Too Much License," Archbridge Institute, April 10, 2018. <https://www.archbridgeinstitute.org/too-much-license>

63 Dick Carpenter and Lisa Knepper, License to Work: A National Study of Burdens from Occupational Licensing, 2nd Ed., Nov. 2017. <https://ij.org/report/license-to-work/ranking-the-states/>

64 Timmons, Meehan, Meehan and Hazenstab, "Too Much License," Archbridge Institute, April 10, 2018. [https://www.archbridgeinstitute.org/too-much-license/#\\_edn2](https://www.archbridgeinstitute.org/too-much-license/#_edn2)

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That’s not how government is supposed to work in the Land of Opportunity. Louisiana’s regulatory system should support, not undermine, the rights of citizens to get jobs and earn an honest living.

Fortunately, there is a solution. The Right to Earn a Living Act, developed by the Goldwater Institute and recently enacted in Arizona,<sup>65</sup> restores the right to earn a living to its status as a protected right. The Act can serve as a model for Louisiana lawmakers looking to provide greater freedom in the area of occupational licensing.

As noted in the Pelican Institute’s report, *Restoring the Right to Earn a Living: A Common-Sense Solution to Occupational Licensing Job Barriers*,<sup>66</sup> the Act restores the proper balance between freedom and legitimate government regulation.

These reforms are desperately needed. Too often, entrepreneurs, business owners, and job seekers face an uphill battle when trying to protect their rights in court. When laws or regulations restrict people’s freedom of speech or religious freedom, courts examine a challenge to that government requirement under what is called “strict scrutiny.” In other words, the court will require the government prove that the restriction is narrowly tailored to accomplish a compelling government interest. Under this standard of review, a regulation that undermines a constitutional right is susceptible to being struck down.

The opposite is true for laws or regulations that restrict economic freedom and the right to earn a living. Courts examine these restrictions under a much more lenient “rational basis” test, under which a court will presume the law is constitutional and will require the victim of the regulation to disprove every imaginable justification for the law. The Right to Earn a Living Act would put the burden of proof back where it belongs – on the regulators who restrict economic freedom, instead of on the job-seeker.

For instance, the Act would have protected Sandy Meadows, who lost her job as a floral department supervisor at a grocery store after the Louisiana Horticulture Commission inspected Meadows’s store and found she was unlicensed. She ended up unemployed and on the verge of homelessness, dying before a legal case that challenged Louisiana’s arcane and protectionist florist laws could be appealed.<sup>67</sup>

The Act would have also protected the brothers of Saint Joseph Abbey, a century-old monastery based in Covington, La., which was shut down by a state board before it sold even one casket because it was a crime for anyone but a government-licensed funeral director to sell caskets in Louisiana.<sup>68</sup> The brothers filed suit and eventually won their case in federal court on the grounds that the state’s arbitrary restriction on the sale of caskets served no legitimate public purpose and did nothing more than drive up costs for grieving families seeking to bury their loved ones.

The Right to Earn a Living Act would help these and many other hard working citizens who are negatively impacted by the state’s irrational licensing system and help to ensure that economic opportunity for all is not merely a promise, but a reality in Louisiana.

65 Ariz. Rev. Stat. Ann. § 41-1093, et seq.

66 Jon Riches, “Restoring the Right to Earn a Living: A Common-Sense Solution to Occupational Licensing Job Barriers,” Pelican Institute, Goldwater Institute, March 2018.

[https://pelicaninstitute.org/wp-content/uploads/2018/03/PEL\\_RighttoEarn\\_Final\\_WEB.pdf](https://pelicaninstitute.org/wp-content/uploads/2018/03/PEL_RighttoEarn_Final_WEB.pdf)

67 Mark Flatten, “Protection Racket: Occupational Licensing Laws and the Right to Earn a Living,” Dec. 2017, <https://goldwaterinstitute.org/article/protection-racket-occupational-licensing-laws-and/>.

68 Institute for Justice Blog Post, “Louisiana Caskets,” August 2010, <https://ij.org/case/saint-joseph-abbey-et-al-v-castille-et-al/>

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## SPOTLIGHT: A BIPARTISAN OPPORTUNITY

Recently, there have been calls from elected officials on both sides of the political aisle, including Governor John Bel Edwards, to review and reform many occupational licenses. Governor Edwards specifically questioned why Louisiana is the only state in the nation to license florists.<sup>69</sup> Governor Edwards is right to be skeptical. In a state with slow job growth and low wages, thousands of citizens like Sandy Meadows and the brothers of Saint Joseph Abbey have been blocked from meaningful work because the state imposes unnecessary and unreasonable licensing requirements on them.

