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How Occupational Licensing Inhibits Economic Opportunity

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Introduction

Occupational licensing is the practice of requiring workers to obtain government permission to work in certain professions. Most often, getting a license entails completing an approved educational program, passing an exam, and paying a fee. Advocates of occupational licensing frame their arguments around public safety, arguing that these restrictions ensure adequate competency and reduce fraud. Far more often, however, occupational licensing laws' main consequence is restricting the ability of Americans, particularly low- or moderate-income workers, to enter the labor market.¹

Unlike today, licensing has not always played such a significant role in the American labor market. In the 1950s, fewer than five percent of U.S. workers were required to have a state-issued license to work.² But by 2015, this number had risen to nearly 30 percent.³ At the state level, where the majority of licensing requirements are found, there are over one thousand distinct occupations licensed, with still more licensed at the federal and municipal levels.⁴ While this number includes occupations that one might traditionally expect to be licensed, such as lawyers, doctors, and accountants, it also includes occupations that pose much less of a physical or financial risk to the public, such as interior designers, animal massage therapists, residential painters, pet sitters, and florists.

Though it receives little attention, occupational licensing is the largest issue facing the American labor force today. The number of licensed workers is far higher than the number of workers who earn the federal minimum wage or who are union members. The growth of occupational licensing has coincided with the decline of union membership; union membership stood at 10.7 percent in 2016, a stark decline from the peak of 35.4 percent in 1945.⁵ And despite a great deal of policy and media focus on the minimum wage, only 2.7 percent of Americans are paid at or below the federal minimum wage.⁶ In addition to its scope, occupational licensing is also problematic because of its negative impact on economic opportunity.

Who does licensing hurt?

It is estimated that occupational licensing costs the economy between \$127 and \$203 billion per year in higher consumer prices and elevated levels of unemployment.⁷ Worse yet, this large financial burden does not fall equally on all Americans. Instead, it is disproportionately borne by several groups that, often, are already disadvantaged.

1. Low-income Individuals

Participation in public assistance programs has increased in recent years. The number of individuals on food stamps has increased by over 150 percent over the last fifteen years, with 43 million people participating in the Supplemental Nutrition Assistance Program (food stamps) in 2016.⁸ Additionally, 75 million individuals were enrolled in Medicaid in 2016, more than double the number of enrollees fifteen years ago.⁹ In 2012 alone, more than 35 percent of people received some form of means-tested welfare benefit.¹⁰

To combat this alarming increase in welfare participation, policymakers must promote work. There is strong evidence that getting people to work is the best way to foster economic well-being and encourage independence. Only 2.4 percent of individuals with a full-time, year-round job live below the poverty line.¹¹ Even those with part-time jobs are only half as likely to live in poverty as those who are unemployed or do not participate in the labor market. Increasing the unemployment rate by just one percentage point results in a corresponding increase in the poverty rate of as much as 0.7 percentage points.¹²

Policymakers of all political ideologies can agree that job creation, economic opportunity, and reduced government dependence are desirable policy goals. Therefore, they should all agree that the significant, often unnecessary barriers to employment imposed by occupational licensing makes these goals more difficult to achieve.

A 2012 study by the Institute for Justice that examined licensing requirements for 102 different low- and medium-income occupations found an average requirement of \$209 in fees, one exam, and approximately nine months' worth of education and training for licensure.¹³ Manicurists in Virginia need to pay \$290 to work legally, and cosmetologists in Michigan must pay \$291 for an application, license, and exam—in addition to the cost of state-required schooling.¹⁴ After completing the required training, residential painters in Arizona must pay \$870 to receive a license.¹⁵

These administrative charges, testing fees, tuition payments, and time requirements all make it harder for low-income Americans to climb the economic ladder.¹⁶ Though \$200 may not pose a substantial barrier to work for someone with a high income, this amount is the low-end of what a family of four spends on a week's groceries, according to the U.S. Department of Agriculture.¹⁷ For those struggling to make ends meet, every dollar in increased costs is a barrier to starting work.

