

# **UNNATURAL RIGHTS IN THE NATURAL STATE**

## **OCCUPATIONAL LICENSING IN ARKANSAS**



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**ARKANSAS CENTER FOR  
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# EXECUTIVE SUMMARY

Should a woman who hasn't completed 1,500 hours of cosmetology training be allowed to braid hair for a living? Should a man who has taught for 20 years in one state be barred from practicing in another until he completes additional schooling and passes an exam? Should an interior designer need a four-year degree to recommend the best color to paint your living room and the best curtains for your windows? Occupational licensing makes it harder for millions of individuals nationwide and thousands of Arkansas residents to earn a living in the profession of their choice. The educational and experience requirements to obtain a license to work, not to mention the costs involved in doing so, make it unnecessarily difficult for people to work in professions as diverse as cosmetology, pest control, athletic training, massage therapy, and auctioneering.

The stated purpose of occupational licensing laws is to protect the public's health and safety and increase

work quality. But requirements to obtain a license in a given profession and the occupations that require a license vary so much by state that the requirements seem arbitrary and designed to keep newcomers out of the profession, limiting competition and allowing existing practitioners to capture a greater market share and charge more. Indeed, state licensing boards are often comprised mostly of members of the licensed occupation, who have a vested interest in keeping others out. Further, by increasing prices and reducing the availability of needed services, licensing can cause people to turn to cheaper and less safe alternatives, such as do-it-yourself electrical work or going without medical care. And studies have shown that licensing doesn't necessarily increase work quality. Despite the often strict requirements to earn a license, a license is no guarantee that a service provider is highly skilled or ethical. Consumers can and often do turn to free-market alternatives to screen service providers, such as

online reviews and recommendations from friends and family. Bonding and insurance also protect consumers from service providers that don't deliver what they've promised or cause harm in the process.

Licensing laws not only keep people, especially immigrants and the poor, from working in the jobs where they might be most skilled and able to earn the most, they also harm consumers, who must pay more for services in licensed professions. Licensing further harms society as a whole by causing higher unemployment rates and making it difficult for individuals to move across state lines. People can't easily relocate to where their services are in highest demand, which is especially troublesome in emergencies. Individuals who are licensed in one state may be barred from providing assistance in that state that most needs it. In nonemergency situations,

when one spouse is required to relocate across state lines for work, as is frequently the case for military families, the other spouse may be unable to work in the new state if his or her profession is licensed and there is no reciprocity in licensing requirements between the two states.

Arkansas's licensing laws are in particular need of reform, as the state has some of the most burdensome licensing laws in the country. And occupational licensing is on the rise; the number of occupations that require a license nationwide has increased substantially in just the last 50 years. Alternatives to licensing, such as certification and registration, are effective at protecting the public health and safety while avoiding the substantial problems caused by licensing.

# LICENSING LAWS

KEEP PEOPLE FROM WORKING IN THE  
JOBS WHERE THEY MIGHT BE MOST SKILLED  
AND ABLE TO EARN THE MOST.

LICENSING FURTHER HARMS SOCIETY  
AS A WHOLE BY CAUSING HIGHER  
UNEMPLOYMENT RATES AND MAKING  
IT DIFFICULT FOR INDIVIDUALS TO MOVE  
ACROSS STATE LINES.





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# THE NEED FOR OCCUPATIONAL LICENSING REFORM

Imagine you had a skill that you had been honing for years that allowed you to run your own business. You provide a safe service to consumers while earning a living for your family on your own terms. Now imagine that you had to operate that business illegally under the constant threat of fines and jail time because you couldn't afford to invest 1,500 hours and \$20,000 to obtain a state license covering information and skills barely relevant to your work.<sup>1</sup>

That was the situation Nivea Earl and Christine McLean, two natural hair braiders working in Arkansas, found themselves in back in 2014. And it's similar to the situations that thousands of workers nationwide face because of restrictive occupational licensing laws.

Many professions are subject to occupational licensing: government requirements that individuals must meet before they can work in a specific job.<sup>2</sup> Requirements

to get a license vary by state and by occupation but generally include completing coursework, passing exams, completing an internship or specialized training, and paying a fee. Occupational licenses may also have subjective components, such as requiring the applicant to have "good moral character," as is the case for interior designers and many others in Arkansas.<sup>3</sup> The occupations that require a license also vary by state. Every state and the District of Columbia requires occupations such as emergency medical technicians, pest control applicators, school and city bus drivers, pesticide handlers, truck drivers, and cosmetologists, to obtain a license.<sup>4</sup> By contrast, only one state requires a license to work as a forest worker, fire sprinkler system tester, florist, conveyor operator, or pipelayer.<sup>5</sup> In total, more than 1,100 occupations are regulated in at least one state, according to a White House report,<sup>6</sup> and occupational licensing hurts job growth by 20 percent and costs Americans an estimated \$35 billion to \$41 billion every year.<sup>7</sup>

The Institute for Justice (IJ), a public interest law firm that has defended individual rights nationwide since 1991, has conducted extensive research on occupational licensing. One of its key findings is that many licensed occupations are those that low- and moderate-income workers pursue.<sup>8</sup> By creating barriers to work, occupational licensing requirements make it harder for individuals of modest means to earn an income, improve their living standards, and save for the future. Licensing requirements also tend to exclude workers with limited English skills and limited education, even in occupations where strong English proficiency and a high school degree are unnecessary, such as manicuring.<sup>9</sup>

While occupational licensing's stated purpose is to protect the public health and safety, "the pressure on the legislature to license an occupation rarely comes from the members of the public who have been mulcted or in other ways abused by members of the occupation," writes economist Milton Friedman. "On the contrary, the pressure invariably comes from members of the occupation itself."<sup>10</sup>

A recent example from New Jersey illustrates this point. The Northeast Spa and Pool Association is trying to get the state to require pool and spa builders, installers, and servicers to be licensed. The bill's proponents are not consumers who have been harmed, but those who work in the industry. They freely admit that they want licensing because it will help them raise prices. If the bill, which has already passed in the state assembly, passes in the state

senate, a new Pool and Spa Service Contractors and Pool and Spa Builders and Installers Advisory Committee will have a majority of members from the industry setting licensing standards and deciding who can compete with them.<sup>11</sup>

Indeed, licensing boards are generally comprised of members of the licensed profession, and their incentives have less to do with the public interest and more to do with their own interest. By restricting the number of individuals who can obtain a license through burdensome requirements that many workers cannot meet, existing practitioners limit their competition. They can then charge higher prices and, in opposition to licensing's stated purpose, provide a lower quality of service. The public that is supposed to benefit from licensing laws ends up losing. We pay higher prices, we don't get the best possible service, and we may face long waits for the services we need.

