

A Review Of The Need For State Licensure Of Electrical Occupations

Research Report No. 166

LEGISLATIVE RESEARCH COMMISSION
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FOREWORD

Each session, the Kentucky General Assembly considers a number of bills to license various occupations. The 1978 General Assembly received twenty-one such bills, including House Bill 311, which would have required state licensure of electrical contractors and electricians. When House Bill 311 was recommitted for further study, House Resolution 127 was introduced, urging the Legislative Research Commission to study the need for licensure or regulation of electrical contractors and electricians. The study was to include a review of the provisions of HB 311.

At the August, 1978 meeting of the Legislative Research Commission, a motion was passed to expand the study to include mechanical contractors. Preliminary research completed at the time indicated much of the study would deal with occupational regulation in general, and regulation of the construction area in particular. It was decided that this would sufficiently address the regulation of mechanical contractors.

This report was researched and written by Michael Greer, Committee Administrator, Interim Joint Committee on Business Organizations and Professions and edited by Charles Bush. The cooperation of officials of the Kentucky Department of Housing, Buildings and Construction, the Attorney General's Office, Division of Consumer Protection, the National Fire Protection Association, the National Electrical Contractors Association, local officials and individuals within the electrical and construction industry is gratefully acknowledged. A special thanks is extended to Doug Roederer and Dr. Ben Shimberg for their assistance.

Vic Hellard, Jr.
Director

The Capitol
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SUMMARY

Occupational licensing has proliferated in recent years to the point that, according to a recent U. S. Department of Labor study, more than 900 occupations are now licensed or otherwise regulated. This proliferation has created a great deal of concern and has prompted many state legislatures to scrutinize carefully any new request for licensing. The purpose of this study is to review the need to license or otherwise regulate electrical occupations.

All but eight states regulate electrical work or electrical occupations in some way. Thirty-eight states license electrical contractors. Eleven of these license all contractors. Twenty-two states license electricians and twenty-two have state electrical inspection programs. Many states have combinations of licensing and inspections. Some states that do not regulate at the state level permit local regulation.

Kentucky law contains several statutes which relate to the regulation of electrical occupations. House Bill 44, passed by the 1978 Kentucky General Assembly and codified as KRS Chapter 198B, created the Department of Housing, Buildings and Construction. Under this legislation a uniform state building code, including an electrical code based on the National Electrical Code, is to be developed. Local governments are required to develop building programs which will cover plan review, permit issuance and inspection.

Several statutes in KRS Chapter 227 (KRS 227.450 to 227.500) pertain to the regulation of electrical occupations. Electrical inspectors are required to be examined and certified by the Department of Housing and they are required to place an approval sticker on installations inspected. Local jurisdictions are granted the authority to license electrical contractors and electricians. They may create examining boards and require an examination. All but two of the first, second and third-class cities exercise this authority. Most cities below third class require an "occupational license" but do not test. The 1978 General Assembly saw the introduction of House Bill 311, which would have required state licensure of electrical contractors and electricians.

The courts have vacillated on occupational regulation. The prevailing thinking has been that the practice of an occupation is a privilege extended by the state, and the courts have generally tolerated whatever schemes states have enacted. In recent years, the courts have been viewing the practice of an occupation more as a right, and a number of regulatory provisions have been struck down, as violating the due process requirement of the fourteenth amendment. Provisions which violate the first amendment have also been overturned. Both the U. S. Department of Justice, Anti-Trust Division, and the Federal Trade Commission have been actively investigating occupational practices which may constitute "restraint of trade," in violation of the Sherman Act.

Studies done in recent years indicate that occupational regulation has a significant economic impact. Restrictions on who may practice reduce the supply and increase cost. There is some evidence that regulation may even lower the quality of service. There is also evidence that over-regulation, rather than protecting the public, may actually be detrimental to the public.

Two indices are reviewed in this study in determining the need to regulate electrical occupations: electrical fires and consumer complaints. There is harm to the public from electrical fires, but the degree is slight. Avail-

able statistics indicated that about 7% of fires, both nationwide and in Kentucky, are "electrical in origin." Many of these fires can be attributed, however, to outdated or abused electrical systems rather than improper wiring.

Few consumer complaints against electrical contractors or electricians have been recorded in Kentucky. Many more complaints have been lodged against other types of contractors, particularly home builders, heating and air conditioning contractors and remodeling contractors. Contractor complaints totaled 460 for 1977, which made it the largest single complaint category.

Kentucky has adequate statutory provisions for consumer protection. The Consumer Protection Act covers fraud or misrepresentation. Small claims court provides an expedient vehicle for recovering small financial losses. Certain legal remedies in Chapter 198B also protect the consumer in building matters.

A sound building code and enforcement program seems to be the most effective way of assuring public protection in electrical work. The basics of a good program were enacted in 1978 in House Bill 44 (KRS Chapter 198B). Available resources should be concentrated on full and effective implementation of this program.

The following recommendations are made to complement existing programs and policy:

Recommendation 1. That electrical occupations not be licensed at this time at the state level, and that local authority to license be repealed.

Recommendation 2. That all contractors involved in the construction industry be required to register with the Department of Housing, Buildings and Construction.

Recommendation 3. That the Department of Housing, Buildings and Construction give top priority to enforcement of the state building code.

Recommendation 4. That electrical inspectors continue to be certified by the Department of Housing, Buildings and Construction, but that the certification program be improved.

CHAPTER I

INTRODUCTION

The number of occupations regulated by states has increased significantly since World War II. A Council of State Governments report published in 1952 identified at least 75 occupations being licensed.¹ A more complete study, conducted by the Department of Labor in 1968, discovered more than 500 occupations which were licensed or regulated in some way.² An update of this study currently being completed shows that the number of occupations regulated has risen in ten years to above 900.³

Types of occupations regulated are interesting. In addition to the commonplace licensing of doctors, lawyers, engineers and accountants, many states license numerous types of brokers, dealers, distributors, inspectors, installers, salesmen and repairmen. Some states license such occupations as alligator hunter, artificial inseminator, cesspool cleaner, fortuneteller, hareracer, hooker, horseshoer, lightning rod salesman, parachute rigger, rainmaker, sardine packer and tattoo artist.

Licensing touches on all aspects of life. The pervasive nature of licensing led William Beard to comment as early as 1934:

The individual is ushered into this world...by a licensed midwife or physician...at a licensed maternity hospital, attended by a licensed nurse. As a youngster, he receives public school education with the help of licensed teachers....His health is looked after by licensed physicians, dentists, chiropodists, optometrists, osteopaths, and pharmacists....To marry he must get a license and have the ceremony performed by someone licensed to do it. Suppose he plans to build a house: he buys the land from a licensed real estate dealer...has it staked out by a licensed surveyor, and perhaps engages a licensed architect to design the dwelling. The drinking water is supplied through pipes installed by a licensed plumber from a dam constructed under the supervision of a licensed civil engineer. Electric current for lighting passes through wiring put in place by a licensed electrician....Nor does he escape the licensing system when he dies, for he is prepared for the grave or cremation by licensed undertakers, embalmers, and cremators.⁴

Proliferation of licensing is of grave concern to many people, a concern perhaps best articulated by Professor Walter Gellhorn:

Occupational licensing has gone too far. It compresses rather than liberates the economy, stratifies society instead of furthering its democratization. Nevertheless, the excesses and abuses of licensing do not entirely obscure its utility. It does in fact afford protection against suffering at the hands of the blatantly inept or patently corrupt. The question to be considered is whether such protection as is truly necessary (for, after all, there is such a thing as over-protection) can be obtained with less social risk....As matters stand, the citizen's right to use his facilities in a freely chosen career has been squeezed beyond justification. What we need now is fewer but better designed bindings on that

right.⁵

The concern over licensing has prompted many state legislatures to reevaluate licensing policies and procedures. As a result, a number of states have enacted reform measures to streamline licensing and to make it more effective and accountable. More than thirty states have passed "sunset" laws which require periodic review and evaluation of licensing functions.

Yet each year state legislatures receive numerous requests to license new occupations. In a recent session of one state legislature, bills were introduced to license auctioneers, home improvement contractors, pet groomers, sex therapists, television repairmen, electrologists, data processors, appraisers, professional salespeople and a dozen other groups.⁶ Three states, Virginia, Michigan and Minnesota, have established guidelines and criteria for reviewing and evaluating the need for new licensing. There are indications that more states will follow this example.

During the 1978 regular session of the Kentucky General Assembly, twenty-one bills were introduced to license a variety of occupations, including athletic trainers, denturists, memorial dealers, politicians, well drillers, soil classifiers and septic tank installers. House Bill 311 would have licensed electrical contractors and electricians.

The failure of House Bill 311 to be enacted prompted the introduction of House Resolution 127 (see Appendix 1), urging the Legislative Research Commission to study "the need for licensure and regulation of electricians and electrical contractors," to include a review of the provisions of House Bill 311.

Chapters I through V provide background on occupational regulation in general and regulation of electrical occupations in particular. State laws regulating electrical occupations are analyzed and summarized and House Bill 311 is reviewed. Considerable treatment is given to legal issues and the economic impact of occupational regulation, two of the more important aspects.

The need to regulate electrical occupations is analyzed in detail in Chapter VI. Need is based on potential harm to the public; the two indices used for measuring harm are the number of fires electrical in origin and consumer complaints about electrical contractors and electricians. Also discussed in this chapter are alternative forms of regulation.

In the final chapter the findings and recommendations of the study are presented.

CHAPTER II

STATE REGULATION OF ELECTRICAL OCCUPATIONS

Summary of State Laws

All but eight states have some form of statewide regulation of electrical work or occupations. Thirty-eight states license electrical contractors. In eleven of these states, electrical contractors are licensed as part of a requirement for licensing all contractors. Twenty-two states license electricians and have state inspection programs.

State programs vary considerably in their extent. Sixteen states regulate at all three levels: contractor, electrician and inspector. All twenty-two states that license electricians also license electrical contractors. Sixteen states license electrical contractors but not electricians. Four states license electrical contractors and have state inspection programs.⁷

Local Regulation

Most states that do not have statewide regulation permit municipalities and other local jurisdictions to regulate at the local level. Even in some states with state regulation, local jurisdictions with equal or more stringent regulation are exempted. In Michigan, an electrician is not required to have a state license if he is licensed locally. In some states with state regulation, however, local jurisdictions are specifically prohibited from subjecting licensees to further regulation.

Some states that rely primarily on local regulation have reciprocity provisions in their laws to prevent local jurisdictions from restricting labor mobility. Illinois law states that a municipal license must be recognized by other municipalities. Maryland law establishes a system of reciprocity for licensing between all electrical boards whether they be state, municipal or locally appointed.

Electrical Code

Thirty-eight states have adopted a state electrical code. A majority of these states, twenty-nine, have adopted the National Electrical Code. A few states have adopted it with some modification.

Some states permit cities to enact standards which are more stringent than the state code. In Arizona the state code is advisory. Municipalities may adopt their own codes and most large municipalities adopt the National Electrical Code.

TABLE I
STATE REGULATION OF ELECTRICAL OCCUPATIONS

STATE	ELEC- TRICAL CONTRAC- TORS	ELECTRI- CIANS	INSPEC- TIONS	STATE ELECTRICAL CODE
Alabama	X*			
Alaska	X		X	X
Arizona	X*			X
Arkansas	X*			
California	X*		X	X
Colorado	X	X	X	X
Connecticut	X	X		X
Delaware	X		X	X
D. C.	X	X	X	X
Florida	X			X
Georgia	X			
Hawaii	X*	X		
Idaho	X	X	X	X
Illinois				X
Indiana				X
Iowa				X
Kansas				
Kentucky				X
Louisiana	X*			X
Maine	X	X	X	X
Maryland			X	X
Massachusetts	X	X		X
Michigan	X	X	X	X
Minnesota	X	X	X	X
Mississippi	X			
Missouri				
Montana	X	X	X	X
Nebraska	X	X	X	X
Nevada	X*			X
New Hampshire	X	X		
New Jersey	X		X	X
New Mexico	X*	X	X	X
New York				
North Carolina	X			X
North Dakota	X	X	X	X
Ohio			X	X
Oklahoma				
Oregon	X	X	X	X
Pennsylvania				
Rhode Island	X	X		X
South Carolina	X*			
South Dakota	X	X	X	X
Tennessee	X*			X
Texas				
Utah	X	X	X	X
Vermont	X	X	X	X
Virginia	X*			X
Washington	X	X	X	X
West Virginia	X	X		X
Wisconsin				X
Wyoming	X	X	X	X

*Indicates regulation of all contractors.

SOURCES: National Electrical Contractors Association and correspondence with the states.

Analysis of State Laws

Enforcement

Enforcement of the state electrical code is generally carried out through some type of inspection program. Twenty-two states have state inspection programs. Other states either require or permit local jurisdictions to assume responsibilities for inspections. In some states, the state inspects only where no local inspection program exists.

In most states, including those with local inspections, electrical inspectors are credentialed by the state. Alaska and New Mexico permit private or public utility personnel to be deputized as inspectors. Delaware and New Jersey authorize the use of private inspection agencies approved by the state. In South Dakota, inspectors must be licensed as electricians.

In most states, the adopted electrical code applies to all new, altered or repaired electrical installations. In many states utilities cannot make electrical connection to a structure until it has been inspected. In a few states, in lieu of inspections, an electrical contractor may sign an affidavit to the effect that he has complied with the code. In Maine, failure to conform to standards in the code is prima facie evidence of gross negligence and incompetency and constitutes grounds for suspension or revocation of a license.

Some states have restrictions or limitations on enforcement of the electrical code. Vermont limits applications to industrial, commercial and institutional establishments and residential dwellings with four or more living units. Michigan exempts private dwellings and farm buildings in cities with less than 7,000 population. Wyoming exempts ranches of forty acres or more on deeded land. In Illinois and Iowa, the state has general authority for inspection but there is no requirement that installations actually be inspected.

Coverage

Coverage of state regulation of electrical occupations varies, depending primarily on definition of terms. Many states classify an electrician as master, journeyman or apprentice. In these states the master level is usually the contracting level. Some states have a separate contractor level in addition to the master. In many of these states, electrical contractors are required to employ master electricians to actually perform the work. Oregon requires all work to be performed under the supervision of a licensed engineer.

"Electrical contractor" is generally defined as any person or firm which engages in the business of wiring installation. This definition includes subcontractors as well as contractors. Some states limit the definition to any persons or firms holding themselves out to the public as electrical contractors. This definition exempts subcontractors.

States which have a licensing law for all contractors usually define a contractor as any person or firm engaging in any phase of the construction

industry. Contractors are classified either by laws or by regulation of the regulatory board, according to the recognized types of contracting work. This classification is usually rather extensive. Arizona law, for example, lists seventy-five different classifications of contractors.

Most of the generic licensing states specify an amount of business one must do to be considered a contractor. In Tennessee a contractor must contract for \$10,000 or more a year before he is covered. In Alabama and Arkansas the amount is \$20,000, and in Louisiana, Wyoming and Utah, \$30,000.

Many states exempt from regulation persons performing work on their own property. California has such an exemption but the property owner is prohibited from selling the property for one year. In Oregon a person cannot work on his own property if it is for sale, lease or rent.

Licensing Boards

Most states regulate electrical occupations through a board or council. Some of these regulatory bodies are placed under the auspices of a state "umbrella" agency, while others function as independent entities. Board membership ranges from three members in several states to thirteen members in Hawaii. In Hawaii there are actually two boards, a board to regulate contractors and an electrical board to regulate electricians. Five members is the most common board membership.

Electrical boards are generally comprised of representatives of electrical occupations: contractors, electricians and inspectors. They are appointed by the governor for staggered terms. Some boards include electrical engineers, representatives of public utilities and relevant public officials, such as the state fire marshal. Recently, board membership in many states has been expanded to include one or more public members. In California, the Public Members Act of 1976 requires a majority of public membership on all but the health area and accountancy boards, which require one-third public membership.

Experience and Training

A majority of states require some degree of experience and/or training for an applicant to qualify for a license. Experience requirements range from two to eight years. Experience and training requirements are generally graduated in accordance with the type of license, but in some states the requirements for master and journeyman are the same. Some states require that the experience be at the level immediately below, while some require a certain amount of supervisory experience.

