

Occupational Licensing

Principles

- Citizens have a right to pursue a legal occupation and the burden should fall on the government to justify any restrictions to that right.
- Restrictions on economic liberty should be targeted at protecting health and safety and policy-makers should demand proof that there is a clear, likely and well-established danger to the public.
- Government should use the least restrictive means to address any danger to the public.

Recommendations:

- **Create protections for economic opportunity:** Protect economic opportunity by creating a statutory right to an occupation; requiring proof of a clear, likely and well-established danger to the public, and ensuring that less restrictive means have been tried before resorting to professional licensing.
- **Reduce, convert and repeal:** Examine existing occupational license requirements for opportunities to **reduce** qualifications for licensure such as the hours of training and "continuing education" required to obtain and retain certain licenses; **convert** license requirements to a less restrictive form of regulations such as inspections, bonding or voluntary certification; or **repeal** regulatory requirements.

Facts

- In the 1950s, only one in 20 U.S. workers needed the government's permission to pursue their chosen occupation. Today, that figure stands at almost one in three.¹
- Research to date – on occupations as diverse as school teachers, interior designers, mortgage brokers, dentists, physicians and others – provides little evidence that government licenses protect public health and safety or improve the quality of products or services.²
- A greater body of research indicates that occupational licenses increase consumer costs³ and reduce opportunities for workers,⁴ particularly minorities, those with less education and older workers who may want to switch careers.⁵
- A nationwide study⁶ of license requirements found that Georgia licenses only 33 out of 102 moderate-income occupations, but it imposes the 18th most burdensome requirements on workers wishing to enter those occupations. Georgia ranked as the 37th most extensively and onerously licensed state. Georgia is one of only two states, for example, that requires landscape contractors to pass two examinations. And it is one of only 10 states that license landscape contractors at all.⁷

Overview

As millions of Americans struggle to find productive work, one of the quickest ways legislators could help would be to reduce or remove needless licensure burdens.

An "occupational license" is, put simply, government permission to work in a particular field. To earn the license, an aspiring worker must clear various hurdles, such as earning a certain amount

Special thanks to the Institute for Justice for assistance in preparing this chapter.

¹ "License To Work," Institute for Justice, April 24, 2012, <http://ij.org/licensetowork>

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

of education or training or passing an exam.

Occupational licensing laws can pose substantial barriers for those seeking work, particularly those most likely to aspire to these occupations – minorities, those of lesser means and those with less education. Moreover, since many currently licensed occupations offer the possibility of entrepreneurship, these laws hinder both job attainment and creation.

Occupational licensing is one of the biggest issues in labor economics today. **More than 29 percent of workers need a government-issued license to work.** That represents a sevenfold increase from the 4 percent rate of licensed workers in the 1950s. It also dwarfs today's rates of unionism at 13 percent of workers and minimum-wage earners at 2 percent of all hourly-paid workers.

But licensing is more than big. It presents some significant public policy issues. Licensing creates barriers to entry into occupations. In doing so, it shrinks the available number of jobs, lowers competition and increases prices to consumers by 15 percent or more. Unfortunately, these costs are not offset by additional consumer protection because licensing is generally an ineffective screen for frauds and incompetents.

More than 200 years ago, Adam Smith observed that trades conspire to reduce the availability of skilled craftsmen in order to raise wages, and modern public choice theory and social science research demonstrate little has changed since then.⁸

Occupational practitioners, often through professional associations, use the power of concentrated interests to lobby state legislators for protection from competition through licensing laws. (The power of concentrated interests occurs when benefits of a particular policy are concentrated among a relatively limited number of entities while the costs are dispersed among a larger group of consumers or taxpayers.) Such anti-competitive motives are typically masked by appeals to protecting public health and safety, no matter how facially absurd. For example, the 2011 legislative session in North Carolina saw efforts to license music therapists. The enabling legislation's introduction stated: "The North Carolina Music Therapy Practice Act is established to safeguard the public health, safety, and welfare ..."⁹ (Georgia mandated licensing for music therapists in 2012.¹⁰)

There are alternatives to licensure. Voluntary certification through professional associations can benefit practitioners by enabling them to distinguish themselves, while consumers remain free to choose among all providers and decide for themselves how much value to place on such credentials.