"People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices," wrote Adam Smith in *The Wealth of Nations*. "It is impossible indeed to prevent such meetings, by any law which either could be executed, or would be consistent with liberty and justice. But though the law cannot hinder people of the same trade from sometimes assembling together, it ought to do nothing to facilitate such assemblies; much less to render them necessary."<sup>12</sup>



Friedman further wrote, “a producer group tends to be more concentrated politically than a consumer group. ... The result is that people in the same trade, like barbers or physicians, all have an intense interest in the specific problems of this trade and are willing to devote considerable energy to doing something about them.” But consumers’ interest is casual; “Hardly any of us are willing to devote much time going to the legislature in order to testify against the iniquity of restricting” a profession. Because “the public interest is widely dispersed...

producer groups will invariably have a much stronger influence on legislative action and the powers that be than will the diverse, widely spread consumer interest.”<sup>13</sup>

While most of us may not have the time to dedicate to reforming occupational licensing laws, we can support others that do. This report will explore why occupational licensing restrictions matter to Arkansans, why we need reform, and what alternatives exist.

### WHY ARKANSAS NEEDS REFORM: TOO MANY BARRIERS TO WORK

According to a 2012 Institute for Justice study, Arkansas has the second most burdensome licensing laws when the breadth and scope of the occupations are considered in the ranking.<sup>14</sup> IJ examined 102 low- and moderate-income occupations and found that 52 require a license in Arkansas.<sup>15</sup> Only 10 other states have more licensed occupations than Arkansas does, and only one state,<sup>16</sup> Hawaii, has more barriers to entering these occupations.<sup>17</sup>

Some of the highest barriers to entry in Arkansas include five years of education and experience to work in construction trades, and three years of training to work as an optician or a fire alarm installer.<sup>18</sup> Another way Arkansas stands out is that unlike most states, it requires a license to work as a funeral attendant, psychiatric technician or residential dry wall installer.<sup>19</sup>

Licensing requirements are often inconsistent and seemingly arbitrary, with occupations being licensed in some states and not others and wildly different amounts of education and experience needed to obtain a license. Arkansas, for example, requires opticians to obtain three years of training while the national average is one year.<sup>20</sup>

Similarly, a 2007 study by the Reason Foundation found that Arkansas workers face some of the heaviest occupational licensing requirements in the nation, with 128 licensed job categories,<sup>21</sup> making Arkansas the fifth most licensed state (California leads the nation with 177 licensed job categories).<sup>22</sup>

**ARKANSANS SPEND  
AN ESTIMATED \$400—\$800 EXTRA PER YEAR ON  
SERVICES BECAUSE OF OCCUPATIONAL LICENSING —  
EFFECTIVELY A HIDDEN TAX ON CONSUMERS.**

**TABLE 1.**  
**OCCUPATIONAL LICENSING IN ARKANSAS VS. SURROUNDING STATES**

STATE	NUMBER OF OCCUPATIONS LICENSED	AVERAGE EDUCATION & EXPERIENCE (DAYS)
Oklahoma	29	416
Missouri	31	220
Texas	34	326
Arkansas	52	689
Tennessee	53	222
Mississippi	55	155
Louisiana	71	163

Source: Carpenter, D. M., II, Knepper, L., Erickson, A. C., & Ross, J. K. (2012). *License to work: A national study of burdens from occupational licensing*, table 8. Arlington, VA: Institute for Justice, <http://ij.org/licensetowork>.

Occupational licensing leads to higher prices,<sup>23</sup> unemployment, and poverty.<sup>24</sup> <sup>25</sup>Arkansans spend an estimated \$400–\$800 extra per year on services because of occupational licensing—effectively a hidden tax on consumers.<sup>26</sup> Arkansas could lower prices across the board by 4.5 percent by reducing the education and experience requirements for licensed low-wage jobs from 689 to 155 days on average, on

par with Mississippi, and it could reduce the poverty rate by 2.1 percent and reduce the unemployment rate by 0.75 percent by reducing the total number of licensed low-wage occupations from 52 to 31, on par with neighboring Missouri.<sup>27</sup>



### **THE INCREASING NATIONAL TREND OF OCCUPATIONAL LICENSING**

Occupational licensing hinders workers not just in Arkansas, but nationwide. Nearly one-third of American workers need a license, labor policy experts Morris Kleiner and Alan Krueger find.<sup>28</sup> In the early 1950s, by contrast, less than 5 percent of workers needed a license.<sup>29</sup>

According to a 2015 White House report on occupational licensing that draws heavily on work by Kleiner and Krueger, one reason licensing has increased so much is the US economy has gradually shifted away from providing goods and toward providing services. Service industry jobs are twice as likely to require a license as goods-producing jobs.<sup>30</sup> But even aside from the changing structure of the economy, more occupations today require a license than they did in the 1950s.<sup>31</sup>

In the late 1960s, less than 13 percent of the US workforce was employed in the education or health services industries, two of the most heavily licensed industries.<sup>32</sup> By 2013, that share had risen to over 22 percent.<sup>33</sup> More than 60 percent of education workers and more than 80 percent of health care workers are licensed.<sup>34</sup> But further analysis shows that changing workforce composition explains only about one-third of the increase in licensed workers.<sup>35</sup> The rest of the increase is due to the greater number of professions that require a license.<sup>36</sup>

One possible explanation for the greater number of professions that require a license is that when new fields emerge, practitioners may want to establish licensing requirements to make the field seem more legitimate. They may also believe they are improving quality and safety for consumers.<sup>37</sup> While licensing may increase the appearance of legitimacy, there are other ways to achieve this goal that place far fewer burdens on workers, and licensing often has ulterior motives that have nothing to do with quality or safety.

