

**SUNRISE ANALYSIS  
OF A PROPOSAL TO REGULATE  
THE PRACTICE OF LOCKSMITHING**

**A Report to the Governor and the Legislature of the State of Hawaii**

**Submitted by the  
Legislative Auditor of the State of Hawaii  
Honolulu, Hawaii**

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**Introduction**

In 1984, the Legislature amended the Hawaii Regulatory Reform Act, or the "Sunset Law," by incorporating a "sunrise" provision requiring the Legislative Auditor to analyze proposed legislation that would impose licensing or other regulatory controls on unregulated occupations.

The Legislative Auditor is required to assess the probable effects of the proposed measure and to determine whether its enactment would be consistent with state regulatory policies in the Sunset Law. These policies establish criteria for regulation such as the following:

- . Regulation is warranted only where reasonably necessary to protect the health, safety, and welfare of consumers.
- . Evidence of abuse shall be awarded great weight in determining whether regulation is desirable.
- . Regulation shall not be imposed except to protect relatively large numbers of consumers who may be at a disadvantage in choosing the provider of the service.
- . Regulation should not unreasonably restrict entry into the occupation by qualified persons.
- . The purpose of regulation is to protect the consumer and not the regulated occupation.

During the 1987 legislative session, Senate Bill No. 18 relating to locksmiths was introduced. The bill would establish licensing requirements for the practice of locksmithing. It was referred to the Legislative Auditor for sunrise analysis of whether its enactment would be consistent with sunset law policies.

This analysis contains background information on the locksmith profession, an examination of the need to regulate the practice of locksmithing, and an assessment of the proposed legislation.

### **Background on Locksmithing**

The Romans made the first metal locks, using iron for the lock and bronze for the key. The locking system was composed of "wards" (ridges) which prevented all but the properly cut key from entering the lock. The warded lock concept was transferred to portable locks, or padlocks, which were developed by the Chinese. Early Chinese and East Indian artisans created ornamental metal padlocks which cleverly disguised the keyhole. Some padlocks were designed to eject needles, poison darts, or knives if a foreign key were inserted.

During the Middle Ages, medieval guilds of locksmiths formed and became powerful. To be accepted into the guild, a journeyman locksmith had to submit an individually designed lock and key which were then placed on display in the guild hall. These medieval guilds regulated the terms of apprenticeships and the rules of conduct for its journeymen. The guild controlled the techniques of its masters, regulated prices, and established construction standards for the locks. Those who defied the guild were expelled and lost their right to practice the trade. Locksmithing operated as a family enterprise following guild requirements until the nineteenth century.

Beginning with the Industrial Revolution, more attention began to be paid to locks as security devices. Before this, locks were primarily ornamental and equipped with traps to deter thieves, but the actual security device of the lock had remained the same. Competition between locksmiths and lockpickers spurred improvements in locking devices. As lockpickers exposed the weaknesses of various mechanisms, the demand for better locks grew.

In 1778, Robert Barron of England patented a lock which combined the concepts of wards and level tumblers. However, a contemporary locksmith, Joseph Bramah, discovered how to pick the lock through "keying by impression" or coating a stock key with a thin layer of wax, inserting it into the lock, and then filing the key to fit the wax impression.

In 1784, Bramah patented a cylinder lock which held a number of metal slides that had to be depressed to an exact depth by the key turn in order to retract the bolt. This lock went unchallenged for about 70 years until Alfred C. Hobbs succeeded in opening the Bramah, using picks that he had designed.

At about the same time, several locksmiths in the United States created locking mechanisms which are still in use today. Among the most notable of these inventors were Linus Yale Sr. and Linus Yale Jr. Both were bank lockmakers who combined the ancient Egyptian falling pin concept with the Bramah cylinder design to create the pin tumbler cylinder lock. In the mid-1800s, combination locks were introduced for bank vaults. When bank robbers began kidnapping bank officers to get the combination, the time lock was invented.

