



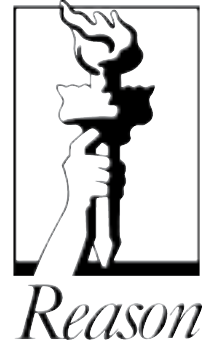
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OCCUPATIONAL LICENSING: RANKING THE STATES AND EXPLORING ALTERNATIVES

By Adam B. Summers



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By Adam B. Summers

Executive Summary

America takes great pride in being the “land of opportunity.” The whole notion of the American Dream is that with hard work and determination, anyone can take advantage of the freedoms afforded here and make whatever he wants of himself. There is no rigid caste system, and a good entrepreneur can go from poor to rich in a short period of time. We have come to take this right to control and utilize our labor for granted, but, more and more often, people now have to seek the permission of the government to work in the occupation of their choice. Today, over 1,000 occupations are regulated at the state level—and still more are regulated at the federal and municipal levels. Governments require licenses for everyone from doctors and lawyers to florists and fortune tellers. It is time we took a closer look at the costs and benefits of licensing regulations, and why they were enacted in the first place.

Occupational licensing has a significant impact on the labor market, yet it receives very little attention. During the 1950s, about 4.5 percent of the workforce needed to obtain a license to work. That figure has grown to over 20 percent today. By comparison, labor union strength has diminished, as labor union membership has fallen from nearly 35 percent of the workforce during the mid-1950s to just 12 percent today (and only 7.4 percent of the private sector). And minimum wage laws, which price low-skilled workers out of the market, have a direct impact on less than 10 percent of the workforce. Thus, occupational licensing laws directly affect a larger segment of the population than other significant barriers to work, but receive only a small fraction of the attention enjoyed by labor unions and the minimum wage.

To get an idea of the extent of occupational licensing across the country, I conducted a survey of which jobs required licenses in each of the fifty states using data from the Department of Labor, state agencies, news articles, and trade organization and professional association Web sites.

According to the survey, states required licenses for an average of 92 occupations. The most regulated state in the nation is California, which requires licenses for 177 job categories, nearly double the average. It is followed by Connecticut, Maine, New Hampshire, and Arkansas. With the striking exception of California, Western states tend to be less regulated than Midwestern and Eastern states.

The survey also indicates that occupational licensing laws are very arbitrary, as evidenced by the disparity in which occupations are licensed and how burdensome the licensing regulations are from one state to the next. For example, there were several cases in which neighboring states had significant differences in the number of licensed job categories: California (177) and Arizona (72), Arkansas (128) and both Missouri (41) and Mississippi (68), New Jersey (114) and Pennsylvania (62), North Carolina (107) and South Carolina (60), Tennessee (110) and Alabama (70), and Florida (104) and Alabama (70). If some places work just fine with minimal or no regulations, why must others be plagued with so many restrictive laws? Are things so drastically different just across state lines that this disparity could be justified? Not likely.

While occupational licensing laws are billed as a means of protecting the public from negligent, unqualified, or otherwise substandard practitioners, in reality they are simply a means of utilizing government regulation to serve narrow economic interests. Such special-interest legislation is designed not to protect consumers, but rather to protect existing business interests from competition.

Numerous studies have revealed little, if any, improvement in service quality from compulsory licensing. Oftentimes, licensing laws actually *reduce* service quality and public safety. There are a number of reasons why product or service quality and health and safety may actually be *diminished* by occupational licensing:

- The costs of regulations reduce competition, thus reducing the pressure on businesses to provide higher-quality services.
- Training requirements may be arbitrary and not necessarily relevant to practical job skills.
- The “club mentality” of licensing boards may lead them to prosecute unlicensed workers, but ignore the indiscretions of fellow licensees.
- The risk that licensing exams test the wrong skills and the reluctance of licensing boards to discipline negligent licensees for their transgressions may provide consumers with a false sense of security, lulling them into being less cautious of those with whom they do business.
- Licensing leads to artificially high prices, which cause more people to take on dangerous do-it-yourself jobs and skip needed medical visits.
- Higher prices may also force some consumers to seek black-market services, which afford them little or no legal protection against incompetent or harmful practices.

The real motivation behind most occupational licensing regulations is one of special interests, not the public interest. By banding together and convincing governments to impose new or stricter licensing laws, existing practitioners (who typically are exempted from the new laws through grandfather clauses) can raise the cost of doing business for potential competitors. These barriers to entry reduce competition, allowing the existing practitioners to keep prices and profits higher than they otherwise would be in a truly free market. Moreover, since they have less competition, licensed businesses have less incentive to innovate or invest in research and development to stay ahead of their rivals.

This imposes a great cost on the economy. By restricting competition, licensing decreases the rate of job growth by an average of 20 percent. The total cost of licensing regulations is estimated at between \$34.8 billion and \$41.7 billion per year.

This diminished level of competition also means that consumers have less choice in the marketplace. Their choices are reduced not only by the fact that licensing means there will be fewer practitioners in business, but also because the one-size-fits-all licensing requirements imposed by the government discourage specialization and varying levels of service. It may make sense for some consumers to seek lower-quality services in exchange for cheaper prices, but stringent regulations prevent practitioners from providing these services.

In addition to occupational licensing regulations being harmful for the many practical reasons noted above, they also violate economic liberty. By erecting artificial and arbitrary barriers, licensing regulations prevent people from working in the job of their choosing. A nation that prides itself on its entrepreneurial spirit should allow its citizens the greatest opportunities for starting any business they see fit to invest their money and labor in, not stifle them with paternalistic government regulations.

Sadly, the poor are hardest hit by occupational licensing laws. Those who can least afford it must endure the double whammy of paying higher prices as consumers and being shut out of job opportunities by costly regulations. Laws that make it more difficult for them to obtain certain jobs or start their own businesses only make it that much harder for them to work their way up the economic ladder.

Some may claim that the market does not offer enough protection for consumers, but they underestimate the value of business reputation and the legal system. Simply put, bad service and shoddy products are bad for business. Poor service is just as much a killer for businesses as outrageously high prices.

There are already a number of resources that offer consumers information about various products and services. Consider *Consumer Reports*, the Good Housekeeping Seal of Approval, CNet.com, bizrate.com, and even the American Dental Association, which offers its own certification of products. The Internet has provided the consumer with an even greater wealth of information, including not only expert and consumer reviews of products, but also of services and the merchants

that sell them. In the absence of licensing regulations, we could expect an even greater amount of information and more private-sector certification organizations to emerge.

When even the best information is not enough, however, and consumers are harmed or mired in disputes with businesses, the legal system serves as a last resort to provide justice. With or without licensing, there will always be some scam artists and shysters, but self-regulation by the private sector and a fair legal system are all that is needed to adequately protect consumers.

In light of the enormous economic losses to society inflicted by occupational licensing regulations, and the destructive effects these laws have on consumers, aspiring workers, and business owners—not to mention individual liberty in general—***occupational licensing laws should be abolished***. Since this may not be feasible in the near term, however, policymakers should consider a couple of “second-best” options that may have a better chance of making a more immediate impact. Governments should conduct periodic occupational licensing reviews—either through a special commission or an auditing agency—to ensure that regulations pass the “laugh test” (Do we really need to license interior designers and casket sellers?) and analyze licensing board performance by evaluating enforcement actions against licensees. Licensing laws should be subject to removal if: (a) few other jurisdictions have seen the need to license the occupation, (b) too few practitioners are licensed to financially justify the existence of the licensing board, or (c) there is a history of little or no enforcement activity, suggesting that either the licensing board is not doing its job or there is no cause for action, and thus that the board is unnecessary. Finally, sunset provisions should be included in all licensing laws to improve accountability by forcing occupational licensing boards to periodically justify their existence and forcing policymakers to ensure that regulations have not gotten out of hand.

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Part 1

Introduction

That is not a just government, . . . where arbitrary restrictions, exemptions, and monopolies deny to part of its citizens . . . free use of their faculties, and free choice of their occupations.

– James Madison (1792)¹

Shamille Peters of New Orleans, Louisiana is a talented flower arranger. She has taken floral design courses at a local community college and created floral arrangements for the weddings of several friends and a cousin, as well as her own. But though she has had opportunities to do flower arrangements for banquets and other events, she has had to decline. You see, in Louisiana, one must have a state-granted license to work as a florist and Shamille has failed the licensing exam (which costs \$150 to take) five times. Never mind that the licensing board—the Louisiana Horticulture Commission—is comprised of current florists who have an economic interest in denying licenses to potential competitors. The licensing exam emphasizes such subjective criteria as whether flowers have been “picked properly,” arrangements have the “proper focal point,” or flowers are “spaced correctly.” No wonder the passage rate is less than 50 percent. So despite her proven talent, Shamille has been forced to forego floral work and find a job elsewhere.²

If you want to work, more and more often you have to seek permission from the government, pass arbitrary requirements, and pay fees to the state. Once upon a time, all you needed to do to go into business and make a living for yourself was to obtain the know-how, equipment, and/or business acumen necessary to keep your business afloat. Today, professions from doctor and lawyer to lightning rod installer, auctioneer, and chimney sweep require a license or other form of government consent.

Occupational licensing laws are often sold as a way to protect consumers by establishing minimum standards of competence and safety. Numerous studies have shown that this consumer protection argument is dubious at best, however. Normal business incentives to attract customers and make a profit, coupled with a legal system that defends property rights, ensure that self-regulation is sufficient to protect consumers from irresponsible practitioners, and that justice is served in the event they are harmed.

Licensing regulations impose significant costs on employees, business owners, and consumers alike. Far from being an attempt to protect consumers, they are typically lobbied for by business

interests in order to suppress competition and enhance their own bottom lines. By restricting competition, these interests not only get to keep a larger share of the business for themselves, they are able to charge higher prices and are less inclined to put as much emphasis on product or service quality. With more competitors breathing down their necks, they would be forced to lower prices, improve product or service quality, and invest a greater amount in developing more innovative and efficient ways of doing business.

Numerous studies have shown that this consumer protection argument is dubious at best.

As much as occupational licensing makes consumers worse off, however, the greatest tragedy of licensing regulations is that they stifle the freedom to work in one's chosen occupation. Fees, needless education or irrelevant experience requirements, and other regulatory hurdles serve as barriers that prevent many people from making an honest living. Such cost barriers disproportionately affect the poorest members of society, those who are in the greatest need of occupational freedom to improve their living standards. Occupations with relatively low start-up costs such as taxi driving, hairbraiding, child care, and numerous home-based businesses that the poor might otherwise take advantage of are unattainable because the costs of obtaining a license are too high—and usually unnecessary.

While the use of occupational licensing across the country is universal, not all regulation is created equal. Some states make prospective employees and entrepreneurs jump through more regulatory hoops than others, and some licensing laws seem just plain silly. For instance, California requires licenses for roughly twice as many occupations as Ohio, Louisiana, and Virginia. And did you know that you need the government's permission to work as a rainmaker in Arizona, a fortune teller in Maryland, or a reptile catcher in Michigan? In addition to discussing the costs—both plain and hidden—of occupational licensing, this paper contains a survey of occupational licensing laws in the 50 states. This analysis of which occupations are licensed in which states will help to illustrate which states have the greatest occupational regulatory burdens.

Part 2

Background

Occupational licensing in the United States is pervasive. More than 1,000 occupations are currently regulated by the states.³ Children even need the government's permission to run makeshift lemonade stands during their summer vacations.⁴ Occupational regulation can take the form of a license, certification, or registration requirement (not to mention numerous other types of regulations, such as business permits, that mandate how and where business is to be conducted). Prospective employees and entrepreneurs may be forced to pay fees (application fees, license fees, examination fees, renewal fees) to the government, take educational or training courses or obtain a full degree in a particular field from certain accredited schools, undergo an apprenticeship or gain experience as a "lower-level" employee in the field, and/or pass an examination. There may also be minimum age, residency, and citizenship requirements. These requirements are arbitrary and may vary widely from one jurisdiction to another—even for the same occupation.

The trend in government regulation—be it occupational licensing or anything else—is continued growth. Governmental and bureaucratic inertia leads to more laws and regulations, but rarely are these laws and regulations ever re-evaluated to see if they are having the intended effects, are overly burdensome, or are still deemed necessary. Although technology and practices are continually changing, licensing requirements are seldom given a second look. Thus, the number of licensed occupations seems to continually increase.

The percentage of the workforce that must obtain a license to work has grown from about 4.5 percent during the 1950s to over 20 percent today.⁵ By contrast, labor union strength, which serves as another barrier to entry in the labor market, has diminished. Almost 35 percent of the workforce belonged to a union in the mid-1950s, but only 12 percent of the workforce is unionized today (and only 7.4 percent of the private sector).^{6,7} Minimum wage laws, which price low-skilled workers out of the market, have a direct impact on less than 10 percent of the workforce.⁸ Hence, occupational licensing laws directly affect a larger segment of the population than other significant barriers to work, but receive only a small fraction of the attention.

The growth in occupational licensing laws is not mere accident. There are strong incentives that drive the urge to regulate. Sometimes politicians feel or want to show that they are doing something to enhance public health and safety, so they support regulations intended to ensure that practitioners are properly trained and equipped. (Whether or not these regulations accomplish this

goal is another matter that will be addressed later.) Or they may tap into public anger over scam artists and enact licensing laws meant to protect a naïve public from shysters and those that would rip them off, even though laws that prohibit fraud and allow victims to be compensated for negligence and other harm are already on the books.

Besides the politicians and bureaucrats, the industries to be licensed often organize to lobby for licensing themselves. Again, while such proposals are often sold as public health and safety measures, one must look at who really benefits from such legislation to see what the incentives truly are. By getting the government to enact or increase regulations, while generally exempting themselves from the new requirements, current practitioners raise the costs of doing business for anyone else. This reduces competition and increases profits. Regardless of who is pushing for greater occupational licensing, the fact remains that it is becoming harder and harder to work freely without having to traverse burdensome government regulations.

Governmental and bureaucratic inertia leads to more laws and regulations, but rarely are these laws and regulations ever re-evaluated to see if they are having the intended effects, are overly burdensome, or are still deemed necessary.