SECURITY ALARM INSTALLER BARBER COSMETOLOGIST PSYCHIATRIC TECHNICIAN  
MILK SAMPLER BILL COLLECTOR AGENCY DRYWALL INSTALLATION CONTRACTOR SKIN CARE SPECIALIST  
LANDSCAPE WORKER CHILD CARE WORKER FUNERAL ATTENDANT

# ARKANSAS

HAS SOME OF THE MOST  
BURDENSOME LICENSING  
LAWS IN THE COUNTRY

OPTICIAN NURSERY WORKER VETERINARY TECHNOLOGIST  
EMERGENCY MEDICAL TECHNICIAN

PEST CONTROL APPLICATOR MIDWIFE  
CARPENTER/CABINET MAKER CONTRACTOR TERRAZZO CONTRACTOR

ANIMAL TRAINER FLOOR SANDER CONTRACTOR  
PIPELAYER CONTRACTOR TEACHER ASSISTANT SHEET METAL CONTRACTOR

GAMING SUPERVISOR ATHLETIC TRAINER

CEMENT FINISHING CONTRACTOR SECURITY GUARD PAVING EQUIPMENT OPERATOR CONTRACTOR  
PAINTING CONTRACTOR SCHOOL BUS DRIVER MAKEUP ARTIST

INSULATION CONTRACTOR FIRE ALARM INSTALLER GLAZIER CONTRACTOR

MASSAGE THERAPIST IRON/STEEL CONTRACTOR BACKFLOW PREVENTION ASSEMBLY TESTER TRUCK DRIVER

DOOR REPAIR CONTRACTOR MANICURIST MASON CONTRACTOR  
EARTH DRILLER TRUCK DRIVER HVAC CONTRACTOR BUS DRIVER

VEGETATION PHARMACY TECHNICIAN PRESCHOOL TEACHER MOBILE HOME INSTALLER  
PESTICIDE HANDLER DRYWALL INSTALLATION CONTRACTOR







# WHY REGULATE OCCUPATIONS WITH LICENSING?

Occupational licensure is a severe form of regulation. Yet, dozens of professions, both high- and low-paying, are licensed. Some of the most common higher-paying licensed fields include accountants, dentists, lawyers, nurses, optometrists, pharmacists, physicians, surgeons, and real estate brokers.<sup>38</sup> Some of the most common lower-paying licensed fields include cosmetologists, manicurists, teachers, athletic trainers, HVAC contractors, massage therapists, and veterinary technologists.<sup>39</sup>

Some occupations are licensed in all 50 states and the District of Columbia, while others are only licensed in a single state. Professionals who want to work in an occupation that is licensed in their state must typically complete educational requirements, pass exams, gain professional experience under someone who is already licensed, and pay fees both to obtain their license and to renew it, on top of any fees incurred to meet educational requirements. Many licenses require workers to complete more than one thousand hours of work and spend thousands of dollars.

**MANY LICENSES  
REQUIRE WORKERS TO COMPLETE MORE  
THAN ONE THOUSAND HOURS OF WORK  
AND SPEND THOUSANDS OF DOLLARS.**

### COMPARING LICENSING TO CERTIFICATION AND REGISTRATION

Friedman described three levels of control that governments exert over professions: registration, certification, and licensing. Under registration, “individuals are required to list their names in some official register if they are engaged in certain kinds of activities” but “there is no provision for denying the right to engage in the activity to anyone who is willing to list his name,” though they may be charged a tax or registration fee. Under certification, “the governmental agency may certify that an individual has certain skills but may not prevent, in any way, the practice of any occupation using these skills by people who do not have such a certificate”; and licensing, which is “more than a formality” and “requires some demonstration of competence or the meeting of some tests ostensibly designed to insure competence, and anyone who does not have a license is not authorized to practice and is subject to a fine or a jail sentence if he does engage in practice.”<sup>40</sup>

Friedman wrote that registration could perhaps be justified on grounds that “there may be certain activities that are so likely to give rise to fraud as to render it desirable to have in advance a list of people known to be pursuing this activity,” such as taxicab drivers, who might be in a position to rob their passengers.<sup>41</sup> Friedman notes that even registration can be harmful as it “tends to be the first step toward certification and licensure.”<sup>42</sup>

He wrote that “certification is much more difficult to justify” because the private market can generally handle this task. Private certifications such as Good Housekeeping’s seal serve this purpose, as do organizations such as Consumers Union, Consumers’ Research, and the Better Business Bureau. Likewise, colleges and universities certify the educational attainment of their graduates.<sup>43</sup>

Friedman described licensure as “still more difficult to justify,” as it further encroaches on individuals’ rights to enter voluntary contracts. He says licensure may be justified on the grounds of neighborhood effects. For example, a physician who doesn’t properly care for a patient may harm not only that patient but also uninvolved third parties by causing an epidemic.<sup>44</sup> However, he writes, “the usual arguments for licensure... are satisfied almost entirely by certification alone,”<sup>45</sup> and if some think that the general public is “too ignorant to judge good practitioners, all that is needed is to make the relevant information available.” Consumers can then decide for ourselves whether to choose a certified or non-certified practitioner.<sup>46</sup>

Certification offers many benefits of occupational licensure while avoiding many of the harms, but it is not a perfect solution. Friedman said that if certification imposes “unnecessarily stringent requirements and reduce[s] the number of practitioners too much,” the large price difference that will emerge between certified and noncertified practitioners will cause the



public to turn to the latter.<sup>47</sup> The same argument can be made about licensing. When licensed or certified professionals are too expensive or in short supply, consumers will turn to less qualified professionals or engage in do-it-yourself work that in some cases can be dangerous, meaning that occupational licensing can have the opposite of its intended effect.

