



REPUBLICAN STAFF COMMENTARY

From Impeding to Empowering Entrepreneurs

A Review of State Occupational Licensing Laws

July 25, 2014

Introduction

Job churn has slowed in recent years, and labor force participation has declined among the young and prime working-age individuals. Expanding firms are adding fewer jobs on average than they have in the past. The Brookings Institution finds that overall “business dynamism,” the continual process of businesses opening, closing, expanding, and failing, has slowed over the last few decades, which is cause for great concern since entrepreneurs play a critical role not only in this process but in net job creation.¹ Whether these trends continue remains to be seen, but the Congressional Budget Office (CBO), the Federal Reserve, and many private economists expect a “new normal” of slow growth. Though most of what spurs innovation and job creation is outside of government purview, there are many things that policymakers can do to strengthen the foundation for entrepreneurship and job growth.

It is well documented that the cumulative effect of regulations is taking a toll on GDP growth, productivity growth, entrepreneurship and job creation, ultimately slowing improvements in living standards and making the American Dream more difficult to achieve.² Occupational licensing is one state-level layer of that accumulative encumbrance that, if misused to benefit special interests rather than to protect consumers, has become particularly burdensome for many entrepreneurs and jobseekers.

Prevalence of Occupational Licensing Laws

Occupational licensing laws typically require fees, training, exams and other qualifications for certain professions to obtain a license, but licensing laws vary significantly from state to state. Some occupations require a license (i.e., emergency med-technicians) in every state, while others are only required in certain states (i.e., florists). The level of arbitrariness is two-fold: not only may certain occupations require a license in one state but not another, but an occupation that requires a license in numerous, if not all, states may have completely different fees, training, and examination requirements from one state to another. For example, 10 states require at least four months of training for manicurists, while others require less than 10 days.³

Licensing is typically justified based on consumer welfare, but the licensing authorities are not consumer groups; they consist of providers or are state regulators who act at the behest of incumbent providers. The incumbent providers’ interest is to lessen competition and raise prices. Licensing

Occupational licensing is often used to protect the commercial interests of incumbent businesses and practitioners by limiting market entry and competition at the expense of consumers.

controls market entry and therefore reduces competition. Notably, as union membership has decreased, licensing has risen; as Alan Krueger and University of Minnesota professor Morris Kleiner point out, both are institutions created by workers to raise wages, and licensure is about as effective as unions, raising wages by about 15 percent relative to workers in states that don't require licenses for the same occupation.⁴ Only 5 percent of workers required licenses in 1950. *The New York Times* reports that in the 1970s, only 10 percent of individuals who worked had licenses, but that rose to almost 30 percent by 2008.⁵ Yet that's not due to more individuals getting licenses in the same jobs as 1970; rather, the number of jobs requiring licenses has greatly expanded. In the mid-1980s, about 800 professions were licensed in at least one state; in 2011, at least 1,100 were.⁶

