

OHIO OCCUPATIONAL LICENSURE: OPTIONS FOR REFORM

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Chair Wiggam, Vice Chair John, Ranking Member Kelly, and members of the State and Local Government Committee:

My name is Matthew Mitchell. I am an economist and a senior research fellow at the Mercatus Center at George Mason University. In recent years, my colleagues and I have been studying occupational licensing laws, and I am grateful for the opportunity to discuss our findings with you.

In my testimony, I wish to focus on three points:

1. Licensing is a substantial barrier to employment, imposing a cost on the economy and a disparate burden on certain vulnerable populations.
2. Licensing does little to enhance either consumer safety or the quality of services; it does, however, increase prices for consumers.
3. Successful reform is difficult, but not impossible. Institutional reforms must permit policymakers to cast conspicuous votes in the general interest and limit the power of special interests to dominate the process.

AN EMPLOYMENT BARRIER THAT IS ECONOMICALLY COSTLY AND INDIVIDUALLY BURDENSOME

Licensing represents a significant and growing barrier to work. Nationally, the share of the workforce that is required to have an occupational license has increased more than fourfold in the past 50 years. As of 2015, nearly one in five working Ohioans—18.1 percent of the state’s workforce—was required to be licensed.¹

1. Morris M. Kleiner, *Reforming Occupational Licensing Policies* (Washington, DC: Hamilton Project at the Brookings Institution, March 2015), 9.

As licensing burdens have increased nationwide, they seem to have depressed interstate migration of those in licensed professions. Economists Janna Johnson and Morris Kleiner estimate that between-state migration of those who are licensed is 36 percent lower than that of members of other professions.²

These burdens have an economic cost. In separate research, Kleiner and Evgeny Vorotnikov estimate that, each year, licensure may cost the US economy between 1.8 and 1.9 million jobs and result in between \$6.2 billion and \$7.1 billion in lost output each year. They also estimate that licensure creates a misallocation of resources that costs the US economy between \$183.9 billion and \$197.3 billion annually.³ In Ohio alone, they estimate that licensure costs nearly \$210 million in lost annual output and has created a \$6 billion annual misallocation of resources. It has also eliminated more than 67,000 jobs.⁴

Aspiring entrants to a large number of professions—ranging from upholsterer and animal breeder to cosmetologist—are now required by the state of Ohio to obtain a government-issued license to work. It can take months and hundreds of dollars to obtain these licenses. Among 40 low- to moderate-income occupations licensed by Ohio, the average aspiring worker is required to spend 350 days in training and pay \$188 in fees before he or she may obtain a license.⁵ This does not count either the cost of the education or the income that people forgo when they spend months in often-unnecessary training. According to the Institute for Justice, Ohio’s licensing laws are the 20th most burdensome in the country.

Licensure is often arbitrary. As shown in table 1, licensing requirements often don’t match the risk posed to the public by certain professions. Compared with emergency medical technicians, aspiring cosmetologists in Ohio must undergo *10 times* as many months of training; would-be auctioneers (who are unlicensed in 20 states) must complete more than *10 times* as much training; and high school coaches must complete more than *80 times* as much training.

TABLE 1. OCCUPATIONAL TRAINING MISMATCHES IN OHIO

Occupation	Days of Education/Experience	Exams
Emergency medical technician	35	2
Makeup artist	140	2
Cosmetologist	350	2
Auctioneer	379	3
Commercial HVAC contractor	1,825	1
High school head coach	2,921	2

Source: Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 114–15.

Licensing boards are dominated by members of the professions they oversee. About 86 percent of Ohio occupational licensure boards are required by law to have a majority of their members work in the

2. Janna E. Johnson and Morris M. Kleiner, “Is Occupational Licensing a Barrier to Interstate Migration?” (NBER Working Paper No. 24107, National Bureau of Economic Research, Cambridge, MA, December 2017).

3. Morris M. Kleiner and Evgeny S. Vorotnikov, *At What Cost? State and National Estimates of the Economic Costs of Occupational Licensing* (Arlington, VA: Institute for Justice, November 2018), 5.