#### **OCCUPATIONAL LICENSING’S STATED PURPOSE: CONSUMER SAFETY AND WORK QUALITY**

Licensing boards and many members of licensed occupations say occupational licensing laws benefit consumers by protecting public safety and ensuring product and service quality. An experiment conducted in 2010 by IJ’s director of strategic research Dick M. Carpenter II illustrates why these claims are false.<sup>48</sup>

Carpenter wanted to see whether floral arrangements by Louisiana florists, who are required to be licensed, were superior to those by Texas florists, who are not required to be licensed. He purchased 25 sympathy arrangements from randomly selected florists in each state who did not know they were part of an experiment. He then asked 18 randomly chosen florists, eight from Texas and 10 from Louisiana, to judge the arrangements on specific criteria without telling them which state each arrangement came from.<sup>49</sup>

The judges found no significant differences in the floral arrangements from each state. And Carpenter found no difference in the quality of the florists themselves; the licensed Louisiana florists were not more discerning judges than the unlicensed Texas ones. Consumer complaint rates against florists were similar in both states, too. The florists he spoke to said that it was not licensing requirements, but the desire to please consumers—competition, in other words—that drove the quality of their work, and that licensing’s real purposes were to raise money for the state and limit competition.<sup>50</sup>

Louisiana florists partnered with IJ in March 2010 to file a lawsuit against the Louisiana Horticulture Commission, which succeeded in making the florist licensing law less strict,<sup>51</sup> but florists are still required to be licensed in the state. No other state licenses florists.<sup>52</sup>

Another justification for licensing is based on the idea that consumers are “unable or unwilling to correctly evaluate quality standards” and consequently choose lower quality but less expensive services that put higher quality but more expensive ones out of business, write researchers Sidney Carroll and Robert Gaston.<sup>53</sup> The idea is that licensing excludes these lower quality producers so that the market contains only those producers a well-informed consumer would choose.<sup>54</sup> Similarly, Kleiner and Kudrle have found no relationship





between stricter state regulations for dentists and the number of complaints to dental licensing boards or the cost of malpractice insurance, but they have found that the number of dentists in a state grows more slowly and dentists charge more and earn more under stricter regulations for their profession.<sup>55</sup>

But as Carroll and Gaston point out, occupational licensing can actually lower service quality in four ways.<sup>56</sup> Since licensing restricts the number of service providers, some consumers will try to perform services themselves that they may not be well suited for.<sup>57</sup> For example, some people may choose to prepare their own taxes because it is too expensive to hire a certified public accountant, or worse, they may try to do their own electrical work because it is too expensive to hire a licensed electrician. Another problem is that licensed professionals can end up providing services that they are overtrained for;<sup>58</sup> think of doctors providing services that nurse practitioners can capably perform. Those professionals end up dedicating less time to their areas of true expertise.<sup>59</sup>

A third problem is that if licensing restricts the quantity of service providers to the point where not all consumers

are able to obtain it, consumers may suffer even if the quality of licensed service providers is higher than it might be without licensing.<sup>60</sup> A limited supply of highly qualified doctors could lead to worse overall patient health than a larger supply of slightly less qualified but still competent doctors.<sup>61</sup> Finally, by making it harder to enter a profession and by limiting competition, licensed professionals may have less incentive to compete on quality.<sup>62</sup>

Carroll and Gaston also report on three studies that confirm that licensing increases the quality of service provided by lawyers, pharmacists, and optometrists,<sup>63</sup> but they point out that “the quality–licensing relationship does not hinge solely on quality delivered but rather on quality received. ... Quality received involves the overall effectiveness of the service received by all consumers whether served by licensed professionals or by substitute means.”<sup>64</sup> They point out that while some amount of restriction may increase service quality, too much restriction may be harmful.<sup>65</sup> For example, if high-quality dentists who practiced in Mexico cannot easily practice in the United States because of licensing restrictions, then consumers may not have access to the best possible pool of dentists.



### **OCCUPATIONAL LICENSING'S TRUE PURPOSE: BLOCKING COMPETITION**

A recent case that went all the way to the Supreme Court illustrates how occupational licensing's true purpose is not to protect consumers but to block competition. In *North Carolina State Board of Dental Examiners vs. FTC*, the Federal Trade Commission sued the dental board for unfair competition in violation of the FTC Act after the board issued cease-and-desist letters to 29 non-dentist teeth whitening service providers.<sup>66</sup> The justices found that the dental board had indeed violated the antitrust

law, on the grounds that the board was composed of dentists and the state did not have active oversight.<sup>67</sup>

Teeth whitening was an \$11 billion industry as of 2013, providing the average member of the American Academy of Cosmetic Dentistry with \$25,000 in annual income.<sup>68</sup> Nearly one-third of states say that only licensed dentists, hygienists, or dental assistants can offer this service,<sup>69</sup> which 80 percent of dentists do offer.<sup>70</sup> And North Carolina is not alone; half of state dental boards have tried to put non-dentist teeth



whitening providers, who often charge significantly less than dentists for this service, out of business.<sup>71</sup>

Connecticut, for example, passed a law that made providing teeth whitening services a crime punishable by up to five years in prison for non-dentists.<sup>72</sup> Consumers have rarely filed complaints against teeth-whitening businesses, so it seems that the dentists who have attempted to drive other practitioners out of business are primarily concerned with protecting or even increasing their own revenue and not with protecting consumers.<sup>73</sup> Indeed, it has been dentists, dental associations, and state dental boards who have initiated all the legislative efforts to block teeth-whitening services by others.<sup>74</sup>

Occupational licensing may also be used as a tool to drive out competition from immigrants. Consider the example of Vietnamese manicurists. In the 1990s, large numbers of Vietnamese immigrants to the United States began to enter the manicuring profession, which is licensed in all 50 states.<sup>75</sup> Researchers Federman, Harrington, and Krynski found that “by 2000, 41 percent of manicurists were Vietnamese and 5 percent of all Vietnamese workers were manicurists, compared to only 0.04 percent of non-Vietnamese workers.”<sup>76</sup>