An example is ASE certification for auto mechanics through the National Institute for Automotive Service Excellence. Presently, about 350,000 mechanics hold ASE certifications, and it is a credential widely recognized and valued in the industry. ASE-certified professionals usually wear ASE insignia and carry credentials listing their exact areas of expertise, while employers display their technicians' credentials in customer waiting areas.¹¹

There are also third-party consumer organizations, such as the Better Business Bureau, and more contemporary versions built on new information and communication technologies, such as Angie's List (www.angieslist.com), that enable consumers to hold occupational practitioners accountable for the quality of their goods and services. These organizations already help consumers sort through providers in fields where practitioners are licensed and in those where they are not. In addition, consumer affairs divisions within various state governments provide

⁸ <http://www.ij.org/l2w-protection>

⁹ *Ibid.*

¹⁰ <http://sos.ga.gov/plb/MusicTherapyGALaw.pdf>

¹¹ <http://www.ase.com/About-ASE.aspx>

aggrieved parties an option with even greater authority.

Lawmakers should not view licensing as the first option, but rather the last resort after less restrictive options have been tried.

Occupational regulation from least to most restrictive:

- Market Competition (no regulation)
- Private Civil Action
- Inspections
- Bonding or Insurance
- Registration
- Voluntary Certification
- Licensure

The Institute for Justice's John Kramer outlined this approach at the 2013 Georgia Legislative Policy Forum. His presentation, *Seven Alternatives to Government Licensure* is available on our Web site.¹²

The data in the Institute for Justice's study, "License To Work," reveal the arbitrary and irrational nature of licensure:

- Most of the 102 occupations studied are practiced somewhere without government permission and apparently without widespread harm: Only 15 are licensed in 40 states or more, and on average, the 102 occupations are licensed in just 22 states – fewer than half. This includes a number of occupations with no self-evident rationale for licensure, such as interior designer, shampooer, florist, home entertainment installer and funeral attendant.
- Licensure burdens often vary considerably across states, calling into question the need for severe burdens. For instance, while 10 states require four months or more of training for manicurists, Alaska demands only about three days and Iowa about nine days.
- The difficulty of entering an occupation often does not line up with the public health or safety risk it poses. In Georgia, 19 occupations have greater average licensure burdens than emergency medical technicians. The average cosmetologist, for example, spends 350 days in training; the average EMT, only 31.

Such inconsistencies give good reason to doubt that many licensing schemes are necessary. These inconsistencies may reflect not the relative public health and safety risks of occupations but the lobbying prowess of practitioners in securing laws to shut out competition.

Reducing the breadth and burden of occupational licensure could help states realize significant economic benefits by freeing job-seekers to enter new occupations and enabling entrepreneurs to create new enterprises. When Mississippi replaced its cosmetology-license requirement for African hairbraiders with a modest registration requirement, 300 new braiders registered with the state.¹³ Some of those 300 moved to Mississippi from neighboring states where braiding is still onerously licensed, but others came out from the shadows of the informal economy and will now formally contribute to the economic and social health of their communities.

Policy-makers should start with a few simple questions:

- Is an occupation unlicensed in other states?
- Are the licensure burdens for an occupation high compared to other states?

¹² <http://www.youtube.com/watch?v=7kO2LATwFAA>

¹³ Carpenter, D.M. (2011), *The power of one entrepreneur: A case study of the effects of entrepreneurship*. Southern Journal of Entrepreneurship, 4(1), 19-35.

- Are the licensure burdens for an occupation high compared to other occupations with greater safety risks?

If the answer to any is yes, it points to a licensing scheme that may be unnecessary or needlessly burdensome and that may not be justified by legitimate health and safety concerns.

That an occupation is unlicensed elsewhere suggests that the purported health and safety risk is not truly present – or that other mechanisms such as market forces, private certification, third-party endorsers or less intrusive regulation can work instead. When occupation aspirants face lower hurdles in other states, or compared to similarly risky occupations, it suggests that licensure burdens can be eased without compromising public safety.

When reviewing current or proposed licensing laws, policy-makers should demand proof that there is a clear, likely and well-established danger to the public from unlicensed practice. And if they decide to license an occupation, they should carefully determine how much of the burden placed on applicants is truly needed to ensure public health and safety. Forcing would-be workers to take unnecessary classes, engage in lengthy apprenticeships, pass irrelevant exams or clear other needless hurdles does nothing to ensure the public's safety. It simply protects those already in the field from competition by keeping out newcomers. Finally, policy-makers should always consider whether less restrictive options – including simply letting consumers decide for themselves – can keep the public safe while creating new opportunities for workers.¹⁴

Finding a job or creating new jobs should not require a permission slip from the government. As millions of Americans struggle to find productive work, one of the quickest ways legislators can help is to simply get out of the way: Reduce or remove burdensome regulations that force job-seekers and would-be entrepreneurs to spend precious time and money obtaining a license instead of working.

¹⁴ For model legislation that would codify similar standards for the establishment of new licensing regimes and create a statutory right to an occupation, see <http://www.ij.org/legislation/>