



Reduce Regulatory Barriers



Louisiana's comeback requires laws and regulations that preserve and increase freedom.

"The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom."

-John Locke

PROBLEMS

Louisiana lawmakers and governors have created over 500 boards and commissions that govern countless occupations. Even more difficult than complying with these requirements is entering these professions in the first place, as boards and commissions enforce unneeded licensing requirements. Louisiana has more licensed low-income occupations than any other state in the nation; it is the only state that requires someone to have a license to arrange and sell flowers.

Louisiana is also one of the most regulated states in the south. It's often hostile to businesses, job creators, and entrepreneurs due to its administrative rules and regulations that are often difficult to locate, confusing to follow, changing regularly, and weighted towards the interest of state agencies. Challenging these rules and regulations is onerous. There is little to no political accountability for the agencies make the rules, and Louisiana courts adhere to Auer deference, which means that courts defer to an agency's interpretation of its own regulations.

If those aren't concerning enough, Louisiana has been called a "judicial hellhole" due to excessive litigation and the economic harm it has inflicted. The American Tort Reform Foundation reports that the state's litigation environment costs Louisiana 46,302 jobs lost per year and levies an annual "tort tax" of \$1,020.57 per resident. Louisiana's ongoing, meritless coastal litigation, staged accidents with big rigs in New Orleans, COVID-19 insurance coverage lawsuits expanding liability, judicial misconduct, and a lack of transparency in addressing complaints against judges all contribute to a dysfunctional justice system.

SOLUTIONS

1. Limit occupational licensing.

While policymakers have made progress in reining in occupational licensing requirements, more remains to be done. In the 2022, the state made it easier to challenge burdensome licensing rules. When challenged, boards must demonstrate that a regulation serves a safety, health, welfare, or fiduciary purpose.

Last year's new law is a great first step, but many licensing requirements are in state law, not in board regulations. Lawmakers should pass a bill that extends the same scrutiny to requirements found in state law so that courts looking at them require a health, safety, welfare, or fiduciary purpose to leave them in place. They should also carefully review outdated occupational licensing schemes



enshrined in law and repeal any that no longer make sense, such as florists, interior designers (Louisiana is one of only three states that require such a license), public school teacher's aides (one of five states), natural hair braiders, auctioneers, locksmiths, and security alarm technicians. The health, safety, welfare, or fiduciary purposes for these licenses are limited or non-existent.

Louisiana also needs to expand recognition of occupational licenses obtained in other states, making it easy for workers to relocate to Louisiana. To date, 19 other states have begun recognizing licenses granted in other states if professionals have been licensed for a certain period and are in good standing. This is a better practice than interstate compacts or reciprocity agreements because it applies to all states and remains in effect even as state requirements and personal qualifications change over time.

2. Reduce administrative regulations.

Lawmakers can address excessive state regulations and provide a fairer process for citizens and businesses to challenge those that are burdensome. First, they should require that rules and regulations adopted by executive agencies expire within a certain time frame unless legislation is enacted to continue them. Second, they should remove the government's thumb on the scale of justice by rejecting deference doctrines. Instead, allow the courts to review challenges to administrative rules de novo, that is, with a fresh look at the facts of the case. Where there is doubt in interpreting rules, courts should favor a reasonable interpretation that limits agency power and maximizes individual liberty.

3. Reform civil litigation.

The legislature made positive changes with the passage of the Civil Justice Reform Act of 2020, which lowered the jury trial threshold, limited recoverable expenses, and largely prohibits mention of insurance to juries. Significant work, however, remains to be done.

Unending coastal lawsuits threaten to discourage future investment in the state. Louisiana parishes have sued more than 200 energy companies since 2013, alleging that these companies' operations from decades ago damaged coastal marshes and wetlands. This short-sighted effort is reminiscent of killing the goose that laid the golden eggs – Louisiana is home to one-fourth of the nation's energy supply and the industry employs more than 250,000 Louisianans. A 2019 Pelican Institute study found that just two years after the coastal lawsuits began, more than 2,000 job losses were directly attributable to the impact of litigation risk.



Elected officials should encourage energy investment and jobs, not drive away critical economic contributors for short-term gains that will only go to lawyers. Lawmakers should curb state-sanctioned lawsuits and clarify appropriate and reasonable causes of action and damages for oil field remediation cases going forward.

The Legislature should also reform lax venue laws that allow rampant "forum shopping." As the saying goes, "it's good to know the law, it's better to know the judge" – the current system makes it easy for lawyers to "pick their judge" in class action, multi-party, and toxic tort cases.

Judicial integrity and transparency remain critical issues in the state. In 2021, only five percent of 526 judicial complaints were acted upon, according to public reports. Greater transparency around judicial complaints is crucial for continued public faith in Louisiana's system of justice.



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