Manicuring can be an attractive job opportunity for immigrants with limited English skills, which is the case for nearly a third of Vietnamese immigrants.<sup>77</sup> As well, it can be an attractive option for workers who have not completed high school, which is the case for more than a third of Vietnamese immigrants.<sup>78</sup>

Yet, manicuring license requirements for educational attainment and English proficiency prevent Vietnamese immigrants in many states from becoming manicurists. They also prevent Vietnamese manicurists who work in states with less stringent licensing requirements from moving to states with more stringent licensing requirements. While some amount of education might make sense to ensure that manicurists learn proper health and safety precautions, “the number of hours required appears excessive in most states if the goal is to ensure health and safety,” the researchers find.<sup>79</sup> They conclude that in addition to limiting job opportunities for Vietnamese immigrants, “these regulations result in fewer manicurists overall, which is likely to raise the price of manicures and reduce consumer options, especially since the Vietnamese have pioneered the ubiquitous, stand-alone nail salon.”<sup>80</sup>









# WHY OCCUPATIONAL LICENSING IS HARMFUL

Occupational licensing harms both producers and consumers in several ways. It reduces employment and entrepreneurship, hurts economic growth, concentrates power in established firms, increases the prices consumers pay, leads to wasteful lobbying efforts, and exposes states to lawsuits. Below, we examine each of these harms in more detail.

## **OCCUPATIONAL LICENSING REDUCES EMPLOYMENT**

Occupational licensing reduces employment in licensed professions by increasing barriers to entry. These burdens may have a greater impact on certain groups that already face disadvantages, including immigrants, released criminals, and military spouses and others who frequently move to different states.<sup>81</sup> Immigrants who have successfully practiced a profession in their home country may find it difficult to meet licensing requirements in US states because training and experience acquired

overseas often does not count and it may be costly and time consuming to meet US state requirements, such as working under a US engineer for four years in order to obtain an engineer's license.<sup>82</sup> Military spouses and others who move often may have trouble meeting the different licensing requirements in each state.<sup>83</sup> And in half of states, a criminal conviction of any type at any point in the applicant's history can prevent him or her from being granted a license. What's more, it can take months for states to determine whether such applicants even qualify to pursue a license.<sup>84</sup>

## **OCCUPATIONAL LICENSING REDUCES ENTREPRENEURSHIP**

Occupational licensing can make it significantly more difficult to start a business. Instead of simply opening up shop and starting to offer a service, individuals who wish to work in licensed occupations must first meet

educational and experience requirements that can take years, especially if someone can only devote part of their time to meeting those requirements while they continue to earn a living in another job.

*The Wall Street Journal* conducted an online survey of 798 businesses in 2014 and concluded that about half of US businesses with less than \$20 million in annual revenue are licensed.<sup>85</sup> Licensing laws can be more of a burden than taxes to small businesses trying to grow.<sup>86</sup>

Even businesses that don't operate in a space that requires a license can find themselves under attack from licensing boards in closely related fields, as was the case with nondentist teeth whitening service providers such as beauty parlors and spas that received cease and desist letters from the North Carolina State Board of Dental Examiners (discussed in the section of this report entitled "Occupational Licensing's True Purpose:

Blocking Competition"). Dentists were trying to protect themselves against competition from providers who charged about a third of what they did for a similar service.<sup>87</sup>

Similarly, occupational licensing has made it difficult for Vietnamese manicurists to work in states that have educational and English proficiency requirements that many members of this group can't meet. Even if they've been successfully working as manicurists in an unlicensed or less strictly licensed state for years, their experience is irrelevant in the eyes of licensing boards.<sup>88</sup>

#### **OCCUPATIONAL LICENSING RESTRICTS WORKER MOBILITY**

In addition to reducing employment and entrepreneurship, occupational licensing makes it harder for workers to move from one state to another because

**LICENSING LAWS  
CAN BE MORE OF A BURDEN  
THAN TAXES TO SMALL  
BUSINESSES TRYING TO GROW.**





licensing requirements vary by state. A license obtained in one state will not be valid in another state unless there is reciprocity, meaning that one state will accept another state's licensing requirements.<sup>89</sup> When there is not reciprocity, a worker who wishes to relocate might not be able to afford to do so because of the time and cost required to obtain the license in the new state and the inability to continue working while doing so.<sup>90</sup>

Reduced mobility doesn't just harm workers; it also harms consumers. For example, in the aftermath of a natural disaster, practitioners from other states may not be able to respond to a shortage of workers because they don't meet that state's licensing requirements. While it is true

that unscrupulous, unlicensed workers sometimes prey on disaster victims, it is also true that we could speed up disaster recovery by improving reciprocity or creating temporary exceptions to allow out-of-state workers to assist in areas such as health care, veterinary care,<sup>91</sup> and construction. Fourteen states and the District of Columbia do allow license reciprocity for emergency service providers,<sup>92</sup> but the residents of the other 36 states remain vulnerable.

The nursing profession illustrates another solution to the mobility problem. The Nurse Licensure Compact, in effect since 2000, lets practical, vocational, and occupational nurses work in any of 25 states.<sup>93</sup>

**OCCUPATIONAL LICENSING CONCENTRATES POWER**

By making it difficult for newcomers to enter a field of employment, occupational licensing tends to concentrate power in existing companies. These companies face less competition than they would in a free market devoid of licensing, which gives them a larger market share.<sup>94</sup> Funeral directors have used occupational licensing to consolidate businesses into larger and larger regional firms.<sup>95</sup> For example, when Florida increased the regulations on direct disposers (people who cremate remains but are not funeral directors), funeral directors greatly increased their share of the cremation market.<sup>96</sup>

Since licensing boards are generally made up of members of the licensed profession, existing licensed companies get to decide who can enter their field and what requirements they must meet to do so. Occupational licensing also concentrates power because consumers who are affected by licensing laws in the form of less competition, higher prices, and potentially lower service quality have much less incentive to challenge licensing requirements than the incentive licensed firms have to make sure they are upheld. Economists call this a problem of dispersed costs (for consumers) and concentrated benefits (for licensees).

