

Occupational Licensing: Barriers to Work, Redemption, and Growth

Presentation to New Mexico's Criminal Justice Reform Subcommittee

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Overview

- Introduction to JAN
- Issues Created by Restrictive Occupational Licensing
- Federal Reforms
- National Legislative Trends

Who We Are



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The Breadth of Occupational Licensing Today

- 1,100 occupations were licensed in at least one state in 2016
- Fewer than 60 of those were licensed in every state
- Between 25 percent and 30 percent of workers must have a license or some other form of permission from the government
 - Up from 5 percent in the 1950s
 - About two-thirds of that growth is due to previously unlicensed professions added to the list of those being regulated
- The ABA's inventory documented 27,254 state occupational licensing restrictions for those with a criminal record
 - Blanket bans, permanent disqualifications, mandatory disqualifications

Issues Created by Overly Burdensome Occupational Licensing (1/3)

- Fewer jobs and higher costs: licensing has been estimated to result in 2.85 million fewer jobs nationally, with an annual cost to consumers of \$203 billion
 - Licensing is estimated to increase prices between 3 and 16 percent
- Less competition
 - Create barriers to entry, practice restrictions, expand scope of practice definitions to regulate competitors
 - A recent study from the Federal Reserve Bank of Minneapolis found that “licensing has strong and significant barrier effects on worker entry,” particularly for those previously unemployed

Issues Created by Overly Burdensome Occupational Licensing (2/3)

- Increased income inequality
 - Estimates find that unlicensed workers earn 10 to 15 percent lower wages than licensed workers with similar levels of education, training, and experience
- Less social and economic mobility
 - Interstate migration rates for workers in the most-licensed occupations are nearly 14 percent lower than the average migration rate for the least-licensed occupations

Issues Created by Overly Burdensome Occupational Licensing (3/3)

- Higher recidivism: one study found “between 1997 and 2007, the states with the heaviest occupational licensing burdens saw an average increase in the three-year, new-crime recidivism rate of over 9%.”
- The states with the lowest burdens and no “good character” provisions “saw an average decline in that recidivism rate of nearly 2.5%.”

Federal Reforms: Truly Bipartisan

- President Obama directed his Department of the Treasury Office of Economic Policy, Council of Economic Advisers, and Department of Labor to issue a lengthy report on the problems implicated in overly burdensome occupational licenses and the steps policymakers can take, including:
 - “Limiting occupational licensing requirements to those that address legitimate public health and safety concerns;
 - Applying results of comprehensive cost-benefit studies of licensing laws to reduce the number of unnecessary or overly-restrictive licenses;
 - Harmonizing regulatory requirements [and] entering into interstate compacts ... to increase the mobility of skilled workers;
 - Allowing practitioners to offer services to the full extent of their current competency, to ensure that all qualified workers are able to offer services.”

Federal Reforms: Truly Bipartisan

- President Trump directed his FTC to create the Economic Liberty Task Force
- First policy initiative: occupational licensing, and increasing competition in the marketplace to protect the public against unqualified service providers
- Recommended that voluntary certification or other types of occupational regulation offer less restrictive alternatives that can help some employers and consumers when comparing their options for hiring employees or vendors
- Just last month, released report on license portability across state lines

Federal Reforms: Truly Bipartisan

- Pennsylvania's Rep. Glenn Thompson passed the "Strengthening Career and Technical Education for the 21st Century Act," which President Trump signed into law on 7/31/18
- In part, permits federal technical education funds to be used for "identification and examination of licenses or certifications that
 - (i) pose an unwarranted barrier to entry into the workforce for career and technical education students; and
 - (ii) do not protect the health, safety, or welfare of consumers;"