Most states recognize combinations of formal education and training. The Colorado law is typical of this type of provision. In Colorado a master electrician may have an electrical engineering degree plus one year of experience or an electrical trade school diploma plus four years of experience, or simply five years of experience.

Other Requirements

A few states have minimum age and residency requirements. A few states have "good moral character" requirements, although the use of this requirement is not as prevalent as in some other occupations. Arizona requires each contractor applicant to have certification of two reputable citizens of the county in which the applicant resides. Idaho requires that an applicant submit evidence that he is "fit, competent and qualified."

Examinations

Most states require successful completion of an examination. There are no national examinations in this area, so states develop their own tests or contract for their development.

Most license examinations are written and are geared toward determining the technical knowledge of the applicant. New Hampshire gives the regulatory board the discretion of administering a written or oral examination while Vermont specifies both written and oral. Tennessee gives only an oral examination for contractors. There is no evidence of states using performance testing to determine competency.

Several states at the contractor level also test an applicant's knowledge of business practices and applicable laws. Arizona, for example, tests knowledge of safety, health and lien laws, business management principles, and rules and regulations of the board. Utah tests for management ability and knowledge of business law.

Fees

All states which regulate electrical occupations charge a fee for doing so. Fees usually include an initial license fee and a renewal fee. The initial license fee is generally higher because it covers the cost of examination in addition to the cost of licensing. A few states charge a separate examination or application fee.

Initial license fees range from a high of \$200 for contractors in Alabama and Washington to \$10 for contractors in West Virginia and \$8 for journeymen in Massachusetts. Renewal fees range from \$150 in Arizona and Washington to \$4 in West Virginia. The typical fee is around \$50 to \$75.

A few states have additional fees. Some permit local jurisdictions to charge an occupational fee, which in Mississippi is called a "privilege tax." Delaware in addition to the license fee, requires that each electrical contractor purchase a business permit, at a cost of \$35 plus one tenth of a percent of the business's gross income.

Financial Responsibility

Many states have a requirement that applicants demonstrate financial

responsibility. This is especially common at the contracting level. There are essentially two ways a state goes about this. Some states require that an applicant submit a detailed financial statement, which is usually substantiated through a credit check. Other states require the applicant to post a "surety bond." A few states require both.

The amount of the required bond varies. It ranges in Arizona from \$1,000 to \$15,000, depending on the type of license. Arizona also permits a cash deposit in lieu of the bond. Washington, D.C. requires a \$4,000 bond and Minnesota a \$2,000 bond. South Dakota requires a \$2,000 bond and proof of \$5,000 of liability insurance.

CHAPTER III

KENTUCKY LAW

Electrical occupations are not without regulation in Kentucky. There are several provisions in Kentucky law which relate either directly or indirectly to regulation of electrical occupations.

Department of Housing, Buildings and Construction

The 1978 Kentucky General Assembly in regular session enacted House Bill 44, which instituted a major restructuring of programs dealing with the construction industry. HB 44 created a state agency to regulate construction, consolidated existing programs under this agency and extended regulatory coverage statewide. New sections of HB 44 were codified as KRS Chapter 198B (See Appendix 2).

State Agency Created

The Kentucky Board of Housing, Buildings and Construction is created in Chapter 198B, to be comprised of seventeen members appointed by the Governor for four-year staggered terms. Membership includes public officials and representatives of various groups involved in the construction industry. The Board is to serve as a policy-making body for regulation of the construction industry.

The Department of Housing, Buildings and Construction, commonly referred to as the Department of Housing, is also created to serve as the staff and administrative agency for the Board. In addition, the Commissioner of the Department of Housing serves as chairman of the Board.

State Building Code

One of the main charges of the Board is to adopt and promulgate a mandatory uniform state building code which establishes standards for the construction of all buildings. "Building" is defined broadly as any structure which affords facilities or shelter for human occupancy, with the exception of mobile homes and farm dwellings and other farm buildings not in a municipality and not used for commercial purposes. Single-family dwellings are exempted from the building code, except for electrical and plumbing provisions. Further coverage may, however, be enacted by local ordinance.

The Board is required to adopt the code within one year from the date of its initial meeting. The building code is to be comprehensive and is to include provisions relating to electrical systems. These provisions are to encompass the National Electrical Code.

Local Responsibility

Chapter 198B provides for the review and approval of all building plans and specifications. The Department of Housing and local governments share this responsibility. Local governments are responsible for buildings of no more than three stories, containing less than 20,000 square feet of space, and not intended for assembly, educational, institutional or high-hazard occupancy, business or industrial occupancy in excess of one hundred persons or the production of frozen food. The Department of Housing is responsible for all other buildings.

Each local government is required to employ a building official or inspector and necessary staff to enforce the state building code. Local governments may contract with other local governments or seek technical assistance in carrying out their enforcement responsibilities. No building is to be constructed until a permit has been issued by the appropriate local building official. Further, no building is to be occupied until a certificate stating that the building has been constructed in conformity with the state building code is issued.

Local governments are permitted to charge a fee for functions they are required to perform by law. There is no fee schedule listed or no maximum specified, except that the fees shall not exceed the actual costs of services performed.

Implementation

For local governments in a county containing a first or second-class city or for urban-county governments, the state building code is to be effective six months from the date it is promulgated by the Board. These local governments may, however, adopt the code prior to this time if they desire.

For other local governments, those parts of the code applicable to buildings for which the Department of Housing has responsibility for plan review also become effective six months from the date the code is promulgated. Dates of effectiveness of provisions dealing with buildings for which local governments have responsibility are staggered. In counties containing a city of the third or fourth class, these provisions become effective two years after promulgation; and in counties containing a city of the fifth or sixth class, three years after promulgation. Any local governments, however, may adopt the code at an earlier date.

Legal Remedies

Chapter 198B specifies legal remedies which can be used to assure compliance with the state building code. The Department of Housing or a unit of local government may seek injunctive relief in a court of competent jurisdiction to stop the construction, sale or occupancy of any building which is not in compliance with the code. For violations of Chapter 198B or the building code, a fine ranging from \$10 to \$1,000 may be levied. Each day the violation continues is to be considered a separate offense.

In addition to other penalties, violations of the chapter or code may be considered a cause of action against the person responsible for the violations. The aggrieved party may ask for damages plus the cost of litigation, including reasonable attorney fees.

Electrical Inspectors

Kentucky law requires electrical inspectors to be certified by the state. This requirement was enacted in 1974 and codified as part of KRS 227.450 to 227.500, entitled "regulation of electricians" (See Appendix 3). In 1978 responsibility for administration was transferred to the Department of Housing as part of HB 44.

KRS 227.489 states that electrical inspectors are to be examined and that the examination is to be based on the National Electrical Code. Persons who have been engaged in electrical inspections for three years may be certified on the basis of knowledge and experience.

In January, 1979, the Department of Housing submitted a regulation to create two classifications of electrical inspector, residential and commercial. Under this regulation there would be a separate examination for each classification. Electrical inspectors already certified would be "grandfathered in" as residential inspectors but would be required to submit proof of knowledge and experience in commercial wiring systems to receive a commercial certificate. The regulation also requires proof of completion of a continuing education course as a prerequisite for biennial certificate renewal. There is some question whether there is statutory authority for such requirements.

Kentucky law provides that an electrical inspector who certifies an installation must attach on the main service entrance an equipment approval sticker bearing his name and certificate number. The inspector must also provide the owner with a certificate of approval if requested. An inspector is prohibited from overruling the judgment of another inspector unless he has prior approval from the office supervising the original inspector. Failure to adhere to these provisions subjects an inspector to review and possible suspension up to one year.

The Commissioner of Housing has broad discretion to investigate alleged misconduct of an electrical inspector. Any party may seek redress from the Commissioner of Housing when the misconduct has resulted in undue hardship on the party. There is no specific statutory authority for the Department of Housing to suspend or revoke an inspector's certificate, although the Department does this by regulation.

Inspection fees are not established by statute. Some cities establish fee schedules or fee maximums by local ordinance. Others let fees be determined by the competitive marketplace. This seems to work, except in areas where one or two inspectors have a virtual monopoly on the market. Officials of the Department of Housing have received complaints of excessive fees or "price gouging" in these areas.

As of July, 1978, there were 127 inspectors certified by the Department of Housing, representing 54 counties. There were seven out-of-state inspectors certified from the greater Cincinnati area.

Local Licensure

Provisions of KRS Chapter 227 permit cities and counties and combinations of local governments by cooperative agreement to license electrical contractors and electricians (See Appendix 3). "Electrical contractor" is defined as "any individual, partnership or corporation that engages in the business of or employs others for the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power." "Electrician" is defined as "any person who is employed by an electrical contractor and is engaged in the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power."

Examining Board

Local governments are empowered to create examining boards, each composed of seven members. Board membership must consist of two fire department officials, two consulting electrical engineers or architects, two electrical contractors and one utility official. No member may serve more than two consecutive years; members must serve without salary.

A local examining board has broad power to conduct examinations. It may adopt regulations concerning the conducting of examinations, the method and time for making application and the time of examinations. It may adopt other reasonable regulations for the administration of its responsibility. A board may also adopt reasonable fees for issuance of licenses.

Kentucky law empowers a board to issue and revoke licenses. The law does not, however, state grounds on which a license may be revoked. Neither does the law state whether a board may take other types of disciplinary action, such as suspension. Local governments may fix penalties for violations of ordinances regulating electrical work. They may set fines of not less than \$10 nor more than \$100, or imprisonment of not more than 50 days, or both.

Survey of Cities

A survey of Kentucky cities revealed that all cities of the first, second, and third classes license electrical contractors and electricians. All but two administer license examinations. Some cities have adopted the apprentice, journeyman, and master classifications for electricians. A few have adopted other classifications.

Examinations used by cities are locally developed and there is no standardization in terms of content or format. The tests are based on prevailing electrical codes and ordinances and are generally "open book." Some of the tests appear to be fair indicators of competency, while others appear to be ineffective. An official in one city stated that the test for electricians was a joke and that anyone who could read the code book could pass it.

Cities permit individuals with five years of experience to be licensed without examination [KRS 227.490 (1)]. Some cities which classify electricians have prorated the experience so that masters need five but journeymen need only four. There is no specific authority in the statutes for this.

Most cities below third class require an "occupational license" for electrical contractors and electricians, but there is no examination involved. Licensing in these cities is merely a method of generating revenue. This is permissible since examination for licensure is discretionary. Cities also are granted authority to establish fees or taxes for occupations and professions under Section 181 of the Kentucky Constitution.

Probably the major problem with local licensing of electrical contractors and electricians is the lack of reciprocity among cities. Each city develops its own classifications and administers its own examination and there is no recognition of licenses from other jurisdictions. This deficiency has a net effect of restricting labor mobility and reducing competition and it gives the impression of being a protectionist mechanism for local licensees.

House Bill 311

A bill to license electrical occupations, House Bill 311, was introduced in the 1978 regular session of the General Assembly. The bill was referred to the Committee on Business Organizations and Professions, where a committee substitute was drafted and reported favorably. The bill was then recommitted to the Committee on Public Utilities and Transportation for further study.

Coverage

HB 311 would have required statewide licensing for the following: "Electrical Contractor," "Supervisor," "Electrician" and "Apprentice Electrician." The licensing board would have authority to create classifications for licenses. Exempted from the Act were installation, alteration or repair of electrical systems used by electrical public service corporations, municipal light and power departments, telephone, telegraph and broadcasting companies, and railroads. Also exempted were automotive electrical equipment, elevators and electrical equipment in farm buildings.

Electrical contractors and supervisors licensed by a municipal agency would be exempt if the municipality had requirements at least as stringent as the state's. It is unclear whether a municipal license would be valid outside the municipal jurisdiction or whether a state license would be valid within the municipality. Electricians and apprentice electricians licensed by the state could not be subjected to local regulation.

The bill also provided for the issuance of temporary work permits for out-of-state electricians. Any out-of-state electricians with five years of experience could receive a temporary permit upon recommendation and employment by a licensed electrical contractor. The permit would be for a maximum of twelve months but could be extended until a job was finished. There is no provision in the bill for recognition of out-of-state licenses by reciprocity or endorsement.

Licensing Board

HB 311 would have created an independent regulatory board called the

Electrical Administrative Board. The Board would be comprised of seven members, appointed by the Governor for four-year staggered terms. Membership would consist of one representative of an electrical public service corporation, two electrical contractors, two representatives of a nationally recognized electrical workers' organization, one electrical engineer and one certified electrical inspector.

The Board would be required to employ a licensed electrical engineer to serve as its chief administrative officer. He would be required to have ten years of experience and be a resident of the state for five years. In addition, he would have to post a \$5,000 performance bond.

The Board would have broad authority to administer and enforce the provisions of the bill. Specifically, it would adopt rules and regulations, examine applicants, issue licenses, revoke or suspend licenses and prescribe minimum standards for electrical wiring.

License Requirements

Applicants would be required to pass an examination on rules and regulations governing the installation of electrical wiring. The bill does not specify whether the examination would be written, oral or performance, or whether the same examinations would be given to all categories of applicants.

HB 311 contains a "grandfather" clause for those engaged in electrical occupations. Anyone with five years of experience could receive a license without examination if he applied within one year from the effective date of the bill. After the one-year period has elapsed applicants for an electrician's license would be required to have five years' experience, but there would be no experience requirements for an electrical contractor's or supervisor's license.

Each applicant for an electrical contractor's license would be required to file a \$5,000 bond with the Electrical Administrative Board to assure faithful performance of all work.

License Fees

The Board would be empowered to set license fees, with the maximum prescribed in the bill. For contractors and supervisors the maximum would be \$50. For electricians, \$25, and the same for a temporary electrician permit. All receipts would be deposited in a "trust and agency account," known as the "electrical administrative fund," to be expended for administration of the bill. Any surplus money would lapse to the state general fund.

Other Provisions

The Board would have the power to suspend or revoke the license of anyone who willfully or through incompetency violated relevant statutes. The Board would be required to hold hearings and would be required to prescribe by regulations, rules of conduct for hearings. Any decision of the electrical engi-

neer could be appealed to the Board within fifteen days and any decision of the Board could be appealed to Franklin Circuit Court within thirty days.

The Circuit Court would hear the case upon the record, and its review would be limited to whether the Board acted within its power, whether the evidence supported the decision and whether the decision was in conformity with the bill. Decisions of the Circuit Court would also be appealable.

Any person violating any provision of the bill or regulation of the Board would be guilty of a misdemeanor. Punishment would be a fine of not less than \$25 nor more than \$500, or imprisonment not to exceed sixty days, or both.

HB 311 would repeal sections of KRS Chapter 227 dealing with local regulation of electrical contractors and electricians.

Critique of HB 311

This section focuses on the viability of HB 311 as a licensing vehicle by analyzing and critiquing major provisions of the bill. The critique is aimed at assessing the public protection aspects of the bill, based on available licensing research. This section does not address the need for licensure of electrical occupations, which is a separate issue and which is dealt with thoroughly in Chapters VI and VII.

Both HB 311 and HB 44 were considered by the 1978 General Assembly and there is some overlapping of provisions. Since HB 44 was subsequently enacted into law, several corresponding provisions of HB 311 would now be in conflict. For example, Section 4(3) of HB 311 directs the licensing board to prescribe minimum standards for the installation of wiring. Chapter 198B, established by HB 44, assigns this same responsibility to the Board of Housing, Buildings and Construction as part of its responsibility for promulgating a uniform state building code.

HB 311 would create a licensing board comprised essentially of members of electrical occupations. There are several questions which may be raised about this board. First, why does the composition not include public members? This is certainly questionable, when other licensing boards in Kentucky have one public member and when the trend in other states is toward greater public participation in the regulatory process. Can an occupation-dominated board reasonably be expected to place the public interest above professional interests when the two sometimes are incompatible? There is evidence, which will be discussed in subsequent chapters of this report, of self-serving policies by licensing boards which have been detrimental to the public. Finally, is there a need for an independent licensing board? Whatever regulation is decided upon could be administered through the Department of Housing, Buildings and Construction, which is currently administering regulation of plumbers.

One of the main flaws in HB 311 is the exemption from the law for municipal licensing of electrical contractors and supervisors. This provision was added to the bill in response to opposition to the bill by municipalities with licensing programs. Section 7(8)(b) provides that any municipal agency with requirements as stringent and comprehensive as the state's shall be permitted to license electrical contractors and supervisors in lieu of state licensing. This would not include electricians and apprentices, who would still be li-

censed exclusively by the state.