**OCCUPATIONAL LICENSING  
TENDS TO CONCENTRATE POWER IN EXISTING  
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THEM A LARGER MARKET SHARE.**







 *Cadillac*





### **OCCUPATIONAL LICENSING HARMS CONSUMERS**

Occupational licensing tends to increase the prices of goods and services by 3 to 16 percent while not necessarily improving the quality of those goods and services.<sup>97</sup> Higher prices may be more prevalent in states where licensing laws are more restrictive since those laws may limit the supply of providers.<sup>98</sup>

It can be argued that a licensed provider has the education and experience to offer a higher quality of service than an unlicensed provider and that they are justified in charging a higher price for their work. Even if that argument is true, customers should have the option to choose a less qualified and less experienced but still competent service provider who does not charge as much.

Friedman makes this point with an analogy using Cadillacs that a colleague of his once shared in a meeting, “Would it not, he said, be absurd if the automobile industry were to argue that no one should drive a low quality car and therefore that no automobile manufacturer should be permitted to produce a car that did not come up to the Cadillac standard. . . . This tends to be the professional attitude. The members look solely at the technical standards of performance, and argue in effect that we must have only first-rate physicians even if this means that some people get no medical service—though of course they never put it that way. . . . Quality is only a rationalization and not the reason for the restriction.” Further, in cases where licensing requirements have little to do with a service provider’s skill, such as requirements that manicurists complete a certain number of years of education, consumers should have the right to choose a provider that doesn’t meet arbitrary requirements designed to limit competition, not to protect consumers.

**CONSUMERS SHOULD  
HAVE THE RIGHT TO CHOOSE A  
PROVIDER THAT DOESN'T MEET  
ARBITRARY REQUIREMENTS  
DESIGNED TO LIMIT COMPETITION.**

### **OCCUPATIONAL LICENSING LEADS TO LOBBYING**

Occupational licensing generally comes about in two ways: through efforts by politicians attempting to garner support and votes by passing new laws in the name of protecting the public health and safety and protecting consumers against fraud and through efforts by existing members of the licensed profession who want to protect themselves from competition by newcomers to their field.<sup>99</sup> These efforts are often transparently absurd, as the cases of North Carolina music therapists and interior designers nationwide seeking to get their professions licensed.<sup>100</sup> Still, lobbying persists in an attempt to create, protect, or expand privileges that restrict competition and let licensed practitioners charge more and capture a greater market share.

The technical term economists use for lobbying is rent-seeking, and they consider the practice to be a waste of resources.<sup>101</sup>

When interior designers spend time and money lobbying governments for greater restrictions on their competitors, they may increase their incomes as a result. But another way to increase their incomes would be to spend that time and money doing extra work, advertising to attract new clients, and taking classes to increase their knowledge. This second path not only benefits interior designers but also benefits the customers who use their services, while the first path only benefits the designers.

**RENT-SEEKING  
IS USING RESOURCES TO  
SECURE MARKET RESTRICTIONS  
THROUGH POLITICAL MEANS.  
EXAMPLE: LOBBYING TO CREATE  
OR MAINTAIN A MONOPOLY**

## **OCCUPATIONAL LICENSING EXPOSES STATES TO LAWSUITS**

When states require an occupational license to practice a profession, they expose themselves to lawsuits. As discussed in the “Occupational Licensing’s True Purpose: Blocking Competition” section of this report, the Federal Trade Commission sued the North Carolina State Board of Dental Examiners for unfair competition in violation of the FTC Act after the board issued cease-and-desist letters to 29 nondentist teeth whitening service providers.<sup>102</sup> The Supreme Court’s ruling in this case made it easier for state licensing boards to be sued for anticompetitive behavior.<sup>103</sup> Another prominent example is the case of two Arkansas hair braiders, Nivea Earl and Christine McLean, who in June 2014 sued the Arkansas Department of Health and all the members of the Arkansas Cosmetology Advisory Committee for violating the Fourteenth Amendment, as this report details further in the section entitled “Case Study of a Recent Reform: Arkansas Hair Braiders.”<sup>104</sup>

Other lawsuits have been filed by eyebrow threaders in Louisiana, who are expected to spend 750 hours in cosmetology school and take three exams before they can work in this field, which is not even a required subject in cosmetology school;<sup>105</sup> 20 teachers from other states have sued the Minnesota Board of Teaching over the difficulties they encountered obtaining a Minnesota teaching license despite their qualifications;<sup>106</sup> and longtime medical marijuana shops in Seattle suing the state Liquor and Cannabis Board over their difficulty entering the state’s new legal recreational marijuana system.<sup>107</sup>

Such lawsuits are a waste of time and money for the individuals who file them and for the states who must defend themselves using taxpayer dollars. Without licensing laws, individuals would be free to work in the professions of their choosing and such lawsuits would never be necessary.

Customer Satisfaction

CUSTOMER REVIEWS



...this product relying on my dear friend  
...have chosen right brand  
...quality is



# REFORM

With the second-highest occupational licensing burden in the nation, Arkansas is in desperate need of reform to its occupational licensing laws. There are several paths such reform could take.

## **RADICAL REFORM**

When you want to hire an athletic trainer, get a haircut, or find a dentist, how do you choose? Most of us ask friends, family, and colleagues for recommendations, consult online reviews, choose the most convenient or most affordable, or some combination of these. Rarely do we ask for a service provider's license number, then check with the state licensing board to verify that the license is valid.

The most radical step Arkansas could take is to abolish licensing requirements altogether. Licensing is unnecessary to ensure quality and safety because

numerous private organizations exist to help consumers assess a service provider before hiring him or her. As consumers already do when choosing a service provider in both licensed and unlicensed professions, they could rely on reputation when deciding whom to hire. The Better Business Bureau, Angie's List, and Yelp all offer consumers a free and convenient way to check a business's reputation before doing business with them.