In this century, the scope of practice of locksmiths has changed significantly. Locks became mass produced. Key cutting machines allowed keys to be duplicated exactly and efficiently. Tools and devices were invented to operate locking

mechanisms without a key. Finally, there are now locking mechanisms which respond to electronic signals, utilize magnet-imbedded plastic cards to trip electrical circuits, and elaborate security systems which no longer involve a mechanical lock and key.<sup>1</sup>

The development of the private security industry, of which locksmiths are but one component, has also influenced locksmithing. Security services are becoming more varied and complex. There has been a substantial increase in sales of deterrent equipment such as safes and vaults, locking devices, and electronic access control. There are firms which specialize in the installation and maintenance of these electronic systems which are in direct competition, both technologically and financially, with traditional mechanical locking devices.<sup>2</sup>

**Occupational characteristics.** The locksmithing industry is divided into two distinct groups: lock manufacturers and lock repairers. According to industry literature, the present-day definition of "locksmith" refers to the lock repairer. The *Locksmith Ledger*, one of the major publications in the industry, reports that there are approximately 17,000 locksmiths.<sup>3</sup>

The Associated Locksmiths of America, Inc. (ALOA), established in New York in 1955, is the national trade association for locksmiths. As of March 1987, the association had approximately 7,800 national and international members.<sup>4</sup> To be eligible for active membership, an applicant must be at least 18 years of age; have not less than two years of experience in locksmithing; and supply character and business references, background evaluation of prior criminal activity, educational training, and suitable proof of employment such as business card, stationery, or telephone book advertisement.

Apprentice memberships are available for those who have lesser qualifications and who are at least 16 years of age. Allied memberships are available to individuals in affiliated security industries, but they may not exceed 10 percent of the total membership.<sup>5</sup>

The main goals of ALOA are to raise professional standards through education; encourage and promote interchange of data, information, experience, and techniques related to locksmithing and promote friendly cooperation among locksmiths; establish a uniform code of ethics; conduct trade promotion activities; and cooperate with all organizations related to the industry.

Since 1985, ALOA has emphasized professional evaluation and state licensing. The ALOA's evaluation program, the Proficiency Registration Program (PRP), began in 1985. It is an examination program covering 37 evaluation categories ranging from basic locksets and key codes to advanced alarm and electro-mechanical devices. Depending on the number of evaluation categories passed, a locksmith may be designated as a Registered Locksmith (RL), Certified Professional Locksmith (CPL), or a Certified Master Locksmith (CML). As of June 1987, 915 locksmiths had been awarded PRP designations based on examination with an additional 766 grandfathered at the RL level.<sup>6</sup>

The ALOA adopted a model law for state regulation and licensing of locksmiths in January 1986. Senate Bill No. 18 is derived from the model law and is supported by ALOA.<sup>7</sup> In 1986, similar licensing bills were introduced in the states of Georgia, New Jersey, and North Carolina. None of these measures were passed in 1986.<sup>8</sup>

**Locksmiths in Hawaii.** Today, a person may operate a locksmithing business upon acquiring a general excise tax license. There are 72 locksmiths listed under

the heading "Locks & Locksmiths" in the 1987 Hawaiian Tel GTE Yellow Pages for the four counties. Under the heading "Locksmiths' Equipment and Supplies," three local companies and one mainland company are listed.

Most locksmith businesses in Hawaii are sole proprietorships and family owned businesses. The locksmiths we contacted say they install, repair, and service various types of locks and keys. A few specialize in working on safes or opening automobile doors although they do not limit their services to these categories. The larger businesses also provide retail sales of locks, safes, and other security devices.

There is an active Hawaii Chapter of ALOA which was chartered in May 1986. There are currently 68 members in the Hawaii chapter.<sup>9</sup>

**History of locksmith related legislation in Hawaii.** Bills relating to the possession of master keys or burglar's tools were introduced in 1969, 1975, and 1977.

In 1978, Act 221 relating to the possession of burglar's tools was enacted. The act amended Sections 708-800 and 708-812 of the Hawaii Penal Code making the possession of burglar's tools, including explosives and master keys, a misdemeanor. In its committee report, the House Committee on Judiciary stated that it had found the use of master keys in burglaries to be a significant problem and the police had found it difficult to prosecute persons in possession of master keys. The legislation was intended to curb burglaries using master keys.<sup>10</sup>

The first bill relating to regulation of locksmiths was introduced in 1977. House Bill No. 1402 would have required locksmiths to be certified before they could engage in the business. Applicants had to meet examination and qualification requirements. In 1980, House Bill No. 2783 would have established state licensing for the practice of locksmithing and a board of locksmiths to oversee the licensure program. The bill made practicing without a license, employing an unlicensed person, and possessing locksmithing tools by unlicensed persons a misdemeanor.

## **Current Proposal to Regulate Locksmithing**

Senate Bill No. 18 would require anyone practicing locksmithing to be licensed. Locksmithing services are defined as: "(1) repairing, rebuilding, servicing, adjusting, or installing a mechanical or electrical locking device, safe, or vault; (2) operating a mechanical or electrical locking device, safe, or vault by a means other than those intended by the manufacturer of such locking device, safe, or vault; or (3) rendering technical advice concerning activities described in paragraphs (1) and (2)." Providing locksmithing services without a license would be a misdemeanor.