The costs of business regulation, including occupational licensing, are enormous. A U.S. Small Business Administration report found that federal regulations cost consumers, businesses, and taxpayers \$843 billion in the year 2000.⁹ Especially hard hit by these regulations are small businesses, which make up 99.7 percent of all employer firms and generate 60 to 80 percent of net new jobs each year.¹⁰ As will be shown in the following pages, occupational licensing laws produce little to no improvement in the quality of services (and may even *decrease* the quality of services), but they do significantly increase the cost of services provided. It is estimated that licensing results in a cost, or “dead-weight loss,” to society of between \$34.8 and \$41.7 billion per year (in 2000 dollars), compared to a labor market without licensing.¹¹ In addition to licensing laws, even more regulations are heaped on existing and would-be businesses and employees at the federal, state, and local levels. The focus of this paper is on those regulations that establish mandatory requirements for an individual (as opposed to a business entity) to perform work in a given occupation.¹²

Part 3

Survey of State Occupational Licensing Laws

A. Methodology

The Department of Labor (DOL) provides a searchable directory of licensed occupations by state and by occupation, aiding in analyzing the breadth of occupational licensing laws in the United States. The DOL, in a cooperative effort with the states, has developed a project known as CareerOneStop, “a collection of electronic tools, operating as a federal-state partnership, and funded by grants to states.”¹³ CareerOneStop resources include a job bank, a searchable database of government agencies providing employment-related services, and a section devoted to providing labor market statistics and other information. The latter section, called America’s CareerInfoNet, contains a wealth of information on occupational licensing, including which states require licenses for which occupations. The data are not perfect, but this is perhaps the most comprehensive current source around on occupational licensing requirements. The DOL data were supplemented with information on licensed occupations from state government Web sites, news articles, and trade organization and professional association Web sites.

B. Results

According to the survey, the most regulated state in the nation is California, which requires licenses for 177 job categories, followed by Connecticut, Maine, New Hampshire, and Arkansas (see Table 1 for a listing of the most- and least-licensed states, and Appendix A for a full ranking of the states by the number of licensed job categories). The average number of licensed job categories is 92 and the median is 90. Seventeen states license more than 100 job categories. Only Missouri (41) licenses fewer than 50. Note that with the striking exception of California, Western states tend to be less regulated than Midwestern and Eastern states. (See Figure 1 below for a map of the states coded by the number of licensed occupations.) The survey identified 33 job categories that require a license in all 50 states (see Appendix B).

Table 1: Number of Licensed Occupations by State, Most and Least Licensed States					
Rank	State	Licensed Occupations	Rank	State	Licensed Occupations
1.	California	177	41.	Colorado	69
2.	Connecticut	155	42.	North Dakota	69
3.	Maine	134	43.	Mississippi	68
4.	New Hampshire	130	44.	Hawaii	64
5.	Arkansas	128	45.	Pennsylvania	62
6.	Michigan	116	46.	Idaho	61
7.	Rhode Island	116	47.	South Carolina	60
8.	New Jersey	114	48.	Kansas	56
9.	Wisconsin	111	49.	Washington	53
10.	Tennessee	110	50.	Missouri	41

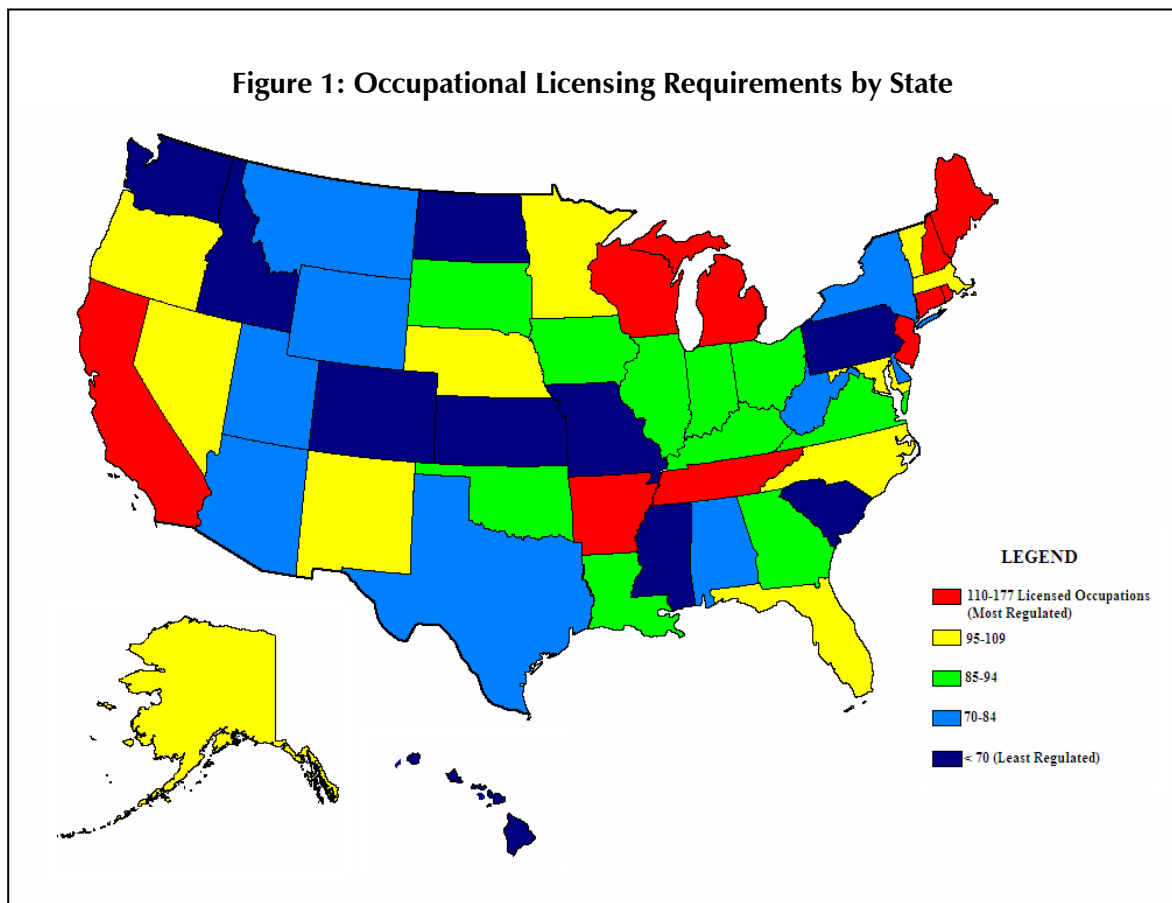
This occupational licensing survey comports, with a few minor variations, with a survey conducted by Morris M. Kleiner, using a similar methodology.¹⁴ A more general study of economic liberty among the 50 states conducted by the Pacific Research Institute (PRI) likewise produced similar results.¹⁵ The PRI's *U.S. Economic Freedom Index: 2004 Report* consists of 143 variables for each state, organized into five categories: fiscal, regulatory, welfare spending, government size, and judicial. Occupational licensing measures were included in the regulatory category. Data were collected for the years 1995 to 2003.

Like the present survey and the Kleiner survey, the PRI study concluded that California is the most regulated state in the nation (placing 50th in the regulatory category),¹⁶ and the state ranked 49th in overall economic freedom, beating out only New York.¹⁷ Furthermore, 19 of the top 25 states (those with the most economic freedom) in the PRI index licensed fewer than the average number of occupations in the present survey—a fairly significant correlation.

Fees, needless education or irrelevant experience requirements, and other regulatory hurdles serve as barriers that prevent many people from making an honest living.

Illustrating the arbitrary nature of occupational licensing laws, there were several cases in which neighboring states had significant differences in the number of licensed job categories: California (177) and Arizona (72), Arkansas (128) and both Missouri (41) and Mississippi (68), New Jersey (114) and Pennsylvania (62), North Carolina (107) and South Carolina (60), Tennessee (110) and Alabama (70), and Florida (104) and Alabama (70). Are things so drastically different just across state lines that this disparity could be justified? Not likely.

Some licensing laws are seemingly senseless and others are just plain bizarre. For example, consider the following licensing requirements: auctioneer (several states), beekeeper (Maine), chimney sweep (Vermont), elevator operator (Massachusetts), florist (Louisiana), fortune teller (Maryland), interior designer (several), lightning rod installer (Vermont), mussel dealer (Illinois), rainmaker (Arizona), reptile catcher (Michigan), sheep dealer (Iowa), turtle farmer (Louisiana), and whitewater rafting guide (Maryland) (see Appendix C for a more comprehensive list).



C. Disclaimers

Despite best efforts, the data presented here are not perfect. While the America’s CareerInfoNet site is fairly comprehensive, there were some problems with the data. Slight differences in job title led to duplication in the data set. Similar or identical licensed occupations might be listed, for example, under “pipefitter,” “pipelayer,” and/or “pipelaying fitter.” Some states defined occupational categories more broadly than others. Thus, one state may require licenses for “contractors” (of all kinds), while others may require licenses for several specializations of contractors. All else equal, if we count the number of occupations for which a state requires licenses, the latter will appear to be more regulated than the former, though the difference may be due to nothing more than the specificity of the definition of the occupation. To correct for this, as much as possible, *occupations* were sometimes combined to form more general *job categories*. As

a result, the number of licensed job categories presented here *understates* the total number of licensed occupations.

Information about federal occupational licenses (which showed up in a state's licensed occupations if the state contained a federal agency's office) was also omitted. Note also that, due to a lack of data, the survey excludes Washington, D.C. In addition, a perusal of state Web sites revealed that the data set, while impressive, was not complete. Information from the states' Web sites, as well as from news articles and trade and professional organizations, was required to fill in the gaps.

The states' Web sites presented their own data problems, however. Occupational licensing information was surprisingly difficult to come by for many states, and a searchable database presented in a single location was an even rarer find. Occupational licensing information was frequently spread out over several different Web pages in several different locations. There were typically no links to connect these resources. Moreover, even "central" occupational licensing Web pages were often incomplete. For example, licensing information for taxidermists may show up only on the state's fish and wildlife agency site. Furthermore, some states may not provide up-to-date licensing information.

There were some bright spots in my quest for occupational licensing information, however. Some states, like Louisiana, Nebraska, New Hampshire, and Oklahoma, put together a comprehensive and easy-to-find occupational licensing directory that includes information such as job descriptions, licensing requirements, appropriate regulatory agency and contact information, wage data, number of active licensees, and authorizing statutes.¹⁸

Governments are continuously licensing more and new occupations. They rarely, if ever, abolish licensing requirements. Because of this, and the problems described above, any errors will tend to be those of omission. This is another reason that the number of licensed occupations will be *undercounted*.

The occupational licensing data contained in this survey are merely quantitative, not qualitative. The only criterion is whether or not a particular state requires a license for a particular occupation. This study does not attempt to compare the licensing requirements of, say, private detectives, from one state to another. Thus, there could be a case in which a state that licenses many occupations, but has, on balance, relatively less demanding licensing requirements might appear more heavily regulated than a state with few licensing laws, but highly burdensome regulations. These types of comparisons are simply beyond the scope of this paper. In addition, this survey analyzes licensing requirements at the *state* level only. There are numerous other requirements at the local and federal levels (which may be more or less arduous). While this survey constitutes a rough estimate of state occupational licensing requirements, it nonetheless should serve as a reasonable approximation of licensing requirements and a general measure of occupational regulation in the 50 states.

Part 4

The Economics of Occupational Licensing: Protecting Consumers or Special Interests?

I am myself persuaded that licensure has reduced both the quantity and quality of medical practice; that it has reduced the opportunities available to people who would like to be physicians, forcing them to pursue occupations they regard as less attractive; that it has forced the public to pay more for less satisfactory medical service, and that it has retarded technological development both in medicine itself and in the organization of medical practice. I conclude that licensure should be eliminated as a requirement for the practice of medicine.

– Milton Friedman, *Capitalism and Freedom*, 1961

A. Product/Service Quality and Health and Safety Concerns

The chief justification of occupational licensing laws is that they protect the public from negligent or conniving businessmen and shoddy, potentially dangerous products peddled by incompetent workers. However, licensing's record at improving public safety is dubious at best, and often even makes things worse. A 2001 report by the Canadian Office of Fair Trading presented a summary of 15 academic studies on the effects of occupational regulation on product and service quality for a variety of professions. The effect was neutral in seven cases, mixed in one case, negative in five cases, and positive in only two cases (see Table 2 below).¹⁹ In addition, a 1990 Federal Trade Commission (FTC) report entitled "The Costs and Benefits of Occupational Regulation" found that occupational regulations frequently increase prices and impose significant costs on consumers without improving the quality of professional services.²⁰

As with concerns over service quality, public safety concerns are exaggerated by business lobbies with strong financial interests in excluding competitors. While some occupations are inherently dangerous, this does not mean that they must fall under the watchful eye of the state. As former Michigan Governor John Engler explained in a veto message for a bill to license tanning salons, "Government cannot and should not be involved in all potentially hazardous aspects of life.

Individuals must be held accountable for their own actions.²¹ The legal system is there to act as a final check on negligent and injurious conduct.