There are two problems with the municipal exemption. First, it is contrary to the basic thrust of the bill toward uniform, statewide standards. It is particularly important that examination for competency be uniform, since the state will be enacting a uniform state building code. Second, and more important, the municipal exemption does not address interjurisdictional reciprocity of licensees. Would a municipal license be valid in other parts of the state and would a state license be valid in a municipality with a licensing program? Licenses should be recognized statewide so as not to hamper labor mobility. If this is not addressed in the bill, however, it could upon enactment become a point of contention between municipalities and the state.

There is also a problem with a lack of recognition of licenses from other states. Section 7(2) allows a non-resident electrician to secure a temporary permit to work on a job until it is completed but there is no provision for a non-resident electrical contractor. Nor is there any provision for the general recognition of licenses from other states. Most states have either an endorsement provision, which recognizes licensees from other states with equal or greater requirements, or a reciprocity provision, which allows the state to enter into agreements with other states for the mutual recognition of licenses. A provision of this nature is important to encourage labor mobility.

Another problem is the lack of specificity concerning the examination process. The bill merely states (Section 7) that an "applicant shall be examined by the board to determine his knowledge of the rules and regulations governing the installation of electrical wiring..." The type of exam to be administered and the frequency with which it will be offered is not stated. Nor is the method by which the examination will be developed and validated specified in the bill.

Since the required examination is the only real means of determining competency, it is crucial to the success of the legislation to insure an effective testing process. It should be stipulated that the examination be professionally constructed by reputable test experts and validated as being performance-relevant. The board should be required to administer the examination a sufficient number of times and in a sufficient number of locations to give applicants reasonable access. A significant portion of the examination should be performance-based, because a written exam will only test knowledge and not actual ability to perform. This portion could be accomplished through the use of wiring simulation exercises. It is true that these matters could be addressed by the board in regulations, but, based on documented abuse of examinations in other states, it would seem important to have these basic provisions in the enabling statutes.

Another questionable provision of the bill is the inclusion of a "grandfather" clause for the licensing of those currently engaged in electrical occupations. In licensing vernacular, a "grandfather" clause is a provision which allows persons who have been engaged in the occupation for a prescribed number of years to be licensed without examination for a certain period of time after the legislation goes into effect. "Grandfather" clauses are traditionally included in licensing legislation and are a means of gathering support for the legislation from the occupational group involved.

The desirability of including a "grandfather" clause in the bill should be closely examined. The primary purpose of a licensing scheme is to protect

the public from incompetents and the enactment of a licensing law is prima facie evidence that incompetency is extensive enough that the public is being significantly harmed. The licensing examination is the chief method of weeding out the incompetents, so a "grandfather" clause which exempts current practitioners from the examination actually has the effect of institutionalizing incompetence.

The final problem with HB 311 to be discussed here is the restrictive effects the bill will have on manpower supply. This is probably the most questionable aspect of the bill. The bill is written so that entry into electrical occupations would be tightly controlled. The bill requires that an applicant for an electrician's license have five years of experience at the trade or four years in an apprenticeship training program approved by the Kentucky Department of Labor and the Apprenticeship and Training Council. Since a person cannot gain the required experience without a license, the only real method of entry into the trade is through an apprenticeship program. This vests almost exclusive control of entry and labor supply to those groups which control the apprenticeship programs. In fact there is a built-in restriction in the definition of "apprentice electrician" in the form of a limitation of one apprentice for every three electricians. The net results of this could be a drastic decrease in the number of electricians and an equally drastic increase in the cost to the consumer.

CHAPTER IV

OCCUPATIONAL REGULATION AND THE COURTS

Right vs. Privilege

The courts have played a role in shaping the nature and extent of occupational regulation. The federal courts have been hesitant about ruling in cases involving occupational regulation because this area has historically been the jurisdiction of the states. Most decisions have deferred to the authority of the state to regulate. State courts have been bolder, but the results have been inconsistent. The hesitancy of the federal courts and the inconsistency of the state courts can be attributed to the absence of an effective resolution of the right vs. privilege dispute: Is the practice of an occupation an individual right guaranteed by the Constitution or a privilege extended to an individual by the state?

Supreme Court

There is a considerable body of case law which in rather definitive terms views the practice of an occupation as a privilege to be regulated at the will of the state. This judicial thinking is typified in the case of Barsky v. Board of Regents.⁸

In the late 1940s, Dr. Barsky was an officer in an organization which was suspected of having communist affiliations. He was subpoenaed to testify before the House Committee on Un-American Activities, but refused. He was subsequently convicted of contempt of Congress and spent five months in prison.

Upon his release from prison the New York State Department of Education, which has responsibility for the licensing of physicians, filed charges against Dr. Barsky and suspended his license for six months. Under New York law, conviction for any crime constituted grounds for the suspension or revocation of a medical license. Dr. Barsky challenged the decision in court, arguing that the statutory provision under which he was suspended was unconstitutionally vague and violated the fourteenth amendment.

The Supreme Court upheld the state, saying:

The practice of medicine in New York is lawfully prohibited by the state except upon the conditions it imposes. Such practice is a privilege granted by the state under its substantially plenary power to fix the terms of admission.⁹

The Barsky decision was based on considerable case precedent and appeared to present an immutable judicial stance on occupational regulation. A few years later, however, in a rather surprising move, the Supreme Court reversed itself in the case of Schware v. Board of Bar Examiners of New Mexico.¹⁰

Schware was refused permission to take the bar exam by the Board, on the grounds that he did not possess "good moral character," as required by law. The determination was based on several circumstances in Schware's background. He had in the past used aliases, had been arrested (but never tried and convicted), and had once been a member of the Communist Party.

The Supreme Court found that the circumstances of Schware's past were insufficient to prohibit his practicing law. The Court ruled that the denial abridged the due process provision of the equal protection clause of the fourteenth amendment. The Court addressed the "right/privilege" dichotomy in a rather indirect manner.

We need not enter into a discussion whether the practice of law is a 'right' or a 'privilege.' Regardless of how the state's grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the state's grace.¹¹

The Court, obviously still sensitive to states' rights criticism, attempted to circumvent the right/privilege question by couching the same arguments in different terms. Regardless of what the Court said, the language of Schware indicates recognition of the right of occupational choice. One commentator argues that the decision virtually laid to rest the right/privilege distinction.¹² This appraisal may be overly optimistic, but Schware certainly opened the area of occupational regulation to closer judicial scrutiny.

State Courts

State courts have a rather checkered report card in the area of occupational regulation. Several states recognized the right of occupational choice in an era when courts embraced substantive due process and a "laissez-faire" approach to government. But most states abandoned this philosophy as a result of substantial government regulation necessitated by the Depression and World War II. Post-war courts generally viewed occupational regulation as a matter for the legislature and they were usually not willing to review even the reasonableness of regulatory schemes.

A few states were exceptions. The Oklahoma Supreme Court, for example, issued decisions which made very forceful statements about the right of occupational choice. In the case of Short v. Riedell¹³ the court ruled Oklahoma's accountancy act unconstitutional:

...It abridges the right of private property and infringes upon the right of contract in matters purely of private concern bearing no perceptible relation to the general or public welfare, and thereby tends to create a monopoly in the profession of accounting for the benefit of certified accountants and denies to uncertified accountants the equal protection of the laws and the enjoyment of the gains of their own industry. The defendants are not engaged in the exercise of a franchise, but a constitutionally guaranteed right.¹⁴

A similar decision was rendered in Oklahoma in a case involving the state Watchmaking Act. In Whitzel v. Wood,¹⁵ Wood was accused of practicing watch-

making without a license. He challenged the constitutionality of the law, and the court ruled:

The provisions of the Act are unreasonably arbitrary and discriminatory, and are not designed to promote the general welfare or contribute to the public morals, health or safety. The Act vests in the Board powers to make rules and regulations which may deny some citizens their inherent right to earn their livelihood in a private field of work, thus depriving them of a valuable property right without due process of law.¹⁶

The position of the Oklahoma Supreme Court on occupational choice is not the position of a majority of state courts, however. It is fairly evident from the large number of occupations regulated and from the kinds of occupations regulated that most state courts grant state legislatures broad authority to regulate.

Kentucky Courts

The Kentucky Courts have not been called upon very often to adjudicate matters of occupational regulation. The few cases which have been decided do show, however, a rather typical evolution of judicial thinking.

In the early 1920s, the Kentucky Court of Appeals in the case of Hoblitzel v. Jenkins¹⁷ ruled that the General Assembly's grant of authority to regulate the real estate business was a constitutional and proper exercise of police power. This decision was overturned a few years later in the case of Rawles vs. Jenkins,¹⁸ which was more indicative of the philosophy of the court at the time.

Mr. Rawles had his real estate license revoked on the grounds that he had violated "good moral character" provisions of the statutes. The Court of Appeals issued an adamant decision:

Among the inherent and inalienable rights guaranteed to our citizens by our Bill of Rights are (a) 'the right of enjoying and defending their life and liberties,' and (b) 'the right of acquiring and protecting property...' Not only does the term 'liberty' include the right of the citizen to earn his livelihood by any lawful calling...but the right of acquiring property includes the right to engage in any business or occupation that is not injurious to the public weal.¹⁹

The subject of occupational regulation came before the court again some years later, in the case of Shelton v. McCarroll,²⁰ Rawles had apparently in the ensuing years been overlooked and was not brought to the attention of the court. The court therefore reaffirmed the opinion of the court in Hoblitzel. This decision had the effect of overruling Rawles "sub silentio," which returned occupational choice to the status of a privilege.

In 1952, in the case of Miller v. State Real Estate Commission,²¹ the oversight of Rawles was brought to the attention of the court. The court refused, however, to accept the Rawles case as precedent and instead reaffirmed Hoblitzel. Miller was a case in which a person had received a license by obviously fraudulent means. It appears that, due to the circum-

stances of the case, the court felt compelled to uphold the state's power to regulate.

Due Process

Most challenges to occupational regulation have been based on violations of the due process or equal protection provision of the fourteenth amendment. In applying the fourteenth amendment to occupational regulation there are three basic requirements: specificity, rationality and fairness.²²

Specificity

There are two types of specificity. The first deals with delegation of authority and implies specificity in the amount of discretion a legislature may delegate to an administrative body. This argument is seldom used any more to attack licensing schemes. Due to the increased complexity of government, legislatures have out of necessity delegated broad power and the courts have generally accepted the practice.

The second area of specificity concerns the standards a board promulgates in regulating the practice of an occupation. The standards must be specific enough so that a practitioner can know what conduct is permissible and what is not. It is argued that the demise of the delegation doctrine and the vesting of broad power in professional boards makes it imperative that conduct standards, particularly, the definition of "unprofessional conduct," be spelled out in specific terms.

Rationality

To meet the rationality requirement, a regulatory scheme must be relevant to the practice of the occupation being regulated, in terms of protecting the public. The rationality requirement has been especially effective against such provisions as age, citizenship and residency requirements for licenses. It has also been applied quite successfully against license examinations which do not relate to the practice of occupation. Successes in these areas suggest that other requirements, such as education and experience, might be challenged on a selective basis.

Fairness

The fairness requirement pertains to the procedural aspects of due process. An individual is entitled to a fair hearing before a fair tribunal.

"Fair tribunal" means that those sitting in judgment have no prejudices or vested interests in a case. A large majority of boards consist totally of practitioners of the occupation regulated. Most are appointed from a list submitted by the professional association. In many states, the boards serve as prosecutor, judge and jury.

It has been argued that this traditional board make-up does not constitute a fair tribunal, but the courts have not agreed. Generally, they have ruled that board members who are practitioners are not necessarily prejudiced. In fact, the courts have recognized that practitioners are most competent to rule in technical matters.

The courts have, however, ruled against board membership that is obviously prejudiced, as in the case of Gibson v. Berryhill.²³ In this case the Alabama Optometric Association filed charges of "unprofessional conduct" against licensed optometrists working for the Lee Optical Company. They were charged with violating Alabama law prohibiting the practice of optometry by employees of a business corporation. The case was heard by the State Board of Optometry. The Lee employees filed suit in district court, charging that the membership of the Board would not permit them a fair hearing.

The district court ruled that the membership did indeed violate the plaintiffs' right to due process. The Board was comprised solely of members of the Alabama Optometric Association, membership in which was limited to optometrists in private practice, even though corporate optometrists constituted half the practicing optometrists in the state. The case was appealed to the Supreme Court, which agreed with the district court that "...the Board members' pecuniary interest disqualified them from passing on the issues."²⁴

First Amendment

The federal courts have not been hesitant in ruling in occupational regulation cases involving first amendment rights. The courts seem to place a higher priority on first amendment rights than on economic rights, which are less clearly defined.

A first amendment case which is having a significant impact on occupational regulation is Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council.²⁵ The Consumer Council brought suit against the Board, challenging the constitutionality of a Virginia law which banned advertising the price of prescription drugs. The Supreme Court ruled:

The right to know is the foundation of the First Amendment; it is the theme of this suit. Consumers are denied this right by the Virginia statute.... Enforcement of the ban gives no succor to public health; on the contrary, access by the infirm or poor to the price of prescriptions drugs would be for their good.²⁶

Antitrust

The essence of the Sherman Antitrust Act is summed up in Section 1 of the Act. It states that

Every contract, combination in the form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several states, or with foreign nations is declared to be illegal...²⁷

Occupational regulation has escaped application of Sherman in two ways. First, state economic regulation has been exempted by the courts. Second,

professional groups have successfully argued that "trade and commerce" pertains to the production and distribution of goods and not to professional services.

The exemption for state action was established in the case of Parker v. Brown.²⁸ California established a state program to regulate the 1940 raisin crop. The plan specified amounts of raisins to be sold and prices to be charged. A suit was filed against the state on the grounds that the plan violated the Sherman Act. The Supreme Court ruled that state action toward economic regulation was exempted from the Sherman Act. The court recognized that the California plan amounted to a restraint of trade, but they said in effect that restraint of trade imposed by act of government is acceptable.

The state action exemption and the exemption of professions from the "trade or commerce" clause for many years discouraged the Justice Department from looking for possible antitrust violations in occupational regulation. Then, in 1975, a case occurred which placed some aspects of occupational regulation under the Sherman Act (Goldfarb v. Virginia State Bar²⁹).

Goldfarb attempted to find an attorney to perform a title search for less than the fee prescribed by the state bar association. When he was unsuccessful in doing so he brought suit against the bar association on grounds that the fee schedule constituted price-fixing and was in violation of the Sherman Act. The Supreme Court upheld Goldfarb. In regard to the "professional" exemption they remarked:

We cannot find support for the proposition that Congress intended any such sweeping exclusion (of Sherman). The nature of an occupation alone does not provide sanctuary from the Sherman Act.... Congress intended to strike as broadly as it could in Section 1 of the Sherman Act and to read into it so wide an exemption as that urged on us would be at odds with that purpose.³⁰

As a result of Goldfarb, the Justice Department stepped up its activities with regard to occupational regulation. A new section was created under the Antitrust Division, the purpose of which was to investigate professional practices which might constitute restraint of trade. This effort has already led to suits against professional associations whose practices have been found to be objectionable. The American Association of Anesthesiologists has been sued for price-fixing and the American Bar Association for restrictions on advertising. Suits against the American Society of Civil Engineers and the American Institute of Architects have resulted in consent agreements.³¹ Other investigations are in progress.

While Goldfarb opened up practices of professional organizations to the Sherman Act, however, the state exemption doctrine still protects regulatory practices sanctioned by state law.

Federal Trade Commission

Since 1974, the Federal Trade Commission has been involved in areas of occupational regulation. Through its occupational licensure program, the FTC has undertaken investigations of various occupations' practices to determine if they are in violation of federal laws regarding trade. The courts have given the FTC broad authority to determine what is an "unfair" trade practice.

Most investigations have been carried out through the FTC regional offices; occupational groups which have been investigated or are under investigation include optometrists, attorneys, funeral directors and accountants. An FTC investigation of television repairmen is detailed in the next chapter.

The emphasis of the FTC's occupational licensure program has been toward deregulation. Several investigations have led to FTC rules which prohibit certain practices which have been deemed too restrictive. Rules have been issued on ophthalmic goods and services and rules are pending on dental practices and the funeral business. Ironically, rulemaking in this area by the FTC has been criticized as more regulation rather than less.