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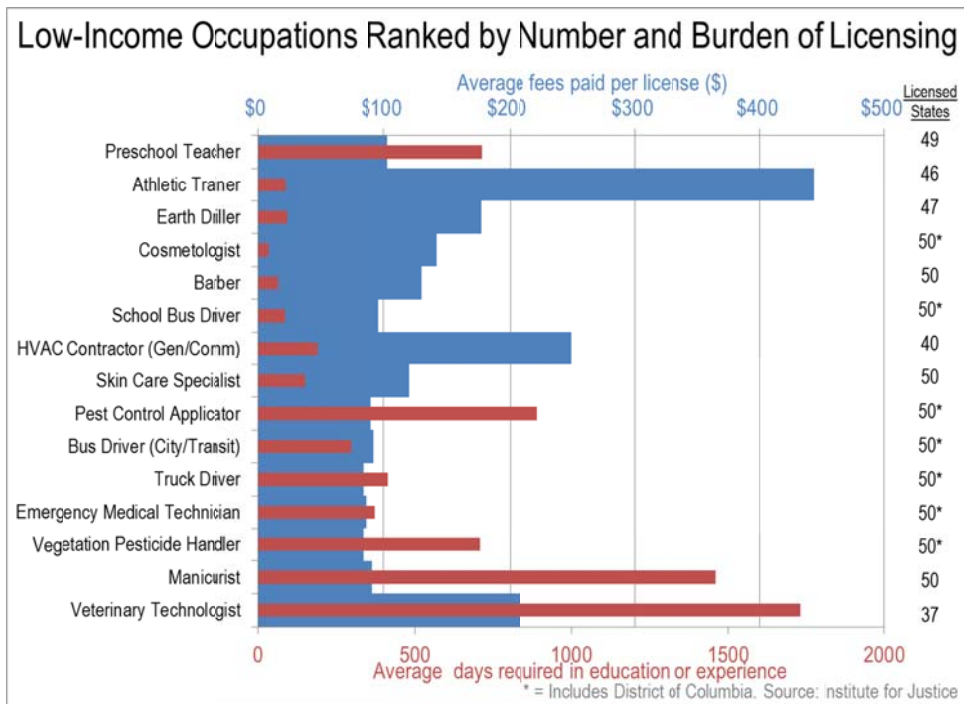
A recent survey of small business owners by Thumbtack, a business services firm, found again this year that licensing and permitting regulations were a far better predictor of the perceived "business friendliness" of a state than taxes were. At least half the businesses surveyed were subject to at least one professional licensing requirement. Many businesses saw professional licenses as their greatest problem because the requirements were beyond justifications for the public's safety. Utah, Idaho, Kansas, Virginia and Texas were rated most friendly for their professional licensing requirements affecting small businesses; Rhode Island, Connecticut, Illinois, Massachusetts and California were rated the least friendly. Average real GDP growth in 2013 was double in the top five friendliest states compared to the average growth rate of least five friendliest.⁷

Licensing Becoming the More Burdensome Barrier to Entry

Some professions, medical doctors and dentists, for example, involve highly-skilled tasks that pose significant risk to the health and safety of consumers if those tasks are performed incorrectly. For these professions, licensing may serve the public interest. However, licensing should be based on assuring consumers that licensed practitioners have the skills necessary to perform their tasks safely. Licensing should not include criteria that only serve to limit the number of practitioners. Most occupations lack a sufficient public health or safety justification for licensing; for example, Louisiana is the sole state that requires florists to be licensed.⁸ Licensing has the effect of restricting market entry, stifling innovation, constraining labor mobility, increasing the costs of services, and limiting choices, hurting both workers and consumers. The public benefits must be great enough to justify these costs. According to Kleiner, licensing results in 2.85 million fewer jobs and costs consumers \$203 billion annually.⁹ Studies show that licensing requirements do not always improve quality, and for some occupations, have been shown reduce it.¹⁰

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Using data from the Labor Department and various state licensing bodies, the Institute for Justice (IJ) analyzed the breadth and burden of licensing laws, targeting 102 low- to moderate-income jobs in all 50 states and D.C. The chart on the next page shows a ranking of the top 15 that bear the broadest regulations and highest burdens according to the analysis. Notably, cosmetologists require more days in education and higher fees per license on average than emergency med-technicians.



In the 2012 report, IJ ranked jobs by average fees paid and average required days in education or experience. The 102 jobs studied required an average \$209 in fees, an exam, and 9 months of training. Louisiana licensed 71 of the occupations; Vermont and Kentucky licensed only 27. Arizona and California ranked as the “most widely and onerously licensed” states. The most difficult license to obtain was interior designer, though a license was required in only three states.¹¹

Many occupational licensing requirements and conditions should be reexamined for their relevance to public health and safety. Florists, hair braiders, interior designers and casket sellers are among the many professions that inexplicably require licenses in certain states to operate. Such licenses make very little sense from the standpoint of consumer safety and prevent new competition in those fields, increasing prices and reducing entrepreneurship. The overuse of occupational licensing has had a profound effect on entrepreneurs, especially those of modest means and who have skills for which they can enjoy the flexibility of managing their own hours and clients.