Table 2: Effects of Licensing Regulations on Product Quality					
Author	Date	Country	Profession	Restriction	Impact on Quality
Holen (i)	1978	USA	Dentistry	Direct entry	Positive
Feldman & Begun (i)	1985		Optometry	Commercial practice, advertising, CPD	Neutral
Healey (i)	1973	USA	Laboratory Personnel	Licensing	Neutral
Cady (ii)	1976	USA	Pharmacy	Advertising	Neutral
Muris (iii) & McChesney	1978	USA	Law	Advertising	Neutral
Bond et al. (iv)	1980	USA	Optometry	Advertising, commercial practice	Neutral
FTC (ii)	1983	USA	4 including pharmacy and optometry	Advertising	Neutral
Paul (i)	1984		Physicians	Licensing	Neutral
Young (i)	1986	USA	Accountancy		
Trebilcock et al. (v)	1979	Canada	4 including law	Price advertising	Negative
Muris (vi) & McChesney	1979	USA	Law	Advertising	Negative
Carroll & Gaston (i)	1981	USA	7	Direct entry	Negative
Kwoka (vii)	1984	USA	Optometry	Advertising	Negative
Cebula (viii)	1998	USA	Law	Advertising	Negative
Martin (i)	1982	USA	Pharmacy	Direct entry	Mixed

Source: Canada Office of Fair Trading, *Competition in Professions*, March 2001, p. 22, <http://www.oft.gov.uk/NR/rdonlyres/B08439C8-C5F6-4946-8AFF-71C050D34F46/0/oft328.pdf>, citing:

- (i) Results summarized in Cox & Foster: The Costs and Benefits of Occupational Regulation, FTC 1990.
- (ii) Results summarized in Jacobs et al: Improving Consumer Access to Legal Services – the case for removing restrictions on truthful advertising, Cleveland Regional Office, FTC 1984.
- (iii) Muris & McChesney: Advertising, consumer welfare and the quality of legal services, 1978.
- (iv) Bond, Kwoka, Phelan & Whitten: Effects of restrictions on advertising and commercial practice in the professions – the case of optometry, FTC, 1980.
- (v) Trebilcock, Tuohy & Wolfson, 1979 cited in OECD Roundtable Report (Note 13).
- (vi) McChesney & Muris: The effect of advertising on the quality of legal services, American Bar Association Journal, 1979.
- (vii) Kwoka: Advertising and the price and quality of optometric services, AER 1984.
- (viii) Cebula: Does lawyer advertising adversely influence the image of lawyers in the United States? – An alternative perspective and new empirical evidence, Journal of Legal Studies, June 1998.

There are a number of reasons why product or service quality and health and safety may actually be *diminished* by occupational licensing:

1. Less Pressure to Compete

Since it is more difficult to work if one has to obtain a license, fewer people will enter a given licensed profession than would exist in an unregulated world. Less competition for licensees means less pressure to offer higher quality or lower prices to attract business. Thus, licensed businesses will be more inclined to pocket more of their profits (or use more of their profits to cover payroll) and invest less in developing higher-quality goods and services. Since businesses have less incentive to provide high-quality goods and services under a regulated system, occupational licensing laws make consumers worse off. (Note that in a *laissez-faire*, license-free market, even if only some consumers shop around for high-quality goods and services, this pressures sellers to maintain high quality, which benefits all consumers.)²²

2. Improper Training Requirements

Established standards may sound all well and good, but what if you establish the wrong standards? Conditions and required knowledge may vary from place to place, but with a single rigid set of standards, licensed workers may be forced to spend time and money learning useless, or even incorrect, skills. Moreover, high-quality workers must perform routine tasks that could be done by less-qualified workers, leaving them with less time to devote to honing high-quality, specialized skills. Licensing, therefore, discourages specialization and makes licensees less effective and less able to serve their customers.

In addition, licensing exams prove only that a licensee has mastered the material on the test, not that he or she is necessarily qualified to perform the work. Testing standards may deviate greatly from practical knowledge. For example, “candidates taking California’s architecture licensing exam have had to discuss the tomb of Queen Hatshepsut and the Temple of Apollo.”²³ Thus, unqualified workers may be sanctioned by the state if they are able to merely study how to pass the test.

3. Licensing’s “Club Mentality”

While licensing boards ardently prosecute unlicensed workers (regardless of whether or not there is reason to believe a health or safety issue is involved), they are typically much more hesitant to discipline one of their own. Making public the indiscretions of a licensed worker brings unwanted negative publicity and, like a union whistleblower, “is often viewed as disloyalty to the professional community.”²⁴ Thus, not only are unscrupulous or incompetent licensees not punished, they are allowed to continue their work and the public is left in the dark about the hazards of doing business with them. For example, a 1982 study revealed that as much as 16 percent of the dental work performed under insurance plans in California in 1977 was so shoddy

that it required retreatment. Despite this alarming statistic, the state's dental board punished only eight licensees for causing their patients harm.²⁵ Author James Bovard reports other examples of licensing boards looking the other way when faced with licensee wrongdoing:

*A Washington Post investigation revealed that the state of Maryland allowed over thirty-five doctors to retain their licenses despite criminal convictions for sex crimes, drug violations, theft, and fraud. One Baltimore physician "was convicted of raping a gynecological patient in his office but allowed by the commission to continue practicing medicine." The Maryland commission even allowed two dozen physicians that it explicitly ruled incompetent to continue practicing medicine. The New York Bureau of Professional Misconduct allowed a New Jersey anesthesiologist to continue practicing medicine in New York after he had been convicted by a jury in 1992 of raping a patient in New Jersey; the anesthesiologist returned the board's favor by getting arrested in May 1993 for sexually abusing a female patient in New York.*²⁶

4. False Sense of Security

Because of the reluctance of licensing boards to discipline negligent licensees for their transgressions and the possible mismatch between licensing standards and actual practical job requirements, the state's seal of approval gives consumers a false sense of security about the competence of licensees. This causes people to be less critical, and possibly less demanding, of those with whom they do business than they otherwise would be. As an *Orange County Register* editorial observed, "Without the false sense of security licensing boards provide, consumers might be encouraged to shop more intelligently for a range of services."²⁷ Moreover, since licensing boards are not wont to punish their licensees for negligence, consumers are left even more open to abuse by licensees.

5. Do-it-Yourself Jobs

The result of reducing competition and attempting to mandate high quality through licensing is higher prices for consumers. "Substandard" work performed by professionals may be better than no work at all, however. In the absence of licensing, people would be able to sacrifice a little quality for a lower price and qualified workers that would be unable to afford the costs of obtaining a license could offer their services for less than what a licensed worker would charge. These options are not available under a licensing scheme. As a result, consumers unwilling or unable to pay the artificially high prices under licensing resort to sometimes dangerous do-it-yourself jobs. In areas with licensing restrictions on plumbers, for example, retail sales of plumbing equipment are higher because people resort to doing their own plumbing work.²⁸ In addition, electrocution rates are higher in areas with strict electrical licensing requirements, as more consumers risk performing their own electrical work.²⁹

6. Reduction in Repeat Medical Visits

The “Cadillac effect” of purchasing high-priced services or none at all, described above, becomes particularly harmful when people who are unable (or unwilling) to pay the relatively high prices commanded by licensees compensate by consuming less *needed* services such as medical care. (Even the most miserly individual will not resort to do-it-yourself open-heart surgery!) This delay in seeking services reduces preventive treatment and the likelihood of catching diseases early, causing patients to suffer. It should come as no surprise, then, that states with stricter dental licensing laws also had the highest incidence of poor dental hygiene, and states with tougher optometry licensing laws reported higher rates of blindness.³⁰ Fear of such an occurrence caused the FTC to argue against a 2002 proposal by the Connecticut Board of Examiners for Opticians to require stand-alone replacement contact sellers to obtain state optician and optical establishment licenses: “[Such a requirement] would likely increase consumer costs while producing no offsetting benefits. . . .” Furthermore, it “could harm public health by raising the cost of replacement contact lenses, inducing consumers to replace the lenses less frequently than doctors recommend.”³¹

States with stricter dental licensing laws also had the highest incidence of poor dental hygiene, and states with tougher optometry licensing laws reported higher rates of blindness.

7. Creating Black Markets

Some workers and consumers may simply choose to ignore government licensing standards and operate outside the law (for price or other reasons). As such, transactions are typically not enforceable and consumers are more likely to become the victims of charlatans and scam artists, who are drawn to circumstances where they cannot be held accountable. In a free market without licensing, consumers would be sheltered by better knowledge of a business’s reputation and the protection of the legal system. There would be fewer negligent businessmen and fly-by-night operations if they had to be held accountable for their actions.

Occupational Licensing Hampers Hurricane Repairs

Many suffered damages and were forced to pick up the pieces when Hurricane Charley hit Florida in 2004, but even a hurricane was no match for occupational licensing laws. Licensing regulations even prevented a man from New York from helping out a friend in need, as illustrated in a *Journal News* article dated August 28, 2004.

Anthony Howell flew to Florida last week to help out a friend whose home was badly damaged by Hurricane Charley. Now, he may face a \$5,000 fine and a felony charge.

"This is such a nightmare," said the 25-year-old Thiells man. "My only intention was to help my friend."

Howell, a Rockland County [New York] licensed contractor who runs Triad Builders in the hamlet, said his friend, Alex Arzoomanian, had called him on Aug. 14, because Arzoomanian's home in Kissimmee had been damaged by the hurricane and subsequent thunderstorms.



Arzoomanian had taken over the home after his mother died in May and had not had time to get homeowners insurance. His 4,000-square-foot shingled roof had taken a beating, and after the numerous Florida contractors he had called said they couldn't help him immediately, Howell offered to take a week off work to help. So Arzoomanian paid for the \$400 plane ticket and picked up his friend of 15 years at the airport on Aug. 16.

They began repairing the roof the next day. "The roof was completely damaged," Howell said. "It needed to be redone. There was a lot of water damage. We caught it in the nick of time. He could have lost his ceilings and his personal effects, stuff that can't be replaced."

Three days into the job, Howell was approached by two deputies from the Osceola County Sheriff's Office and two investigators from the state's Department of Business and Professional Regulation, who gave him a cease-and-desist order.

Under Florida law, only contractors licensed by the state may engage in roof repair. It carries up to a \$5,000 fine. Not to mention that the practice of unlicensed contracting becomes a third-degree felony when the governor has declared a state of emergency.

The two friends had finished portions of the roof and were allowed to cover up exposed wood, but the investigators would not let Howell finish a portion of the roof that was covered with a tarp, which could—and later did—get ripped off by the wind, the two friends said.

– Sulaiman Beg, "Contractor's bid to help friend turns nightmarish," *Journal News*, August 28, 2004.

B. Reducing Competition and Increasing Prices (and Profits)

If licensing laws do not serve to improve public safety and protect consumers, what purpose do they serve and how do they come to be? Whenever new legislation is passed, the discerning, pocketbook-protecting, skeptical observer will always ask, “Who benefits?” While the public may not benefit from licensing laws, existing trade interests sure do. As one policy analyst observed: “The dirty little secret about state licensure is that the people who lobby for it are usually the stronger competitors of those who would be licensed. Their goal is not to protect the public, but instead to raise barriers to new competitors who might cut prices and lower profits.”³²

Unfortunately, the history of licensing laws reveals that they are regulations born of special interest, not public interest. Businesses and workers have a financial interest in minimizing their competition. More competition means consumers have more sellers to choose from to find a good deal, and can more easily switch from one seller to another if their standards are not met. In order to maintain and grow their customer base—and thus their profits—firms (and, by extension, their employees) are pressured to keep prices low and the quality of goods and services high. The more competition there is in the marketplace, the stronger these incentives are. If, on the other hand, businesses are able to artificially reduce their competition (not by outcompeting them with lower prices, but rather by arbitrarily raising the cost of doing business and pricing them out of the market through government regulation), they will be better able to raise prices and realize greater profits. (See Table 3 below for a summary of empirical studies illustrating how occupational licensing regulations lead to higher prices for consumers.) As evidence of the artificial barriers to entry erected by licensing regulations, consider that licensing reduces the rate of job growth by 20 percent.³³

The dirty little secret about state licensure is that the people who lobby for [licensing laws] are usually the stronger competitors of those who would be licensed. Their goal is not to protect the public, but instead to raise barriers to new competitors who might cut prices and lower profits.

– Jack P. McHugh, “We’re All Licensees Now”

The additional profits trade interests can achieve through licensing laws are significant. It is estimated that licensing increases prices and earnings by 10 to 12 percent, although this may vary widely depending on the occupation and how strict the regulations are.³⁴ A number of studies have been conducted on different industries to analyze the impact of licensing on prices and wages. The studies show that there is a strong correlation between occupational restrictions and higher prices for consumers:³⁵

- An average eye exam and eyeglass prescription is 35 percent more expensive in cities with more restrictive optometry regulations.³⁶

- The average price of a pack of six contact lenses purchased by mail order is 19 percent cheaper than a pack purchased directly from an ophthalmologist, optometrist, or optical chain.³⁷
- Eleven of twelve common dental procedures are more expensive in states with stricter licensing laws.³⁸
- Dental fees are 14 to 16 percent higher in states with the strictest dental licensing laws, compared to those with the least-strict regulations.³⁹
- Unjustified restrictions on dental service cost consumers an estimated \$700 million in 1982.⁴⁰

Since occupational licensing appears to increase earnings, on average, for persons in high income occupations relative to persons in low income ones, this state and local policy may serve to exacerbate income dispersion in the United States.

– Morris M. Kleiner, “Occupational Licensing”

There is also a strong correlation between licensing laws and higher wages:

- Occupational licensing, including advertising restrictions and mobility restrictions (not recognizing one’s license from another state), increase wages by an average of about 27 percent for higher-wage occupations such as dentistry, although they have little impact for low-wage occupations such as barbering or cosmetology.⁴¹
- “Licensing may increase wage inequality by first keeping out persons from entering higher wage occupations, and then by raising wages for persons in these already high income occupations. Moreover, more highly educated and influential occupations may be more powerful in state and local jurisdictions and be able to control supply more effectively. Since occupational licensing appears to increase earnings, on average, for persons in high income occupations relative to persons in low income ones, this state and local policy may serve to exacerbate income dispersion in the United States.”⁴²
- Strict licensing laws increased the relative wages of clinical laboratory personnel by 16 percent.⁴³
- Physicians in states with more stringent regulations on alternative medicine earn significantly higher incomes.⁴⁴
- In a study of occupational restrictions on lawyers, low rates of interstate immigration and emigration, a common effect of licensing, were associated with higher wages.⁴⁵

Table 3: Effects of Licensing Regulations on Prices						
Author	Date	Country	Profession	Restriction	Impact on Price	Increase in Price
Benham (i)	1972	USA	Optometry	Advertising	Increase	25-100%
Benham (ii)	1975	USA	Optometry	Advertising	Increase	25-40%
Cady (iii)	1976	USA	Pharmacy	Advertising	Increase	5%
Muris & McChesney (iv)	1978	USA	Law	Advertising	Increase	--
Shepard (iii)	1978	USA	Dentistry	Reciprocity	Increase	15%
Feldman & Begun (iii)	1978/ 1980	USA	Optometry	Advertising	Increase	9-16%
Bond et al. (v)	1980	USA	Optometry	Commercial practice, Advertising	Increase	33%
Muzondo & Pazderka (vi)	1980	Canada	20 including law and architecture	Direct entry, mandatory fees, advertising	Increased income (fees & adverts)	10.4% (fees) 32.8% (adverts.)
Cox, DeSerpa & Canby (vii)	1982	USA	Law	Advertising	Higher price dispersion	--
Conrad & Sheldon (iii)	1982	Canada	Dentistry	Commercial practice, use of auxiliaries	Increase	4%
FTC (viii)	1984	USA	Law	Advertising	Increase	5-11%
Kwoka (ix)	1984	USA	Optometry	Commercial practice, advertising	Increase	20%
Haas-Wilson (iii)	1986	USA	Optometry	Commercial practice	Increase	5-13%
Schroeter et al. (x)	1987	USA	Law	Advertising	More inelastic demand	--
Liang & Ogur (iii)	1987	USA	Dentistry	Use of auxiliaries	Increase	11%

Source: Canada Office of Fair Trading, *Competition in Professions*, March 2001, p. 27, <http://www.oft.gov.uk/NR/rdonlyres/B08439C8-C5F6-4946-8AFF-71C050D34F46/0/oft328.pdf>, citing:

(i.) Benham: *The effect of advertising on the price of eyeglasses*, Journal of Law and Economics, 1972.