In fact, it might be better to let consumers rely solely on these sources. "Interpreted as a seal of government approval, licenses give consumers a false sense of security about the business with which they are dealing," states an opinion column in the Knoxville, Tennessee, News Sentinel by Glenn Jacobs, cofounder of the Tennessee Liberty Alliance. "Instead of empowering the buying public — the ultimate judge of a business's economic worth — licensing laws encourage consumer ignorance."<sup>108</sup>



Private and nonprofit professional credentialing associations offer another way for consumers to judge service provider quality, even in the absence of reviews or recommendations. For example, mechanics can earn the Automotive Service Excellence certification, financial professionals can earn the Certified Financial Planner™ or Chartered Financial Analyst® designations, and computer systems engineers can earn the Cisco Certified Internetwork Expert certification.

Even businesses themselves provide a way for consumers to choose qualified and reliable service providers. Economist Robert P. Murphy, in an article for the Foundation for Economic Education, provides an example that illustrates this point. “With medical care in particular, surely hospitals and insurance companies would exercise a large degree of quality control,” he writes. “For example, a major hospital wouldn’t allow someone to work in the operating room without good credentials, and an insurance company wouldn’t issue malpractice coverage to a surgeon who merely had an undergrad degree in biology.”<sup>109</sup>

In a 2015 paper on occupational licensing reform, Kleiner proposes certification as a substitute for licensing in occupations that don’t pose enough risk to health and safety to warrant licensing, such as locksmiths, ballroom dance instructors, interior designers, pet groomers, and auctioneers. Legislation similar to that introduced in Minnesota and Utah could require the government

to bear the burden of proof in demonstrating that an occupation needs to be licensed because of a significant risk to public health and safety. State administrative costs to oversee licensing regimes would go down and that money could be redirected to other purposes or returned to taxpayers. Kleiner also proposes requiring certified individuals to purchase surety bonds, which would protect customers against incompetent or unscrupulous behavior, similar to malpractice insurance at a much lower cost to service providers than licensing.<sup>110</sup>

This is not to say that all licensing is bad, but rather that licensing is a strict regulation. Licensing can serve as a protection and as a valuable signal to consumers and employers but governments should carefully weigh the benefits and costs. Academics who study licensing find that licensing often has adverse effects and that more extreme licensing does not necessarily produce larger benefits. Concentrated industry interests have strong incentives to increase the amount of licensing above what protects consumers in order to reduce competition and raise prices. It is more important to focus on what sorts of quality consumers get than to focus on the difficulty of becoming a professional.



### **MODERATE REFORM**

Requiring state and local governments to perform a cost-benefit analysis of each occupational licensing law would be a more moderate approach to reform. This analysis should be undertaken with existing licensing laws and before any new occupation is licensed or any existing occupation implements stricter licensing requirements. Kleiner suggests that the government and the professional organizations supporting the laws should bear the burden of proof in showing that licensing is not only necessary but also the least restrictive way to protect the public's health and safety.<sup>111</sup>

Sunset reviews, in which a special committee reviews whether a government program should continue, are another option for reforming occupational licensing laws. In Colorado, for example, a state with a relatively low percentage of licensed occupations, the Colorado Department of Regulatory Agencies conducts sunset reviews on occupational regulation to eliminate laws that don't help with consumer protection. Kleiner suggests that if an occupation's current standards are adequate to protect the public, licensing should not be allowed—nor should it be allowed if existing institutions

or organizations exist to adequately protect consumers, such as the Better Business Bureau, American Arbitration Association, or American Hospital Association. Further, licensing should be deemed unnecessary if state and local courts can resolve harms a service provider might cause to a customer.<sup>112</sup> A shortcoming of sunset reviews is that even when sunset committees recommend delicensing an occupation, lawmakers don't always take action.

Kleiner also recommends that if licensing would restrict the supply of practitioners, especially if that restriction would hurt underserved and impoverished individuals, "then licensing should not be approved unless health and safety issues dominate." The same is true if licensing would increase costs substantially for consumers. While governments would lose revenue from fewer licensing fees, they would likely see an offsetting increase in income and payroll taxes as reduced licensing requirements increased employment.<sup>113</sup>

A 2015 report by the US Bureau of Labor Statistics lists a mere eight instances where occupations have been delicensed over the previous 40 years. These efforts have aimed to improve employment opportunities, especially for lesser-educated workers. For example, barbers were delicensed in Alabama in 1983 but licensing became mandatory again in 2013. Colorado delicensed funeral directors in 1981 but still requires them to meet hefty experience requirements to use the

job title, a practice known as title protection. Virginia delicensed naturopaths in 1972, while Colorado delicensed private investigators in 1977; licensing is now optional. In other cases, courts have reduced the scope of licensing requirements or stopped their expansion. Judges have determined that hair braiders do not need a cosmetology license in Arizona, California, Mississippi, and Utah, while other states, including Illinois and Oregon, have lowered their training requirements for hair braiders. We have found no studies showing harm from these cases of delicensing, nor have we found consumer complaints about delicensing.<sup>114</sup> Bills have been proposed in some states, including Florida, New Hampshire, and Indiana, to collectively delicense groups of occupations, but none have passed.<sup>115</sup>

### **A HIERARCHY OF OPTIONS FOR REGULATING OCCUPATIONS**

Lee McGrath, IJ's legislative counsel, came up with a hierarchy of options to offer legislators who feel compelled to do something as an alternative to full-blown licensing. The least restrictive option is allowing the free market to regulate a profession with no government intervention, followed by the option for consumers to seek remedy for harms in court. At the next level is deceptive trade practice acts which apply to business processes rather than individual workers. Should those be insufficient, municipal inspections, such as those used to rate restaurant cleanliness, could be imposed.