National Legislative Trends

- Eliminate
- Narrow
- Review and oversight

National Legislative Trends: Pennsylvania

- Unanimously approved Senate Bill 637, which limits consideration of criminal records in licensing decisions to those that “directly relate” to the occupation, and where the individual poses a “substantial risk”
- Requires individualized assessments and permits preliminary reviews; creates a “best practices” guide and lists of directly related offenses
- Empowers licensing boards to issue licensing for occupations in which correctional facilities offer training
- Also includes provisions for licensing reciprocity and provisional licenses

National Legislative Trends: Michigan

- In 2011, Gov. Rick Snyder established the Office of Regulatory Reinvention (ORR)
- Since then, the state has repealed seven license requirements outright (dietitians and nutritionists, auctioneers, community planners, oculists, school solicitors, immigration clerical assistants, and interior designers)
- Legislation passed in 2018 to permit individuals to receive a preliminary determination regarding the good moral character requirement (House Bill 6060)

National Legislative Trends: Arizona

- Governor Doug Ducey signed HB 2613 into law in 2016, eliminating licensure requirement for citrus fruit packers, cremationists, assayers, and yoga instructors
- In 2017, he ordered a full review of all existing licensing requirements, including the economic justifications for any standard that is more burdensome than the national average and for any license that is not required by at least 25 other states
- Later that year, the Legislature passed and he signed SB 1437, which:
 - requires agencies to limit occupational regulations to only those necessary and carefully tailored to meet public health, safety, or welfare objectives;
 - provides an additional avenue for a person to petition the Governor's Regulatory Review Council to review a final rule based on the belief that the final rule was not made in compliance with rulemaking procedures

National Legislative Trends: Nebraska

- LB 299, the “Occupational Board Reform Act,” signed 4/23/18
- Establishes policy for the state, including “the fundamental right of an individual to pursue a lawful occupation,” which includes the “the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications,” and the presumption to “use the least restrictive regulation which is necessary to protect consumers”
- Permits someone to obtain preclearance from a licensing entity; provides for a written determination and the steps necessary to remedy the disqualification
- Requires annual review of all occupational regulations

National Legislative Trends: Other States

- Tennessee: limited licensing requirements to those needed to protect public health, safety and welfare (2016)
- Illinois: prohibits using a criminal record as a bar for certain professions unless the underlying offense is “directly related” (2016)
- Colorado: adjusts qualification consideration from criminal record/good moral character to “is qualified,” provides conditional licenses (2018)
- Delaware: limited older criminal histories from consideration; permitted shorter waiting periods for waivers (2018)
- Indiana: required an explicit list of disqualifying crimes; required deletion of vague terms like “moral turpitude” (2018)
- Mississippi: prohibited denying a license due to criminal conviction unless “directly related” (2019)
- Oklahoma: removed vague terms from licensing statutes; required disqualifying offenses to “substantially relate” (2019)
- Arkansas, Iowa, Maryland, Nevada, North Carolina, Texas, Utah...

National Legislative Trends: One Step Forward...Two Steps Back

- In 2017 and 2018 alone, Idaho added to the requirements to be a licensed sign language interpreter, Alabama extended licensure requirements for roofers and “pyrotechnic display operator licenses,” Arkansas required a license for “pharmacy benefits managers,” and Louisiana licensed “genetic counselors”
- Among others...

Next Steps: Recommended Questions for Policymakers to Ask

- The FTC has recommended that policymakers ask these questions when reviewing occupational licensure requirements:
 - “What legitimate policy justifications, if any, were articulated when the original license requirements were imposed?”
 - Are there currently any specific, legitimate and substantiated policy objectives that justify continuing these license requirements?
 - If current, legitimate policy objectives are identified, does the furtherance of those current objectives likely outweigh the expected harms from licensing?
 - If state licensing appears justified, are there any less restrictive alternatives to the current licensing system that still address the legitimate policy objectives, while reducing burdens on the public?
 - Are the licensing requirements narrowly tailored to achieve the specific public policy purpose, or is there a less intrusive way to achieve the public policy objective?”

Thank you!

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