(ii.) Benham & Benham: *Regulation through the professions: a perspective on information control*, Journal of Law and Economics, 1975.

(iii.) Cited in Cox & Foster: *The costs and benefits of occupational regulation*, FTC 1990 p31.

(iv.) Muris & McChesney: *Advertising, consumer welfare and the quality of legal services*, 1978 – cited in OECD Round Table Report: Chapter 3, Regulatory Reform and Professional Business Services.

(v.) Bond, Kwoka, Phelan & Whitten: *Effects of restrictions on advertising and commercial practice in the professions – the case of optometry*, FTC 1980.

(vi.) Muzondo & Pazderka: *Occupational licensing and professional incomes in Canada*, Canadian Economics Association, 1980.

(vii.) Cox, DeSerpa & Canby: *Consumer information and the pricing of legal services*, JIE 1982.

(viii.) Jacobs et al.: *Improving consumer access to legal services – the case for removing restrictions on truthful advertising*, Cleveland Regional Office, FTC 1984.

(ix.) Kwoka: *Advertising and the price and quality of optometric services*, AER 1984.

(x.) Schroeter, Smith & Cox: *Advertising and competition in routine legal service markets: an empirical investigation*, JIE 1987.

Some mistakenly believe that business interests and regulation are contradictory concepts. In fact, oftentimes, quite the opposite is true. Business interests long ago learned that, like other interest groups, they could lobby politicians to use the coercive power of government to their advantage. Of course, if this regulatory machine did not exist in the first place, business interests would have no recourse but to compete fairly in the market like everyone else.

Occupational licensing is especially ripe for this type of special-interest lobbying because much of the information relevant to each regulated business or industry is technical and politicians cannot possibly know all the intricate details of running every kind of business in every industry. Since the politicians are not experts in all the industries they regulate, they rely on those being regulated for such information.⁴⁶ Moreover, they typically leave the regulation up to a board comprised mostly or entirely of those being regulated.

Incumbent practitioners dominate the creation and enforcement of regulations because they dominate the licensing boards. Most, if not all, members of a licensing board work in the occupation they are regulating. In fact, “About three-quarters of all licensing boards in our country are comprised solely of practitioners in the occupation that the board controls.”⁴⁷ Most licensing board members, thus, have a blatant conflict of interest.

Most licensing board members have a blatant conflict of interest.

Some argue that it is necessary to have representatives of the licensed profession on the board because lawyers, for example, best understand the business of the law and are, therefore, the best suited to regulate other lawyers. But, as economist and syndicated columnist Walter Williams counters, “with that kind of reasoning, we would have made Al Capone Attorney General—after all, who can best regulate criminals but other criminals?”⁴⁸ In other words, in keeping with our lawyer example, lawyers might know the legal business well, but if they have the ability to use the regulatory power of government to their advantage, they might also be most likely to take advantage of the system.

Some states have attempted to make licensing boards less partial to existing trade interests by appointing more “public” representatives to the boards. These efforts do not seem to improve things, however. A study of licensing boards in Missouri concluded that “the presence of voting public membership has no effect on any aspect of board decision making.”⁴⁹ There are a couple of possible reasons for this outcome. Public representatives may defer to practitioner board members because of their “practical knowledge” of the regulated business, which defeats the whole purpose of having public representatives on the board in the first place. The more likely reason, however, is that the decisions of the licensing board have less to do with the board’s composition and more to do with the nature of the board itself. The regulations have already been rigged to benefit incumbent practitioners at the expense of new (or potential) competitors. Who enforces these regulations is of little consequence.

Another way members of newly licensed professions gain advantage over their potential future competitors is through the adoption of a “grandfather clause” in the licensing law. This automatically licenses existing practitioners and exempts them from all the regulations imposed on others after the law goes into effect. This allows incumbents to impose stricter, more costly requirements on new, equally qualified competitors than they themselves had to satisfy. Grandfather clauses are typical of newly regulated occupations.

If business interests are really just scheming to reduce competition and increase prices, you might ask, how do they get away with it so regularly? First, the public safety myth is a strong and, unfortunately, persuasive argument to those that don’t consider the incentives of those pushing for regulation and who will truly benefit from it. Second, special interests achieve their regulatory goals through intense political mobilization and lobbying. The two sides of the issue are represented by, on the one hand, the trade interests looking to enact licensing laws and, on the other hand, consumers and the relative few who will be (or potentially will be) competing against the incumbent practitioners. The incumbent group clearly has a strong interest in seeking licensing regulations, as they will benefit from the laws significantly. On the other side, future competitors do not yet exist, many consumers may not be affected because they may never utilize the services of those to be licensed, and most of those who will do business with them will see the price increases as relatively small, as higher costs are spread among numerous consumers. In other words, “Because their per capita stakes in the licensing controversy are so much greater than those of consumers, it is professionals who usually determine the regulatory agenda in their domains. Crucial licensing decisions that can affect a vast number of people are often made with little or no input from the public.”⁵⁰ It is a case of large, concentrated benefits (to current practitioners) versus small, widely-dispersed costs (to consumers and potential and future competitors). In politics, the former always wins.

Once a licensing board or commission is established, the tendency is to further restrict price and quality competition.

Once a licensing board or commission is established, the tendency is to further restrict price and quality competition. For example, the FTC “brought suit against the California Dental Association in 1991 for prohibiting its members from advertising discount offers to senior citizens, free initial consultations, promises to refund money to dissatisfied customers, or claims that an office offers ‘gentle dental care,’ thereby restricting price and quality competition among dentists.”⁵¹ The Oregon Board of Cosmetology increased the number of required training hours from 1,500 to 2,500. The move was not inspired by a flurry of discontented customers but at the urging of beauty schools, which would realize more customers (students) and be able to charge higher prices under the new regulation.⁵²

The Oregon cosmetology example illustrates an important and revealing point: licensing requirements are typically adopted at the behest of the businesses and workers to be licensed (and

who stand to benefit most from regulation), not from disgruntled consumers. The Michigan Supreme Court noted (and condemned) this trend as early as 1889:

*It is quite common in these latter days for certain classes of citizens—those engaged in this or that business—to appeal to the government—national, state, or municipal—to aid them by legislation against another class of citizens engaged in the same business, but in some other way. This class legislation, when indulged in, seldom benefits the general public, but nearly always aids the few for whose benefit it is enacted, not only at the expense of the few against whom it is ostensibly directed, but also at the expense and to the detriment of the many, for whose benefit all legislation should be, in a republican form of government, framed and devised. This kind of legislation should receive no encouragement at the hands of the courts.*⁵³

Special-Interest Licensing Laws: Using Licensing to Inflate Casket Prices

In some states, it is illegal to sell caskets without a funeral director's license. This has predictably led to enormous price markups. In Oklahoma and Tennessee, markups reached as high as 600 percent! Lawsuits seeking to have the licensing provision thrown out were brought on behalf of casket sellers in both states by the Institute for Justice.

The funeral industry has a long history of anti-competitive behavior. Beginning in the early 1970s, the Federal Trade Commission began investigating anti-competitive practices within the industry. In April 1984, the FTC's "Funeral Rule" went into effect. Among other things, the Funeral Rule prohibited funeral providers from charging "casket-handling fees" to those who purchased a casket elsewhere, and required them to provide customers with itemized price information. The Rule was intended to increase competition among providers of funeral goods—including independent casket sellers—and afford consumers better information and choice. The funeral industry has attempted to bypass the Funeral Rule by lobbying states for restrictive licensing laws.

To get a funeral director's license in Tennessee and 10 other states, one must invest at least two years training how to handle and embalm dead bodies, and learning lavish amounts of other information that has nothing to do with casket-making. Complying with the regulations can result in tuition expenses and lost income totaling in the tens of thousands of dollars.

The Institute for Justice enjoyed mixed success in the casket-seller cases. The 6th U.S. Circuit Court of Appeals struck down the Tennessee law in 1999, noting that the Supreme Court has "repeatedly recognized that protecting a discrete interest group from economic competition is not a legitimate state interest." Incredibly, however, the 10th Circuit Court of Appeals upheld the Oklahoma law in 2004, arguing: "the Supreme Court has consistently held that protecting or favoring one particular intrastate industry . . . is a legitimate state interest."

Sources: Clark Neily, "Six Feet Under: It's time to kill the special-interest funeral industry," *National Review Online*, January 19, 2005, <http://www.nationalreview.com/comment/neily200501190848.asp>; Chip Mellor, "Burying the Casket Cartel," *Liberty & Law*, Vol. 11, No. 3, May 2002, http://www.ij.org/publications/liberty/2002/11_3_02_f.html; and FTC Amicus Brief in *Powers v. Harris*, August 29, 2002, <http://www.ftc.gov/os/2002/09/okamicus.pdf>.

If the reader still doubts that the motive of trade interests in establishing licensing laws is protectionism, consider, at last, that many licensing laws do not necessarily ban someone from working without a license, they ban someone from working without a license *for money*.⁵⁴

Incumbent practitioners are not the only entrenched interests in the licensing system. Without licensing laws, numerous bureaucrats would be out of a job and would be forced to find productive work in the private sector.⁵⁵ Since their livelihoods depend on the regulatory system, they have a very strong interest in preserving and expanding it. It is no wonder, then, why the number and scope of licensing laws is ever-increasing. Consequently, once licensing laws are established, it is nearly impossible to get them removed.

C. Reducing Consumer Choice

We have already seen how licensing's arbitrary single standard of worker competency reduces consumer choice regarding price and quality decisions for various goods and services. By restricting entry to would-be workers and entrepreneurs, occupational licensing affords consumers fewer firms and workers with whom they can do business. Consumers have little choice but to pay artificially high prices to those who have, effectively, formed a government-sanctioned cartel (unless they want to risk performing do-it-yourself work or tapping into a black market).

Imagine what would happen if government were to artificially restrict the number of gas stations or grocery stores. If there were fewer gas stations, there would be less competition and prices would increase. Indeed, this is the main criticism of the Organization of the Petroleum Exporting Countries (OPEC), that the cartel restricts the supply of oil to drive up prices around the world. Add to this the fact that restricting the number of gas stations would cost consumers even more in time and money because they would have to travel farther to find a gas station and, ironically enough, waste more gas getting there.

Such artificial restrictions do not just affect prices, however. Let us return to the grocery store example to see how they also affect consumer choice. Unlike gas stations, which rely primarily on a single product, grocery stores stock hundreds or thousands of different products and brands. There are superstores like Vons, Ralphs, and Albertsons, specialty chains like Trader Joe's and Whole Foods, and Mom-and-Pop corner stores. Restricting entry to the grocery business through government regulation would not only reduce the number of grocers, it would also reduce the number and variety of products supplied by them. Thus, even if there were no resulting price increases from the implementation of licensing laws, the reduction in the available pool of businesses and workers hurts consumers by diminishing consumer choice, and should be reason enough to reject occupational licensing.

Even if there were no resulting price increases from the implementation of licensing laws, the reduction in the available pool of businesses and workers hurts consumers by diminishing consumer choice.

D. Reducing Innovation and Entrepreneurship

Since occupational licensing reduces the number of businesses and workers in licensed professions, the businesses and workers that are licensed do not have to compete as vigorously as they otherwise would. This gives them a somewhat monopolistic pricing power, since consumers have fewer places to go to find better deals. Consumer demand has remained the same, but producer supply has been artificially shrunk.

This protection from competition affords licensees a special luxury. Part of the competition among sellers of goods and services involves innovation and research and development. Producers are constantly trying to discover new and better products, more efficient ways of doing business, and even developing new lines of business to attract new customers and better serve existing customers. To do so, they must invest a portion of their profits in innovative endeavors. With fewer competitors, however, there is less incentive for the producer to innovate. In addition, minimum and continuing education standards force licensees to focus narrowly on meeting license board requirements, which may or may not be relevant to their business and their customers' needs. This prevents them from specializing and exploring new and "unapproved" practices that might allow them to better serve their customers. Such narrow-mindedness has led lawyers' Bar associations, for example, to ban low-cost legal clinics.⁵⁶

To make matters worse, licensing laws often prohibit entrepreneurs who discover a market niche not being effectively served by existing licensees from competing against the licensed cartel. Consider the examples of licensed cosmetologists taking action against African-style hairbraiders, established licensed medical professionals against alternative medicine practitioners, and licensed funeral directors against casket sellers. Without licensing laws, such entrepreneurs would be free to offer alternative, specialized, and/or cheaper services and consumers would be free to utilize them or not. If the goal is truly to enhance consumer welfare, governments should encourage innovation and entrepreneurship by abolishing licensing laws, not making them stricter and adopting ever more regulations for more and more occupations.