# HIERARCHY OF OCCUPATIONAL REGULATION OPTIONS

PRIVATE GOVERNANCE OPTIONS	Market competition
	Third-party or consumer-created ratings and reviews
	Private certification
	Specific private civil cause of action or alternative dispute resolution to remedy consumer harm
PUBLIC REGULATION	Deceptive trade practice act
	Regulation of the process of providing the specific goods or services to consumers
	Public inspection
	Mandatory bonding or insurance
COMMAND AND CONTROL	Registration
	Government certification
	Specialty occupational license for medical reimbursement
	Occupational license

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Businesses that pose a greater risk to consumers than inspections can prevent could be required to carry a bond or insurance to compensate harmed consumers. After that come registration, certification, and licensure, as discussed earlier in the “Comparing Licensing to Certification and Registration” section of this report.<sup>116</sup>

## **RECENT TENNESSEE REFORM: THE RIGHT TO EARN A LIVING ACT**

Earlier this year, Tennessee Governor Bill Haslam made the Right to Earn a Living Act law.<sup>117</sup> The act aims to reduce the scope of the state’s occupational licensing

laws by directing “all state and local agencies to limit licensing regulations to those necessary to fulfill legitimate public health, safety or welfare needs” and allowing “any person in Tennessee to request that an agency repeal or modify any licensing regulation not fitting that description, and for the agency to act within 90 days,” writes Jacobs.<sup>118</sup> The Institute for Justice found that 53 low- to moderate-income jobs in Tennessee require an occupational license, and the average license requires seven months of education or experience, one exam, and \$218 in fees.<sup>119</sup> Going forward, Tennesseans should have an easier time gaining entry to the occupations of their choice.





# CASE STUDY OF A RECENT REFORM: ARKANSAS HAIR BRAIDERS

Arkansas native Nivea Earl started braiding hair when she was 16.<sup>120</sup> In 2013,<sup>121</sup> she started a natural hair business called Twistykinks, which provides a wide array of braiding, twisting, and other styling services to African-style hair.

When she started her business, Arkansas's licensing laws required hair braiders to have a cosmetology license.<sup>122</sup> This license requires 1,500 hours of instruction<sup>123</sup> and costs as much as \$20,000. Cosmetologists also have to pass two exams, of which hair braiding is only a very small part.<sup>124</sup> Given the time, expense and scope of the unrelated skills that are required by Arkansas's licensing law as it applies to hair braiders, it's no surprise that Earl chose to operate without a cosmetology license.<sup>125</sup>

Christine McLean also learned to braid hair as a child.<sup>126</sup> She grew up in the Ivory Coast and immigrated to the United States in 1998, where she braided hair in Florida and Missouri to earn a living.<sup>127</sup> When she moved to Arkansas and opened LaBelle African Hair Braiding, she was fined repeatedly for working without a cosmetology license.<sup>128</sup> The fines totaled nearly \$2,000.<sup>129</sup>

Earl and McLean partnered with the Institute for Justice to challenge Arkansas's hair braiding laws on the basis that hair braiding does not influence public health and safety—the stated reason for cosmetology licensing laws.<sup>130</sup> Hair braiding requires no chemicals, dyes, heat, or even scissors.<sup>131</sup> Consumer complaints against hair braiders are exceedingly rare and almost never relate to health or safety.<sup>132</sup>



In June 2014, the trio sued the director and cosmetology section chief of the Arkansas Department of Health and all the members of the Arkansas Cosmetology Advisory Committee.<sup>133</sup> They asked the court to find that Arkansas's Cosmetology Act, as it related to hair braiders, violated the Fourteenth Amendment.<sup>134</sup> The Fourteenth Amendment protects Americans' right to work, stating that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The government is not allowed to arbitrarily interfere with people's right to work without a rational basis, such as protecting public health and safety.

A trial became unnecessary when Representative Bob Ballinger and 14 others sponsored the Natural Hair Braiding Protection Act exempting hair braiders from licensing requirements in Arkansas.<sup>135</sup> The act passed on March 19, 2015.<sup>136</sup> Now, Arkansas hair braiders may obtain an optional certification in hair braiding, but they are not required to obtain a cosmetology license.<sup>137</sup> IJ has pursued similar initiatives to fight for braiding freedom in other states. Its initiatives have succeeded in Arizona, California, DC, Minnesota, Mississippi, Ohio, Texas and Utah.<sup>138</sup> Fifteen states have eliminated occupational licensing for hair braiders since 2004.<sup>139</sup>

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This licensing freedom not only protects hair braiders' right to earn a living, it also makes it easier for consumers to access hair styling services that work with the natural texture of their hair and don't resort to damaging chemical relaxers and straighteners. IJ has found that states with few or no restrictions on hair braiders have far more workers in this profession than states with many restrictions.<sup>140</sup>

While Arkansas has reformed its burdensome licensing regulations for hair braiders, nearly half of states still have requirements ranging from 1,000 to 2,100 hours of cosmetology, hairstyling, or hairdressing training. In 10 more states, licensing requirements range from 100 to 600 hours.<sup>141</sup> There is still work to be done to improve job opportunities for hair braiders in other states and workers who face burdensome licensing requirements in other professions in every state.







# CONCLUSION

Occupational licensing requirements supposedly exist to improve service quality and protect the public health and safety. Increasingly, however, the evidence suggests that occupational licensing does not pass the cost-benefit test. It benefits few and costs many. While licensing some professions is warranted based on evidence, in many other professions, licensing serves only to restrict competition. Licensed professionals capture a greater market share and earn more for their services than they would otherwise. It is typically licensed workers themselves, not the general public, that fight for states to implement or increase occupational licensing regulations.

Consumers and individuals who wish to work in a licensed field but do not have the time or money to meet the

educational and experience requirements are the big losers. Consumers pay more and unemployment rates are higher as a result of licensing, and paradoxically, consumers may actually receive lower-quality service from licensed professionals than they might if the profession were unlicensed and more workers could compete to provide the best service.

Occupational licensing hits low- and moderate-income workers, immigrants, minorities, those with limited English skills, and those with limited education hardest. By making it unnecessarily difficult for individuals with one or more of these characteristics to work in the fields that are the best match for their passions and abilities, everyone loses except the workers who are already licensed.

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