For example, many African hair braiding businesses, which use no chemical or dangerous products, have been shut down by cosmetology boards across the country. The boards want these hair braiders to go to cosmetology school and become licensed even though most cosmetology schools don’t teach the technique of African hair braiding.¹² As a result of the undue burden, some entrepreneurs are advocating for themselves, would-be entrepreneurs, and the communities they serve. In Missouri a cosmetology license is required for hair braiding, taking 1,500 hours and costing \$16,000, or else face misdemeanor charges and fines; in fact, Missouri hair braiders recently filed a lawsuit seeking to challenge the regulation.¹³ As mentioned in testimony before a Small Business Committee subcommittee hearing entitled, “Barriers to Opportunity: Do Occupational Licensing Laws Unfairly Limit Entrepreneurship and Jobs?”, in 2004, hair braiders challenged the

Florists, hair braiders, interior designers and casket sellers are among the many professions that, for dubious reasons, require licenses to operate in certain states.

state of Mississippi on its licensing requirements and in 2005 were finally able to teach hair braiding without a cosmetology license, leaving them subject only to a \$25 fee to register with the state and compliance with all relevant health and hygiene codes.¹⁴

Many states are cracking down on violations of licensed practice—in some cases, to the extreme. In fact, last year, America’s longest running newspaper advice columnist, John Rosemond, received a letter from the Kentucky attorney general to stop publishing his advice column in a Kentucky newspaper or face fines and jail for “unlicensed practice of psychology” in Kentucky, begging the question: do occupational-licensing laws trump free speech?¹⁵

Low-income workers would be especially advantaged by more narrowly focused licensure laws, as they frequently lack the time and financial resources to obtain a license, limiting their opportunity for personal advancement and upward mobility.

Cross-state licensing reciprocity should be considered, so that labor mobility is less constrained.

The justification for licensing should include why certification is not enough.

States Should Look to Improve Licensing Laws, Cross-State Licensing

At the state level, as suggested by economist Rachel Greszler recently in testimony before the Joint Economic Committee in a hearing entitled, “Empowerment in the Workplace”: “Licensing requirements should be eliminated or reduced in accordance with cost-benefit analysis of their public interest and economic consequences.”¹⁶ At the federal level, however, it was suggested in previous testimony before the Small Business Committee subcommittee that Congress could “revoke antitrust immunity for regulatory bodies that abuse government power for private ends.”¹⁷ Such a change would help prevent abuse of licensing laws by established businesses seeking to exclude competition.

As pointed out by Kleiner, occupational licensing “does nothing to close the inequality gap.”¹⁸ Low-income workers would be especially advantaged by more narrowly focused licensure laws, as they frequently lack the time and financial resources to obtain a license, limiting their opportunity for personal advancement and upward mobility. Greszler further suggested that cross-state licensing reciprocity be considered, so that labor mobility is not so constrained. A massage therapist or a math teacher, for example, require a license to work in most states and would greatly benefit from cross-state reciprocity.

Occupational licensing can often be a clumsy solution to ensure consumer health and safety; there are other ways, such as voluntary certification, to prioritize consumer health and safety without hurting entrepreneurship and job creation. Voluntary certification does not directly limit the number of market entrants but can confer the same informational benefit to consumers about a practitioner’s qualifications. The justification for licensing should include why certification is not enough. States should reexamine their occupational licensing laws to ensure that they are not serving the interests of incumbent groups instead of the consumers they are meant to protect.

¹ Ian Hathaway and Robert E. Litan, “Declining Business Dynamism in the United States: A Look at States and Metros,” Brookings Institution, May 5, 2014, <http://www.brookings.edu/research/papers/2014/05/declining-business-dynamism-litan>

² Patrick McLaughlin, “The Consequences of Regulatory Accumulation and a Proposed Solution,” Mercatus Center at George Mason University, February 11, 2014, <http://mercatus.org/publication/consequences-regulatory-accumulation-and-proposed-solution>

³ Rachel Greszler, “Empowerment in the Workplace,” testimony before the Joint Economic Committee, U.S. Congress, June 18, 2014,

http://www.jec.senate.gov/republicans/public/?a=Files.Serve&File_id=292c7edc-5e4d-4a86-9779-3d9cbf38c76f