The Right to Earn a Living Act provides a unique bipartisan opportunity for the governor and lawmakers to work together to make changes that will have a real and immediate impact on job seekers and entrepreneurs.

House Bill 748, sponsored by Rep. Julie Emerson during the 2018 Louisiana Legislative Session, would have instituted a rigorous “sunset review” process of Louisiana’s occupational regulations to identify rules or laws that need to be repealed or modified. Despite receiving support from Governor Edwards and passing the House of Representatives with a large majority, HB 748 was met with stiff opposition in the Louisiana Senate. Ultimately the legislation was revised to establish a task force that will study the issue over the next 5 years and then recommend reforms.<sup>70</sup>

The Pelican Institute applauds Gov. Edwards, Rep. Emerson and the many other legislators who supported HB 748. However, the governor and lawmakers should not wait five years to enact reforms. Louisiana needs to maximize opportunities for businesses and citizens to prosper now and the Right to Earn a Living Act provides a holistic solution to the occupational licensing accountability problem.

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### 3.2 Rein in the Authority of Government Bureaucrats

Legislative oversight and democratic accountability are necessary components of a sound regulatory system. Elected officials, not unaccountable government bureaucrats, should make the laws and be responsible for the results.

Under Louisiana’s current system, appointed officials and rank-and-file state employees have vast and largely unchecked powers to interpret and impose regulations on unsuspecting entrepreneurs and businesses. One recent example of this includes an advisory opinion issued by the Louisiana Office of Alcohol and Tobacco Control (ATC), which imposed new requirements on craft breweries that dramatically impacted the way they operate. The advisory was issued months after ATC sent cease and desist letters to every craft brewery in the state restricting onsite activities like entertainment, food sales, private events, and other activities that had been permissible under previously appointed ATC Commissioners. The cease and desist letters and the

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69 Elizabeth Crisp, “In La. Florists Need a License. Governor Questions Why,” Houma Today, Jan. 16, 2018. <http://www.houma-today.com/news/20180116/in-la-florists-need-license-governor-questions-why>.

70 Elizabeth Crisp, “Despite Unlikely Support, Bill to Look Into Louisiana’s Occupational Licensing Roll-Back Likely Headed to Task Force,” The Advocate, May 13, 2018. [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_8af9ce3a-556f-11e8-b500-2f1ee73af6b3.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_8af9ce3a-556f-11e8-b500-2f1ee73af6b3.html)

advisory opinion caused chaos throughout the budding industry and even drove one craft brewer out of state before it even opened here.<sup>71</sup>

With more than 470 boards, commissions and other similar entities,<sup>72</sup> Louisiana has more appointed panels than any other state in the Southeastern region.<sup>73</sup> State boards range in size from 8 to 28 members.<sup>74</sup> Effectively, that means there are more government bureaucrats setting policy in Louisiana than there are legislators passing laws at the State Capitol. Greater oversight is a must. The Louisiana Legislature should not relinquish its authority to these boards and commissions. The legislature should be more prescriptive when writing laws, understanding that an agency or board will have to implement them. Lawmakers should take steps to curtail the authority of the unelected and unaccountable members of these boards and commissions in order to minimize costs and ensure that regulations are constitutional and necessary.

### 3.3 Improve Financial and Economic Impact Assessments

While state policymakers often have good intentions when considering new regulations—such as protecting consumers or improving worker safety— sometimes they do an inadequate job of measuring the real impact that proposed regulations could have on job creators, small businesses, entrepreneurs and the overall state economy.

Currently, the Administrative Procedure Act of Louisiana requires that all proposed legislation must include a financial impact statement and an economic impact statement before it can move through the legislative process. Too often though, these impact assessments are based on speculation, anecdotes, statistical correlations or non-independent studies, rather than scientifically validated, publicly available data. These assessments, which are drafted by state agencies and approved by the Legislative Fiscal Office, also lack independence and appropriate standards of review.

A review of state rulemaking procedures conducted by the Institute for Policy Integrity concluded: “The statements are mostly limited to reviewing impacts on agency revenues and the economic well-being of the community; assessing qualitative benefits or indirect effects is not a priority.” Overall, the standards for reviews are vague, there is no procedure to promote interagency coordination or combat inaction, and periodic reviews to evaluate effectiveness over time are non-existent. The current process also suffers from a lack of public participation.<sup>75</sup>

Instead of continuing with this overly burdensome and inadequate process, lawmakers should consider adopting an “economic analysis unit”<sup>76</sup> to provide independent, evidence-based reports on the costs and benefits of proposed regulations.