The authority for the FTC to make rules in this area has been questioned. Seventeen states have filed suit against the FTC, challenging its authority to preempt state law. Much of the FTC's work in occupational licensure is on hold, pending the outcome of this case. A court ruling in favor of the states could virtually stop FTC's efforts toward deregulation.

There is also legislation pending before Congress which would restrict the FTC's rulemaking authority. One approach being considered would give Congress "legislative veto" over any rule proposed by the FTC.

CHAPTER V

ECONOMIC IMPACT OF OCCUPATIONAL REGULATION

Economic Impact

Studies of licensing conducted in recent years show that licensing has significant economic impact. The restrictions licensing places on who can practice an occupation reduces the supply of practitioners and increases the cost of services. There are also indications that licensing lowers the quality of service provided.

In Florida, it has been estimated that half of the gross state product, or \$25 billion, is generated by the businesses and occupations which are regulated. The add-on cost of regulation has been conservatively estimated by the Federal Trade Commission to be between 3% and 5%. This means that the cost of regulation to Florida consumers is between \$750 million and \$1.25 billion annually.

The gross state product for Kentucky is estimated for 1979 at \$33.6 billion. Assuming that Kentucky's economy is generally similar to Florida's, one half, or \$16.8 billion, is generated by regulated businesses and occupations, and the cost of regulation to consumers is between \$504 million and \$840 million annually. It is not, of course, reasonable or desirable to eliminate all regulations; but a mere 5% reduction could result in a savings of as much as \$42 million per year to the consumer.

This chapter reviews some of the more important economic impact studies, several of which concerned electricians or contractors. Others reviewed here did not, but their findings are still largely applicable to electrical occupations, because of similarities in the mechanics of licensing.

Advertising and Prices

The impact of advertising on prices has been disputed. Some studies have concluded that advertising leads to higher prices because the seller must add the cost of advertising to his price. Other studies have indicated that advertising increases consumer knowledge, stimulates competition, and thus leads to lower prices.

A study was conducted by a Washington University economics professor, Dr. Lee Benham, in the early 1970's to determine the effects of advertising on the price of eyeglasses. Using data from a 1963 survey, he compared the prices of eyeglasses and eye examinations for a sample of 634 individuals. The sample was selected from states which had (1) complete advertising restrictions, or (2) no advertising restrictions.

As an interesting aside, Dr. Benham polled his colleagues to get their predictions on the outcome of the study. Of those polled, 100% of the marketing faculty and 40% of the economists felt that prices would be the same or lower where advertising was prohibited.

The results were just the opposite. Restrictions increased prices paid by 25% to more than 100%. The mean price of eyeglasses was \$6.70 more in states which prohibited advertising than in states which did not. The difference was greatest in Texas, North Carolina and the District of Columbia, where there was a \$19.50 mean difference. The results led Dr. Benham to conclude that restrictions on advertising reduce competition and raise prices.³²

Exclusionary Practices

Dr. Elton Rayack, Professor of Economics at the University of Rhode Island, conducted a study of twelve non-professional occupations in Rhode Island, Massachusetts and Connecticut. One of the occupational groups studied was electricians. The study examined various elements of occupational licensing. It was designed to determine whether occupational licensing is primarily a restrictive device to protect those already licensed from competition.

The study found that the licensing process generally encouraged work restrictions, jurisdictional disputes and anti-competitive policies. It discouraged reciprocity, investigation of consumer complaints and disciplinary action against licensees. Further, the study found that licensing boards are comprised predominantly of members of the regulated group, who have a vested interest in protecting those already licensed.³³

Probably the most interesting finding was the direct relationship between license examination scores and the job market. The study empirically proved a positive correlation between examinations and the unemployment rate. As the unemployment rate rose, the failure rate on license examinations also rose. This led to the conclusion that license examinations are used to restrict entry and protect those licensed from additional competition.

Florida Contractor Exam

The findings of the Rayack study on license examinations are corroborated by a situation which occurred in Florida several years ago. Contractors are licensed in Florida by the Construction Industry Licensing Board. The Board administers a written examination to all qualified applicants.

In 1973, 2,149 applicants were tested for general contractor licenses.³⁴ They all failed. The Board succumbed to pressure from the irate builders and agreed to curve the results. After regrading, 1,887, or 88%, passed. This indicated either that Florida sanctioned incompetent contractors to build, or the testing process was not an effective means of determining competency.

This incident received a great deal of press coverage, including an article in the Wall Street Journal, all of which prompted the Florida legislature to conduct an investigation of testing by licensing boards. The investigation led to changes in testing policy, particularly to the use of professionally developed tests whenever possible. Today, testing policies and procedures are being continually reviewed as part of Florida's "sunset" law.

Study of Television Repairmen

One of the most enlightening studies on occupational regulation was conducted by the Federal Trade Commission in 1974. The FTC studied regulation of the television repair industry in three geographic areas: Louisiana, which has mandatory licensing for television repairmen; California, which requires registration and has a unit to investigate fraud; and Washington, D.C., which has no regulation.

The study was conducted by having twenty identical repairs of television sets made in each area. The results were as follows:

1. The cost of television repairs was 20% higher in Louisiana than in California or Washington, D.C.
2. The incidence of "parts fraud" was the same in Louisiana, with its licensing, as in Washington, D.C., with no regulation.
3. The incidence of "parts fraud" was significantly lower in California than in the other two areas (20% as compared to 50%).³⁵

There are several conclusions which can be drawn from this study. First, and most important, licensing does not necessarily protect the consumer. In fact, licensing may give the consumer a false sense of protection. Second, licensing results in higher prices, as a result of a decrease in the supply of practitioners. Louisiana showed 33% more televisions per technician than the other areas. Finally, the study would indicate that lesser degrees of regulation may be more effective than licensing in protecting the public.

Quality of Service

The impact of regulation on quality of service is even more difficult to measure than the impact on supply and prices. An ambitious study in this area was undertaken in 1975 by Sidney Carroll and Robert Gaston, Professors of Economics at the University of Tennessee. The two-year study involved thirty-one occupations and was funded by a federal grant.

The study was based on the assumption that the purpose of licensing is to assure quality of service above a certain minimum standard. The study attempted to measure the quality of service to determine if this purpose was being achieved. Obviously, the most difficult problem in setting up the study was how to measure quality. It was decided to select quantitative measures to serve as proxies for quality. Some occupations, such as health area occupations, were dropped from the study when quality proxies could not be identified.

The study found that licensing has a definite impact on both the quantity and quality of service. The more restrictive licensing becomes, the lower the quantity and, it seemed, the quality of services the consumer receives. The researchers concluded that licensing produces a "Cadillac effect." They compared licensing to a situation where only Cadillacs could be manufactured and sold. Those people with the price of a Cadillac could afford a car; the rest would not even have the choice of buying Chevrolets or other less expensive models.³⁶

One of the occupational groups studied was electricians. The proxy measure for this field was the number of deaths by accidental electrocution. The study showed a correlation between restrictive licensing and the rate of accidental electrocutions. As restrictions increased, so did the rate of electrocutions.³⁷ One conclusion which can be drawn from these results is that the reduction in the supply of electricians and the increase in prices brought about by licensing forces more of the public to attempt their own electrical work, which leads to a higher rate of electrocution.

California Contractors

California contractors are tested and licensed by the Contractor's Licensing Board. A recently completed study of the impact of regulation on the quality of these contractors used consumer complaints as an index of quality.

A basic premise of the study was that consumer complaints result from dissatisfaction and that the greater the dissatisfaction, the greater the number of consumer complaints. When the number of complaints was compared to the number of licensees, it was seen that complaints rose as the number of licensees grew, but at a greater rate.³⁸ If complaints are a valid index of quality of service it may be inferred from this study that the licensing process has not had a positive effect on the quality of contracting services.

CHAPTER VI

THE NEED TO REGULATE ELECTRICAL OCCUPATIONS

The states of Virginia, Michigan and Minnesota have developed formal procedures and criteria for reviewing new licensing proposals. These procedures are essentially two-step processes. First, a determination is made on the need to regulate. What is the nature and extent of potential harm to the public and how will regulation alleviate or prevent this? Second, what is the most appropriate and effective means of regulation? Is the threat severe enough to warrant licensing or will a lesser degree of regulation suffice?

This type of inquiry is appropriate for electrical occupations, and indeed essential. Does the need exist to regulate electrical occupations? If so, what form of regulation should be employed? This chapter is devoted to determining need and exploring the various regulatory alternatives.

Causes of Fires

Fires may be caused by improperly installed electrical wiring. This appears to be the primary threat to public safety from the practice of electrical occupations. This section reviews the nature and extent of this threat by analyzing available data on the causes of fires.

National Statistics

The National Fire Protection Association (NFPA) conducted a five-year study of fires involving loss of life. NFPA is a private organization established to promote the science and improve the methods of fire protection and fire prevention. Electrical fires accounted for 7.5% of the fires studied, ranking them third. The leading cause was smoking, 56%; heaters were second, 13.8%. A list of causes, along with a list of materials ignited and locations of fires, is contained in Table II.

Improper wiring is not the only cause of electrical fires. They may be caused by outmoded electrical equipment, such as old wire with insulation deteriorated by age. They may also be caused by abuses of electrical systems or malfunctioning of electrical appliances. Unfortunately, statistics on electrical fires are generally not broken into subcategories. Several experts have offered opinions, however, that more electrical fires are caused by outmoded and abused systems than by improper installations.

Statistics very similar to those reported by the National Fire Protection Association were contained in a report issued in 1978 by the National Fire Data Center under the U. S. Department of Commerce.³⁹ This report showed that most fires (69.8%) occur in homes, with less than 5% occurring in places of public assembly. Cooking was listed as the leading cause of residential fires (18%), followed by smoking (13%), heating (13%), suspected incendiarism (11%) and electrical distribution problems (7%).

TABLE II

FIVE-YEAR STUDY ON
LOSS OF LIFE BY NFPA

CAUSES OF FIRES STUDIED

Smoking	56 %
Heaters	13.8%
Electrical	7.5%
Cooking Equipment	7.2%
Arson	4 %
Other	11.5%

MATERIAL IGNITED

Bedding	46.4%
Upholstery	42.5%
Clothing	6.6%
Other	4.5%

LOCATION OF FIRES

Living Rooms & Dens	33.8%
Basement	25.7%
Kitchen	16.2%
Bedroom	12.1%
Bathroom	4 %
Garage	1.4%
Outside	1.4%
Other	5.4%

SOURCE: National Fire Protection Association

FIVE YEAR STUDY OF LOSS OF LIFE

CAUSES OF FIRES MATERIAL IGNITED LOCATION OF FIRES

SMOKING 56.0%
HEATERS 13.8%
ELECTRICAL 7.5%
COOKING EQUIP. 7.2%
ARSON 4.0%
OTHER 11.5%

BEDDING 46.4%
UPHOLSTERY 42.5%
CLOTHING 6.6%
OTHER 4.5%

LIVING ROOMS & DENS 33.8%
BASEMENTS 25.7%
KITCHENS 16.2%
BEDROOMS 12.1%
BATHROOMS 4.0%
GARAGES 1.4%
OUTSIDE 1.4%
OTHER 5.4%

Electrical distribution fires also accounted for 7% of fire injuries but only 4% of fire deaths. Fire death rates are lowest in communities of 50,000 to 100,000 and highest in communities of less than 5,000 and more than 1,000,000. Table III shows fire death rates by states. Of the twelve states with the highest rates (42 or more deaths per million population), only two states have statewide inspection programs. Eleven of these states license electrical contractors. In comparison, six of the twelve states with the lowest death rates (less than twenty-six deaths per million population) have inspection programs. Ten of these states license electrical contractors. Two of these states, Kansas and Wisconsin, have no licensing or inspections.

State Statistics

A survey was made of other states to secure statistics on causes of fires. Data received could not be used for comparison, however, because states do not have uniform reporting procedures and there are no standard definitions or classifications of fires. The United States Fire Administration in the Department of Commerce is developing a uniform state reporting system, but data from the system was not available for this study.

A few states have developed computerized systems for compiling fire statistics. California has one of the more sophisticated systems, although California does not have a complete breakdown on electrical fires. The California fire incident reporting system shows the following percentages of fires caused by "electrical distribution equipment": 1974, 4.8%; 1975, 4.6%; 1976, 5.3%; and 1977, 5.7%. The category "electrical distribution equipment" includes fires caused by lamps and extension cords, as well as fixed wiring, and related fires. Fires caused by appliances and equipment, cooking equipment, air conditioning and heating systems are listed separately.

Recently, Ohio has developed a reporting system with the same code breakdown as California, except that Ohio computes statistics on the subcategories of major items. Table IV shows a breakdown by subcategory for 1977.

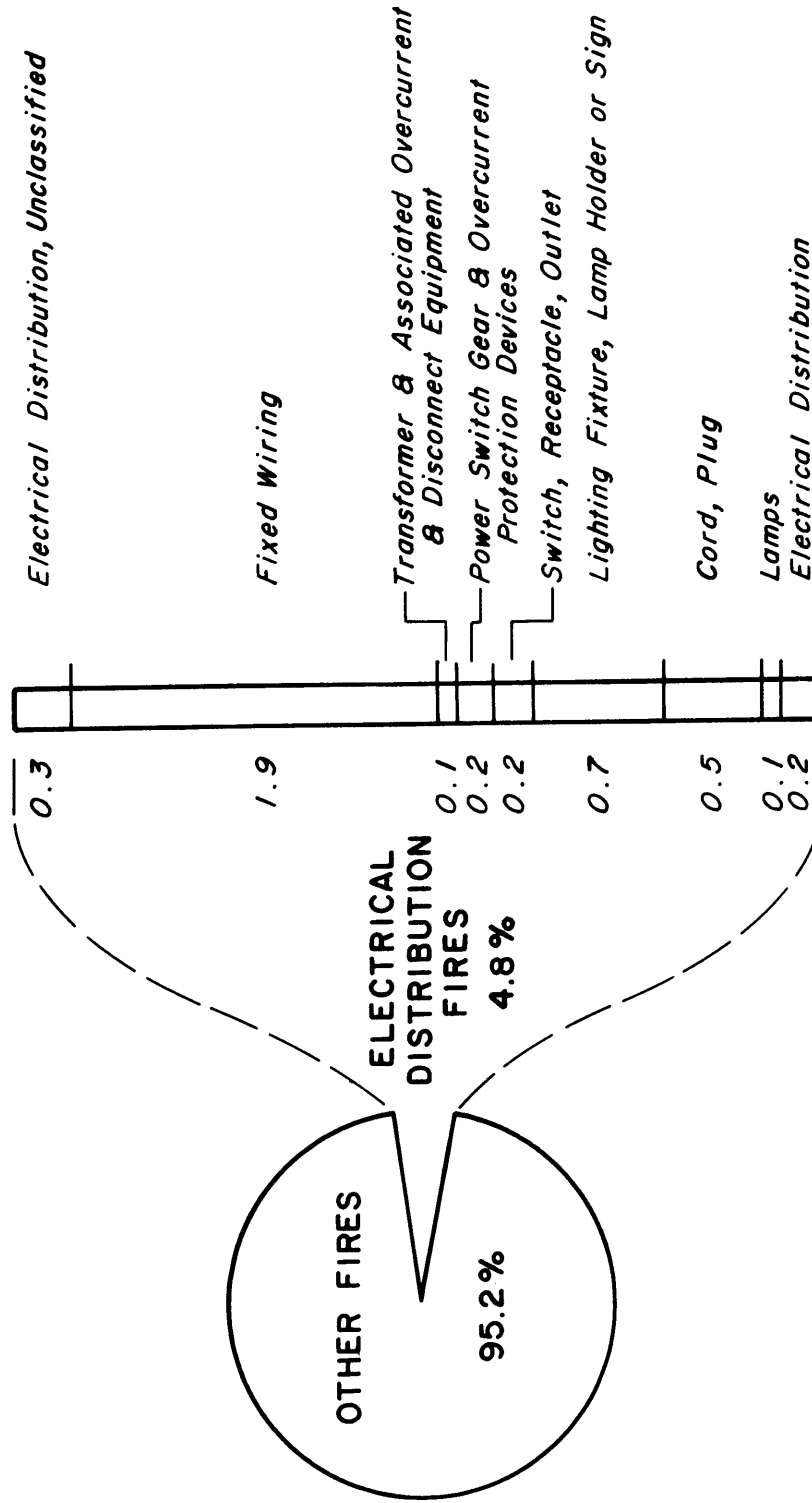
TABLE IV
CAUSES OF ELECTRICAL FIRES

	<u>No. of All Fires</u>	<u>%</u>
Electrical Distribution Equipment	3274	4.8
Electrical distribution, unclassified	243	.3
Fixed wiring	1305	1.9
Transformer and associated overcurrent and disconnect equipment	129	.1
Meters	32	
Power switch gear & overcurrent protection devices	178	.2
Switch, receptacle, outlet	187	.2
Lighting fixture, lamp holder or sign	482	.7
Cord, plug	402	.5
Lamps	119	.1
Electrical distribution, other	197	.2

SOURCE: Ohio State Fire Marshal

FIRES CAUSED BY ELECTRICAL DISTRIBUTION EQUIPMENT

OHIO - 1977



SOURCE: Ohio State Fire Marshal

Oregon has developed a breakdown which is different from that used by California or Ohio. Under the major category "electrical other than heating," there is a subcategory "wire, short circuit or arcing." This subcategory may come closest to isolating fires which are caused by improper installation. The following statistics are reported for this subcategory; 1974, 2.9%; 1975, 3.4%; and 1976, 2.3%.