Part 5

Licensing Violates the Freedom to Work

A. Barriers to Entry

The great tragedy of occupational licensing is that it prevents many qualified individuals from obtaining the jobs they desire. The hassle and costs of satisfying the regulations simply price a lot of people out of the market. They also create disincentives to hire additional employees.⁵⁷ Occupational licensing thus reduces employment and denies even skilled workers opportunities to improve their lives and work in the profession of their choice.

As we emphasize the importance of a shift from a welfare to a work ethic, we should seek to encourage employment opportunity and entrepreneurship, not deter them. Governments should, therefore, look to remove economic barriers, not erect or maintain them through licensing laws.



Barriers to Entry: Licensing Hairbraiding

Melony Armstrong of Tupelo, Mississippi, has practiced her craft for nine years. She runs her own business and now wants to move up the economic ladder by opening her own school so she can share her skills with others. But bureaucrats from Mississippi decided that Melony must complete 3,200 hours of courses to be allowed to teach the art of African hairbraiding.

On the other side of the country in Washington state, a similar problem entangles hard-working entrepreneurs. Benta Diaw, a native of Senegal, has been earning a living in Seattle working as an African hairbraider for the past six years. Benta built her successful business by working hard to establish a devoted clientele. But cosmetology regulations on the books in Washington require Benta to obtain a license to practice her art—a skill she learned in Africa from her grandmother.

In all but a handful of states, performing African hairbraiding professionally without a government-issued license is against the law. And earning the license requires braiders to take more than 1,000 hours of coursework that cover techniques completely unrelated and even antithetical to the type of natural hair care braiders provide.

The State of Washington's regulations are typical of many states, requiring even skilled braiders to take up to 1,600 hours of completely unrelated classes to get a cosmetology or barbering license to braid legally. In Mississippi, braiders can get a cosmetology license with a 1,500-hour class, or a "wigology" license with 300 hours of classes in wig care, but only two of the state's more than 40 cosmetology schools offer wigology. That leaves most aspiring braiders in the state with only three options: attend an expensive, 1,500-hour cosmetology program that doesn't teach braiding, abandon their profession, or operate outside the law.

Recognizing this problem, Melony Armstrong, who earned her wigology license, decided to open a wigology school to teach her craft to others. But the State doesn't allow wigology-only schools. Instead, Melony must open a cosmetology school—even if she only wants to teach braiding and wigology—which means spending more than 3,000 hours (about three academic years) in cosmetology and cosmetology instructor programs. Of course, those programs don't teach braiding.

Consider that in the 3,200 classroom hours it would take for Armstrong to get a license to teach hairbraiding, she could instead become licensed in all of the following professions: emergency medical technician (122 hours plus five emergency runs), paramedic (1,700 hours), ambulance driver (8 hours), law enforcement officer (ten weeks), firefighter (six weeks), real estate appraiser (75 hours) and hunting education instructor (20 hours). And all of that would take more than 600 hours less than getting her license to teach braiding.

Similarly in Washington, the extensive training required for one to lawfully braid hair is especially incongruous in light of the training required to perform other, far more dangerous jobs and activities. Emergency medical technician certification, for example, requires only 114 hours of classroom training and an examination. One can graduate with a firefighting degree after only 14 weeks of evening and weekend courses and a state examination. And as long as you have \$60 and picture identification, applying for a concealed weapons permit takes about 30 minutes.

– Excerpted from Dana Berliner and Jeanette Petersen, "Hairbraiding Lawsuits Make a National Case for Economic Liberty," *Liberty and Law*, Vol. 13, No. 5, October 2004, http://www.ij.org/publications/liberty/2004/13_5_04_f.html.

Note: As a result of lawsuits filed by the Institute for Justice in these cases, hairbraiders are no longer required to obtain a cosmetology license in the states of Mississippi and Washington.

B. Reduced Economic Liberty

While occupational licensing laws are sometimes thought of as little more than a nuisance (except by those to whom they deny employment), they “infringe on one of our most precious, but oft-forgotten, civil rights: the right to engage in the occupation of one’s choice without arbitrary or irrational government interference.”⁵⁸

The importance of the ability to earn one’s own living unhindered by the state and to voluntarily do business with whomever one chooses cannot be overstated. It goes to the very root of living in freedom. As economist and author Murray Rothbard explained, “If a man has the right to self-ownership, to the control of his life, then in the real world he must also have the right to sustain his life by grappling with and transforming resources.”⁵⁹ In other words, if we are to have the unalienable right to life, then we must also have the right to sustain our lives through the use of our labor. Adds Rothbard,

*Since each individual must think, learn, value, and choose his or her ends and means in order to survive and flourish, the right to self-ownership gives man the right to perform these vital activities without being hampered and restricted by coercive molestation.*⁶⁰

The copious licensing laws on the books today in every state of the union are testament to the disdain legislators and judges alike have shown to this freedom to work. Such was not always the case, however. There were few, if any, licensing laws in the early days of the nation, and federal judges once regularly struck down state laws restricting the right to engage in one’s chosen occupation without government interference. During the U.S. Supreme Court’s “Lochner Era” from 1905-1937, for example, the high court repeatedly rebuffed state attempts to infringe upon this right.⁶¹

The fundamental right to earn a livelihood in pursuing some lawful occupation is protected in the Constitution, and in fact, many authorities hold that the preservation of such right is one of the inherent or inalienable rights protected by the Constitution.

– Florida Supreme Court, *State ex rel. Hosack v. Yocum*

Indeed, the federal courts have often adopted the Rothbardian notion of the right to earn a living:

- “The right to hold specific private employment and to follow a chosen profession free from unreasonable governmental interference comes within the ‘liberty’ and ‘property’ concepts of provisions of the Fifth Amendment to the Federal Constitution that no person shall be denied liberty or property without due process of law.”⁶²
- “[T]he Fourteenth Amendment protects an individual’s right to practice a profession free from undue and unreasonable state interference. . . .”⁶³
- “[T]he right to work for a living in the common occupations of the community is of the very essence of personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure.”⁶⁴

State courts have likewise recognized this right:

- The California Supreme Court deemed the right to earn a living a “fundamental” one.⁶⁵
- Texas courts have found that citizens “[have] a vested property right in making a living.”⁶⁶
- New York courts asserted: “Monopolistic restrictions on the right to earn a living are odious devices.”⁶⁷
- The Florida Supreme Court held that “[t]he fundamental right to earn a livelihood in pursuing some lawful occupation is protected in the Constitution, and in fact, many authorities hold that the preservation of such right is one of the inherent or inalienable rights protected by the Constitution.”⁶⁸

The courts have also been rather inconsistent, however, sometimes ignoring or denying precedents that upheld the right to earn a living unfettered by government.⁶⁹

The point is not that anyone is *entitled* to any particular job, only that everyone has the right to pursue a career of his or her choice free from government obstruction.

Occupational licensing laws violate this freedom.

C. Paternalism (Government Knows Best)

As if restricting entry to numerous jobs and denying an individual the right to freely earn a living were not enough, the government adds insult to injury by claiming that it is doing so in the best interests of the public. This has led James Bovard to declare, “Licensing restrictions are one of the most pervasive and least recognized triumphs of paternalism in the average American’s everyday life.”⁷⁰ By imposing licensing laws, the government claims to “protect” members of the public not

only from incompetent workers, but also from themselves. As asserted in a Reason Foundation study, “The assumption is that the government is better able to determine the fitness of a business than are customers.”⁷¹ Not only is this view false, it is extremely condescending. Apparently, we consumers are too stupid and incompetent to make our own decisions about whom we do business with.

Two years ago, the Idaho House of Representatives passed the 2005 Contractor Registration Act, which requires building contractors to pay a fee to register with the state Bureau of Occupational Licensing, provide a certificate indicating that the contractor will provide workers’ compensation for all employees, and provide proof of at least \$300,000 in liability insurance. Though the measure passed easily, members of the opposition cautioned that there were good reasons it had taken such a bill decades to get so far. Said Rep. Phil Hart, who voted against the bill, “I think people should be able to make their own choices, and they should be able to ferret out who the good contractors and the bad contractors are. Anytime they delegate that to government, they give up some of their own responsibility.”⁷²

Rep. Hart’s point is a crucial one: abdication of individual responsibility leads to reliance on government. Dependence on the state breeds more dependence on the state, all at the expense of individual responsibility. We have seen this to be the case in other areas of government. From retirement to health care to unemployment assistance and numerous other social programs, aspects of life that once were unquestionably the realm of private decisions and consequences are now heavily regulated by the state. This is no less true of occupational decisions. Today, we even rely on government to sanction the barber who cuts our hair!

[Abdication of individual responsibility leads to reliance on government.](#)

D. Arbitrary Standards

If government were able to accurately ascertain the requirements necessary for a practitioner of a given occupation to achieve a given level of proficiency and public safety, one would think that the standards would be pretty similar from jurisdiction to jurisdiction. The fact that standards vary widely illustrates the arbitrary nature of occupational licensing standards. For example, many states require twice as much training for X-ray technicians, and eight times as much training for dental assistants, as does the military.⁷³

Another drawback of governmental licensing is that it typically allows for only a single standard. Who is to decide what the “best” standard is for everyone (and how)? As Walter Williams argues, “higher standards imposed by licensing requirements make consumers worse off.”⁷⁴ Dr. Williams explains in the following example. If we were to apply the same logic to the automobile market as we apply to the labor market with licensing laws, “in the interest of high-quality cars, we would only allow one kind of car—and it has to be a Rolls Royce? A lot of people would be walking! The existence of Pintos and Hyundais—lower-quality cars—are part of the optimal stock of cars.”⁷⁵

Arbitrary Standards: Louisiana Florist Licensing

Sandy Meadows of Monroe, Louisiana, has nine years' experience arranging flowers and supervises the floral department at an Albertsons grocery store. Shamille Peters, of New Orleans, has taken floral design courses at a community college, done arrangements for the weddings of several friends and a cousin, not to mention her own, and has received opportunities to do arrangements for banquets and other special events. Barbara Peacock decorated her church with flowers for weddings, services, and other events with her mother as a girl in Hall Summit. She dreams of opening a wedding chapel and doing her own flower arrangements for her clients' special day.

These three women have a lot in common: they are all talented flower arrangers, they all live in Louisiana, and they are all banned by the state from working as florists because they have not passed the Louisiana Horticultural Commission's arbitrary licensing exam.

Louisiana is the only state in the nation to require a licensing exam for florists, and with good reason: being a florist requires no formal training, consumers are much better judges of product quality than government bureaucrats, and there are no public safety issues involved. Nevertheless, the Horticulture Commission, which is comprised of existing florists who have an interest in suppressing potential competition, turns away more than 100 applicants each year. The pass rate on the exam is between 40 and 50 percent.

On what basis are these aspiring florists denied the right to work? Applicants are judged on such subjective criteria as whether their flowers and greenery have been "picked properly," whether their floral arrangements have the "proper focal point," and whether the flowers are "spaced effectively."

The costs of licensing are significant. The exam costs \$150 to take, and even experienced florists from other states often have to take it several times to pass, if they pass at all. Even more important, however, is the loss of income to aspiring florists. Sandy Meadows is able to stock and order flowers for the grocery store where she works, but she cannot work as an actual florist. Despite her nine years of experience and responsibilities for supervising the store's floral department, she earns only \$9.25 an hour and must work under the supervision of a state-licensed florist. Licensed florists at her store make \$11.25 an hour, nearly a 22 percent higher salary!

Sadly, a lawsuit brought by the Institute for Justice to throw out the regulation was rejected by a federal district court in March 2005 and Louisiana continues to be the land of the "flower police."

Sources: Clark Neily, "Flower Power," *Liberty & Law*, Vol. 13, No. 1, February 2004, http://www.ij.org/publications/liberty/2004/13_1_04_a.html, and Adam Causey, "War of the Roses: Florists fight Louisiana license law," *LSU Reveille*, March 5, 2004, <http://www.lsureveille.com/vnews/display.v/ART/2004/03/05/404811e8a6708>.

When quality standards and other licensing decisions are made by government bureaucrats, the decisions are inevitably going to be driven by politics, not consumer demand. In a free, unlicensed market, consumer demands are revealed through whom they do business with, how much business they conduct, and how much they are willing to pay for goods and services. If someone receives poor service or a shoddy product (by whatever standards he may set), he is likely to take his business elsewhere in the future until he is satisfied. Businesses that provide the best service and quality and/or lowest prices⁷⁶ (in other words, those that best satisfy consumers' wants and needs) will tend to draw the most customers and be the most successful. This is all the motivation they need to provide quality goods and services.

Consumers and producers alike have different preferences and different risk tolerances. The government standards may be good for some, but bad for anyone with lesser requirements. Some consumers may want to pay lower prices for lower-quality goods and services than those permitted under licensing laws. Licensing laws thus hurt consumers who would willingly purchase goods and services from “sub-par” producers, as well as the producers that would have satisfied their needs.

Since the poor have smaller incomes than those of the middle or upper class, these costs take a larger chunk of their disposable incomes, further draining resources that might be used to better their financial position.

E. The Poor and Minorities: Hit Hardest by Occupational Regulations

Occupational licensing laws tend to hurt the very people that the government purports to be “protecting” with its regulations. Such regulations disproportionately harm the poor and minorities, who generally have less work experience and fewer employment opportunities than the rest of the population. Laws that make it more difficult for them to obtain certain jobs or start their own businesses only make it that much harder for them to work their way up the economic ladder.

The poor, who are in most need of economic opportunity and can least afford to jump through regulatory hoops, are harmed by prohibitively costly licensing requirements. Many occupations that would otherwise be attractive options for those poor looking to improve their economic position and quality of life—including entry-level positions, jobs that require little or no formal education, and businesses that require little start-up capital for entrepreneurs—are needlessly regulated and price the poor out of the market. Thus, they must settle for fewer (and less desirable) jobs and lower wages, and the poorest of the poor are prevented from getting back on their feet.

If that were not enough, the poor are doubly hit by licensing laws since the reduced competition and higher business costs that result from licensing force them to pay higher prices for goods and services. Since the poor have smaller incomes than those of the middle or upper class, these costs

take a larger chunk of their disposable incomes, further draining resources that might be used to better their financial position.

Unfortunately, licensing laws have a history of preventing minorities from realizing economic freedom. Historically, licensing laws have allowed racists to use the power of government to deny minorities entry into labor markets without making overt references to one's nationality or the color of one's skin. It did not take long after the abolition of slavery for these practices to develop.