To qualify for a license, an applicant must be at least 18 years of age, prove competency through examination or other means, maintain a liability insurance policy of \$1 million, and not have been convicted of a felony or misdemeanor involving intentional dishonesty or moral turpitude. An apprentice locksmith must be at least 16 years of age, registered in an approved apprenticeship program, and meet the same insurance and criminal conviction standards.

The bill would require applicants to submit fingerprints and an affidavit of any criminal record. The Director of the Department of Commerce and Consumer Affairs (DCCA) must verify whether the applicant has a criminal record and periodically monitor licensees to determine if there are any subsequent criminal convictions.

Locksmith competency standards are to be established through departmental rule after consultation with experts and representatives of trade associations who are knowledgeable about locksmithing services. The competency of applicants is to be evaluated by either a departmental examination or one developed and administered by a bona fide locksmith trade association.

Examination requirements may be waived for applicants who meet any of the following standards: (1) completion of an approved apprenticeship program, (2) possession of a locksmith license within the previous three years from another state with equivalent standards, (3) previously demonstrated competency by achieving criteria established by any locksmith trade association, or (4) previously demonstrated competency by having provided locksmithing services on a full-time basis for two years immediately preceding the application date for licensure.

Licenses are to be issued for two years and would include a photo identification card and a certificate to be displayed at the normal place of business. A \$1 million liability insurance policy must be held by each licensee or for each licensee employed by an organization. A license may be suspended or revoked and an administrative penalty of not more than \$1,000 imposed by the director for violation of licensing provisions.

It would be a misdemeanor for a person without a license to obtain ownership or possess lockpicking tools, safe-opening tools, or code books either in person, through the mail, or through any remote procurement method.

### **Analysis of Proposed Legislation**

**Summary of findings.** Our analysis of Senate Bill No. 18 is based on criteria in the Sunset Law. We find that regulation of locksmithing is not warranted because its regulation would not comply with state regulatory policies in the Sunset Law. In summary, our findings are:

1. The practice of locksmithing does not pose sufficient harm to warrant licensure.

2. The proposed standards for licensure are arbitrary and do not establish a minimal level of competency.

3. The scope of regulation is restrictive and anticompetitive.

4. The impetus for licensure comes from the industry and would benefit those already in the industry.

**No evidence of harm.** According to representatives of the locksmithing industry, licensure is necessary to protect the consumer from untrained persons who may damage property or unscrupulous persons who may engage in criminal activity. However, there is no evidence that these kinds of problems are sufficiently serious or prevalent to warrant a licensure program.

The kind of property damage reported by locksmiths and industry publications focuses on damage to cars caused by law enforcement officers opening automobiles with lockpicking tools.<sup>11</sup> There are some cases where police departments have been held liable for damage resulting from car openings. Some police departments on the mainland have established a policy to prohibit car openings except in life threatening situations. The National Association of Chiefs of Police has endorsed a model policy prohibiting car openings by police except in life threatening situations.<sup>12</sup> In Hawaii, the Kauai County Police Department is the only police department which reports that it does not respond to requests to open cars but refers these calls to locksmiths.<sup>13</sup>

Senate Bill No. 18 would not prevent this type of damage as it would allow police officers, firefighters, and other government agencies to continue to perform locksmithing in emergencies. The bill does not define "emergency" or "other government agencies."

A second major concern is access to locksmith tools and equipment. The industry believes that these tools are readily available for use by either incompetent practitioners or persons committing crimes. The proposed law would restrict possession and acquisition of locksmith tools except by licensed locksmiths.

Suppliers of locksmithing tools and equipment in Hawaii report that their policy is to sell only to established businesses that provide proof of their ongoing trade. However, they also indicated that various lockpicking tools are available in retail stores and through mail order from mainland establishments.

Senate Bill No. 18 could not effectively limit sales through the mail if such sales are not restricted by the U.S. Code. According to a staff attorney with the General Counsel's office for the Postal Service, there are provisions in the U.S. Code which would allow state law to make possession of certain mailable items to be illegal, but state law could not prohibit delivery by the postal service.<sup>14</sup> Therefore, it would seem that this provision would, in practice, be unenforceable by the State.

The proposed measure would add little to preventing criminal activity using master keys and lockpicking tools by those in the locksmith occupation. Section 708-812 of the Hawaii Penal Code already makes the possession of burglar's tools and master keys for theft or forcible entry a misdemeanor offense. Since laws already exist for acts involving the illegal use of these tools or master keys, it is not necessary to license locksmiths to prevent such acts.