2. Military families

Licenses usually are non-transferable between states, further increasing their burden. Moreover, one state will often require a license for a given occupation while another will require no license at all.¹⁸ These confusing discrepancies make it difficult for people to move between states, and excessive licensing could be a contributing factor to the decline in inter-state migration.¹⁹

These variations between states and the lack of state-to-state licensing reciprocity especially harm active-duty military and National Guard members and their spouses. Research from The Institute for Veterans and Military Families found that 73 percent of military spouses with an occupational license required a renewal or re-issuance of their license after being transferred to a new state.²⁰ And because military spouses are ten times more likely to have moved across state lines in the last year compared to their civilian counterparts and are licensed at a higher rate than the general population, this problem regularly occurs.²¹

Excessive licensing requirements are one reason why military spouses face an elevated unemployment rate of 18 percent—more than four times the U.S. overall unemployment rate.²²

Additionally, despite the extensive experience and standardized training that veterans receive during their time in the military, most state and local governments do not allow military training in a specific occupation to count towards a license in a similar or identical occupation. Instead, veterans are forced to take lengthy and costly educational programs that, as the Obama White House pointed out in a report on licensing, they could teach.²³ If someone is qualified to serve as a paramedic in the military, they should be qualified to be a paramedic after they leave the service. It is difficult to justify forcing qualified veterans to complete occupational licensing requirements, yet this is the case for countless licensed occupations throughout the country.

3. Young workers

Young workers are another group disproportionately harmed by occupational licensing.²⁴ By protecting established, older workers, these government requirements make it hard for the young to enter the workforce, leaving them with fewer job opportunities.

At its core, occupational licensing is a highly protectionist institution that frequently keeps new, often younger, workers out of segments of the labor market.²⁵ There are 1,100 distinct occupations licensed by at least one state, but only 60 occupations are licensed in every state.²⁶ If a license for an occupation is truly necessary to protect public safety, then it should be expected that every state would currently license that occupation.

Licensing creates a system in which those who can obtain a license are protected from outside competition, reducing the incentives for new workers to enter certain professions. This dynamic allows those who are licensed to raise their prices by about 15 percent and makes many promising work options cost-prohibitive for young workers.²⁷

Though the overall economy has steadily improved since the Great Recession, young people are still struggling with a sluggish labor market. As of August 2017, the unemployment rate for 20- to 24-year-olds remains above seven percent, and the teenage unemployment rate is 13.6 percent—significantly higher than the 3.8 percent unemployment rate for those over 25 years old.²⁸ Additionally, the percentage of teens and young people employed or looking for work—or labor-force participation rate—is 57 percent, nearly its lowest level since the government began keeping records on it in 1948.²⁹

4. Those with criminal records

Nearly 70 million people living in the United States, or one-third of adults, have a criminal record and over 600,000 people are released from incarceration each year.³⁰ Having a job is the number one predictor of how likely these people are to re-offend.³¹ Furthermore, the sooner a newly-released person finds a job, the less likely he or she is to re-offend.³² Unfortunately, occupational licensing laws and regulations ban many lines of work for those with criminal records.³³

There are about 30,000 state licensing rules that keep ex-offenders from working by requiring licensing boards to reject their applications.³⁴ Though it makes sense to exclude those with tax fraud convictions from working as Certified Professional Accountants, many of these restrictions lack a public-safety justification. For example, In Nebraska, a person with a misdemeanor or felony is automatically and permanently banned from being a licensed massage therapist.³⁵ In Calvert County, Maryland, a misdemeanor or a felony automatically disqualify someone from working as a licensed fortune-teller.³⁶

Additionally, requirements with phrases like “good moral character” and “moral turpitude” make it difficult for license applicants to know if they will be barred from licensure before applying. Vague phrasing also gives far too much flexibility in interpretation to licensing boards that often bar individuals with offenses that are completely unrelated to performing the job safely and adequately. Opening more career opportunities to these individuals will help them be able to choose work over government dependence or imprisonment.

These government-imposed barriers to work are counter-productive, having been found to lead to higher rates of crime. From 1997 to 2007, states with the most burdensome licensing requirements for ex-offenders saw a nine percent increase in recidivism rates. By contrast, states with the least burdensome requirements for ex-offenders saw a decrease in recidivism rates of over four percent.³⁷

5. Aspiring entrepreneurs

Occupational licensing also serves as a barrier to entrepreneurship in hundreds of professions, with low-income individuals being most susceptible to such impediments. Research by the Goldwater Institute found that states that licensed more than 50 percent of low-income professions had an entrepreneurship rate that was 11 percent lower than the national average—while states that licensed less than a third of low-income professions had an entrepreneurship rate that was 11 percent higher than the national average.³⁸

Occupational licensing damages entrepreneurship and harms low-income individuals’ ability to climb the socioeconomic ladder by starting a business or testing new ideas. When businesses that could have created new jobs or revolutionized an industry are never started, invisible costs reverberate throughout the economy. About half of the 102 occupations evaluated by the Institute for Justice offer the possibility of new business creation, which illuminates the pressing need for entrepreneurial potential to be encouraged.³⁹ As the story of one determined Mississippi entrepreneur shows, occupational licensing’s negative effects on the economy and Americans’ lives are real and substantial.