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71 Matthew Sigur, “Noble Wave, a Microbrewery and Restaurant, No Longer Opening in Baton Rouge: Owners Cite ‘Restrictive’ Laws.” *The Advocate*, November 28, 2017. [https://www.theadvocate.com/baton\\_rouge/entertainment\\_life/article\\_3dd444ca-d449-11e7-a800-57fb3b34d537.html?utm\\_medium=social&utm\\_source=facebook&utm\\_campaign=user-share](https://www.theadvocate.com/baton_rouge/entertainment_life/article_3dd444ca-d449-11e7-a800-57fb3b34d537.html?utm_medium=social&utm_source=facebook&utm_campaign=user-share)

72 Julia O’Donoghue, “Audit Suggests Reducing Louisiana Boards and Commissions.” *Nola.com*, October 15, 2018. [https://www.nola.com/politics/2018/10/louisiana\\_boards\\_commissions.html](https://www.nola.com/politics/2018/10/louisiana_boards_commissions.html)

73 Elizabeth Crisp, “New Audit Shows How Much Louisiana’s Boards, Commissions Spent on Travel, Salaries in 2017.” *The Advocate*, April 2, 2018. [https://www.theadvocate.com/baton\\_rouge/news/politics/legislature/article\\_122fa760-36b9-11e8-b861-ef2b7c9acc17.html](https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_122fa760-36b9-11e8-b861-ef2b7c9acc17.html)

74 Louisiana Division of Administration, Boards and Commissions Website. <https://www.cfrpd.doa.louisiana.gov/boardsandcommissions/selectBoard.cfm>

75 Jason A Schwartz, 52 Experiments with Regulatory Review: The Political and Economic Inputs into State Rulemakings, Report No. 6” Institute for Policy Integrity, November 2010. [https://policyintegrity.org/files/publications/52\\_Experiments\\_with\\_Regulatory\\_Review.pdf](https://policyintegrity.org/files/publications/52_Experiments_with_Regulatory_Review.pdf)

76 James Broughel and Patrick A. McLaughlin, “Principles for Constructing a State Economic Analysis Unit.” Mercatus Center at George Mason University, 2018. [https://www.mercatus.org/system/files/broughel\\_and\\_mclaughlin\\_-\\_policy\\_primer\\_-\\_principles\\_for\\_constructing\\_a\\_state\\_economic\\_analysis\\_unit\\_-\\_v1.pdf](https://www.mercatus.org/system/files/broughel_and_mclaughlin_-_policy_primer_-_principles_for_constructing_a_state_economic_analysis_unit_-_v1.pdf)

This data-driven approach relies upon credible cost-benefit analysis based on scientifically validated, publicly available data.

When developing or reviewing business regulations, state agencies should also be required to seek input from interested parties early in the process and to balance the goals of regulation with the costs for businesses to comply. Louisiana lawmakers should consider implementing best practices from Ohio's Common Sense Initiative, which works with the business community to eliminate excessive and duplicative rules and ensure that new rules are justified in their costs to businesses.<sup>77</sup>

“  
*Louisiana does not have a systematic process to review and sunset regulations... this allows obsolete and ineffective rules to remain on the books.*”

Lawmakers may also consider redefining review standards to focus impact assessments on rules that would gain the most from rigorous analysis. For example, the federal government requires impact assessments for economically significant bills, which it defines as those that have “an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”<sup>78</sup> A relative standard could be established to define economically significant regulations at the state level.

### 3.4 Establish a Sunset Date for Regulations

Sunset provisions set a specific time for legislation to expire unless lawmakers take action beforehand. Currently, Louisiana does not have a systematic process to review and sunset regulations. Too often this allows obsolete and ineffective rules to remain on the books, without evaluating the value or benefit they provide to the public on a regular basis.

One of many examples includes the state's piecemeal approach toward tax exemptions. In 2016, the Louisiana Legislative Auditor found Louisiana has more than 460 tax exemptions worth nearly \$8 billion. Only 52 of those have sunset provisions—meaning most of Louisiana's exemptions essentially continue year after year on automatic pilot.<sup>79</sup> The challenges stemming from this flawed system of picking winners and losers through targeted exemptions are discussed in great detail in the Pelican Institute's report, *Reforming the Tax Code in Louisiana: A Jobs and Opportunity Agenda*.<sup>80</sup>

In addition to enacting comprehensive tax reform as outlined in the report, Pelican recommends that the Louisiana Legislature should establish a process to periodically review all existing state regulations and set a 10-year sunset date for any new regulations. This approach has proven to be effective in other states. Act 454 by Representative Mark Wright was signed into law in 2018 and set up a process to begin a broad review of regulations. Agencies are tasked with holding public hearings to allow stakeholders the opportunity to bring awareness to and review regulations. Though a hearing has yet to be held, it's a first step toward addressing the broader problems.