4. Kleiner and Vorotnikov, *At What Cost?*, 41.

5. Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 114.

professions they oversee.⁶ See table 2 for board composition data in a sample of Ohio boards. Owing to vacancies, many boards are composed entirely of industry insiders. This presents a legal concern in light of the US Supreme Court’s decision in *North Carolina State Board of Dental Examiners v. FTC*, which held that states may be liable for antitrust violations when boards are dominated by members of the professions they oversee and when elected officials fail to actively supervise these boards.⁷ It also creates a practical concern that boards will tend to act as industry cartels, controlling entry of new members rather than ensuring public safety.

TABLE 2. COMPOSITION OF SELECT OHIO BOARDS

Board or Council	Industry Members	Total Members	Percent Industry
Occupational Therapy Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board ^a	5	5	100%
Ohio State Cosmetology and Barber Board ^b	11	13	85%
Ohio Real Estate Commission ^c	4	5	80%
State Auctioneers Commission ^d	4	5	80%
Landscape Architects Board ^e	5	5	100%

^a OHIO REV. CODE ANN. § 4755.01 (2007).

^b OHIO REV. CODE ANN. § 4713.02 (2005).

^c OHIO REV. CODE ANN. § 4735.02 (2008).

^d OHIO REV. CODE ANN. § 4707.03 (2005).

^e OHIO REV. CODE ANN. § 4707.03 (2008).

Licensing reduces employment opportunities, especially among certain communities. High barriers to employment pose particular difficulties to lower-skilled, lower-educated populations, to immigrants, to non-English speakers, to those with criminal records, to certain ethnic and racial minorities, and to those who move frequently, such as military spouses.

For example, one study finds that Black or Hispanic interior designers are 30 percent less likely to hold a college degree than white designers and that licensing requirements mandating a college degree disproportionately exclude minorities from this occupation.⁸ Another study finds that licensing requirements for barbers reduce the probability of Black individuals working as barbers by 17.3 percent.⁹ Licensing laws requiring new teachers to pass an examination reduce the proportion of new

6. Rebecca Haw Allensworth, “Foxes at the Henhouse: Occupational Licensing Boards Up Close,” *California Law Review* 105, no. 6 (December 2017): 1609.

7. *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).

8. David E. Harrington and Jaret Treber, *Designed to Exclude: How Interior Design Insiders Use Government Power to Exclude Minorities and Burden Consumers* (Arlington, VA: Institute for Justice, February 2009).

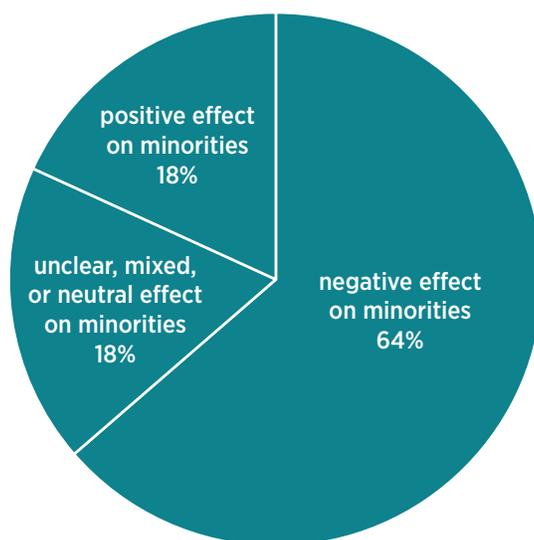
9. Marc T. Law and Mindy S. Marks, “Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era,” *Journal of Law and Economics* 52, no. 2 (2009): 351–66. Note, however, that the authors do not find evidence that licensure harmed minority employment in other fields. For a critique, see Daniel B. Klein, Benjamin Powell, and Evgeny S. Vorochnikov, “Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks,” *Econ Journal Watch* 9, no. 3 (2012): 210–233.

Hispanic teachers by 2 percent.¹⁰ Some licensing laws require English proficiency, making it more difficult for nonnative English speakers such as some Vietnamese Americans to work.¹¹

And some states require aspiring professionals to have lived or worked for a number of years in the state, making it more difficult for immigrants to obtain a license.¹²

As shown in figure 1, 64 percent of the studies that assess the effect of licensure on minorities have found that it has a negative effect. The remaining studies are split evenly between finding a positive effect on minorities or a mixed, neutral, or unclear effect.