Melony Armstrong's Story

Melony Armstrong experienced the harms of occupational licensing laws firsthand. When she decided that she wanted to start her own business as an African hair braider, she had no idea that a protracted, difficult battle against the State Board of Cosmetology lay ahead. It took Melony four years to realize her dream of opening an African hair-braiding salon.

Having majored in psychology at college and never studied hair braiding, Melony seemed an unlikely candidate to open a hair-braiding salon. However, she had a lifetime of giving back to her community by working at a shelter for battered women, a boys home, and a state hospital. So when she first got her hair braided, the experience gave her another idea for how to help her community of Tupelo, Mississippi.

Her salon, Naturally Speaking, opened there in September 1999 and immediately had customers. Before its opening, the closest hair-braiding salon to her hometown was two hours away in Memphis, Tennessee.

African hair braiding is a natural process that does not use any chemicals. For this reason, Melony saw no point in spending \$10,000 and several years in a school to get a cosmetology license that would not teach her any of the skills that she needed to braid hair. After the first of her many fights with the state government, she was able to open her salon without getting a cosmetology license. As a compromise, the state required her to earn a wigology license instead, which “only” required 300 hours of coursework—and not a single hour of braiding instruction.

As Melony's business expanded, she wanted to hire younger workers and train them so that she could better manage the overwhelming demand for her services. The state of Mississippi and owners of licensed cosmetology schools, however, had other ideas. To protect their monopoly on educating workers, they demanded that Melony spend another 3,200 hours of (still unrelated) education to earn a cosmetology license and cosmetology instructor's license. All this, just so she could teach willing employees a skill that she had already mastered.

None of these hours in the classroom would have covered how to braid hair or how to teach hair braiding. Nonetheless, Melony, an established professional with a growing business, was going to be forced to undergo over a year and a half of full-time, unrelated education to continue braiding hair. In that time, she could have become licensed for all of the following occupations: EMT, police officer, firefighter, paramedic, real estate appraiser, hunting education instructor, and ambulance driver—and she would still have had 600 hours to spare.⁴⁰

When Melony was asked how these requirements weighed on her, she recalled that:

"When I first learned that I was not free to pursue my passion, I felt like I had hit a brick wall. I wondered whether I had made a mistake and if my effort, time, energy, and money invested were all for nothing. This was very similar to what I felt when I was legally prohibited from hiring the help I needed. The strong enthusiasm I had possessed about seeing my business grow and thrive began to weaken. The most difficult part about my ordeal was just thinking that this just doesn't make sense. All I was trying to do was braid hair and grow my business in a way that would afford my family financial freedom."

But Melony refused to give in. In 2004, she worked with the Institute for Justice to file a lawsuit against Mississippi. It was not easy to overcome the entrenched interests of the cosmetology board, and Melony had to make weekly trips to the state capitol to share her story. But on April 19, 2005, Mississippi's governor Haley Barbour allowed hair braiders to practice their trade without burdensome, pointless regulations. Thanks to Melony's determination, all that is required to be a hair braider now is a \$25 payment and compliance with Mississippi's health and hygiene codes. Today, there are over 1,200 entrepreneurs who followed Melony's example and work as hair braiders in Mississippi.⁴¹

Once Mississippi finally updated its laws, Melony began hiring workers and expanding her business. One 16-year-old worker, Ebony Starks, had her father pass away a few months after she began working. Ebony was able to work full-time in the summer to help her family financially cope with the loss. Today, Ebony is a mother in her late-20s, and she continues to braid hair at Naturally Speaking, just as she did during college breaks. Mississippi's reforms helped people like Ebony support themselves and those who rely on them. Absent these reforms, Ebony's challenges might have been significantly more difficult to overcome.

Melony's experience has been part of a growing tide of reform for hair braiding regulation, as 23 states require no training to work as a hair braider. However, 13 states have yet to create a specialty license for hair braiding and continue to require aspiring hair braiders to obtain a cosmetology license—each requiring 1,000 hours or more of training.⁴²

Recommendations for Reform

Policymakers should learn from Melony's experience and recognize the pressing need for significant and comprehensive occupational licensing reform. While there are many aspects to reforming these laws and regulations, here are three ways policymakers can begin restoring opportunity.