77 Governor of Ohio: Common Sense Initiative Website. <https://governor.ohio.gov/wps/portal/gov/governor/priorities/common-sense-initiative>

78 Presidential Executive Order 12866 of September 30, 1993 <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

79 Daryl G. Pupera, CPA, CFE, “Louisiana's Tax Revenues and Exemptions: Performance Audit Services Informational Report,” Louisiana Legislative Auditor, February 2016. [http://app.la.state.la.us/PublicReports.nsf/0/732D86EC4C5F7F4986257F5E006D7347/\\$FILE/0000CC4F.pdf](http://app.la.state.la.us/PublicReports.nsf/0/732D86EC4C5F7F4986257F5E006D7347/$FILE/0000CC4F.pdf)

80 Chris Jacobs, “Reforming the Tax System in Louisiana: A Jobs and Opportunity Agenda for Louisiana,” Pelican Institute, October 2018. [https://pelicaninstitute.org/wp-content/uploads/2019/01/PEL\\_Ontheissues\\_TaxReform\\_v2FINAL.pdf](https://pelicaninstitute.org/wp-content/uploads/2019/01/PEL_Ontheissues_TaxReform_v2FINAL.pdf)

As Louisiana works to establish this review process, one model worthy of consideration is North Carolina's regulatory-sunset law.<sup>81</sup> Enacted in 2013, it subjects every rule on the books to a 10-year lifespan. If the administrative agency responsible for the rule fails to review the regulation within the time allotted, or concludes that its costs exceed any continuing benefits, the rule expires automatically. On the other hand, if the agency concludes that the rule remains relevant and cost-beneficial, it stays in force. If such a rule has attracted public comments over the preceding two years, then it must go back through the legislative process and be explicitly reaffirmed by the legislature.

As of early 2018, some 13,500 regulations in North Carolina had been subjected to periodic review by state agencies. Most, 62 percent, were kept in place unchanged. Regulators decided that 26 percent needed to go through the re-adoption process. The remaining 12 percent, about 1,600 outdated rules, simply went away.<sup>82</sup>

Clearly, this common sense approach to regulation reform works. Louisiana should consider it.

## 4. THE PATH TO A BETTER FUTURE

Louisiana's legal and regulatory challenges are sobering. However, the reforms outlined above provide a pathway to a better future. If enacted by the state legislature these fundamental reforms would help to transform Louisiana's business climate and propel its economy forward, creating much-needed jobs and higher incomes.

Passing these reforms will not be easy, particularly given that some of the state's most powerful special interests benefit from the current system and are heavily invested in the status quo. But the current system is not working for Louisiana families and businesses. As previously noted, the economic statistics clearly demonstrate that Louisiana is experiencing anemic job growth at a time when most of the country is thriving. The state unemployment rate<sup>83</sup> is consistently higher than the national average, and Louisiana was one of only nine states to suffer a net decrease in population<sup>84</sup> from July 2017 to July 2018, as more and more people left in search of jobs and opportunities elsewhere.

Louisiana desperately needs policies that incentivize economic growth. Common sense legal and regulatory reforms not only help to rebalance the scales of justice and bring jobs and opportunity back to Louisiana, they also offer a win-win for policymakers and businesses alike. Lower legal and regulatory compliance costs can provide an immediate economic stimulus without losses in tax receipts or an increase in government spending.

These and many other benefits of comprehensive reform await taxpayers, entrepreneurs and business in the Pelican State, if lawmakers have the courage to act.

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81 Session Law 2013-413, "Regulatory Reform Act of 2013," <http://www.ncga.state.nc.us/gascripts/BillLookup/BillLookup.pl?Session=2013&BillID=h74&submitButton=Go>.

82 John Hood, "Regulatory Reform is Working," *The Robesonian*, January 14, 2019. <https://www.robsonian.com/opinion/119279/regulatory-reform-is-working>

83 Department of Labor, Bureau of Labor Statistics, "State Employment and Unemployment- February 2019," <https://www.bls.gov/news.release/pdf/laus.pdf>

84 Census Bureau, "State Population Totals and Components of Change: 2010-2018," Table 5: Estimates of the Components of Resident Population Change for the United States, Regions, States, and Puerto Rico: July 1, 2017 to July 1, 2018, <https://www2.census.gov/programs-surveys/popest/tables/2010-2018/state/totals/nst-est2018-05.xlsx>.





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