FIGURE 1. STUDIES ASSESSING THE EFFECT OF OCCUPATIONAL LICENSURE ON MINORITIES



Sources: **Positive Effect on Minorities:** Peter Q. Blair and Bobby W. Chung, “Job Market Signaling Through Occupational Licensing” (NBER Working Paper No. 24791, National Bureau of Economic Research, Cambridge, MA, July 2018); Beth Redbird, “The New Closed Shop? The Economic and Structural Effects of Occupational Licensure,” *American Sociological Review* 82, no. 3 (2017): 600–624. **Unclear, Mixed, or Neutral Effect on Minorities:** Marc T. Law and Mindy S. Marks, “Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era,” *Journal of Law and Economics* 52, no. 2 (2009): 351–66; Peter Q. Blair and Bobby W. Chung, “How Much of Barrier to Entry is Occupational Licensing?,” *British Journal of Industrial Relations* 57, no. 4 (2019): 919–43. **Negative Effect on Minorities:** Stuart Dorsey, “The Occupational Licensing Queue,” *Journal of Human Resources* 15, no. 3 (1980): 424–34; Maya N. Federman, David E. Harrington, and Kathy J. Krynski, “The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists,” *American Economic Review* 96, no. 2 (2006): 237–41; Joshua D. Angrist and Jonathan Guryan, “Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements,” *Economics of Education Review* 27, no. 5 (2008): 483–503; David E. Harrington and Jaret Treber, *Designed to Exclude: How Interior Design Insiders Use Government Power to Exclude Minorities and Burden Consumers* (Arlington, VA: Institute for Justice, February 2009); Alison Cathles, David E. Harrington, and Kathy Krynski, “The Gender Gap in Funeral Directors: Burying Women with Ready-to-Embalm Laws,” *British Journal of Industrial Relations* 48, no. 4 (2010): 688–705; Daniel B. Klein, Benjamin Powell, and Evgeny S. Vorotnikov, “Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks” *Econ Journal Watch* 9, no. 3 (2012): 210–33; Jonathan V. Hall et al., “Occupational Licensing of Uber Drivers” (paper presentation, Allied Social Sciences Association 2018 Annual Meeting, Philadelphia, PA, 2018).

10. Joshua D. Angrist and Jonathan Guryan, “Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements,” *Economics of Education Review* 27, no. 5 (2008): 483–503.

11. Maya N. Federman, David E. Harrington, and Kathy J. Krynski, “The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists,” *American Economic Review* 96, no. 2 (2006): 237–41.

12. US Department of the Treasury, Council of Economic Advisers, and US Department of Labor, *Occupational Licensing: A Framework for Policymakers*, July 2015.

In states where the scope of licensure for low- to moderate-income occupations has grown more rapidly, there is less absolute income mobility, as measured by the chances that an individual raised in a relatively low-income household will move up the income distribution.¹³

Those with criminal histories are particularly likely to be stymied by these laws. The Council of State Governments Justice Center estimates that nationally about 15,000 laws and regulations limit the ability of those with prior convictions to obtain state occupational licenses. Among these, 6,000 are blanket or mandatory restrictions.¹⁴ This means that a decades-old mistake can bar an aspiring worker from employment, even in fields that are unrelated to the original offense. Ironically, it may also land the worker back in incarceration as unemployment has been found to be a key driver of recidivism.¹⁵ Important 2019 reforms made it possible for Ohioans to petition a board ahead of time to see if their prior offenses would bar them from obtaining a license.¹⁶ Still, the state could go further. For example, it could bar boards from denying a license in cases where the underlying crime was unrelated to the profession. Or it could bar boards from denying a license on the basis of old convictions or arrests without conviction. Finally, it could require boards to consider evidence of rehabilitation.¹⁷

Licensure presents an especially steep employment barrier for military spouses. About 35 percent of working military spouses are either licensed or certified.¹⁸ And compared with the broader population, military spouses are 10 times more likely to have moved across a state line in the past year.¹⁹ When military spouses were asked to name the biggest challenges to employment, 22 percent identified the inability to transfer their professional licenses from one state to another.²⁰ This helps to explain why, in 2017, the military spouse unemployment rate was 16 percent, nearly four times the national average.²¹

