



Regulate the Regulators and Protect Economic Opportunity

By Senator Sue Crawford

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When people think of red tape, they often assume that meddlesome regulations come from faceless federal bureaucrats in Washington D.C. Granted, some of the regulations that we wrestle with do come from federal laws and regulations. However, regulations also come from state government.

Regulations often come from bills that pass in the Unicameral because someone saw a problem or an opportunity and brought a bill to the Legislature. Another pathway to new regulations is through the state regulation process.

Citizens concerned about new regulations should become as familiar with the [Secretary of State regulation website](#) as they are with the [Unicameral website](#).

Laws and regulations get made one-by-one, often in response to specific narrow situations. This can lead to overlapping regulations, regulations that drift from legislative intent, or regulations that are more burdensome than anticipated by the lawmakers who authorized the regulations. To combat these challenges, some states employ periodic reviews of all regulations. However, these periodic reviews often come with significant costs due to the time and resources involved in reviewing all regulations on the books.

LB 719, passed in 2014, creates a tool that allows citizens, legislators and other public bodies to direct attention to areas of regulation most in need of review. It provides a mechanism to push for reconsideration and revision of regulations that have become out of date, redundant, or more costly than expected. LB 719 allows any senator to post a complaint against an existing regulation if:

- The regulation creates an undue burden in a manner that significantly outweighs its benefit to the public;
- Circumstances have changed since the passage of the statute which the rule implements; or
- The rule overlaps, duplicates or conflicts with federal, state or local laws, rules, regulations or ordinances.

If you feel that a state regulation meets one of these criteria, contact your state senator to discuss lodging a complaint against the regulation. This begins a process to review the regulation. The LB 719 process, then, creates a citizen-driven review process of regulations.

Governor Ricketts has expressed a commitment to a top-down review of state regulations with leaders in state agencies. The combination of these bottom-up and top-down processes can identify and fix state regulations that may no longer be serving a public purpose worth their cost.

LB 719 also created a tool to proactively keep new regulations in line. LB 719 requires agencies to report on comments made during a hearing for new regulations and the agency's response to those comments when they submit their final version of regulations for the governor's approval. This report also goes to the Legislature so that members of the Legislature can see if the agency is being responsive to public comments.

Unfortunately, businesses and professionals who seek market advantages by restricting access to a market or profession also push for new regulations, often on their own industries and trades. Efforts to restrict access to markets and professions often occur through state licensing laws and regulations.

Increasingly, advocates for better job access for low-income individuals and conservative advocates for free markets are pushing for a rethinking of professional licenses as the number of licensed professions has grown tremendously. Today, a third of American workers are in professions that require a state license, up from just 5 percent in the 1950s.¹

According to a 2012 Institute for Justice study, 44 percent of low and moderate-income occupations in Nebraska require a license, requiring these workers to pay approximately \$140 in fees and undergo almost six months of training.²

Clearly, state governments need to protect public safety and guard against consumer fraud; however, those justifications can be used by some in a profession to protect their market share. Earlier this year, Nebraska passed LB 107 to reduce a market restriction on nurse practitioners that had been in place in the state for twenty years. The Federal Trade Commission in 2014 highlighted these kinds of restrictions on nurse practitioner licensure as a likely unjustified restriction of trade in state licensure regulations.

A recent Supreme Court case that ruled in favor of the Federal Trade

¹ Barrett, Katherine and Richard Greene. "The Bloom in Licenses." *Governing Magazine* . May 2015.

² Carpenter, Dick, et al. "License to Work: A National Study of Burdens from Occupational Licensing." *Institute for Justice* . May 2012.

Commission's position that teeth whitening restrictions in the state of North Carolina violated antitrust laws (*North Carolina State Board of Dental Examiners v. Federal Trade Commission*) affirms that states must guard against licensing regulations that unduly restrict trade without adequate public safety justification. So, in this case, federal regulation cuts against undue state regulation.

This is federalism at work protecting citizens by providing levers for citizens at one level of government to check the power of another level of government. The key is for citizens to know the levers and to be vigilant in using them.

I hope that knowing more about the LB 719 levers at the state level and the recent Supreme Court case and FTC rulings at the federal level will empower Nebraskans to ensure that the regulations that remain in place in our state truly protect citizens in a cost-effective manner.