Kentucky Statistics

The Kentucky Fire Marshal's Office, under the Department of Housing, maintains fire statistics for Kentucky. Statistics for calendar year 1977 show that 365 fires, or 7.76% of all fires, were caused by "electricity." A complete list of the causes of fires, amount of loss for that year is contained in Table V. The category "electricity" includes all types of electrical fires and not just those caused by improper installation. It should be noted also that 2,367 fires, or 49.7%, were of "unknown" origin.

Beverly Hills Fire

On the night of May 28, 1977, the Beverly Hills Supper Club in Southgate, Kentucky, caught fire and burned, with 164 lives lost and millions of dollars in property damages sustained. A team from the State Fire Marshal's Office, which investigated the fire, concluded that the probable cause was electrical. Supporters of legislation to license electrical contractors and electricians cite the Beverly Hills fires as an example of the need to license to protect the public. Since this catastrophe has been used as a rationale for licensing, it might prove helpful to look at circumstances surrounding the fire.

A massive study of the Beverly Hills fire was undertaken by several state and federal agencies, and in September, 1977, a comprehensive report was submitted to the governor. This report contains significant information about the wiring in the Beverly Hills, that an on-site investigation of the remains of the Beverly Hills' electrical system revealed serious violations of electrical codes and sound electrical wiring practices.⁴⁰

Wiring at the Beverly Hills was described as an "electrician's nightmare." Just the obvious violations included

failure to install a box or fitting at each outlet, switch point, junction point, or conductor splice; absence of covers for outlet boxes; failure to securely fasten in place boxes, fittings, and cabinets; failure to place all wiring in metal raceways; absence of fittings; lack of proper grounding; absence of bushings; excessive number of conductors in a box; improper transformer installation; failure to close unused openings in boxes and fittings; and failure to make electrical installations so as to reduce to a minimum the possible spread of fire through fire-stopped partitions and other similar walls.⁴¹

According to documentation, code violations occurred over a period of several years. The Beverly Hills burned once before, on June 21, 1970. The State Police were not able to determine the cause of the fire. The club was remodeled and opened for business again in February, 1971. There was concern

TABLE V

FIRE LOSS IN KENTUCKY BY CAUSE*

January-December, 1977

<u>CAUSE</u>	<u>FIRES</u>	<u>AMOUNT OF LOSS</u>
Chimneys	121	\$ 701,004.00
Conflagration	3	2,681,535.00
Electricity	365	4,599,735.00
Explosives	38	322,959.00
Exposure	99	275,060.00
Fireworks	2	6,387.00
Friction	9	124,676.00
Gas	28	180,629.00
Hot Ashes	83	241,002.00
Hot Grease	518	982,806.00
Hot Irons	184	1,313,419.00
Incendiarism	109	1,373,879.00
Lightning	298	2,184,204.00
Open Lights	64	310,534.00
Matches	128	595,480.00
Sparks	4	72,654.00
Steam	4	28,242.00
Spontaneous Combustion	14	336,227.00
Petroleum	37	233,315.00
Rubbish	41	215,114.00
Stoves	214	1,476,218.00
Unknown	2367	23,688,847.00
Grass Fire	24	110,197.00
Christmas Tree Decorations	3	50,293.00
L. P. Gas	2	12,481.00
Rail	0	
Highway	0	
Water	3	187,301.00
Pipeline	0	
Grand Total	4762	\$42,286,198.00

*SOURCE: Kentucky Department of Housing, Buildings
and Construction

at the time that the structure failed to comply with state safety codes in at least ten areas. One of the deficiencies noted was "absence of a copy of the electrical inspection certificate."⁴² State and local officials were reported in the news media as stating that the alleged violations had been corrected.

An electrical fire occurred in Beverly Hills on August 24, 1974, apparently from a short circuit in an electrical control panel. The fire was extinguished and the panel was repaired by an electrician. In December, 1975, remodeling of a room of the club included the addition of a suspended ceiling with recessed lighting. There is no evidence that a permit was secured for this work or that an electrical inspection was made. There were apparently several other occasions when remodeling was done without a permit or inspection.

During the investigation, interviews with electricians who installed wiring at Beverly Hills showed that they knew they were violating electrical codes when they performed the work. One of the electricians recounted advising the owner that the non-metallic wiring they were using should be run through a metal conduit, according to the code. The owner replied that metal conduit was too expensive and that he had permission to put in that type of wiring without it. Another electrician, when asked about the non-metallic wiring said, "I would be lying if I said we didn't use it because I can go out there and see it."⁴³ These admissions, in the opinion of the investigators, confirmed violations of the state Standards of Safety and possibly the criminal code. The investigators also pointed out that, "It is, of course, no defense for an electrician who intentionally makes an improper installation to prove that he acted at the direction of his employer, no matter how demanding."⁴⁴

Consumer Complaints

Consumer complaints provide another index of the harm to the public perpetrated by occupations. This section reviews the nature and extent of complaints against electricians and other occupations involved in the construction industry. Consumers in Kentucky may lodge complaints with the Consumer Protection Division of the Attorney General's Office. The City of Louisville and Jefferson County also administer consumer affairs programs which receive consumer complaints.

Attorney General

An important function of the Consumer Protection Division is to receive and investigate consumer complaints. Cases involving fraud are referred to the Litigation Section for possible litigation, while complaints not involving fraud are referred to the Consumer Services Section for mediation. The number of complaints received has grown as more consumers have become aware of the complaint process. In 1977, the Consumer Protection Division received 4,449 written complaints.⁴⁵

In 1976, complaints were categorized for the first time by type of product or type of business practice. In 1977 the reporting was refined to provide an even more detailed breakdown.

The top three complaints in 1977, in order, were against mail order companies, new car companies and sellers of used vehicles.

Statistics were also compiled by types of goods and services. Complaints in Table VI were listed under the category "Home Remodeling, Construction and Maintenance."

TABLE VI

CONSUMER COMPLAINTS

Home Remodeling, Construction and Maintenance

1. Mobile/Modular Home Dealers.....	124
2. Home Builders-New Construction Companies.....	115
3. Heating and Central Air-Conditioning Companies.....	97
4. Other Home Remodeling/Construction/Maintenance Companies, Plumbers, Painters, Carpenters, Electricians.....	67
5. Exterminating Service Companies, Home Remodeling Contractors.....	48
6. Building Material/Supply Companies.....	38
7. Roofing Contractors.....	28
8. Siding Contractors.....	25
9. Waterproofing Companies and Water Conditioners.....	18
10. Paving Contractors.....	13
11. Swimming Pool Companies, Alarm Systems Dealers.....	6

SOURCE: Kentucky Attorney General's Office

Sixty-seven complaints were reported against "plumbers, painters, carpenters, and electricians," but only one of these was against an electrician. There were, however, significant numbers of complaints against other occupational groups in the construction industry. Of note, there were 115 complaints against new home builders, 97 against heating and central air conditioning companies, and a total of 181 against other types of construction contractors.

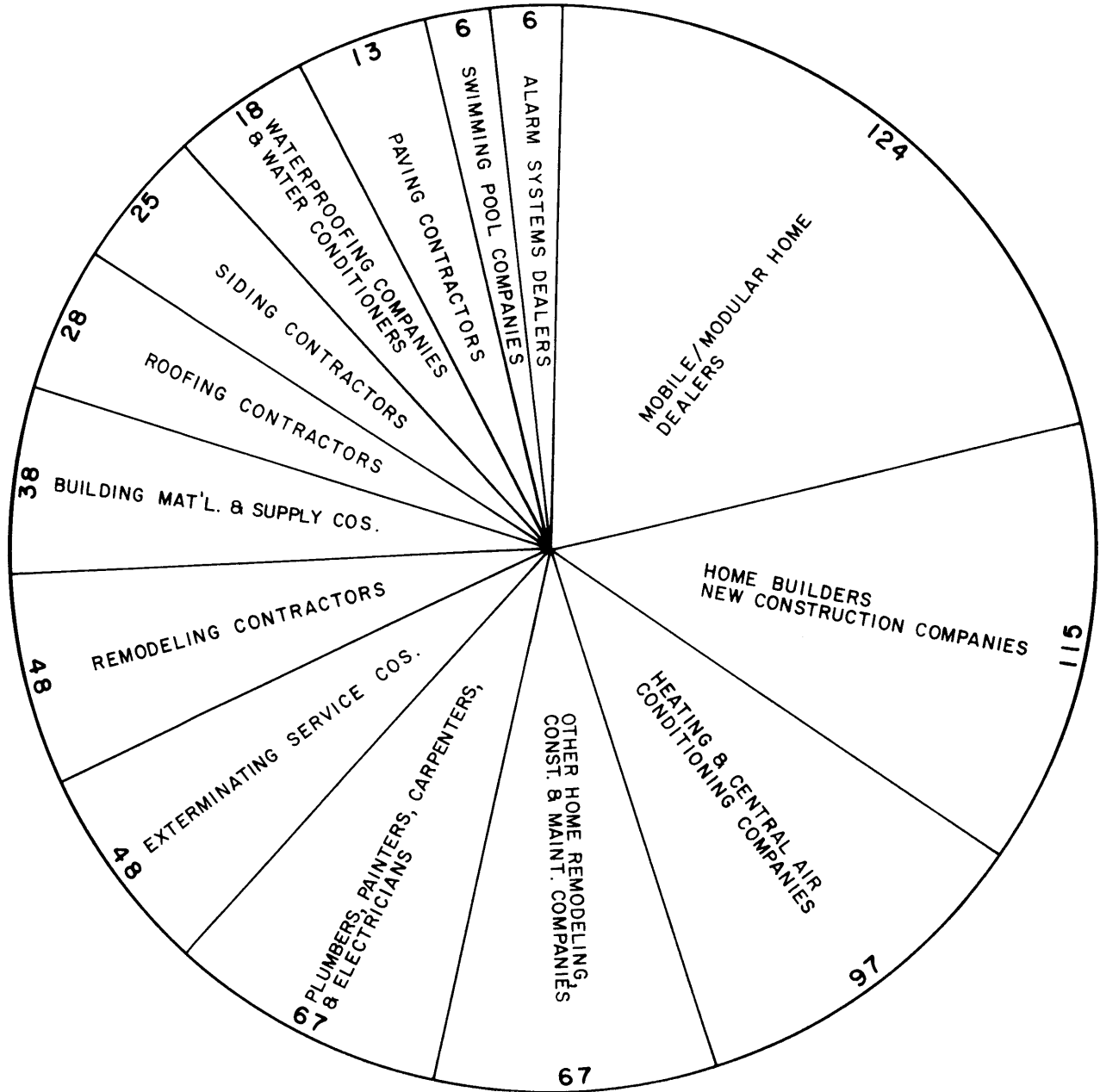
Louisville/Jefferson County

The City of Louisville Department of Consumer Affairs reported 1,225 written complaints and 9,429 phone inquiries and complaints for the fiscal year ending June, 1978.⁴⁶ A breakdown of complaints by category is not maintained, but the top ten complaints are compiled. Electrical contractors and electricians are not on the list. Home remodeling contractors ranked number four.

Jefferson County Consumer Protection registered 1,245 complaints during calendar year 1975. Four of these were against electrical contractors, accounting for only three-tenths of a percent of the total.⁴⁷ Of those four complaints, one was actually more of a landlord-tenant complaint, one was a warranty dispute, one involved overcharging and one concerned alleged faulty wiring.

CONSUMER COMPLAINTS (1977)

HOME REMODELING, CONSTRUCTION & MAINTENANCE



SOURCE: Consumer Protection Division
Ky. Office of Attorney General

Alternatives to Licensing

State legislatures often view licensing as a yes or no proposition, but usually this is inappropriate. If a threat to public health or safety exists, the nature and extent of the threat may vary considerably among different occupations. The type of regulation enacted should be consistent with the threat involved. The regulation which should be enacted is the one that adequately protects the public with the least restriction. Studies indicate that for certain occupations an overly restrictive regulation, such as licensing, does not protect the public, and in fact may have a detrimental effect.

There are a number of alternatives to licensing which may be used to regulate effectively. These alternatives are discussed in this section, as are approaches to licensing which lessen restrictions.

Consumer Protection Legislation

One approach to public protection which has gained popularity in recent years as a result of increased consumer awareness, is "consumer protection," or "trade practice," legislation. This type of legislation regulates activities that could have adverse effects on the consumer. The major advantage of this approach is that it focuses on specific problem areas rather than on occupations. The result is public protection without the sometimes harmful restrictions of occupational licensing.

The Kentucky Consumer Protection Act (KRS Chapter 367) was passed by the General Assembly in the 1972 regular session. The Consumer Protection Act created a Consumer Protection Division in the Department of Law (Attorney General's Office). The Consumer Protection Division was assigned many responsibilities, the major ones being to mediate consumer complaints, prosecute fraud cases, intervene before rate-making bodies, research and investigate consumer matters and promote consumer education.

KRS 367.170 of the Consumer Protection Act makes it unlawful for anyone to engage in "unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce..." Under KRS 367.190 the Attorney General may seek in circuit court an injunction or a restraining order if he has reason to believe a person is committing, has committed, or is about to commit any act or practice declared unlawful under the Consumer Protection Act. He may also seek financial restitution for the individual who is the victim of the unlawful act or practice. If the person guilty of an unlawful act is a license holder, the Attorney General may in addition ask that the license to practice be revoked. The Attorney General may also seek voluntary compliance in lieu of litigation.

Another mechanism for protecting the public was established by the General Assembly in the 1976 special session. A small claims division of each circuit court was created as part of the restructuring of the state court system directed by constitutional amendment. The purpose of the small claims court (KRS 24A.200-24A.360) is to provide a fast and inexpensive vehicle for a person seeking redress in non-criminal cases involving \$500 or less.

A trial date must be set on any claim filed and the date cannot be less than twenty days nor more than forty days from the filing date. Trials are conducted before a judge but the proceedings are informal and the plaintiff may represent himself.

Code

The public may be protected by the adoption of a code prescribing minimum standards by which certain work must be performed. This approach regulates actual work performed rather than the occupations involved and, in doing so, focuses on results rather than qualifications. Anyone may perform work but it must be performed in accordance with the code. The public is protected at the point of impact. This is the approach taken in HB 44.

The key to the code approach is strong enforcement, which is usually accomplished through an inspection program. A permit is generally required so that officials may keep track of work being performed. Upon completion, an inspection is made to insure that the work has been performed in accordance with the code.

The code approach is most effective when two conditions are present. First, the work performed must be readily observable. The nature of construction work makes codes particularly applicable to it. Second, the nature of the work must be such that any code violation can be corrected without harm to the public. This approach should not be used in areas like medicine, where actions completed are many times irreversible.

Business License

Another approach to regulation is to license businesses rather than individuals. Standards may be established under which a business shall operate, and inspection and enforcement responsibility, if necessary, may be assigned to an existing public agency.