LICENSURE DOES NOT SEEM TO INCREASE QUALITY OR SAFETY, BUT IT DOES RAISE PRICES

The most common justification for occupational licensing is that it is necessary to ensure quality and safety. Unfortunately, it seems to fall short in attaining this goal. In theory, licensure could increase the quality and safety of services if it were to successfully screen out low-quality workers, equip workers with the right skills to perform their jobs safely, or both. On the other hand, theory also suggests that licensure could decrease quality and safety. This could happen in two ways. First, licensure may insulate service providers from market competition, and quality tends to be enhanced by market competition. Second, by raising prices and limiting the quantity of providers, licensure may reduce the

13. Brian Meehan, Edward J. Timmons, and Andrew Meehan, *Barriers to Mobility: Understanding the Relationship between Growth in Occupational Licensing and Economic Mobility* (Washington, DC: Archbridge Institute, 2017). Separately, Patrick McLaughlin and Laura Stanley find that in countries with more barriers to entering business, measured income inequality is greater. Patrick A. McLaughlin and Laura Stanley, "Regulation and Income Inequality: The Regressive Effects of Entry Regulations" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016).

14. National Reentry Resource Center, National Inventory of Collateral Consequences of Conviction (database), accessed December 11, 2019, <https://niccc.csgjusticecenter.org/>.

15. John M. Nally et al., "Post-Release Recidivism and Employment among Different Types of Released Offenders: A 5-Year Follow-up Study in the United States," *International Journal of Criminal Justice Sciences* 9, no. 1 (2014): 16–34.

16. OHIO REV. CODE ANN. § 9.78 (West 2019).

17. Nick Sibilla, *Barred from Working: A Nationwide Study of Occupational Licensing Barriers for Ex-Offenders* (Arlington, VA: Institute for Justice, 2020), 81. Because it lacks these reforms, Sibilla gives Ohio a D– and ranks it among the bottom 10 worst states in the union for licensing of ex-offenders.

18. US Department of the Treasury and US Department of Defense, *Supporting Our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines*, February 2012, 3.

19. US Department of the Treasury and US Department of Defense, *Supporting Our Military Families*.

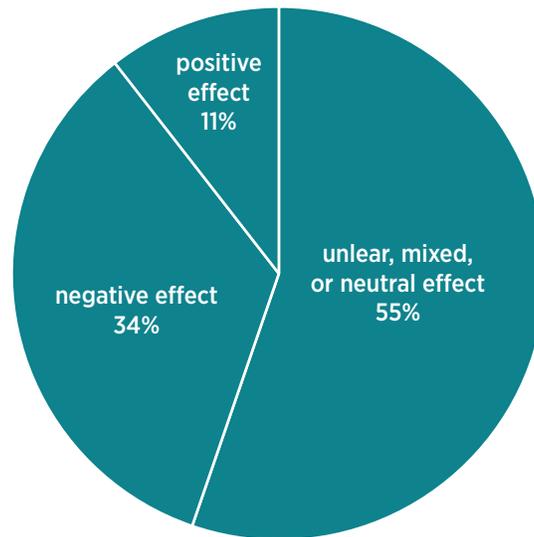
20. US Chamber of Commerce Foundation, *Military Spouses in the Workplace: Understanding the Impacts of Spouse Unemployment on Military Recruitment, Retention, and Readiness*, June 2017, 10.

21. US Chamber of Commerce Foundation, *Military Spouses in the Workplace*, 7. There are other explanations too. For example, 41 percent of military spouses believe that employers are reluctant to hire workers who might move.

availability of needed services. In some cases, this can lead to tragedy. For example, when licensure means that there are fewer electricians in an area, homeowners are more inclined to perform their own electrical work, leading to more injuries.²² And when occupational licensing rules limit the scope of practice for registered nurses, patients have less access to mental health resources, and there appear to be more suicides.²³

Because the economic theory is ambiguous, one must turn to the data. In figure 2, I present a survey of the empirical work on licensure and quality. Most studies find that licensure either has mixed, unclear, or neutral effects on quality. Interestingly, however, more studies find a negative effect of licensure on quality than find a positive effect.

