STREAMLINING STATE REGULATIONS – A Review of Legislative Proposals

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INTRODUCTION

The COVID-19 pandemic created significant setbacks for Kansas' economic growth. This follows Kansas' GDP growing at a rate below the national average since the early 1980s.[1] If Kansas' GDP had grown at the national average, there would have been an additional 313,000 jobs in 2019 corresponding to an additional $22.4 billion in economic activity. This past year, Kansas ranked 35th in the Tax Foundation's State Business Tax Climate Index.[2] Large subsidies and the expansion of government have led to tax rates on different businesses which are some of the worst for mature firms across the entire country.[3] Over the last seven years, $2.9 billion of adjusted gross income has left Kansas for states with friendly business climates.[4]

Taxes are just one part of governments' interaction with the economy, and perhaps the most controversial, but there are many opportunities elsewhere to promote long-term economic growth. Another significant place for change is regulations. With 70,969 restrictions containing 3.2 million words, the 2019 Kansas Administrative Regulations would take the average person 180 hours to read.[5] These regulations appear alongside over 1 million federal regulations and assorted local regulations such as zoning laws.

Regulatory reform would not be a new phenomenon to Kansas or a drastic change to normal government affairs. Recently, in May of 2021, Governor Laura Kelly signed bills into law that eliminated outdated restrictions on alcohol sales and helped facilitate greater telemedicine by reducing licensing barriers with out-of-state providers.[6] Under President Barack Obama, $6.4 billion in regulatory burdens and roughly 121 million hours of paperwork were cut from different programs without compromising the quality of said programs.[7] Kansas could take a similar approach of evaluating burdens and reducing barriers without threatening the quality of programs.

One area legislators can take advantage of while preparing Kansas for future growth is regulatory reform. While regulations often have good intentions, outdated, accumulated regulations create more of a negative burden on businesses and their customers. Regulatory reform has already proved successful in other states. There are a series of tools today that help regulators and governments still maintain a regulatory system which can filter and reform regulation as to best promote growth. This varies from Right to Earn a Living legislation and regulatory sandboxes at the state level to changing how local governments approach regulations.

These changes would be part of the nationwide trend to reform regulation. Idaho, for example, cut 40% of its existing regulations and consolidated 11 separate licensing agencies to reduce government red tape in their reforms.[8] Since the 1970s, increases in efficiency through deregulation in sectors such as air travel led to increased competition and 30% lower prices.[9] Reducing the average first-year regulatory costs of $83,019 for a small business in Kansas could help local start-ups keep their doors open for longer.[10]

Right to Earn a Living Legislation: A Framework for Licensing Reform

Occupational licenses create a barrier for hundreds of thousands of people to choose a career path they want and have the freedom to work as they choose. Licenses operate as a governmental permit to engage in many otherwise-lawful professions. Licenses are often abused as a protectionist tool whose cost frequently falls on historically marginalized groups.[11]

Occupational licenses have the effect of artificially raising wages and hours for those who hold the licenses, at the cost of everyone who does not. They are a barrier to entry for prospective employees and businesses. This means less competition for established firms, who can then charge higher prices. Licenses are frequently a tool to promote protectionism, with many industries launching large lobbying campaigns to either set up barriers into their profession or preserve what already exists.[12] This in-group effect reduces overall employment, and results in a welfare loss of 12% of societal surplus, meaning that people are prevented from choosing the jobs they want and businesses are not thriving as much as they would be in a more efficient market.[13] In Kansas, an estimated 29,409 jobs have been lost due to occupational licensing restrictions, which in total has led to $197.5 million lost from the economy annually.[14]

Much of these economic consequences fall on people of color, people with disabilities, and other historically marginalized groups. For instance, licensing reduces the probability of a black individual working as a barber by 17.3%.[16] Licenses requiring conditions such as English proficiency or an arbitrary amount of time as a resident could limit immigrants' ability to work. New licensing requirements on measures such as education requirements could even retroactively kick well-experienced workers without the specific requirements out of their jobs.[17] All Kansans deserve the freedom to work without being restricted by the government and special interests.

Kansans should adopt Right to Earn a Living Legislation outlined by Arizona's Goldwater Institute.[18] This legislation would tailor licensing requirements to clearly fit legitimate "public health, safety, or welfare objectives." If an occupational license really does accomplish a societal goal, the burden to prove this should be on the government, not on people trying to enter the marketplace for work. Accomplishing this goal starts with creating more transparency when licensing requirements are established. Another important feature is making government more accountable when it creates legislation to ensure that the rules being created exist to solve a real problem to a measurable, provable end. For existing licensing requirements, there should be opportunities for affected workers to request appeals and modifications to regulations they believe are harmful.[19] Cumulatively, right to earn a living legislation creates guideposts for government to prevent the imposition of arbitrary restrictions on employment while at the same time creating a system of standards by which helpful legislation and regulations can be authenticated and defended. The government should have to prove why it can restrict work.[20] The citizen should not have to argue why the government cannot impose restrictions.