1. Waive initial licensing fees for certain applicants

Though many occupational licenses require training, nearly all licenses come with a fee. While there can be some reasons to require training for certain occupations, there is less of a public-safety rationale for charging fees for licenses. A straightforward way to lessen the burdens posed by licensing is by waiving licensing fees for certain groups that are especially deterred from work by these upfront costs

Some states are already doing this. During the 2017 legislative session, the Arizona legislature passed a bill that allows individuals with household incomes below 200 percent of the federal poverty line (\$24,000 per year for an individual) to obtain an occupational license without paying the accompanying fee.⁴³

Another licensing fee exemption bill passed unanimously in Florida in 2017.⁴⁴ In addition to granting licensing-fee waivers to those with household incomes less than 130 percent of the federal poverty level (\$15,600 per year for an individual), the bill also extends a fee waiver to military members and their spouses or widows.

Military spouses from all over the country can now transfer their existing licenses to Florida at no charge when their families are given a new living assignment. And Floridians whose spouses are in the military can keep their state licenses in good standing at no cost when they need to relocate to another state temporarily.

Indiana passed a similar bill in 2017 that waives local licensing fees for low-income workers and military families.⁴⁵ Other states—including Arkansas, Iowa, Kentucky, Missouri, Michigan, Oklahoma, and West Virginia—have legislation that relaxes or waives occupational licensing requirements for members of the military and their families.⁴⁶

In addition to low-income workers and military families, exempting other groups that are disproportionately harmed by occupational licensing—like young workers and first-time entrepreneurs—from paying licensing fees is an option that policymakers should consider.

2. Review licensing prohibitions for those with records

Regardless of the political debate over incarceration and sentencing, sound public policy should encourage people to become productive members of society and discourage them from returning to prison or committing additional crimes. By limiting policies that make it excessively difficult for those who have served their time to work, states can reduce the likelihood of these individuals re-offending.

One way to do this is to require licensing boards to review their restrictions and update them in specific ways that balance public safety and economic opportunity. Each licensing board should have to publish a list of the criminal convictions that disqualify

an individual from working in that occupation. These specific convictions would have to be directly related to the duties and responsibilities of the licensed occupation. This type of reform also prohibits licensing authorities' use of non-specific terms such as "moral turpitude" and "good character," and consideration of arrests that are not followed by a conviction.

Nothing in this reform stops licensing boards from disqualifying people with criminal records that pose a direct threat to public safety from working in certain occupations. If a conviction is specifically and directly related to the duties and responsibilities of a licensed occupation, then licensing boards may disqualify applicants with those convictions on their records.

3. Stop local governments from creating new occupational licenses

Though most occupational licensing is on the state level, many cities abuse their regulatory authority and impose substantial costs to working in specific occupations. States should stop local governments from creating new licensing requirements, eliminate local licenses that are already regulated on the state level, and limit the fees that local governments can charge for existing licenses.

If licensing is truly necessary to protect public safety, then it should be done at the state level. Detroit, Michigan licenses about 60 occupations, including window washers, sidewalk shovelers, and furniture movers.⁴⁷ Most of these occupations are not licensed by the state of Michigan or other large cities in the state. If the rest of a state can maintain public safety, consumer protections, and fair competition without licensing an occupation, then there likely is no reason for just one city to do so.

Local licensing is a problem across the country. In Florida, each year it costs \$447 to be a vehicle mechanic in Palm Beach, \$236 to work as an interior decorator in Miami, and \$157 to be a florist in Ft. Lauderdale.⁴⁸ In Kansas City, Missouri, photographers must pay \$300 a year. Across the state in St. Louis, outhouse cleaners must pay \$100 a year to work.⁴⁹ These annual costs are out of line with the dangers that these occupations pose to the public, and they pose substantial barriers to work.

With states like Arizona, Mississippi, Tennessee, and Wisconsin passing comprehensive state occupational licensing reforms, it makes sense for policymakers to ensure that their work will not be undone if licensing proponents turn their attention to expanding regulations at the local level. For this reason, Tennessee passed local licensing preemption during the 2017 legislative session. Tennessee's reform was similar to a bill that passed in Wisconsin the year prior.⁵⁰

Conclusion

While occupational licensing's effectiveness and relevance in today's economy are debatable, there is no question that these barriers to work harm low-income individuals, military families, young workers, entrepreneurs, and people with criminal records. Increasing political agreement in favor of comprehensive licensing reform follows the overwhelming academic consensus that today's level of occupational licensing decreases economic opportunity and does little to promote public safety.

Reforming occupational licensing is the first step to encouraging job creation, increasing economic opportunity, and reducing dependence on the government. Rather than maintaining barriers to these three universal goals, it is time for policymakers to lighten the burden that licensing places on American workers.

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