FIGURE 2. STUDIES ASSESSING THE EFFECT OF OCCUPATIONAL LICENSURE ON QUALITY



Sources: **Positive Effect:** Arlene Holen, *The Economics of Dental Licensing* (Washington, DC: Public Research Institute, Center for Naval Analysis, 1978); Roger Feldman and James W. Begun, “The Effects of Advertising: Lessons from Optometry,” *Journal of Human Resources* 13 supplement (1978): 247–62; Samuel Claude Martin, “An Examination of the Economic Side Effects of the State Licensing of Pharmacists” (doctoral dissertation, University of Tennessee, 1982); Bradley Larsen, “Occupational Licensing and Quality: Distributional and Heterogeneous Effects in the Teaching Profession” (working paper, 2015). **Unclear, Mixed, or Neutral Effect:** Kathryn Healey, “The Effect of Licensure on Clinical Laboratory Effectiveness” (doctoral dissertation, University of California, Los Angeles, 1973); John J. Phelan, *Regulation of the Television Repair Industry in Louisiana and California: A Case Study* (Washington, DC: Federal Trade Commission, 1974); John F. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs* (Washington, DC: American Enterprise Institute, 1976); Robert J. Thornton and Andrew R. Weintraub, “Licensing in the Barbering Profession,” *Industrial and Labor Relations Review* 32, no. 2 (1979): 242–49; Ronald Bond et al., *Effects of Restrictions of Advertising and Commercial Practice in the Professions: The Case of Optometry* (Washington, DC: Federal Trade Commission, 1980); Chris Paul, “Physician Licensure Legislation and the Quality of Medical Care,” *Atlantic Economic Journal* 12, no. 4 (1984): 18–30; S. David Young, “Accounting Licensure, Quality, and the ‘Cadillac Effect,’” *Journal of Accounting and Public Policy* 5, no. 1 (1986): 5–19; S. David Young, *The Rule of Experts: Occupational Licensing in America* (Washington, DC: Cato Institute, 1987); Morris M. Kleiner and Daniel L. Petree, “Unionizing and Licensing of Public School Teachers: Impact on Wages and Educational Output,” in *When Public Sector Workers Unionize*, ed. Richard B. Freeman and Casey Ichniowski (Chicago: University of Chicago Press, 1988), 305–19; Tim R. Sass and Mark W. Nichols, “Scope-of-Practice Regulation: Physician Control and the Wages of Non-Physician Health-Care Professionals,” *Journal of Regulatory Economics* 9, no. 1

22. Sidney L. Carroll and Robert J. Gaston, “Occupational Restrictions and the Quality of Service Received: Some Evidence,” *Southern Economic Journal* 47, no. 4 (1981): 959–76

23. Kristen R. Choi et al., “The Relationship of Nursing Practice Laws to Suicide and Homicide Rates: A Longitudinal Analysis of US States from 2012 to 2016,” *BMC Health Services Research* 20, no. 1 (2020): 1–9.