Occupational licensing reform opens the door for new opportunities in business and across society. For instance, strict occupational licensing conditions gave the Arizona Board of Cosmetology the ability to investigate and potentially fire unlicensed students who were giving free haircuts to homeless people.[21] According to the Institute for Justice, between 2012 and 2017, the average licensing fee in Kansas increased from $88 to $133.[22,23] Basic occupational licensing reform would at least establish a precedent for questioning whether rules and fees are genuinely protecting the public, or if they are an unnecessary barrier prohibiting willing people from working in a certain profession.

The state of Kansas should look to Arizona for inspiration. In 2017, the state passed a bipartisan Right to Earn a Living bill.[24] Since then, the state has passed reform after reform to remove barriers and boost employment, such as dropping 881 licensing fees for low-income applicants and saving $79 million by identifying and eliminating outdated and unnecessary regulations.[25] A universal recognition law which eliminated repetitive licensing processes when somebody moves to a new state helped almost 1,200 individuals find their new jobs easier, with most of those careers being in medicine.[26] The winds of change are starting to blow: Kansas' House Bill 2066 accomplished many of these goals, albeit for the select group of military spouses.[27]

The COVID-19 pandemic has highlighted the clunky nature of occupational licensing and the benefits of reforming it. With a high demand for nurses across the country, many states opened their reciprocity with medical licenses between other states, eliminated conditions of direct physician supervision of PA's and other specific types of nurses, and expedited the licensing process by eliminating fees or speeding up the timeline.[28] The biggest changes happened with telemedicine. Whether it is preventing the spread of disease, giving people with mobiliy-limiting disabilities the chance to communicate, or connecting rural patients, telehealth has significant opportunities to connect people in new ways. However regulations over practices like a doctor in one state to communicate over telehealth with a patient in another state can create barriers for telehealth.[29] Kansas recently enacted reforms such as allowing quarantined doctors to still practice telemedicine and allow out-of-state licensed professionals to practice telemedicine in Kansas.[30,31] This effort should be applauded, but this is not the end. If the benefits of occupational licensing reform in health have been so prevalent, imagine the potential economic growth of reform in other industries.

Enacting common-sense licensing reform is not a stretch for Kansas. Just this year, House Bill 2066 was passed, which expedited the occupational licensing process in a multitude of sectors for military servicemembers and their spouses.[27] Expanding these reforms for all Kansans could bring vital business to the state. Occupations with state-specific licensing exam procedures saw 36% less interstate migration when compared to occupations with no state-specific requirements.[32] Creating reciprocity agreements with regards to licenses between our similar neighbors could promote a more fluid business environment across Kansas. Kansas' broader Senate Bill 10 was written based on the principles of Right to Earn a Living legislation but failed to make it out of committee.[33]

Regulatory Sandboxes

One of the fundamental problems when dealing with regulations is determining their scope. Why are 1,500 hours of practice for a cosmetology license in Kansas different than 1,000 hours in Massachusetts or 1,800 hours in North Dakota to do the same field of work?[34] What makes a space requirement for a daycare or restaurant or another establishment unique? How is this measured and is it demonstrated to bring about effective protections for customers or the public? Answering these questions should not be a one-time dictation: there should be an ongoing discussion between the people subject to the regulations and the regulators themselves.

One way to facilitate these conversations is through the idea of a regulatory sandbox. In brief, a sandbox is a regulatory tool in which regulators work together with businesses to create conditions in which the businesses can operate with less restrictions over a specified time period.[35] This includes policies such as waived licensing fees and protection from regulations which may impede business start-ups. The intention of the sandbox is to give entrepreneurs flexibility to test their product and start their business without having to deal with government regulation. Sometimes, entrepreneurs may even find their product goes directly against existing regulation, which could shut down their business. For instance in 2007, monks in Louisiana wanted to sell hand-made wooden caskets to support their monastery, but were shut down because of state law that said only licensed funeral directors could sell caskets to the public.[36] Though this case eventually went to the Supreme Court where the regulation was declared unconstitutional, it serves as a solid example of how regulations could unfairly impede innovation and how a sandbox would remove barriers as an entrepreneur finds a new opportunity. A sandbox would put a pause on these regulations, giving businesses room to grow and regulators an opportunity to notice which regulations may or may not be applicable.