After the emancipation of the slaves and the end of the Civil War, things were obviously looking up for African Americans. On July 9, 1868, the Fourteenth Amendment to the U.S. Constitution was ratified. The Amendment asserted one's right to equal protection under the law; prohibited any state from depriving an individual of life, liberty, or property without due process of law; and forbade any state from passing any law that would "abridge the privileges or immunities of citizens of the United States," among other things.⁷⁷ Chief among these privileges and immunities is the right to earn one's living in the occupation of his choosing. Thus, the Fourteenth Amendment has a direct bearing on occupational licensing and regulation. Indeed, according to Dana Berliner, senior attorney for the Institute for Justice, a libertarian public-interest law firm, "much of the purpose of the Fourteenth Amendment was to prevent states from prohibiting newly freed slaves from undertaking occupations previously reserved for white workers."⁷⁸

Rather than discouraging entrepreneurship and locking the poor out of the labor market, government should focus on reducing poverty and improving citizens' quality of life by simply getting out of the way and removing the barriers it has erected to economic freedom.

African Americans began making inroads in professions such as barbering and plumbing, but this trend was not to last long. Unions combated this new competition by successfully lobbying for licensing laws, and black employment in these newly licensed trades plunged after the laws' adoption.⁷⁹

In the late nineteenth century, the U.S. Supreme Court invalidated a San Francisco law that prohibited laundry businesses located in wooden buildings, supposedly for health and safety reasons but, in actuality, to put Chinese store owners out of business.⁸⁰ There was further reason for hope when the Supreme Court issued its 1905 ruling in the landmark *Lochner v. New York* decision, in which the Court nullified a law prohibiting bakery workers from exceeding a certain number of hours worked per week. The law had been "designed to protect unionized German workers against competition from Jewish and Italian immigrants."⁸¹

Economic liberty would again suffer a setback shortly after the onset of the Great Depression, however, as the situation deteriorated for minorities with the adoption of the Davis-Bacon Act in

1931. Rep. Robert Bacon of Long Island, New York, was alarmed when a crew of low-paid, black construction workers from Alabama “took away” jobs from white, unionized workers in his district to build a Veteran’s Bureau hospital. Thus was the genesis of the Davis-Bacon Act, which required (and still does to this day) that the government pay workers the “prevailing” (i.e., union) local wage to workers on all federal construction projects. This effectively allowed the unions to maintain a cartel, restricting minority employment and raising the cost of government projects in the process.

In a truly free market, the only color that matters is the color of money. To the employer, a person’s worth is judged based on his productivity and one buyer’s dollar is as good as any other. As one writer has said, “A competitive market tends toward colorblindness.”⁸²

By imposing costs on those least able to afford them, licensing laws have hurt the people and communities that need economic liberty the most. Rather than discouraging entrepreneurship and locking the poor out of the labor market, government should focus on reducing poverty and improving citizens’ quality of life by simply getting out of the way and removing the barriers it has erected to economic freedom.

Part 6

The Alternative: Self-Regulation and Market Forces

The belief that consumers are left unprotected if the government does not step in to regulate it is a common misconception. In fact, as demonstrated in the aforementioned studies on regulation and product quality, the private sector does at least as good a job as the government in protecting consumers. Those that lack faith in the free market neglect two crucial elements that serve to protect consumers and encourage the delivery of high-quality products: business reputation and a legal system that consistently protects property rights.

One summer while I was in college, I interned for a state assemblyman. I worked in the assemblyman's local district office (as opposed to his office in the state capital), where special emphasis was placed on resolving constituent issues. From an elected official's standpoint, constituent services can be somewhat of a drain on resources, but they are also probably the most important part of the job. There is not a lot of upside to providing exceptional service, because people already expect their representatives to solve their problems, but there is a significant downside to offering substandard services and creating a legion of disgruntled voters. As the assemblyman's chief of staff once told me, if you do the job well and help someone resolve an issue, he may tell one other person about the good deed you have done. If you fail, he will tell ten of his friends. This is true in private enterprise as well.

The significance of a business's or worker's reputation cannot be overstated. Reputation is perhaps the most important, and least discussed, aspect of doing business. What would happen for example, if certain state governments stopped licensing exterminators, chiropractors, and barbers? Would people be living in bug-infested dwellings and running around with bad backs and bad haircuts? Of course not. People would find a way to manage without government regulation. When looking for a place to get your hair cut, you probably just ask your friends for a good referral. If you happen to get a bad haircut anyway, you simply go somewhere else next time. Herein lies the beauty of the free market: businesses have an incentive to provide the goods and services customers want at the best possible price and quality. Bad service is just as much a killer for business as high prices.⁸³

How the Internet Is Changing Jobs and Licensing Laws

Not only did the advent of the Internet bring about a revolution in communication and information, it altered the way people work and do business. The Internet has allowed businesses to cut costs and prices, especially compared to traditional “bricks-and-mortar” stores, and given consumers more information, convenience, and choice than ever before. Many of these bricks-and-mortar stores have since adopted the e-commerce model for the cost savings and consumer benefits it provides.

Not too long ago, historically speaking, it would have been unthinkable to do business with someone you had never even met (and probably weren’t likely to meet in the future) and trust the merchant enough to send money around the nation or the world before receiving your merchandise. Social networks generally restricted trust and business reputation to relatively small geographic areas. Businesses and consumers realized that it was to their mutual benefit to expand these networks, and they have adapted to provide greater information and reputational signals.

Now with the Internet and a few computer clicks, consumers can find detailed product information and compare prices, products, and sellers. eBay has spawned a whole new kind of home-based business. It relies on users to provide feedback on buyers and sellers—available for all to see—to provide others with peace of mind or warn them away from those who might defraud them or provide poor service. It also allows users to build up a track record over time to provide further signals of business quality.

Amazon.com provides some outside product reviews and allows buyers to rate products and write their own reviews. Overstock.com likewise uses buyer comments to provide signals of the quality of its products and service. CNET provides expert reviews and product comparisons for a wide variety of electronics and technology products. Online consumer product review Web sites such as BizRate.com, PriceGrabber.com, Shopzilla.com, and ConsumerReview.com not only provide product information and compare prices for a number of sellers, they also offer consumer reviews of various merchants as well as the products they carry.

These tools provide a wealth of information to consumers, enabling them to make better decisions about whom they do business with, even if they have never done business with a particular seller before.

New business opportunities soon brought about new regulatory opportunities, however. In August 2001, California’s Department of Real Estate began writing letters to a number of Internet-based real estate advertising companies demanding that they obtain real estate brokers licenses or shut down their operations. Curiously, newspapers that do the same thing were exempted from the requirement. The Web sites, such as ForSaleByOwner.com, merely advertised properties for sale in the state and did not negotiate property sales or leases, represent buyers or sellers, or perform other broker activities.

The requirements would have effectively mandated that Web site administrators take a number of college-level real estate classes, apprentice as a real estate salesperson, pass a state licensing exam, and operate out of an office based in the state of California. Keep in mind that these are merely the requirements of a single state. Imagine if all 50 states enforced similar requirements! Needless to say, such burdensome regulations are not only irrelevant to the actual service being provided, they are prohibitively costly and would defeat the whole purpose of offering consumers convenience and cost savings by shopping online. Fortunately, the Institute for Justice brought suit on behalf of ForSaleByOwner.com in May 2003 and a federal district court ruled in favor of the company.

Connecticut decided to get tough with online replacement contact lens sellers. Though these businesses simply provide replacement contact lenses for those who have previously been fitted by an eye care professional—they do not fabricate the lenses or fit them to the eye—the state requires that lenses be purchased only from a licensed optician in a store or office registered in the state. In March 2002, the Federal Trade Commission filed a staff comment before the Connecticut Board of Examiners for Opticians in which it argued that such a requirement “would likely increase consumer costs while producing no offsetting health benefits,” and that it could, in fact, “harm public health by raising the cost of replacement contact lenses, inducing customers to replace the lenses less frequently than doctors recommend.”¹ In June 2003, the Board ruled that in-state companies have to abide by the state’s licensing and prescription laws but out-of-state companies that sell directly to consumers do not need to hold Connecticut licenses or permits. In addition, contact lens sellers located both within and outside the state must obtain a prescription from a licensed optometrist or physician before filling a customer’s order. Congress entered the contact lens seller debate in November 2003 when it passed the Fairness to Contact Lens Consumers Act, which requires eye-care professionals to provide patients with a prescription for their lenses, which they may use to purchase their lenses elsewhere. The law was intended to foster greater competition and make it easier for consumers to shop around for the best deal.

A separate FTC statement before the House Subcommittee on Commerce, Trade, and Consumer Protection noted the trend in expanding occupational licensing requirements to businesses that utilize the Internet: “In a number of instances, and in a number of states, pre-existing regulatory regimes have been extended to the Internet, and it bears examining whether particular regimes are pro-competitive and pro-consumer, or whether they eliminate cost savings or convenience without sufficient benefits to justify those losses.”² Unfortunately, the evidence suggests that regulation is stifling the enormous consumer freedom and economic efficiency afforded by the Internet.

¹ FTC Staff Comment Before the Connecticut Board of Examiners for Opticians, March 27, 2002, <http://www.ftc.gov/be/v020007.htm>.

² Ted Cruz, Prepared Statement of the Federal Trade Commission Before the Subcommittee on Commerce, Trade, and Consumer Protection, Committee on Energy and Commerce, United States House of Representatives, September 26, 2002, <http://www.ftc.gov/os/2002/09/020926testimony.htm>.

Word of mouth is not the only means of assessing a business's reputation, however. Private certification organizations also provide consumers with information about the product and service quality they can expect from certain sellers. There are a couple of different ways to provide such an evaluation. One model is to simply use the reputation of the certifying organization to determine whether or not a product is "good." Since some certification organizations may be better than others, this determination may vary. Again, competition here is a good thing. Competition among various rating agencies will lead them to try to outdo each other by providing the most accurate information and establishing higher standards for certification.

A second certification model allows for different levels of quality. Walter Williams explains the process as follows: "A person can take a test—if he scores a 90, he has the right to declare himself a 'class A' practitioner; if he scores an 80, he has the right to call himself 'class B.' Such a method would give consumers information about quality while leaving them free to choose."⁸⁴ Unlike the single standard—predetermined by the government—of occupational licensing, these multiple standards provide a greater array of information to consumers and allow them to make better decisions based on their individual quality, price, and risk preferences.⁸⁵

Where government (compulsory) certification restricts the number of practitioners, voluntary certification actually increases it. According to a study on occupational regulation and service quality, "certification [voluntary licensing] seems to increase the number of licenses compared to both no licensing and compulsory licensing."⁸⁶ Rather than shying away from unnecessary and overly burdensome state-imposed requirements, practitioners are eager to obtain reasonable and relevant certifications to signal to customers that they provide high-quality services.

The existence of so many consumer organizations and businesses that provide information about products and businesses is a testament to the success of private certification. The Better Business Bureau enforces quality standards on its member businesses and charitable organizations and allows consumers to register complaints or view reports of past complaints and their outcomes. It will even act as a mediator to try to resolve disputes between customers and member businesses. *Good Housekeeping* magazine awards its Good Housekeeping Seal of Approval to products advertised in the magazine only after extensive quality testing, and it offers consumers a two-year warranty on products that have earned the Seal.⁸⁷ *Consumer Reports* has developed a business around providing customers with accurate information and sound reviews on a wide variety of products—from cars to computers to travel arrangements to home appliances. Industry groups such as the American Dental Association also certify consumer products.

Despite the efforts of certifying organizations, there will always be cases of worker negligence. When consumers are harmed by poor workmanship, faulty products, or dishonest businessmen, the courts serve as a final resort to ensure that the consumer is compensated for the harm done. If all else fails, the legal system provides an additional incentive for businesses to provide high-quality goods and services. If you are injured by a defective product, you can sue the manufacturer for negligence and perhaps fraud. If the stigma of being sued and found liable for selling faulty products is not enough to deter shady business practices, the economic effects of a guilty verdict certainly are. Any company foolish enough to hawk faulty and dangerous goods would quickly be put out of business by legal judgments.⁸⁸

Part 7

Recommendations and Conclusions

As the state-by-state occupational licensing survey illustrates, the right to work is heavily regulated across the nation. Some states have more work to do than others to restore economic liberty to those wishing to engage in the occupation of their choice and improve their standard of living.

While occupational licensing laws are billed as a means of protecting the public from negligent, unqualified, or otherwise substandard practitioners, in reality, they are simply a means of utilizing government regulation to serve narrow economic interests. Numerous studies have revealed little, if any, improvement in service quality from compulsory licensing. Oftentimes, licensing laws actually *reduce* service quality and public safety, as consumers make decisions based on a false sense of security regarding a licensee's state-sanctioned qualifications, or else resort to dangerous do-it-yourself jobs or black markets to avoid inflated prices.

Such special-interest legislation is designed not to protect consumers, but rather to protect existing business interests from competition. This suppression of competition damages the business climate and allows licensees to charge higher prices than they would be able to in a truly free market. While licensing regulations may raise earnings by 10 to 12 percent for the organized practitioners that are able to successfully lobby for them, these artificially high earnings are paid for by consumers in the form of higher prices.

Occupational licensing regulations impose a heavy burden on the economy. By restricting competition, licensing decreases the rate of job growth by an average of 20 percent. The total cost of licensing regulations is estimated at between \$34.8 to \$41.7 billion per year. In addition, by protecting licensed businesses from competition, occupational regulation also stifles innovation and entrepreneurship, thereby suppressing future economic growth.

Licensing laws are also very arbitrary, as evidenced by the disparity in which occupations are licensed and how burdensome the licensing regulations are from one state to the next. This begs the question: If some places work just fine with minimal or no regulations, why must others be plagued with restrictive laws?