There is little evidence that consumers have been harmed by incompetent or unscrupulous locksmiths. The property crimes division at the Honolulu Police Department reports only one case of burglary involving a locksmith in the past five years. The records at the Office of Consumer Protection show that over the past

five years, there were only six locksmith related complaints. Three complaints alleged unsatisfactory service and three related to false advertising or the charge for services. None of these relate to irreparable damage or criminal activity.

Finally, the locksmithing industry points to efforts in several states supporting licensure of locksmiths. Although legislation has been introduced in several states, only two, California and Nevada, have laws regulating the practice of locksmithing. Both states register locksmiths upon being provided with their criminal histories.<sup>15</sup>

A review of selected local government codes and ordinances shows that some local governments do require registration of locksmiths as a prerequisite to receiving a business license. However, these are not licensure laws but simply a listing of locksmiths operating within the jurisdictions. Hawaii would be the first jurisdiction with a licensure statute if the proposed legislation were adopted.

**Questionable standards for licensure.** Senate Bill No. 18 does not ensure a minimum level of competency but instead imposes arbitrary measures of competency, moral character, and financial liability.

**Arbitrary measures of competency.** The proposed law states that competency standards are to be established by DCCA in consultation with locksmiths. The director is allowed to evaluate competency using a variety of methods. The director may develop and administer an examination or rely upon a trade association evaluation such as ALOA's Proficiency Registration Program.

The law also allows the director to waive the examination under certain conditions. However, these conditions are either nonexistent or unrelated to competency. They are:

- . Completing an apprenticeship approved by the U.S. Department of Labor, Bureau of Apprenticeship and Training;

- . Possessing within the previous three years a locksmith license from another state with standards equivalent to Hawaii law;
- . Achieving criteria established by any locksmith trade association with standards equivalent to Hawaii law; or
- . Providing full-time locksmithing services for two years immediately preceding application for licensure.

According to a representative of the Bureau of Apprenticeship and Training, the bureau has no apprenticeship programs for locksmiths within the State. Therefore, this first substitute for examination would not be available.

Similarly, it would not be possible to meet the second condition as no other state currently issues licenses for the practice of locksmithing.

The third condition of achieving standards established by any locksmith trade association would essentially require the applicant to be examined according to ALOA's Proficiency Registration Program, since it is the recognized trade association in Hawaii. This would force applicants to become ALOA members and discriminate against those who do not wish to belong to a trade association. Although ALOA allows nonmembers to be evaluated by their PRP program, the charge for field administration of the examination is \$150 for nonmembers versus \$35 for members. This financial disadvantage would tend to influence applicants to become ALOA members as the total fee for membership and examination would still be less than the examination fee for a nonmember.

The fourth possible substitute for the examination is that of providing locksmithing services on a full-time basis for two years immediately preceding application for licensure. This experience substitution would, in effect, allow all full-time practicing locksmiths with two years of experience to receive a license,

and initially, it would operate like a grandfathering provision. Although industry representatives indicate that this is not the intent of the provision, there is no basis for support of the two-year experience requirement as a valid measure of competency.

**Moral evaluation unrelated to occupational skills.** The requirement that applicants may not have any felony conviction or misdemeanor conviction related to intentional dishonesty or moral turpitude is too sweeping. It assumes that a person convicted of *any* felony and some misdemeanors would not be able to perform locksmithing services without being a threat to public safety. This would appear to be contrary to state law. According to Section 831-3.1, Hawaii Revised Statutes, the State may consider a conviction as a possible justification for refusing to grant a license only when the offense "directly relates" to the applicant's possible performance in the occupation for which the license is applied for. Instead, the bill's provision forces a moral evaluation beyond an individual's occupational skills.

**Financial and professional liability.** Finally, the requirement for a locksmith to maintain a liability insurance policy in an amount not less than \$1 million is unreasonable. Inquiries of insurance and bonding companies indicated that they could not estimate a cost for such a liability policy because there is no basis of need for a policy of that size.

Staff at the Insurance Commissioner's office also stated that they lack any baseline data for making an assessment of the fiscal impact of a policy of that size. Occupations which are required to keep large policies are those which have precedents of litigation and monetary awards of sizable amounts. No litigation or awards of any size due to damage by locksmiths could be found in a recent compilation of personal injury compensation cases settled in Hawaii.

**Scope of regulation is restrictive and anticompetitive.** The proposed law defines locksmithing services broadly to cover repairing, rebuilding, installing, operating, or rendering advice on any mechanical or electrical locking device, safe, or vault. These provisions restrict activities within the industry as well as other established occupations.