Restaurants are an example of business licensing. In most states restaurants are required to be licensed and adhere to established health standards. Periodic inspections are made, usually by the public health agency, to determine compliance. This is a less restrictive and more effective means of regulating food service than licensing waitresses, chefs and other restaurant personnel.

Registration

There are three commonly acknowledged types of occupational regulation: registration, certification and licensing. These terms are often used interchangeably, which causes confusion. For example, Kentucky has "registered nurses" and "certified teachers," but the nature of the regulation is licensure, since unqualified individuals are prohibited from practicing in those fields.

"Registration," in the common sense of the word, is the least restrictive form of regulation. In its simplest form it consists of a public body's maintaining a list of practitioners. This method lets the public know who is engaging in an occupation. It should be used only when the risk to the public is minimal. Registration can, however, be used in conjunction with practice standards to create a stricter regulatory scheme for occupations with somewhat higher risks.

Certification

Certification is a method which gives consumers information about the qualifications of practitioners so they can make informed choices. To be certified an individual must meet training and experience requirements and often must pass a competency examination. Those not certified may practice the occupation but cannot call themselves "certified." The consumer has a choice of a practitioner who is certified or one who is not. Many professional associations have certification programs, which are effective in lieu of government regulation. Certification should be used when the risk to the public from unregulated practice is not substantial.

Licensure

Licensure is the most restrictive form of regulation. Licensure establishes minimum standards; any individual who does not meet the minimum standard cannot practice. Licensure is the regulation of last resort and should be used only when the threat to the public is substantial.

When licensing is the appropriate choice, it may be made most effective by avoiding those restrictions which serve no public purpose. Citizenship, residency and age requirements should thus be eliminated. Other qualifications should be minimum qualifications and should be relevant to the occupation. Tests should also be job-related, validated and prepared by test experts. Licenses from other states should be recognized by endorsement (when requirements are equal or greater). Anticompetitive practices, such as bans on advertising and bidding, should not be permitted.

Finally, administration of licensure should be assigned to an entity responsive to public needs. Studies have shown that occupation-dominated licensing boards tend to pursue policies which primarily protect the occupation. Even when boards are not guilty of this, the mere appearance of self-interest is sufficient to undermine public confidence.

There are a number of approaches being taken to improve licensing accountability. Many states are centralizing boards under state "umbrella" agencies. Newly created licensing programs are, whenever possible, being assigned to existing state agencies. Public members are being placed on licensing boards. California, for example, now requires a majority of public members on most of its licensing boards.

CHAPTER VII

FINDINGS AND RECOMMENDATIONS

Findings

Occupational regulation has so proliferated that more than nine hundred occupations are now licensed or otherwise regulated by states. This proliferation has made many question the need for more regulation and, indeed, has fueled the fires of public sentiment in favor of deregulation. More than twenty states have enacted "sunset" laws to subject licensing boards to reevaluation and possible termination.

Yet the quest for deregulation should not overshadow real needs for regulation. The sole purpose for licensing, or any other form of occupational regulation, is to protect the public, and it is important to evaluate proposed regulation carefully in this regard. In reviewing the need to regulate electrical occupations, or for that matter any occupation, there are two issues involved: Is the public being harmed by misdeeds or failings within the occupation? and, if so, what form of regulation will most effectively address the problems?

In assessing public harm, attention should be focused on actual harm and the real probability of harm, rather than the threat of harm. There is some threat to the public from any occupation under extreme or exceptional circumstances. In theory, an incompetent rainmaker could cause a flood, but the probability of this happening is remote and based on speculation rather than empirical evidence.

The nature of public harm should also be considered. Of particular importance is the impact of error. There is a greater need to regulate an occupation where an error committed by a practitioner is irreversible, such as in the field of medicine. The need diminishes with occupations whose errors may be corrected and, consequently, the type of regulation employed may be less restrictive.

The rationale for licensing is frequently the protection of the public from "fly-by-nighters" and "rip-off artists." There are several points to be made about the legitimacy of this argument. First, economic harm can be effectively regulated by means other than occupational licensing. Legislation designed to protect against fraudulent business practices has been most effective. Second, licensing has little effect in stopping the true rip-off artist. Finally, there is a certain level of risk the public must incur in any type of economic transaction. Government cannot, and should not, attempt to guarantee people a totally risk-free existence.

The primary gauge of public harm in this study is the incidence of fires caused by improper wiring. Available data indicates that roughly 7% of all reported fires are "electrical in origin." This figure includes, however, fires caused by outmoded equipment and abuses of electrical systems, as well as improper wiring. Opinions have been offered that improper wiring accounts for a relatively small percentage of electrical fires.

While electrical fires account for 7% of all fires, they account for only 4% of fire deaths. Most fire deaths (67.8%) occur in residences, while only .1% occur in places of public assembly. This statistic would indicate that fires like the one at the Beverly Hills Supper Club are not common occurrences.

Would state licensure of electrical contractors and electricians have prevented Beverly Hills? There is no evidence to substantiate claims that it would have, or that it would not have. It is apparent that local licensing was not effective. Electrical contractors and electricians who worked on Beverly Hills were duly licensed by the Northern Kentucky Electric Authority. Each passed a written competency examination that appears to be one of the more valid examinations given by local licensing boards. Yet licensing restrictions did not prevent Beverly Hills.

An even more disturbing fact is that no action was taken against licensees who admitted committing code violations, and it appears that these individuals are still performing electrical work. Given a general tendency of licensing boards to be lax on enforcement, there is no reason to believe that state licensing would offer improvement.

The Beverly Hills fire was electrical in origin but a number of other factors contributed heavily to the carnage. There was an almost complete breakdown of code enforcement mechanisms. Required building permits were not secured and required inspections were not made. There was evidence of overcrowding and of fire exits being obscured or blocked. Finally, warning of the fire was not given until well after it had been discovered. Many of these problems were addressed in House Bill 44, which should deter future incidents of this nature.

Another interesting fire statistic is the state rate of fire deaths. Only two of the states with the highest death rates had inspection programs, while six of the states with the lowest death rates had inspection programs. A majority of states in both categories licensed electrical contractors. It may be surmised from these statistics (1) that inspections are an important factor in reducing fire deaths, and possibly in reducing the number of fires; and (2) that licensing electrical contractors may have very little, if any, effect on the number of fire deaths.

The other index of public harm used herein is consumer complaints. For the years reviewed, there were few complaints lodged against electrical contractors and electricians. There were, however, a significant number of complaints lodged against other types of contractors. A large number of complaints involved new home builders, heating and air conditioning companies and remodeling contractors. When contractor complaints are totaled, they become the single largest category of complaints recorded by the Attorney General's Office. If consumer complaints are a valid index, there appears to be more justification for some type of regulation for contractors in general than for electrical contractors.

Types of consumer complaints against contractors need to be examined at any rate. A review of eighty-five consumer complaints involving "heating and air conditioning companies" revealed that three-fourths of the complaints pertained to problems other than allegations of incompetent work. The largest single complaint was against defective equipment, accounting for one third of the total complaints.

Many consumer complaints involve misunderstandings or differences in expectations between the consumer and the contractor. No amount of government control can eliminate disagreements. The best government can do is protect against fraud and ensure that work is performed according to applicable standards. Beyond that, the consumer must assume a certain amount of risk. Disagreements are resolved in the marketplace, and contractors who do not satisfy consumers do not stay in business. This is an area where better consumer education could be more effective than additional regulation.

It may be concluded that there is some public harm in the form of electrical fires and certain consumer problems, but that the extent of harm is not great. The next step is to determine what type of regulation will most appropriately and effectively address the problems. It is extremely important that solutions match the problems in terms of costs. Regulation has a significant economic impact and there is a need to ensure that the public protection derived at least balances or offsets the added cost to consumers. Studies show that regulation which is more restrictive than warranted can lead to excessive costs and may, in some cases, harm rather than protect the public. The delicate balancing of interests is best described as follows:

What are needed are measures that will provide protection against those demonstrably deficient in capability or integrity without in the process creating artificial limitations upon career choices, work opportunities, and stimuli to provide superior service at lesser cost.⁴⁸

A considerable amount of public protection has already been enacted into Kentucky's law. The Consumer Protection Act gives the public recourse against unfair, false, misleading or deceptive practices. Small claims court provides a quick and inexpensive mechanism for recovering small sums of money. Chapter 198B provides another method of recovering claims. These safeguards appear to protect the public to a considerable extent from "economic harm."

The most important effort toward public protection has been the enactment of HB 44. Through this legislation, Kentucky has initiated what would appear to be the most effective approach to regulating the construction industry. Under Chapter 198B, a state agency, the Department of Housing, Buildings and Construction, has been created to regulate construction work. A uniform state building code is being adopted and it will contain an electrical code. Building plans are to be reviewed and approved, and permits secured prior to construction. Inspections are to be made by certified inspectors and work approved before a structure may be occupied. When this program is fully implemented, it should provide adequate public protection. Any further regulation in the construction area should be directed toward complementing and strengthening the provisions of Chapter 198B.

Recommendations

Recommendation 1. That electrical occupations not be licensed at this time at the state level, and that local authority to license be repealed.

State licensing is not recommended for several reasons. Creation of an independent, occupation-dominated licensing board would run counter to the movement toward consolidation of construction regulation under the Department of Housing, Buildings and Construction. With the regulatory program estab-

lished in Chapter 198B, licensing would constitute over-regulation and could thus be detrimental to the public. License requirements and examinations would unnecessarily restrict entry into the occupations, which would reduce the number of practitioners and increase the cost of services. In addition, research has shown that entry requirements and examinations may be manipulated to control competition and prices.

More importantly, there is no evidence from available information that state licensure of electrical occupations is warranted. The incidence of electrical fires in Kentucky is the same as the national average. There is no evidence that state licensure decreases electrical fires; in fact, statistics on fire deaths, the most uniform statistics available, indicate licensure may have the opposite effect.

Local licensing of electrical occupation does not appear to be an effective means of regulating electrical work and should be repealed. Lack of reciprocity at the local level seems to restrict labor mobility unnecessarily, which has an adverse effect on competition and prices. License examinations given by local jurisdictions are written "open book" examinations and there is no evidence that they are valid gauges of competence. More importantly, the lack of proper enforcement constitutes failure to provide adequate public protection and may lull the public into a false sense of security. Instead of licensing, local governments should direct their efforts at implementation of the building program mandated in Chapter 198B.

Recommendation 2. That all contractors involved in the construction industry be required to register with the Department of Housing, Buildings and Construction.

The program established in Chapter 198B to regulate construction should adequately protect the public. There are, however, minor additions which could be made to further strengthen the program and give the Department of Housing, Buildings and Construction better management control.

There is a need for the Department to know what individuals and businesses are providing construction services. The least restrictive way of accomplishing this is through registration. It is therefore recommended that all construction area contractors, including out-of-state contractors doing business in Kentucky, should register annually with the Department of Housing, Buildings and Construction. There should be a stiff penalty for any contractor who performs services without registering. The Department should publish annually and make available to the public a directory of registered contractors, classified according to type of contracting work performed.

Considerable thought was given in this study to recommending that contractors post a bond. Several states have a bonding requirement for contractors to demonstrate financial responsibility. The bonding market in Kentucky at this time is such that bonding is not a viable requirement. Bonds are very costly, and more important, surety companies will not write bonds without cancellation clauses. This neutralizes the consumer protection aspects of bonding. If, after full implementation of Chapter 198B, it is determined that lack of financial responsibility is a problem with contractors, further consideration might be given to the creation of a state-maintained contractor recovery fund.

Recommendation 3. That the Department of Housing, Buildings and Construction give top priority to enforcement of the state building code.

The key to the success of the building program established in Chapter 198B is enforcement. Lack of enforcement was the root problem behind the Beverly Hills tragedy. There were codes, building permit requirements and inspection requirements in effect at the time of Beverly Hills, but there was insufficient state and local enforcement. The results of the program under Chapter 198B will be no better unless sufficient emphasis is given to enforcement. An organizational unit to deal specifically with enforcement should be established within the Department, possibly at the division level. In addition, the Department should provide technical assistance and take whatever action is necessary to ensure compliance at the local level.

The authority of the Department of Housing, Buildings and Construction to deal with code violation should be reinforced. Certain legal remedies are provided for in Chapter 198B, but they require court action, which is costly and time consuming. The Department should be able to take administrative action against a contractor for code violations. The Department should be authorized to invoke appropriate disciplinary actions consistent with the severity of the violation. For serious violations, repeat offenses or violation involving fraud, the Department should be authorized to suspend or revoke a contractor's registration. In this respect, registration would function the same as licensing and would give the Department additional leverage to ensure code compliance.

Recommendation 4. That electrical inspectors continue to be certified by the Department of Housing, Buildings and Construction, but that the certification program be improved.

Another factor critical to successful enforcement is the competency of the inspectors. Since 1974, the state has certified electrical inspectors and should continue to do so. (The practice is referred to as certification but technically it is licensure, since only certified persons are permitted to conduct inspections.) There are, however, two areas in which the certification of electrical inspectors could be improved.

There should be at least two classifications of electrical inspector: residential and commercial. There is considerable difference in residential and commercial wiring, and there is some evidence that electrical inspectors who are competent to conduct residential inspections may not be competent to conduct commercial inspections. There should therefore be separate classifications with an appropriate competency test for each. The Department of Housing, Buildings and Construction recently enacted regulations creating the two classifications of electrical inspector, but there is some question concerning their authority to do this. It should be clarified in the statutes.

Improved methods to determine the competency of electrical inspectors need to be developed. Certification examinations should be professionally constructed and validated. The Department of Housing, Buildings and Construction should investigate the possibility of using a standardized examination, such as the one being used by the state of New Jersey. At least half of any examination should be performance-oriented, through the use of either on-site inspection or electrical wiring mock-ups.

Inspection fees are presently not limited by state law. Local governments may establish fees by ordinance, but in the absence of such ordinances,

electrical inspectors may charge whatever they can command. There is some evidence of "price gouging" in areas where an inspector may have a captive market. To prevent this, statutory maximums for inspection fees should be prescribed.

Conclusion

Any form of government regulation has a serious economic impact and should be approached cautiously. The 1978 Kentucky General Assembly took a bold but sound step in creating the Department of Housing, Buildings and Construction and mandating under it a comprehensive, statewide building code program. This program holds promise of providing the citizens of the Commonwealth with adequate protection. Further regulation, such as the licensing of electrical occupations, would be ill-advised at this time. What is needed now is sufficient time and a strong commitment by state and local officials to make the program work.

FOOTNOTES

1. The Council of State Governments, Occupational Licensing Legislation in the States (Chicago: 1952), p.2.
2. Occupational Licensing and the Supply of Nonprofessional Manpower, U.S. Department of Labor, Manpower Administration Monograph No. 11 (Washington, D.C.: Government Printing Office, 1969), pp. 51-57.
3. Ibid.
4. William Beard, Government and Technology (New York: MacMillan Company, 1934), pp. 493-94.
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APPENDIX 1

IN HOUSE

REGULAR SESSION 1978

HOUSE RESOLUTION NO. 127

FRIDAY, MARCH 10, 1978

Representative Al Bennett introduced the following resolution which was ordered to be printed.

A RESOLUTION urging the Legislative Research Commission to study the need to license and regulate electricians and electrical contractors.

WHEREAS, many Kentuckians are killed and hundreds more left homeless each year by fires caused by faulty electrical wiring; and

WHEREAS, the recent tragedy at the Beverly Hills Supper Club vividly illustrated the ineffectiveness of current regulation of the installation of electrical wiring; and

WHEREAS, it is the responsibility of the Commonwealth of Kentucky to protect the health, safety and welfare of its citizens through effective regulation; and

WHEREAS, there have been unsuccessful attempts to achieve more effective regulation through the licensure of electrical contractors and electricians;

NOW, THEREFORE,

Be it resolved by the House of Representatives of the General Assembly of the Commonwealth of Kentucky:

1 Section 1. The Legislative Research Commission is
2 urged to study, through the appropriate interim joint
3 committee, the need for licensure and regulation of elec-
4 tricians and electrical contractors. The study shall
5 include a review of the provisions of HB 311 of the 1978

1 General Assembly.

2 Section 2. Any recommendations the committee may
3 have shall be drafted into proposed legislation.

4 Section 3. Staff services to be utilized in
5 completing this study are estimated to cost \$10,000.
6 These staff services shall be provided from the regular
7 Commission budget and are subject to the limitations and
8 other research responsibilities of the Commission.