Occupational licensing denies many the freedom and opportunity to earn an honest living in the occupation of their choosing. It is not only would-be workers and entrepreneurs that are hurt by licensing laws, however. The rigid, one-size-fits-all standards imposed by the government also harm consumers by reducing consumer choice. Individuals have different wants and needs, and even different levels of risk tolerance. They are better able to determine their own needs and protect their own interests than politicians or bureaucrats far removed in the halls of the state capitol or city hall. In the event that someone is taken advantage of or otherwise wronged by a dishonest or incompetent businessman, the courts are available to punish wrongdoers and make the victims whole.

The poor are harmed worst of all by laws that restrict economic liberty. They are doubly hurt by licensing laws because their smaller disposable incomes are less able to absorb the resulting price increases, and they have fewer job opportunities because jobs they could have performed in the absence of licensing are made prohibitively costly by unnecessary regulations.

In light of the enormous economic losses to society inflicted by occupational licensing regulations, and the destructive effects these laws have on consumers, aspiring workers, and business owners—not to mention individual liberty in general—***occupational licensing laws should be abolished.*** Private sector alternatives such as voluntary certification encourage entrepreneurship and allow consumers to obtain valuable information about product and service quality while leaving them free to choose to do business with practitioners that best meet their needs. The powerful free-market incentive to maintain a solid business reputation and the existence of the legal system to address negligence or wrongdoing should not be overlooked. As University of San Diego business professor Dirk Yandell affirms, “Private property rights, and a legal system to protect them, are all that is necessary to ‘protect the consumer.’”⁸⁹

Although abolition of occupational licensing regulations and other laws that restrict economic liberty, such as minimum wage and zoning laws, should be the ultimate goal, we must recognize that this is probably not feasible in the near term. In recognition of this fact, here are a couple of “second-best” options that may have a better chance of making a more immediate impact:

1. Conduct Periodic Occupational Licensing Reviews

Occupational licensing boards and laws should be continually evaluated for their relevance and perceived need. These reviews should, first and foremost, evaluate whether licensing laws pass the “laugh test” (fortune tellers and rainmakers?). They should also ensure that regulations are narrowly tailored, and that they are providing at least *some* measure of public benefit, not merely a gravy train for special interests and bureaucrats. Reviews should, furthermore, analyze licensing board performance by evaluating enforcement actions against licensees. Reviews could be conducted by a special commission or an existing agency such as an audit bureau or legislative analyst’s office.

Indianapolis Scales Back Licensing Laws

During the mid-1990s, the city of Indianapolis undertook a significant set of regulatory reforms that included a major scaling back of occupational licensing laws. Concerns that local regulations were stifling economic opportunities and growth led to the creation of the Regulatory Study Commission (RSC), which was charged with weeding out bad regulations and conducting cost-benefit analysis on all new regulations, as described in the following Reason Foundation study.

In examining the city's rules governing business licenses, the RSC discovered that, over the years, Indianapolis had created a series of business and occupational-licensing requirements that did little more than protect current practitioners from new competition. Regulations identified by the RSC as offering no net benefit to the community were slated for elimination in a series of initiatives called "Fair Fees for Small Business." In the first round of reforms, in 1994, the RSC eliminated the most obviously unnecessary components of the licensing code, such as rules governing shuffleboard tables and milk cows.

The next round of reforms identified more than 40 types of business and consumer licenses for elimination. The first regulations targeted for removal were those still in force long after the original purpose of the regulations had either vanished or been absorbed by other codes. The annual licensing requirements for hotels and motels, motion picture theaters, second-hand goods dealers, and legitimate live entertainment theaters passed neither the cost-benefit analysis nor the "least possible community restraint" principles of the RSC.

In many cases, such as those of second-hand goods dealers (most of which were businesses owned by women or minorities), legitimate live entertainment theaters, and movie theaters, it had been so long since these licenses were evaluated for relevance or cost-effectiveness that there was no direct evidence, either written or oral, to indicate the original intent of the licensing.

In late 1996, the city passed Fair Fees for Small Business Part II, freeing almost 2,036 local businesses from the burden and expense of annual licensing by requiring a one time, no-fee registration instead of a license for businesses ranging from horse-drawn carriages, commercial parking lots, vending and amusement machine operators, junk dealers, transient merchants, used car dealers, and pet store operators.

By studying enforcement and application histories, the RSC could determine how often enforcement actions were taken against licensed businesses and how many businesses actually applied for and received city licenses. The licenses selected had seen almost no enforcement activity against license holders in the previous decade. In the case of second-hand-motor-vehicle operators, less than 20 percent of those companies listed in the yellow pages under "used cars" had obtained the proper city licensing, yet not a single enforcement action had ever been taken against an unlicensed used car dealer.

Source: Excerpted from Adrian T. Moore and Tom Rose, *Regulatory Reform at the Local Level: Regulating for Competition, Opportunity, and Prosperity*, Reason Foundation Policy Study No. 238, February 1998, <http://www.reason.org/ps238.html>.

In addition to abolishing occupational regulations in obvious cases of political favor, licensing laws should be subject to removal if: (a) few other jurisdictions (say, fewer than 40 percent) have seen the need to license the occupation, (b) too few practitioners are licensed to financially justify the existence of the licensing board, or (c) there is a history of little or no enforcement activity, suggesting that either the licensing board is not doing its job or there is no cause for action, and thus that the board is unnecessary.

The city of Indianapolis successfully employed this strategy through its “Fair Fees for Small Business” initiatives in 1994 and 1996. The city’s regulatory study commission helped to eliminate the most blatant special-interest licensing regulations, including rules governing shuffleboard tables and milk cows.⁹⁰

2. Enact “Sunset” Provisions in Occupational Licensing Laws

Sunset provisions cause the law in question to expire after a certain period of time unless they are specifically renewed by legislators. Enacting such provisions in occupational licensing laws would improve accountability by forcing occupational licensing boards to periodically justify their existence. Rather than allowing more and more confusing licensing codes to pile up and be forgotten, as they have a tendency to do, legislators would have to take a more active interest in the scope and effectiveness of licensing laws.

While the above oversight measures are not perfect solutions, their implementation would help to increase the accountability of occupational licensing boards and restore some semblance of common sense to licensing laws. They would also restore a measure of economic freedom, resulting in more jobs, more competition, and more consumer choice.

About the Author

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Summers holds an M.A. in Economics from George Mason University and earned his Bachelor of Arts degree in Economics and Political Science from the University of California, Los Angeles.

Appendix A: States by Number of Licensed Job Categories

State	Licensed Job Categories	State	Licensed Job Categories
California	177	Virginia	89
Connecticut	155	Louisiana	88
Maine	134	Ohio	88
New Hampshire	130	Georgia	85
Arkansas	128	Indiana	85
Michigan	116	Iowa	85
Rhode Island	116	Utah	84
New Jersey	114	Delaware	83
Wisconsin	111	Montana	79
Tennessee	110	Texas	78
Alaska	109	New York	77
Massachusetts	107	West Virginia	77
North Carolina	107	Wyoming	74
Oregon	107	Arizona	72
Vermont	107	Alabama	70
Florida	104	Colorado	69
New Mexico	104	North Dakota	69
Maryland	98	Mississippi	68
Nebraska	96	Hawaii	64
Minnesota	95	Pennsylvania	62
Nevada	95	Idaho	61
Illinois	93	South Carolina	60
STATE AVERAGE	92	Kansas	56
Kentucky	91	Washington	53
Oklahoma	91	Missouri	41
South Dakota	90		

Appendix B: Job Categories Licensed in All 50 States

1. Accountant/Auditor
2. Architect (except Landscape or Naval)
3. Barber
4. Chiropractor
5. Cosmetologist/Hairdresser/Hairstylist
6. Dental Hygienist
7. Dentist
8. Emergency Medical Technician/Paramedic
9. Funeral Director
10. Hearing Aid Dispenser/Fitter
11. Insurance Agent
12. Land Surveyor
13. Lawyer
14. Medical and Health Services Manager (including Nursing Home Administrator)
15. Nurse
16. Occupational Therapist
17. Optometrist
18. Pesticide Applicator/Pest Control Worker
19. Pharmacist
20. Physical Therapist
21. Physician Assistant
22. Physician/Surgeon
23. Podiatrist
24. Psychologist
25. Public School Teacher
26. Real Estate Agent/Broker
27. Real Estate Appraiser/Assessor
28. School Counselor
29. Securities, Commodities, and Financial Services Agent
30. Social Worker
31. Truck Driver
32. Veterinarian
33. Veterinarian Technician/Assistant

Appendix C: The Nation's Most Outrageous Licensing Laws

Occupation	State(s)
Athletic Trainer	Most
Auctioneer	Several
Barber, Cosmetologist	All
Beekeeper	Maine
Casket Seller	Several
Chimney Sweep	Vermont
Dietician	Most
Elevator Operator	Massachusetts
Florist	Louisiana
Fortune Teller	Maryland
Hairbraider	Several
Hearing Aid Dispenser/Fitter	All
Interior Designer	Several
Interpreter for the Deaf	Illinois, Texas
Jai Alai Athlete, Umpire, Vendor, Ball Maker, Ticket Seller	Rhode Island
Junkyard Dealer	Ohio
Lightning Rod Installer	Vermont
Lobster Seller	Rhode Island
Manure Applicator	Iowa
Maple Dealer	Vermont
Motion Picture Projectionist	Massachusetts
Mussel Dealer	Illinois
Photographer (Itinerant)	Vermont
Prospector	Maine
Quilted Clothing Manufacturer	Utah
Rainmaker	Arizona

Occupation	State(s)
Recreation Administrator/Leader/Supervisor	Georgia
Reptile/Amphibian Catcher	Michigan
Upholsterer	California, Utah
Sanitarian	Several
Sheep Dealer	Iowa
Ticket Broker	Massachusetts
Turtle Farmer	Louisiana
Whitewater Rafting Guide/Operator	Maryland
Manure Applicator	Iowa

Sources: U.S. Department of Labor, America's CareerInfoNet Web site, <http://www.acinet.org/acinet/>; State government Web sites; David P. Bianco, ed., *Professional and Occupational Licensing Directory*, 2nd ed. (Detroit: Gale Research Inc., 1996); and various news articles.

Endnotes

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- ¹ Quoted in “Challenging Barriers to Economic Opportunity: *Uqdah v. Board of Cosmetology*,” Institute for Justice, http://www.ij.org/economic_liberty/dc_hairbraiding/background.html, citing James A. Dorn, “Judicial Protection of Economic Liberties,” in James A. Dorn and Henry G. Manne, eds., *Economic Liberties and the Judiciary* (Fairfax, VA: George Mason University Press, 1987), p. 4.
 - ² For more information on the Louisiana florist licensing laws, see Clark Neily, “Flower Power,” *Liberty & Law*, Vol. 13, No. 1, February 2004, http://www.ij.org/publications/liberty/2004/13_1_04_a.html, Rich Lowry, “Against the flower police,” *townhall.com*, December 18, 2003, <http://www.townhall.com/columnists/richlowry/r120031218.shtml>, and “Louisiana requires florists to be licensed,” *Boston Globe*, March 7, 2005.
 - ³ David P. Bianco, ed., *Professional and Occupational Licensing Directory*, 2nd ed. (Detroit: Gale Research Inc., 1996), p. viii.
 - ⁴ There have been several such cases of local police shutting down children’s lemonade and soda stands that have received media attention in recent years. See, for example, “Police Shut Down 6-Year-Old’s Lemonade Stand,” *News4Jax.com*, June 20, 2003, <http://www.news4jax.com/print/2283228/detail.html>; “Sweet Taste of Victory,” *Washington Times*, August 15, 2004, <http://www.washtimes.com/national/20040814-104752-3911r.htm>; “Las Cruces, N.M., lemonade stand needs permit, officials say,” *Knight Ridder/Tribune Business News*, July 13, 2004; “Sausage Vendor Fights Lemonade Stand,” *Associated Press*, August 3, 2005; and Kevin Duchscher, “No license? No pop stand, St. Paul tells 2 youngsters,” *Minneapolis Star Tribune*, August 29, 2003 (Web links above were good as of March 27, 2006).
 - ⁵ Morris M. Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?* (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2006), p. 12.
 - ⁶ *Ibid.*
 - ⁷ U.S. Department of Labor, Bureau of Labor Statistics, “Union Members in 2006,” January 25, 2007, <http://www.bls.gov/news.release/pdf/union2.pdf> (as of March 31, 2007).
 - ⁸ Morris M. Kleiner, “Occupational Licensing,” *Journal of Economic Perspectives*, Vol. 14, No. 4, Fall 2000, p. 190. Available online at the author’s University of Minnesota, Hubert H. Humphrey Institute of Public Affairs, Web site at <http://www.hhh.umn.edu/img/assets/3763/licensing.pdf> (as of March 27, 2006).