The practice of locksmithing covers a range of activities which call for different levels of skill. For example, it is said that relatively little skill is needed to gain access into a locked residence. The rekeying of a locking device or system or opening a safe would involve more technical expertise. There is no rationale for regulating the entire range of services that a locksmith might offer.

The definition of "locksmithing services" in Senate Bill No. 18 goes beyond traditional mechanical locking devices to impact on other established occupations. For example, it includes electrical locking devices. Installation of electrical locks and electronic access systems are done by contractors and electricians who are already subject to licensure as well as by security system consultants. Licensure which prohibits installation of electronic locking devices except by locksmiths could impinge on the scope of practice of contractors, electricians, and other established businesses already providing these services.

The definitions of "locksmith" and "organization" in Senate Bill No. 18, would also prohibit a business from using its own personnel to perform in-house locksmithing services. Many hotels train their full-time maintenance staff to perform basic locksmithing services. The prohibition on using in-house staff could have a significant fiscal impact upon commercial operations such as hotels, condominiums, or office buildings, which train and employ their own maintenance staff to perform locksmithing services.

**Licensure will benefit those in the industry.** Interviews with locksmiths and association representatives, and information provided from industry journals indicate that the impetus for state licensure of locksmiths is to establish "professionalism" and "ethics" within the industry. The promotion of professionalism and ethics for a particular occupation is not grounds for state regulation of an occupation.

As part of their professionalism campaign, the ALOA is working to have the PRP designations recognized by consumers so that they will request locksmith services from an association evaluated member versus a nonmember. According to ALOA, the goal of the PRP is to: "improve the individual, raise the general level of competency in the locksmith occupation, promote high standards of professional conduct, and provide evidence of professional capability."<sup>16</sup>

Editorials published in the *Locksmith Ledger* see the main issue for locksmiths today as licensure. The ALOA representatives also indicate that they have actively lobbied for the adoption of their model law versus other regulatory measures, and they would prefer that state licensure programs use the PRP instead of developing another examination.

## **Conclusion**

Occupational licensing and regulation are efforts to regulate an occupation by establishing minimal standards to protect the consumer. Unless there is a preponderance of evidence showing consumers to be at a disadvantage or harmed by the unregulated practice, licensure is not warranted.

There is not sufficient evidence of consumer complaints or cases of damage by unlicensed locksmiths to impose regulation. Further, our review of the industry and

## NOTES

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2. William C. Cunningham and Todd H. Taylor, *Private Security and Police in America: The Hallcrest Report*, Portland, Oreg., Chancellor Press, 1985, pp. 117-122 and 147-155.
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4. Interview with Cindy Warren, Membership Director, Associated Locksmiths of America, Inc., Dallas, Tex., May 1987.
5. Associated Locksmiths of America, Inc., *Membership Goals and Benefits*, Dallas, Tex., n.d.
6. Letter from Breck H. Camp, Chair, Proficiency Registration Committee, Associated Locksmiths of America, Inc., to Laurel Johnston Mitchum, Office of the Legislative Auditor, June 14, 1987.
7. Letter from Jon Payne, Chair, Legislative Affairs Committee, Associated Locksmiths of America, Inc., to Laurel Johnston Mitchum, Office of the Legislative Auditor, April 6, 1987.
8. "Legislative Bulletin," *Keynotes*, Vol. 32, No. 1, January 1987, pp. 7-8.
9. Interview with Herm Salz, Chair, Hawaii Chapter, Associated Locksmiths of America, Inc., Honolulu, Hawaii, May 1987.
10. House Standing Committee Report No. 562-78 on House Bill No. 2687-78, Ninth Legislature, 1978, State of Hawaii.
11. Jeff Simmons, "Locked-Out Drivers Can't Count On Police," *Keynotes*, November 1986, pp. 48-49; and Anastasios (George) Thomas, "Locksmiths vs. Police," *Locksmith Ledger*, May 1987, pp. 88-92
12. National Association of Chiefs of Police, "Use of Car Opening Tools by Police or Emergency Agencies - Liability and Policy," reprinted in *Keynotes*, November 1985, pp. 28-31.

13. Interview with Lt. Dana Akita, Patrol Division, Kauai Police Department, June 1987.

14. Interview with Lyman Johnston, Regional Office of the General Counsel, U.S. Postal Service, San Francisco, July 1987.

15. *Nev. Rev. Stat.*, Secs. 655.010–655.081 (1987); and *Calif. Business and Professions Code*, Chapter 8.5.

16. "The PRP: An Overview," *Keynotes*, March 1986, p. 66.