APPENDIX 2

CHAPTER 198B
HOUSING, BUILDINGS AND CONSTRUCTION—
BUILDING CODE

SECTION.		SECTION.	
198B.010.	Definitions.	198B.090.	Training programs for building code administration and enforcement.
198B.020.	Board of housing, buildings and construction.	198B.100.	Mobile home exemption.
198B.030.	Department of housing, buildings and construction.	198B.110.	Effective dates for uniform building code — Exemptions.
198B.040.	General powers and duties of the board.	198B.120.	Injunctions to enforce building code compliance.
198B.050.	Uniform state building code.	198B.130.	Private action for damages.
198B.060.	Local enforcement of uniform building code.	198B.140.	Hindrances of building inspectors.
198B.070.	Appeals.	198B.990.	Penalties.
198B.080.	Amendments to the uniform state building code.		

198B.010. Definitions.—As used in this chapter, unless otherwise provided:

(1) “Assembly occupancy” means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social or recreational purposes; including among others:

- (a) Armories;
- (b) Assembly halls;
- (c) Auditoriums;
- (d) Bowling alleys;
- (e) Broadcasting studios;
- (f) Chapels;
- (g) Churches;
- (h) Clubrooms;
- (i) Community buildings;
- (j) Courthouses;
- (k) Dance halls;
- (l) Exhibition rooms;
- (m) Gymnasiums;
- (n) Hotels;
- (o) Lecture rooms;
- (p) Lodge rooms;
- (q) Motels;
- (r) Motion picture theaters;
- (s) Museums;
- (t) Night clubs;
- (u) Opera houses;
- (v) Passenger stations;
- (w) Poolrooms;
- (x) Recreation areas;
- (y) Restaurants;
- (z) Skating rinks;
- (aa) Television studios;
- (bb) Theaters.

(2) “Attic” means the space between the ceiling beams of the top habitable story and the roof rafters.

(3) “Basement” means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.

(4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure affording facilities or shelter for any human occupancy, whether infrequent or regular. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a mobile home, or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if such farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products. This chapter shall not apply to any single family dwelling except those sold or constructed under a trade or brand name.

(5) Any city, county or urban county government of the Commonwealth may extend, by ordinance, the application of this chapter to those single family dwellings exempted under subsection (4) of this section, but may not enforce any building code other than the uniform state building code on such dwellings.

(6) Nothing in this chapter shall be construed to exempt single family dwellings from those provisions of the uniform state building code that relate to the national electric code and the state plumbing code.

(7) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard; including among others:

- (a) Banks;
- (b) Barbershops;
- (c) Beauty parlors;
- (d) Department stores;
- (e) Garages;
- (f) Markets;
- (g) Service stations;
- (h) Offices;
- (i) Stores;
- (j) Radio stations;
- (k) Telephone exchanges;
- (l) Television stations.

(8) "Commissioner" means the commissioner of housing, buildings and construction.

(9) "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein.

(10) "Department" means the department of housing, buildings and construction.

(11) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving education instruction; including among others:

- (a) Academies;
- (b) Care centers;
- (c) Colleges;
- (d) Kindergartens;

- (e) Libraries;
- (f) Pre-schools;
- (g) Relocatable classroom units;
- (h) Schools;
- (i) Seminaries;
- (j) Universities.

(12) "Equipment" means facilities or installations, including but not limited to, heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.

(13) "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable or explosive materials or which has inherent characteristics that constitute a special fire hazard; including among others:

- (a) Aluminum powder factories;
- (b) Charging or filling stations;
- (c) Distilleries;
- (d) Dry cleaning plants;
- (e) Dry dyeing plants;
- (f) Explosive-manufacture, sale or storage;
- (g) Flour and feed mills;
- (h) Gasoline bulk plants;
- (i) Grain elevators;
- (j) Lacquer factories;
- (k) Liquefied petroleum gas;
- (l) Mattress factories;
- (m) Paint factories;
- (n) Pyroxylin-factories, or warehouses;
- (o) Rubber factories.

(14) "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging or processing operations, except for occupancies of high hazard; including among others:

- (a) Assembly plants;
- (b) Creameries;
- (c) Electrical substations;
- (d) Factories;
- (e) Ice plants;
- (f) Laboratories;
- (g) Laundries;
- (h) Manufacturing plants;
- (i) Mills;
- (j) Power plants;
- (k) Processing plants;
- (l) Pumping stations;
- (m) Repair garages;
- (n) Smokehouses;
- (o) Workshops.

(15) "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.

(16) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable or other care or treatment, or by persons involuntarily detained; including among others:

- (a) Asylums;
- (b) Homes for the aged;
- (c) Hospitals;
- (d) Houses of corrections;
- (e) Infirmaries;
- (f) Jails;
- (g) Nursing homes;
- (h) Orphanages;
- (i) Penal institutions;
- (j) Reformatories;
- (k) Sanitariums;
- (l) Nurseries.

(17) "Mobile home" means mobile home as defined in KRS 227-550 (1).

(18) "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic. (Enact. Acts 1978, ch. 117, § 1, effective June 17, 1978.)

198B.020. Board of housing, buildings and construction. — (1) There is hereby created the Kentucky board of housing, buildings and construction within the Kentucky department of housing, buildings and construction comprised of eighteen (18) members to include: the commissioner of the department, one (1) local government fire chief selected by the governor from a list of three (3) submitted by the Kentucky Firemen's Association; the executive director of the Kentucky housing corporation; the commissioner of the bureau of health services, department for human resources; the attorney general or any assistant attorney general he may designate to represent the interests of consumers; one (1) professional homebuilder selected by the governor from a list of three (3) submitted by the Home Builders Association of Kentucky; one (1) registered architect selected by the governor from a list of three (3) submitted by the Kentucky Society of Architects; one (1) registered structural engineer selected by the governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered mechanical engineer selected by the governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered electrical engineer selected by the governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) citizen member selected by the governor to represent the interests of low and moderate income housing consumers within the Commonwealth of Kentucky; one (1) citizen member at large; one (1) practicing general contractor selected by the governor from a list of three (3) submitted by the Kentucky Association of General Contractors; one (1) practicing code administrator selected by the governor from a list of three (3) submitted by the Codes Administrators Association of Kentucky; one (1) realtor selected by the governor from a list of three (3) submitted by the Kentucky Association of Realtors; one (1) member selected by the governor from a list of three (3) submitted by the Kentucky State Building Trades Council; one (1) member selected by the governor from a list of three (3) submitted by the Kentucky Association of Plumbing, Heating and Cooling Contractors; and one (1) member selected by the governor from a list of three (3) submitted by the Mechanical Contractors Association.

(2) Nominations to the board shall be made to the governor by July 1, 1978. The governor shall make appointments to the board by July 31, 1978.

(3) Except for the commissioner of the department, the commissioner of the bureau of health services, the executive director of the Kentucky housing corporation and the attorney general or his designate who shall serve on the board during the term of their existing office and shall be voting members, board members shall be appointed for four (4) year terms, except that initially four (4) shall be appointed for two (2) year terms, four (4) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms. No board member shall be appointed for more than one (1) successive term except as provided in subsection (4) of this section. The governor shall, within the limitations of this subsection, set the length of term of each of the initial appointees to the board.

(4) Vacancies occurring on the board among those members appointed by the governor shall be filled by seeking nominations as in subsection (1) of this section from the organization which originally nominated the member who is to be replaced. A replacement for a board member shall be appointed immediately upon the expiration of the departing board member's term of service. Should a board member vacate his position on the board prior to the expiration of his term, his replacement shall be appointed for the period of the unexpired term. Should the unexpired term be less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to one (1) successive four (4) year term.

(5) Members may be removed from the board by the governor for unethical conduct or for failure to attend three (3) or more successive meetings of the board without reasonable cause.

(6) The board shall meet at least quarterly, and the first meeting shall occur no later than August 31, 1978. Before assuming their duties, members of the board shall take an oath as specified in section 228 of the Constitution of Kentucky.

(7) The commissioner of the department shall serve as chairman of the board. The board may elect from its members other officers as are required to conduct its business, except that neither the commissioner of the bureau of health services, the executive director of the Kentucky housing corporation nor the attorney general or his designate shall be elected to office on the board.

(8) The board may adopt such rules, regulations and bylaws as are necessary to conduct its internal business.

(9) No member of the board may vote on any matter which will result in his direct or indirect financial gain.

(10) Those members of the board who are not salaried governmental employes shall be compensated for their time when attending board meetings or attending to official duties as directed by the board at the rate of fifty dollars (\$50.00) per day. All board members shall be compensated for expenses incurred in the conduct of board business. (Enact. Acts 1978, ch. 117, § 2, effective June 17, 1978.)

198B.030. Department of housing, buildings and construction.—(1) There is hereby created the Kentucky department of housing, buildings and construction within the cabinet for public protection and regulation. The governor shall appoint a commissioner to head the department by July 1, 1978. The commissioner shall receive for his services such compensation as the governor shall determine.

(2) The commissioner may employ sufficient staff to carry out the functions of his office. Neither the commissioner nor any member of his staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the department of housing, buildings and construction.

(3) The department shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the commissioner in addition to those duties otherwise delegated to him by the governor or prescribed for him by law.

(4) The department may enter into contracts with the federal government, other agencies of state government or with its subdivisions, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.

(5) Subject to the direction of the board of housing, buildings and construction, the commissioner shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the commissioner shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.

(6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the department.

(7) The commissioner is authorized to receive, for and on behalf of the state, the department, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the state treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth. (Enact. Acts 1978, ch. 117, § 3, effective June 17, 1978.)

Legislative Research Commission Note. Acts 1978, ch. 155, § 126 (KRS 227.205) created the department of housing, buildings and construction, while Acts 1978, ch. 117, § 3 (KRS 198B.030) created the department of buildings, housing and construction. Since Acts 1978, ch. 155, § 126 was the later enactment, it prevails.

198B.040. General powers and duties of the board.—The Kentucky board of housing, buildings and construction shall have the following general powers and duties:

(1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;

(2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings, and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability and comfort;

(3) To administer regulatory legislation relating to buildings and construction;

- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the department of local government, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities and amenities of such housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state and local agencies in their programs as they relate to housing;
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky general assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To issue regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the department to the department for natural resources and environmental protection for that department's comments. Any such regulations shall require the department for natural resources' comments to be completed and submitted to the department within sixty (60) days;
- (9) To issue regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants, provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the department to the department for natural resources and environmental protection for that department's comments. Any such regulations shall require the department for natural resources' comments to be completed and submitted to the department within sixty (60) days; and
- (10) To issue regulations for the safe installation and operation of plumbing and plumbing fixtures. (Enact. Acts 1978, ch. 117, § 4, effective June 17, 1978.)

198B.050. Uniform state building code.—(1) Within one (1) year from its initial meeting, after adequate notice in accordance with KRS Chapter 13, the board shall adopt and promulgate a mandatory uniform state building code which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state. The code shall provide that the review and approval, as necessary, of building plans for conformance with the uniform state building code prior to construction approval shall be conducted only by the department or a local government or governments delegated such responsibilities by this chapter, and any exceptions to this policy shall be explicitly stated in the code.

(2) The code shall be comprehensive and shall include but not be limited to provisions for general construction; structural quality; mechanical systems to include heating, cooling, and ventilation; electrical systems; and life safety from hazards of fire, explosion, and other disasters, whether caused by acts of nature or man. The code shall encompass the Kentucky state plumbing code promulgated pursuant to KRS 318.130, boiler rules and regulations issued pursuant to KRS 236.030, and the national electrical code.

(3) This code shall be designed after and may be selected from the models offered by such model code agencies as the Building Officials and Code Administrators, International, Inc.; the International Conference of Building Officials; the Southern Building Code Congress; and other nationally recognized organizations which may include governmental agencies. The code shall:

(a) Provide uniform standards and requirements for construction and construction materials;

(b) To the extent practicable, set forth standards, specifications and requirements in terms of performance objectives, so as to facilitate the use of new technologies, techniques, and materials. The code shall not discriminate in favor of particular suppliers' materials, techniques, or technologies;

(c) Protect the public health, safety, and welfare within the state.

(4) Adoption of a code shall include provisions for the continuing review of, and the board shall adopt when deemed justified to fulfill the purposes of this chapter, new materials, technologies, and techniques in the building industry. The board may adopt a model code promulgated by a model code agency only if that agency provides a method for democratic participation by the board and any local governments which may enforce the code, in a continuing review and possible adoption of new materials, technologies, and techniques in the building industry.

(5) The board shall issue regulations, after notice in accordance with KRS Chapter 13, which are necessary to implement the uniform state building code or to carry out any other responsibility assigned to said board by this chapter.

(6) The board shall provide for monitoring the effectiveness of agencies designated by local governments to enforce the provisions of the uniform state building code.

(7) The board shall provide for the supply, including amendments and revisions thereto, of sufficient copies of the uniform state building code for all interested parties. (Enact. Acts 1978, ch. 117, § 5, effective June 17, 1978.)

198B.060. Local enforcement of uniform building code.—(1) Each local government in the state of Kentucky shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for such services in accordance with subsections (7) and (9) of this section to enforce the uniform state building code within the boundaries of its jurisdiction, and shall neither adopt nor enforce any other ordinance regulating buildings which conflicts with the uniform state building code, except that a building code adopted by a local government prior to March 28, 1978 may continue in effect until such time as the uniform state building code becomes mandatory within that local government jurisdiction.

(2) Local governments shall be responsible for the examination and approval or disapproval of plans and specifications for buildings of no more than three (3) stories in height, exclusive of attic and basement, which do not contain more than twenty thousand (20,000) square feet of floor area, and are not intended for assembly, educational, institutional or high hazard occupancy, business or industrial occupancy in excess of one hundred (100) persons, or for use as a frozen food locker plant as defined in KRS 221.010. Local governments shall be responsible for the issuance and revocation of building permits, licenses, certificates and similar documents which cover activities within their area of responsibility, and the inspection of all buildings pursuant to the provisions of this chapter and the uniform state building code. Each local government issuing a building or demolition permit or an initial certificate of occupancy on a new structure shall send a copy of such permit or certificate to the commissioner for his use in maintaining an accurate housing inventory for Kentucky.

(3) Urban-county governments may determine service districts within their boundaries within which farm dwellings and other farm buildings, not used in the business of retail trade or as a place of regular employment for ten (10) or more people, shall be exempt from the requirements of the uniform state building code. Such determination may be reviewed and altered by the board.

(4) The department shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The department may issue and revoke permits, licenses, certificates and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the uniform state building code. If the commissioner determines that the local jurisdiction is not adequately performing any portion of its program, he may recommend to the board that the department preempt that portion of a local program. The commissioner shall explain his reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review such appeal according to the procedures found in subsections (8) through (12) of KRS 198B.070. No preemption by the department shall take place until the final decision of the board. If the department preempts any portion of a local program, it shall collect the fees applicable to that portion of the program.

(5) Any local government may petition the commissioner requesting that additional plan review functions be allocated to that local government. Such petition shall include evidence of the local government's capability to perform additional plan review functions. The commissioner, after review of the petition and supporting evidence, may grant or deny to the local government any part of a request for additional responsibility. If the commissioner denies any part of a petition, he shall explain his reasons for denial in writing, and provide a copy to the board and the local government. A local government may appeal such denial directly to the board, and the board shall review such appeal according to the procedures found in subsections (8) through (12) of KRS 198B.070. Should the local government be granted additional responsibility by the commissioner or the board, the department shall hold concurrent jurisdiction over such additional responsibility, but the local government shall collect any fees for functions it performs pursuant to such additional responsibility.

(6) The commissioner shall expedite the review of plans and specifications by assigning responsibilities and coordinating review activities among the department's various functional offices so as to prevent unnecessary duplication in the review of plans and specifications.

(7) Upon the effective date of the uniform state building code, no building shall be constructed in this state until a local building official and an official representing the department if the department has jurisdiction issue a permit for such construction. The local building official or the representative of the department shall issue a permit if the proposed building satisfies the requirements of the uniform state building code and if the party desiring to construct the building has complied with all other legal requirements concerning the location and construction of said building. The applicant for a building permit, by the act of applying for the permit, is deemed to have consented to inspection, by the local government or the department, of such building during construction and upon the completion of construction for the purpose of determining that such building is constructed in compliance with the uniform state building code. This section shall apply to industrialized building systems but destructive disassembly of industrialized building systems which carry a seal of approval pursuant to a manufactured building law in the state in which they were manufactured, which seal of approval is accepted by the board of housing, buildings and construction, shall not be performed in order to conduct such tests or inspections.