A regulatory sandbox works with a business applying to participate under a less restrictive set of rules over a set period of time, typically two or three years.[37] There is an "experimentation" stage in which the product and the regulations around it are tested and evaluated to determine their effectiveness.[38] After that time, the conditions and the outcomes of the sandbox are evaluated: how did businesses behave and succeed under the current regulations? If a product is not creating problems, is there a need to then impose regulations on it? Often, the regulatory sandbox is a great "trial period" for both a business to find its footing with its own products and for the regulators to evaluate their role in the industry. Evaluation is not just done at the end of the sandbox though. Both businesses and the regulators who oversee them want to see a positive outcome, and will adjust their policies accordingly during the "trial period."

Because of the multitude of different industries and regulations that apply to them, there has historically been a multitude of different sandboxes across a dozen states.[39] Financial technology or "fintech sandboxes" allow financial companies to test new software on a local scale before expanding it to national markets.[40] One of the most anticipated industries to watch is insurance sandboxes, which offer more flexible waivers with attached intellectual property rights to help companies launch new products faster.[41] The idea of an all-inclusive sandbox has also been pitched to benefit a multitude of industries. In Utah where all-inclusive sandboxes have seen success, the Governor's Office of Economic Development works with businesses on transparent analyses of the safety and quality of products before, during, and after the sandbox, thus helping businesses sell a greater quantity of better products.[42,43] The healthcare industry has also seen some sandbox implementation aid new life-changing products to come out of development.[44]

Kansas should start with its economic roots and grow into an all-inclusive sandbox. Of particular interest to Kansas could be an agricultural technology sandbox in which new products such as self-driving tractors and drones for evaluating field conditions could be easily deployed.[39] For instance, in Singapore's agricultural technology sandbox, regulatory review areas are limited to certain farm developments, where they are studied for application across the entire farming industry.[45] This ranges from new chemical applications to more exciting ideas such as using drones as crop-dusters. In the U.S., where multi-year consent decrees and permit renew processes slow down solutions, sandboxes have been suggested for implementing new data technology to measure stormwater runoff and create flood control systems.[46] This also applies to dynamic solutions for saving endangered species and preventing things like erosion or forest fires via new technology which would have to go through lengthy regulatory review processes.

The point of a sandbox is to facilitate growth, not just remove regulations. Some of the most successful sandboxes promote things like data access and cooperation, new technologies in credit management, and in general, establishing leadership in an economic environment.[47] Kansas should not have a sandbox just to keep up with trends. It should be a tool that government can use to empower a healthy business environment through leadership and indirect assistance. It would be a welcome break from the inefficient policies of government subsidized business that Kansas has seen in recent history.[48]

Sandboxes have had great success in the past. Participants in the United Kingdom's fintech sandbox got to market 40% faster than non-participants, with 80% of the sandbox's participants staying in business.[49] Those firms in the sandbox acquired 15% more private capital after joining than firms who did not, with the probability of raising capital increasing by 50%.[50] On average, countries which introduced regulatory sandboxes saw their total venture capital investment amounts increased by 37.7%, with the average investment in size growing by 86.4%.[51]

Because of their business- and user-friendly policies, sandboxes also attract businesses. For instance, in 2019, Wyoming began a fintech sandbox to promote industries such as digital banking and consumer credit.[52] While working in this sandbox, the Wyoming's Banking Commissioner and Secretary of State had an opportunity to see what sort of policy conditions facilitate the most growth in this sector. As a result, they have taken these lessons and implemented them into future policy. The state is now pioneering business conditions friendly to the generation and management of cryptocurrencies – a form of digital assets. Wyoming's crypto-facilitating legislation includes reducing reporting requirements and reducing barriers in the state's money transmitter laws by eliminating state sales and property taxes on crypto, which would have acted as auxiliary income taxes.[53] Simultaneously, the state is providing infrastructure such as power sources and fast internet development to promote businesses similar to how the government would develop roads to promote transportation businesses. Two years later, and Wyoming has become a central player in America's digital asset market, with the first cryptocurrency bank nationwide charter filed there in September 2020.[54]

Kansas adopting a regulatory sandbox represents the first step in creating a free market approach to public and private business cooperation. Instead of punishing or trying to control firms, the government could instead remove barriers and help businesses grow in a responsible way. If a sandbox were to succeed, the state would need to consider reciprocity agreements with other states the firm may be doing business in. Utah and Arizona's existing legislation for sandboxes would be a solid start for legislators interested in bringing those ideas to Kansas.