-
- ⁹ W. Mark Crain and Thomas D. Hopkins, “The Impact of Regulatory Costs on Small Firms,” a report for the U.S. Small Business Administration, Office of Advocacy, October 2001, p.1, <http://www.sba.gov/advo/research/rs207tot.pdf>.
- ¹⁰ U.S. Small Business Administration, Office of Advocacy, “Small Business Resources for Faculty, Students, and Researchers: Answers to Frequently Asked Questions,” <http://www.sba.gov/advo/stats/arsbfaq.pdf> (as of March 27, 2006).
- ¹¹ Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, p. 115.
- ¹² It is difficult, if not impossible, to generate a reasonably accurate true cost estimate of such regulations, as costs (or the lack of benefits) that derive from employees and businesses that would have otherwise existed, if not for the licensing laws, cannot be estimated with any degree of certainty.
- ¹³ U.S. Department of Labor, CareerOneStop Web site, “Help and FAQs – About America’s Career InfoNet,” <http://www.acinet.org/acinet/HelpAndInfo.asp?helpcontent=AboutACINet> (as of March 27, 2006).
- ¹⁴ Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, see Table 5.1, “Number of Occupations Licensed, by State, and Their Relative Rank, 2000,” pp. 100-101.
- ¹⁵ Ying Huang, Robert E. McCormick, and Lawrence J. McQuillan, *U.S. Economic Freedom Index: 2004 Report*, Pacific Research Institute, 2004, http://www.pacificresearch.org/pub/sab/entrep/2004/econ_freedom/index.html.
- ¹⁶ *Ibid.*, http://www.pacificresearch.org/pub/sab/entrep/2004/econ_freedom/sector.html.
- ¹⁷ *Ibid.*, http://www.pacificresearch.org/pub/sab/entrep/2004/econ_freedom/00_summary.html#table1.
- ¹⁸ See, for example, Louisiana Department of Labor, *Louisiana Licensing Guide 2005*, <http://www.ldol.state.la.us/forms/lmi/licensingguide.pdf>; Nebraska Department of Labor, *Licensed Occupations in Nebraska 2004*, <http://www.dol.state.ne.us/nwd/pdf/lco.pdf>; New Hampshire Employment Security, Economic and Labor Market Information Bureau, *Licensed, Certified, and Registered Occupations in New Hampshire*, September 2003, <http://www.nhes.state.nh.us/elmi/pdfzip/specialpub/lcro/lcro03.pdf>; Oklahoma Employment Security Commission, Economic Research and Analysis Division, *Licensed and Certified Occupations of Oklahoma*, 2005, <http://www.oesc.state.ok.us/lmi/publications/LCO/Occupation2004.pdf> (all Web links good as of March 27, 2006).
- ¹⁹ Canada Office of Fair Trading, *Competition in Professions*, March 2001, p. 22, <http://www.oft.gov.uk/NR/rdonlyres/B08439C8-C5F6-4946-8AFF-71C050D34F46/0/oft328.pdf>.
- ²⁰ Carolyn Cox and Susan Foster, *The Costs and Benefits of Occupational Regulation*, Federal Trade Commission Bureau of Economics Staff Report, October 1990.
- ²¹ Jack P. McHugh, “We’re All Licensees Now,” Mackinac Center for Public Policy, July 24, 2003, <http://www.mackinac.org/article.aspx?ID=5570>.
- ²² S. David Young, *The Rule of Experts: Occupational Licensing in America* (Washington, D.C.: Cato Institute, 1987).
- ²³ S. David Young, “Occupational Licensing,” The Library of Economics and Liberty, undated, <http://www.econlib.org/library/Enc/OccupationalLicensing.html> (as of March 27, 2006).

-
- ²⁴ Ibid.
- ²⁵ Benjamin Shimberg, *Occupational Licensing: A Public Perspective* (Princeton, NJ: Center for Occupational and Professional Assessment, Educational Testing Service, 1982), cited in Young, “Occupational Licensing.”
- ²⁶ James Bovard, “The Cartelization of the American Workforce,” *Freedom Daily*, October 1996, <http://www.fff.org/freedom/1096d.asp>.
- ²⁷ “It’s time to revoke the state’s license,” *Orange County Register*, August 19, 2004, http://www.ocregister.com/ocr/2004/08/19/sections/commentary/article_207231.php.
- ²⁸ Sidney L. Carroll and Robert J. Gaston, “Occupational Restrictions and the Quality of Service Received: Some Evidence,” *Southern Economic Journal* 47, 1981, pp. 959-976, cited in Young, “Occupational Licensing.”
- ²⁹ Ibid.
- ³⁰ Carroll and Gaston, cited in Mary J. Ruwart, “Libertarian Solutions: How government licensing laws can protect consumers to death,” *LP News*, May 1999, <http://www.lp.org/lpn/9905-licensing.html>.
- ³¹ Prepared Statement of the Federal Trade Commission Before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, September 26, 2002, <http://www.ftc.gov/os/2002/09/020926testimony.htm>, citing FTC Staff Comment Before the Connecticut Board of Examiners for Opticians, March 27, 2002, <http://www.ftc.gov/be/v020007.htm>.
- ³² McHugh, “We’re All Licensees Now.”
- ³³ Kleiner, *Licensing Occupations: Ensuring Quality or Restricting Competition?*, pp. 146, 149.
- ³⁴ Ibid., pp. 94, 149.
- ³⁵ Canada Office of Fair Trading, *Competition in Professions*, p. 27.
- ³⁶ Ronald S. Bond, John E. Kwoka, Jr., John J. Phelan, and Ira Taylor Whitten, *Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry*, Staff Report, Bureau of Economics, Federal Trade Commission, Washington, D.C., 1980, cited in Morris M. Kleiner, “Occupational Licensing and the Internet: Issues for Policy Makers,” Prepared for the Federal Trade Commission Hearings on “Possible Anticompetitive Efforts to Restrict Competition on the Internet,” October 1, 2002, p. 4, <http://www.ftc.gov/opp/ecommerce/anticompetitive/panel/kleiner.pdf>.
- ³⁷ Federal Trade Commission, Staff Comment Before the Connecticut Board of Examiners for Opticians, “In Re: Declaratory Ruling Proceeding on the Interpretation and Applicability of Various Statutes and Regulations Concerning the Sale of Contact Lenses,” *Comments of the Staff of the Federal Trade Commission, Intervenor*, March 27, 2002, cited in Kleiner, “Occupational Licensing and the Internet: Issues for Policy Makers,” p. 4.
- ³⁸ Lawrence Shepard, “Investment, Moral Hazard and Occupational Licensing,” *Review of Economic Studies* 53, 2002, pp. 843-862, cited in Kleiner, “Occupational Licensing and the Internet: Issues for Policy Makers,” p. 4.

-
- ³⁹ Morris M. Kleiner and Robert T. Kudrle, “Tough Licensing of Dentists Does Not Improve Health,” *NBER Digest* (Cambridge, MA: National Bureau of Economic Research, October 1997).
- ⁴⁰ J. Nellie Liang and Jonathan D. Ogur, *Restrictions on Dental Auxiliaries*, Bureau of Economics Staff Report to the Federal Trade Commission, May 1987, at 2.
- ⁴¹ Timothy Muzondo and Pazderka Bohumir, “Occupational Licensing and Professional Incomes in Canada,” *Canada Journal of Economics*, Vol. 13, Issue 4, November 1980, pp. 659-667.
- ⁴² Kleiner, “Occupational Licensing,” p. 196.
- ⁴³ William D. White, “The Impact of Occupational Licensure on Clinical Laboratory Personnel,” *Journal of Human Resources* 13, Winter 1978, pp. 91-102, cited in Young, “Occupational Licensing.”
- ⁴⁴ Gary M. Anderson, Dennis Halcoussis, Linda Johnston, and Anton D. Lowenberg, “Regulatory Barriers to Entry in the Healthcare Industry: The Case of Alternative Medicine,” *Quarterly Review of Economics and Finance*, Vol. 40, Issue 4, 2000, pp. 485-502, cited in Kleiner (2002), “Occupational Licensing and the Internet: Issues for Policy Makers,” p. 4.
- ⁴⁵ Steven Tenn, “Occupational Licensing: An Effective Barrier to Entry?” Unpublished dissertation, University of Chicago, cited in Kleiner (2002), “Occupational Licensing and the Internet: Issues for Policy Makers,” p. 4.
- ⁴⁶ John Hood, “Does Occupational Licensing Protect Consumers?,” *The Freeman: Ideas on Liberty*, Vol. 42, No. 11, November 1992, <http://www.fee.org/publications/the-freeman/article.asp?aid=2356>.
- ⁴⁷ Walter E. Williams, “How Regulation and Taxation Stifle Entrepreneurship,” Speech given at the Pioneer Institute for Public Policy Research, April 4, 2000, <http://www.pioneerinstitute.org/research/dialogues/dia32.cfm>.
- ⁴⁸ Ibid.
- ⁴⁹ Quoted in Hood, “Does Occupational Licensing Protect Consumers?”
- ⁵⁰ Young, “Occupational Licensing.”
- ⁵¹ Bovard, “The Cartelization of the American Workforce.”
- ⁵² Hood, “Does Occupational Licensing Protect Consumers?”
- ⁵³ *Chaddock v. Day*, 75 Mich. 527 (1889), at 531-32, cited in Timothy Sandefur, “The Common Law Right to Earn a Living,” *The Independent Review*, Vol. 7, No. 1, Summer 2002, p. 80, http://www.independent.org/pdf/tir/tir_07_1_sandefur.pdf (as of March 31, 2007).
- ⁵⁴ Lew Rockwell, “The Trouble With Licensure,” *The Free Market*, August 1990, <http://www.lewrockwell.com/archives/fm/08-90.html>.
- ⁵⁵ I say here that, in the absence of occupational licensing laws, bureaucrats would be forced to find “productive” work in the private sector because their public-sector regulatory work is clearly *destructive* of livelihoods and economic liberty. Government does not create or produce anything. It renders “services” (usually forcibly) only by first taking from taxpayers. It is the ultimate monopolist. Private-sector entrepreneurs, by contrast, earn their living only by first producing something of value that someone is willing to exchange his money for, and even then they must compete with other businesses to provide the best deal for their goods or services.

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- ⁵⁶ Young, “Occupational Licensing.”
- ⁵⁷ Steven Yates, “Government Licensing: The Enemy of Employment,” *The Freeman: Ideas on Liberty*, Vol. 46, No. 7, July 1996, <http://www.fee.org/publications/the-freeman/article.asp?aid=3905>.
- ⁵⁸ Tim Keller, “State licensing laws unduly burden new firms,” *Tucson Citizen*, December 3, 2003, http://www.tucsoncitizen.com/index.php?page=opinion&story_id=120303b5_guestkeller&PH PSESSID=9d83411687a79b9f812182a5e1e6d9e8.
- ⁵⁹ Murray N. Rothbard, *For a New Liberty: The Libertarian Manifesto* (New York: Macmillan Publishing Co., Inc., 1973), p. 42.
- ⁶⁰ *Ibid.*, p. 28.
- ⁶¹ Sandefur, “The Common Law Right to Earn a Living,” p. 69.
- ⁶² *Greene v. McElroy*, 360 U.S. 474, 492 (1959).
- ⁶³ *Gabbert v. Conn*, 131 F.3d 793, 800-801 (CA9 1997).
- ⁶⁴ *Truax v. Corley*, 814 F.2d 223, 227 (5th Cir. 1987).
- ⁶⁵ *Conway v. State Bar*, 47 Cal. 3d 1107, 1134 n. 7 (1989), cited in Sandefur, p. 88.
- ⁶⁶ *Smith v. Decker*, 158 Tex. 416 (1958), cited in Sandefur, p. 88.
- ⁶⁷ *Di Carlo v. State Liquor Auth.*, 54 Misc. 2d 482 (1967), at 485, cited in Sandefur, p. 88.
- ⁶⁸ *State ex rel. Hosack v. Yocum*, 136 Fla. 246, 251 (1939), cited in Sandefur, p. 88.
- ⁶⁹ Sandefur, “The Common Law Right to Earn a Living,” p. 88.
- ⁷⁰ Bovard, “The Cartelization of the American Workforce.”
- ⁷¹ Adrian T. Moore and Tom Rose, *Regulatory Reform at the Local Level: Regulating for Competition, Opportunity, and Prosperity*, Policy Study No. 238 (Los Angeles: Reason Foundation, February 1998), <http://www.reason.org/ps238.html>.
- ⁷² Thanh Tan, “Contractor Registration Bill Passes House,” KBICTV.com, March 3, 2005, <http://www.kbcity.com/x5154.xml?ParentPageID=x5157&ContentID=x63056&Layout=KBCI.xsl&AdGroupID=x5154> (as of August 30, 2005).
- ⁷³ Moore and Rose, *Regulatory Reform at the Local Level: Regulating for Competition, Opportunity, and Prosperity*.
- ⁷⁴ Walter E. Williams, “How Regulation and Taxation Stifle Entrepreneurship.”
- ⁷⁵ *Ibid.*
- ⁷⁶ Prices certainly figure in our individual calculations of quality and value. Hence, a product might not be of the highest quality available, but it may be “good quality for the money” (the money that one is willing to pay for it).
- ⁷⁷ United States Constitution, Amendment XIV.
- ⁷⁸ Dana Berliner, “How IJ Defends Economic Liberty: A Constitutional Primer, Part One,” *Liberty & Law*, Vol. 9, No. 1, February 2000, http://www.ij.org/publications/liberty/2000/9_1_00_g.html.

-
- ⁷⁹ Robert Whaples, “Racist Regulations: How the Government Held Down Minorities,” Review of *Only One Place of Redress: African Americans, Labor Regulations, and the Courts from Reconstruction to the New Deal*, by David E. Bernstein. *Humane Studies Review*, Vol. 14, No. 2, Spring 2002, <http://www.theihs.org/libertyguide/hsr/hsr.php?id=63>.
- ⁸⁰ Clint Bolick, “The Jim Crow Era’s Unknown Chapter,” Review of *Only One Place of Redress: African Americans, Labor Regulations, and the Courts from Reconstruction to the New Deal*, by David E. Bernstein. *American Enterprise*, July/August 2001.
- ⁸¹ Ibid.
- ⁸² Whaples, “Racist Regulations: How the Government Held Down Minorities.”
- ⁸³ Adam B. Summers, “The New Drug War,” *The Freeman: Ideas on Liberty*, Vol. 54, No. 3, April 2004, p. 32, <http://www.fee.org/pdf/the-freeman/summers0404.pdf>.
- ⁸⁴ Williams, “How Regulation and Taxation Stifle Entrepreneurship.”
- ⁸⁵ For a more detailed discussion and analysis of the role and importance of reputation in business and social relations, particularly in the absence of governmental regulation, see Daniel B. Klein, ed., *Reputation: Studies in the Voluntary Elicitation of Good Conduct* (University of Michigan Press, 1997).
- ⁸⁶ Carroll and Gaston, quoted in Mary J. Ruwart, “Libertarian Solutions: How government licensing laws can protect consumers to death.”
- ⁸⁷ *Good Housekeeping* Web site, “What’s Behind the Good Housekeeping Seal?” http://magazines.ivillage.com/goodhousekeeping/consumer/institute/articles/0,,284512_596441,00.html (as of March 27, 2006).
- ⁸⁸ Summers, “The New Drug War,” pp. 32-33.
- ⁸⁹ Dirk Yandell, “Occupational Licensing,” *The Freeman: Ideas on Liberty*, Vol. 35, No. 1, January 1985, <http://www.fee.org/publications/the-freeman/article.asp?aid=1540>.
- ⁹⁰ Moore and Rose, *Regulatory Reform at the Local Level: Regulating for Competition, Opportunity, and Prosperity*.



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