(8) No building on which construction was begun nor any industrialized building system on which site preparation and assembly were begun after the uniform state building code became effective shall be occupied until the local building official or a representative of the department issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the uniform state building code, or assembled or installed in conformance with applicable instructions.

(9) A local government may associate with other local governments, and may seek the technical assistance of other agencies or area development districts in order to provide for the local enforcement of the uniform state building code

(10) Each local government and the department may establish a schedule of fees for the functions performed under the provisions of this chapter. Such fees shall be designed to fully cover the cost of the service performed but shall in no case exceed the cost of the service performed. Fees payable to the department shall be paid into the state treasury and credited to a trust and agency fund to be used by the department in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth. (Enact. Acts 1978, ch. 117, § 6, effective June 17, 1978.)

198B.070. Appeals.—(1) The mayor, chairman of the board of trustees, or county judge/executive of a local government which is enforcing the uniform state building code may, upon the approval of the local legislative body, appoint a local appeals board, consisting of at least three (3) technically qualified persons with professional experience related to the building industry, to hear appeals from the decisions of the local building official.

(2) Local governments which are enforcing the uniform state building code may cooperate with each other to provide a local appeals board and shall adhere to the provisions of KRS Chapter 65 when entering such cooperative agreements. No local building official or employe of a local inspection department may sit on a local appeals board if such board is hearing an appeal to a decision rendered by his department. No member of a local appeals board shall hear an appeal in a case in which he has a private interest.

(3) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt. All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by registered or certified mail no later than ten (10) days prior to the date of the hearing. The local appeals board shall render a decision within five (5) working days after the hearing.

(4) A local appeals board may uphold, amend, or reverse the decision of a local building official, and there shall be no appeal from the decision of a local appeals board other than by appeal to the board of buildings, housing and construction. Appeals to the board of buildings, housing and construction shall include citation of those provisions of the uniform state building code which are at issue, and an explanation of why the decision of the local appeals board or the local building official relative to those provisions is being contested.

(5) The board of housing, buildings and construction shall serve to hear appeals from the decisions of local appeals boards, when such boards exist, or to hear appeals directly from the decisions of local building officials in cases where no local appeals board has jurisdiction. In no case shall the board hear an appeal directly from a party aggrieved by the decision of a local building official when there is a local appeals board with jurisdiction in the case.

(6) The board shall hear appeals directly from a party aggrieved by the decision of an agent of the department. Such appeals shall include citations of those provisions of the uniform state building code which are at issue, and an explanation of why the decision of the agent of the department relative to those provisions is being contested.

(7) Appeals to the board of housing, buildings and construction shall be addressed to the commissioner who shall immediately notify the board when an appeal is received. The commissioner or a designated employe of his department shall then investigate the evidence pertaining to such appeal and, based upon the results of such investigation, make recommendations to the board on the disposition of the case in question. No employe of the department shall investigate or make recommendations on an appeal to his own decision, but shall defer in such cases to employes who were not party to the decision which led to the appeal. In conducting such investigation, the commissioner or his designated representatives, acting for the department, shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any hearings they may schedule, and hold conferences for the settlement or simplification of the issues by consent of the parties. The commissioner shall complete such investigations and forward written recommendations to the board within thirty (30) days after receiving an appeal.

(8) Upon receiving the written recommendations of the commissioner, the board may decide to accept such recommendations, or it may decide to convene a hearing to consider the question further. Upon receipt of the recommendations of the commissioner, the board shall render a decision on each appeal at its next regularly scheduled meeting, but no later than thirty (30) days after receipt of such recommendations.

(9) Should the board's decision be to schedule a hearing on the appeal, such hearing shall occur within thirty (30) days of such decision, and all parties to such hearing shall be immediately notified in writing of the time and place of such hearing by the commissioner.

(10) The board may appoint five (5) or more of its members, excluding the chairman of the board, to consider the recommendations of the commissioner or to conduct the hearing, and those so appointed shall act in all matters concerning the appeal for the entire board.

(11) In considering an appeal, the board, if they deem it necessary to reach an equitable decision, may exercise any of the powers granted to the commissioner in subsection (7) of this section. The board shall render a decision within ten (10) days of any appeals hearing it may conduct.

(12) The board may uphold, amend, or reverse the decision of a local appeals board, a local building official or an agent of the department; and the decision of the board shall be final, and there shall be no appeal from the board's decision, except to the circuit court within whose jurisdiction the property in question is located. (Enact. Acts 1978, ch. 117, § 7, effective June 17, 1978.)

198B.080. Amendments to the uniform state building code.—(1) Any interested party may suggest amendments to the uniform state building code to the department of housing, buildings and construction. The department shall transmit all suggested amendments to the board with recommendations on the advisability of the suggested amendments.

(2) The board may amend the uniform state building code at any time, but only after notice in accordance with KRS Chapter 13. Such amendments shall be effective statewide.

(3) No amendment shall violate the performance orientation of the code, favor certain materials or suppliers, or weaken the life safety features of the uniform state building code as specified in KRS 198B.050 (3). (Enact. Acts 1978, ch. 117, § 8, effective June 17, 1978.)

198B.090. Training programs for building code administration and enforcement.—(1) The department may conduct or sponsor pre-entry and in-service education and training programs on the technical, legal, and administrative aspects of building code administration and enforcement. For this purpose it may cooperate and contract with educational institutions, area development districts, local, regional, state or national building officials' organizations, and any other appropriate organization.

(2) The department may reimburse building officials, code enforcement officers and other employes of the state and its subdivisions for related expenses incurred by them for attendance at in-service training programs approved by the department. (Enact. Acts 1978, ch. 117, § 9, effective June 17, 1978.)

198B.100. Mobile home exemption.—Unless explicitly stated, exemption of mobile homes from the provisions of this chapter is not intended to exempt them from provisions of existing law regulating them for the purposes of health, safety and welfare. (Enact. Acts 1978, ch. 117, § 10, effective June 17, 1978.)

198B.110. Effective dates for uniform building code—Exemptions.—

(1) In all local governments in a county containing a city of the first or second class, and in urban-county governments, the uniform state building code shall become effective six (6) months after promulgation by the board. Any of said local governments may adopt the code prior to that time.

(2) In all local governments in a county containing a city of the third or fourth class, but not a city of the first or second class, the uniform state building code, as it pertains to buildings for which the department has the responsibility for plan reviews, shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective two (2) years after promulgation by the board. Any of said local governments may adopt the code prior to such times.

(3) In all local governments in a county containing no city or a city of the fifth or sixth class, but not a city of the first through fourth classes, the uniform state building code as it pertains to buildings for which the department has the responsibility for plan reviews shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective three (3) years after promulgation by the board. Any of said governments may adopt the code prior to such times.

(4) Notwithstanding the provisions of KRS 198B.060 (7) and (8), a building for which a permit was legally granted prior to the effective date of the uniform state building code may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.

(5) A building for which plans were prepared at least three (3) months prior to the effective date of the uniform state building code and upon which construction was begun prior to the effective date of the uniform state building code in a locality not then requiring a building permit may be completed and occupied without a building permit. (Enact. Acts 1978, ch. 117, § 11, effective June 17, 1978.)

198B.120. Injunctions to enforce building code compliance.—The department or any local government agency enforcing the uniform state building code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the department or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of this chapter or the uniform state building code. (Enact. Acts 1978, ch. 117, § 12, effective June 17, 1978.)

198B.130. Private action for damages.—(1) Notwithstanding any other remedies available, any person or party, in an individual capacity or on behalf of a class of persons or parties, damaged as a result of a violation of this chapter or the uniform state building code, has a cause of action in any court of competent jurisdiction against the person or party who committed the violation. An award may include damages and the cost of litigation, including reasonable attorney's fees. (Enact. Acts 1978, ch. 117, § 13, effective June 17, 1978.)

198B.140. Hinderance of building inspectors prohibited.—No person shall hinder an inspector enforcing any of the provisions of this chapter in the performance of his lawful duties under this chapter. (Enact. Acts 1978, ch. 117, § 14, effective June 17, 1978.)

198B.990. Penalties.—Any person who violates any provision of this chapter, or of the uniform state building code, or any directive or order issued pursuant thereto shall be fined not less than ten dollars (\$10.00) nor more than one thousand dollars (\$1,000). Each day the violation continues shall constitute a separate offense. (Enact. Acts 1978, ch. 117, § 65, effective June 17, 1978.)

APPENDIX 3

REGULATION OF ELECTRICIANS

227.450. Definitions for KRS 227.450 to 227.500.—As used in KRS 227.450 to 227.500 unless the context otherwise requires:

(1) “Electrical contractor” means any individual, partnership or corporation that engages in the business of or employs others for the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power;

(2) “Electrician” means any person who is employed by an electrical contractor and is engaged in the construction, alteration or repair of any electrical wiring used for the purpose of furnishing heat, light or power;

(3) “Electrical” pertains to the installation of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith.

(4) “Electrical inspector” means any person certified by the commissioner of housing, buildings and construction pursuant to KRS 227.489 who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices and fixtures for light, heat or power service equipment to ascertain the compliance with the national electrical code incorporated in the uniform state building code promulgated pursuant to KRS 198B.050 or the standards of safety of the Commonwealth of Kentucky. (Enact. Acts 1960, ch. 208, § 1; 1964, ch. 137, § 1; 1976, ch. 346, § 1; 1978, ch. 117, § 42, effective July 1, 1978.)

Opinions of Attorney General. Although the Public Service Commission examines and certifies electrical inspectors who are then qualified to be employed by cities to perform inspections under the respective electrical ordinances, the Commission has no authority to make electrical inspections. OAG 76-296.

If a city has adopted an electrical code, the city has the authority to designate a specific firm to make electrical

inspections, as long as the persons designated by the firm to represent it and the city are duly certified by the Public Service Commission. OAG 76-296.

A city of the second class would have no authority to impose its electrical permit system upon the State’s electrical contractor who is working on the construction project of a state university. OAG 77-445.

227.470. Cooperative agreements between local governments.—Any action authorized by the provisions of KRS 227.450 to 227.500 to be accomplished by a city or county may be undertaken cooperatively by two (2) or more local governments upon a resolution by the governing body of each local government to do so. Such cooperative agreements shall conform to the provisions of KRS Chapter 65. (Enact. Acts 1960, ch. 208, § 4; 1978, ch. 117, § 43, effective July 1, 1978.)

227.480. Authority to require permits—Inspection standards.—(1) A city or county shall, when the uniform state building code as it pertains to the plan review responsibilities of local governments takes effect, require any person to obtain permits before commencing construction, alteration or repairs of any electrical wiring, and require such inspection as it deems necessary for the safety of life and property. A city or county may require such permits and inspections prior to the time when the uniform state building code local government plan review responsibilities take effect.

(2) Reasonable standards for the construction, alteration and repair of any electrical wiring shall be those adopted in the uniform state building code after said code is promulgated by the board of housing, buildings and construction, and shall have as a minimum standard the requirements of the national electrical code. These standards shall be used by the electrical inspector in making his inspections. (Enact. Acts 1960, ch. 208, § 5; 1978, ch. 117, § 44, effective July 1, 1978; 1978, ch. 384, § 92, effective June 17, 1978.)

Legislative Research Commission Note. This section was amended by two 1978 acts which do not appear to be in conflict and which have been compiled together.

Opinions of Attorney General. If a county has an inspection program the county may designate a particular firm or person to act as its electrical inspector as long as the inspections are performed by inspectors certified by the Public Service Commission. OAG 77-330.

227.489. Electrical inspectors required to be certified.—The commissioner of housing, buildings and construction shall require electrical inspectors to be certified. Examinations shall be based on the national electrical code incorporated in the uniform state building code and the standards of safety prescribed by the department. Electrical inspectors who have been engaged in the inspection of electrical light and power wiring installations, based on the requirements of the national electrical code, for a period of three (3) years, may be certified on the basis of knowledge of this subject and experience. (Enact. Acts 1974, ch. 74, Art. V, § 27; 1976, ch. 346, § 5; 1978, ch. 117, § 45, effective July 1, 1978; 1978, ch. 384, § 93, effective June 17, 1978.)

Legislative Research Commission Note. This section was amended by two 1978 acts which do not appear to be in conflict and have been compiled together.

Opinions of Attorney General. If a city has adopted an electrical code, the

city has the authority to designate a specific firm to make electrical inspections, as long as the persons designated by the firm to represent it and the city are duly certified by the Public Service Commission. OAG 76-296.

227.490. Local examination—Examining board—Local license.—(1) A city or county may require all electrical contractors and electricians, except those who have had at least five (5) years of experience as an electrical contractor and/or electrician, to be examined by an examining board before being issued a license to engage in their occupation. An electrician desiring to become a contractor may apply for an examination to the examining board. A city or county may require all nonresident electrical contractors and electricians to conform to reasonable standards prior to engaging in their occupation within the jurisdiction of the city or county.

(2) The examining board shall be composed of seven (7) members appointed by the city or the county and in such instances as where the provisions of KRS 227.450 to 227.500 are accomplished jointly as provided for in KRS 227.470, the appointment shall be by joint resolution of the governing body of each local government which is party to the cooperative agreement. Such cooperative agreement shall conform to the provisions of KRS Chapter 65. The board shall consist of two (2) fire department officials, two (2) consulting electrical engineers or architects, two (2) electrical contractors and one (1) utility company official. No appointee shall serve more than two (2) consecutive years.

(3) The members of the examining board shall serve without salary.

(4) In order to administer KRS 227.450 to 227.500, the board may issue and revoke licenses; conduct and make regulations for conducting examinations of applicants; govern the method and time of making application for examination and the time within which applicant shall be examined after application has been filed. It may adopt any other reasonable regulations to administer KRS 227.450 to 227.500.

(5) Electrical contractors and electricians may be required to pay a reasonable fee before issuance of a license to them. (Enact. Acts 1960, ch. 208, § 6; 1978, ch. 117, § 46, effective July 1, 1978.)

227.491. Certification of an electrical installation by an inspector—Invalidation by another inspector prohibited.—(1) An electrical inspector who certifies an electrical installation shall furnish and attach an approval sticker, bearing his signature and certification number in a conspicuous place on the main service entrance equipment. He shall also provide the owner of the electrical installation or his authorized agent with a certificate of approval if the same is requested. A complete record of each inspection shall be kept by the inspector and these records shall be made available to the public service commission upon its request.

(2) No electrical inspector shall attempt to supplant, overrule or otherwise invalidate the judgment of another electrical inspector whose services for a particular building, structure or other project have been solicited by an owner, contractor, municipality or other person without first obtaining express written consent from the designated inspector's office supervising the original inspector. Failure of an electrical inspector to observe this provision shall subject said inspector to review by the commissioner of housing, buildings and construction with possible suspension of certification for a period not to exceed one (1) year from date of the commissioner's ruling. (Enact. Acts 1976, ch. 346, § 3; 1978, ch. 117, § 47, effective July 1, 1978.)

Compiler's Notes. The reference to the "public service commission" in subsection (1) of this section has been changed to the "energy regulatory commission" by Acts 1978, ch. 379, § 56, effective April 1, 1979.

227.492. Investigation of misconduct of electrical inspector.—It shall be the duty of the commissioner of housing, buildings and construction to investigate alleged misconduct of any electrical inspector certified under KRS 227.489 when, in the opinion of the commissioner, there is sufficient evidence to suggest that such misconduct exists. Any party may seek redress from the commissioner when alleged misconduct of an electrical inspector is deemed to have worked an undue hardship on the party. (Enact. Acts 1976, ch. 346, § 4; 1978, ch. 117, § 48, effective July 1, 1978.)

227.500. Authority to fix penalty.—A city or county may fix as a penalty for the violation of any ordinance or resolution passed under the provisions of KRS 227.200 to 227.500, a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100), or imprisonment for not more than fifty (50) days, or both. (Enact. Acts 1960, ch. 208, § 7; 1966, ch. 146, § 7; 1978, ch. 384, § 94, effective June 17, 1978.)