Local Regulations

Right to Earn a Living legislation and regulatory sandboxes are two largescale, state-level initiatives to rethink regulation all the way down to local leadership. However, local leadership could immediately get started on local regulatory reform.

The first step on regulatory reform is rethinking the mindset towards regulations. For instance, if there is a problem in an industry, before immediately creating a regulation and implementing it, lawmakers should consider the following:

1. Is this something that private businesses can solve on their own accord? Are incentives needed so that this can be provided by the private business? How could the government provide this in a way that is not intrusive?
2. Is this an issue potentially addressed by existing regulations? Why does the existing regulation not solve this issue? Is it possible to tailor this previous legislation to fit the new problem?
3. If a new regulation is needed, how can it be narrowly focused and simple so that it is easy to follow? Businesses and citizens are more likely to obey a law if it makes sense with their current norms.[55]

Reform should begin with an independent, bipartisan commission which analyzes the current problem and regulations at hand.[56] This commission should be a soft restart to the regulatory process: they should re-identify what outcome they want. Oftentimes, burdensome regulation emerges from developing elaborate processes or systems in an attempt to solve a problem instead of a more direct solution. Transparency and simplicity of regulations boosts their effectiveness.[57]

Indianapolis' Regulatory Study Commission (RSC) is a model example. The commission established five core guiding principles, including the ideas "the cost of regulation should be no greater than the benefit for the community" and *conditions restricting* regulations to community and agency norms.[58] The commission split the regulations into those affecting businesses versus consumers, then performed economic analysis to determine the costs and benefits before adjusting the policies.

A recent attempt to accomplish a committee like this was through Kansas' own Senate Bill 10 during the 2021 session which would have established comprehensive reviews of all occupational rules across the state with a timeline to allow repeals and petitions against unfair regulations.[33] The bill also would have set a new precedent that the regulations would have to be carefully tailored for health and safety with other transparent elements. The bill did not make it out of committee, meaning it still has potential to see the legislature soon.

Another example are taxi companies around the country as one of the most strictly regulated industries. This is largely a function of existing companies' powers over certain regions or municipalities. The Indianapolis

RSC reformed licenses caps, anti-competition price measures, and other factors surrounding the taxi business in their city in the 1990s and saw a tripling of the number of companies (many of them now minority or woman owned) and a 7% decrease in the average price of a ride.[58]

Even today, barriers to entry still exist in the taxi industry. For a taxi company to be officially registered, it must have at least 20 taxis, have two-way radios *installed* inside every taxi, and must obey a charging scheme which favors established companies.[59] These regulations at least need to be re-examined on a regular basis to determine if they are still effective, needed with technological development, or are less effective relative to another policy.

Competition also plays an important role on regulated industries. The introduction of Uber and Lyft to New York City created an unforeseen competitor for taxis and caused the cost of a taxi medallion to drop from $1 million pre-2013 to around $120,000 in 2020.[60] Government regulation needs to be able to keep pace with technological changes in order to keep consumer costs low in a competitive market. This applies to state governments as a whole: legislators need to have a system that can easily adapt and change based on what the economy is doing. Rigid regulations make these changes more difficult.

With about 71,000 unique regulations on the books in Kansas, legislators should adopt a mentality of limiting regulatory creep. A goal that the Canadian province of British Columbia adopted was for every new regulation, a different regulation had to be removed.[5] Between 2001 and 2004 and alongside new policies specifying review processes and regulatory updates, British Columbia removed 113,440 regulations.[61] It is not surprising then that British Columbia went from being behind the Canadian average for economic growth to above average. A similar policy program in Kansas could reduce regulations and promote business and economic growth.

In 2015, Kansas Policy Institute partnered with Wichita State University's Hugo Wall School of Public Affairs to survey Wichita businesses about their experiences with regulations.[62] Businesses appreciated an approach focus on end results, but were frustrated by regulations littered with unpublished guidelines, no compliance assistance, land development restrictions, and shifting government standards. Businesses noted policies ranging from building code enforcement in Sedgwick County to waste management were rife with areas for review and reform. Something as simple as opening up channels of communication between government and businesses helps solve issues such as stakeholders not having a say in the regulation's creation process.

Kansas' regulatory commissions should be focused on simply evaluating the regulations, like the role of an Inspector General or a research committee. Commissions should not become an inefficient level of bureaucracy.

■ CONCLUSION

Kansas' way forward is by removing barriers to people and businesses from participating in the economy. This means rethinking regulations and licensing to prevent unfair and burdensome conditions and instead promoting innovation and prosperity. Tools like Right to Earn a Living legislation and regulatory sandboxes would help accomplish this, but the most effective change is going to come from adopting new perspectives on reducing regulatory creep at all levels of government.

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