⁴ Morris M. Kleiner and Alan B. Krueger, "Analyzing the Extent and Influence of Occupational Licensing on the Labor Market," *Journal of Labor Economics* 31, No. 2, via Chicago Journals, April 2013, <http://www.hhh.umn.edu/people/mkleiner/pdf/Final.occ.licensing.JOLE.pdf>; see also: Maury Gittleman and Morris M. Kleiner, "Wage Effects of Unionization and Occupational Licensing Coverage in the United States," BLS Working Papers, Bureau of Labor Statistics, May 2013, <http://www.bls.gov/ore/pdf/ec130040.pdf>

⁵ Morris M. Kleiner, "Why License a Florist?" *The New York Times*, May 28, 2014, <http://www.nytimes.com/2014/05/29/opinion/why-license-a-florist.html>

⁶ Veronique de Rugy, "More State Occupational Licensing Law Abuse: Kentucky Edition," *National Review Online* via Mercatus Center at George Mason University, July 17, 2013, http://mercatus.org/expert_commentary/more-state-occupational-licensing-law-abuse-kentucky-edition

⁷ Jared Meyer, "An Even Larger Headache Than Taxes for Small Businesses," e21, June 13, 2014, <http://economics21.org/commentary/even-larger-headache-taxes-small-businesses>

⁸ Kleiner, "Why License a Florist?" 2014.

⁹ http://research.upjohn.org/cgi/viewcontent.cgi?article=1008&context=up_policypapers

¹⁰ Rebecca Haw, "The Cost of Excessive Occupational Regulation and What Antitrust Liability for Licensing Boards Can Do About It," testimony before the Subcommittee on Contracting and Workforce Hearing, Committee on Small Business, House of Representatives, March 26, 2014, http://smallbusiness.house.gov/uploadedfiles/3-26-2014_haw_testimony.pdf

¹¹ Dick M. Carpenter II, Ph.D., et. al., "License to Work: A National Study of Burdens from Occupational Licensing," The Institute for Justice, May 2012, <https://www.ij.org/licensetowork>; see also: Veronique de Rugy, "One in Three Workers Are Subject to Income-Mobility-Destroying Occupational-Licensing Laws," *National Review Online*, March 27, 2014, <http://www.nationalreview.com/corner/374358/one-three-workers-are-subject-income-mobility-destroying-occupational-licensing-laws>

¹² Byron Schlomach, "Six Reforms to Occupational Licensing Laws to Increase Jobs and Lower Costs," Goldwater Institute, Policy Report 247, July 10, 2012, <http://goldwaterinstitute.org/sites/default/files/Policy%20Report%20247%20Licensing.pdf>

¹³ Robert Patrick, "Hair braiders sue to challenge Missouri regulations," *St. Louis Post-Dispatch*, June 17, 2014, http://www.stltoday.com/news/local/crime-and-courts/hair-braiders-sue-to-challenge-missouri-regulations/article_2b12b9ab-43f8-5692-b14a-b8c365064b5d.html; see also: Paul Avelar, "Untangle Occupational Licensing," *National Review Online*, June 17, 2014, <http://www.nationalreview.com/article/380597/untangle-occupational-licensing-paul-avelar>

¹⁴ Melony Armstrong, testimony before the Subcommittee on Contracting and Workforce Hearing, Committee on Small Business, House of Representatives, March 26, 2014, http://smallbusiness.house.gov/uploadedfiles/3-26-2014_armstrong_written.pdf

¹⁵ Mark J. Perry, "Institute for Justice goes up against government censors to help defend freedom of speech and the First Amendment," American Enterprise Institute, *Carpe Diem*, July 16, 2013, <http://www.aei-ideas.org/2013/07/institute-for-justice-goes-up-against-government-censors-to-help-defend-freedom-of-speech-and-the-the-first-amendment/>

¹⁶ Greszler, 2014.

¹⁷ Timothy Sandefur, "Testimony to the U.S. House Committee on Small Business," testimony before the Subcommittee on Contracting and Workforce Hearing, Committee on Small Business, House of Representatives, March 26, 2014, http://smallbusiness.house.gov/uploadedfiles/3-26-2014_sandefur_testimony.pdf

¹⁸ Kleiner, "Why License a Florist?" 2014.