(1996): 61–81; Dan D. Goldhaber and Dominic J. Brewer, “Does Teacher Certification Matter? High School Teacher Certification Status and Student Achievement,” *Educational Evaluation and Policy Analysis* 22, no. 2 (2000): 129–45; Morris M. Kleiner and Robert T. Kudrle, “Does Regulation Affect Economic Outcomes? The Case of Dentistry,” *Journal of Law and Economics* 43, no. 2 (2000): 547–82; David Blau, “Unintended Consequences of Child Care Regulations,” *Labour Economics* 14, no. 3 (2007): 513–38; Joshua D. Angrist and Jonathan Guryan, “Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements,” *Economics of Education Review* 27, no. 5 (2008): 483–503; Thomas J. Kane, Jonah E. Rockoff, and Douglas O. Staiger, “What Does Certification Tell Us about Teacher Effectiveness? Evidence from New York City,” *Economics of Education Review* 27, no. 6 (2008): 615–31; Thomas J. Kane and Douglas O. Staiger, “Estimating Teacher Impacts on Student Achievement: An Experimental Evaluation” (NBER Working Paper No. 14607, National Bureau of Economic Research, Cambridge, MA, 2008); Benjamin Powell and Evgeny Vorotnikov, “Real Estate Continuing Education: Rent Seeking or Improvement in Service Quality?,” *Eastern Economic Journal* 38, no. 1 (2012): 57–73; Dick M. Carpenter II, “Testing the Utility of Licensing: Evidence from a Field Experiment on Occupational Regulation,” *Journal of Applied Business and Economics* 13, no. 2 (2012): 28–41; Mark A. Klee, “How Do Professional Licensing Regulations Affect Practitioners? New Evidence” (Working Paper No. SEHSD-2013-30, Census Bureau, Washington, DC, June 5, 2013); Morris M. Kleiner et al., “Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for a Medical Service,” *Journal of Law and Economics* 59, no. 2 (2016): 261–91; John M. Barrios, “Occupational Licensing and Accountant Quality: Evidence from the 150-Hour Rule” (working paper no. 2018-32, Becker Friedman Institute for Economics at the University of Chicago, Chicago, IL, May 2018). **Negative Effect:** Sidney L. Carroll and Robert J. Gaston, “Occupational Licensing: Final Report” (NTIS No. NSF/FA7704140, National Science Foundation, Alexandria, VA, 1977); Timothy J. Muris and Fred S. McChesney, “Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics,” *American Bar Foundation Research Journal* 4, no. 1 (1979): 179–207; Sidney L. Carroll and Robert J. Gaston, “State Occupational Licensing Provisions and Quality of Services Received: The Real Estate Business,” *Research in Law and Economics* 1 (1979): 1–14; Alex R. Maurizi, “The Impact of Regulation on Quality: The Case of California Contractors,” in *Occupational Licensure and Regulation*, ed. Simon Rottenberg (Washington, DC: AEI Press, 1980), 26–35; Sidney L. Carroll and Robert J. Gaston, “Occupational Restrictions and the Quality of Service Received: Some Evidence,” *Southern Economic Journal* 47, no. 4 (1981): 959–76; Sidney Carroll L. and Robert J. Gaston, “Barriers of Occupational Licensing of Veterinarians and the Incidence of Animal Diseases,” *Agricultural Economic Research* 30 (1978): 37–39; John E. Kwoka, “Advertising and the Price and Quality of Optometric Services,” *American Economic Review* 74, no. 1 (1984): 211–16; Mark C. Berger and Eugenia F. Toma, “Variation in State Education Policies and Effects on Student Performance,” *Journal of Policy Analysis and Management* 13, no. 3 (1994): 477; Catherine Schaumans and Frank Verboven, “Entry and Regulation: Evidence from Health Care Professions,” *RAND Journal of Economics* 39, no. 4 (2008): 949–72; Morris M. Kleiner and Richard M. Todd, “Mortgage Broker Regulations That Matter: Analyzing Earnings, Employment, and Outcomes for Consumers,” in *Studies of Labor Market Intermediation*, ed. David H. Autor (Chicago: University of Chicago Press, 2009), 183–231; Beth Redbird, “The New Closed Shop?”; Kristen R. Choi et al., “The Relationship of Nursing Practice Laws to Suicide and Homicide Rates: A Longitudinal Analysis of US States from 2012 to 2016,” *BMC Health Services Research* 20, no. 1 (2020): 1–9; Darwyn Deyo, “Testing Licensing and Consumer Satisfaction for Beauty Services,” in *Grease or Sand? Occupational Licensing, Efficiency, and Service Quality across Nations*, ed. Morris M. Kleiner and Maria Koumenta (forthcoming).

There is abundant evidence that licensure raises prices. Economic theory is unambiguous: supply restrictions such as licensure tend to raise prices. And the evidence supports this theory. In a Mercatus assessment of 19 peer-reviewed studies, my colleagues and I find that licensure is associated with higher prices in all 19.²⁴ Reviewing many of the same studies, Obama administration officials similarly concluded that the association between licensing and higher prices is “unequivocal.”²⁵

SUCCESSFUL REFORM IS DIFFICULT BUT NOT IMPOSSIBLE

Licensing reform efforts are difficult to implement successfully. The consumers and the aspiring professionals who suffer from anticompetitive licensing regimes are numerous and typically politically unorganized. On the other hand, the industry insiders who benefit from these regimes are comparatively few in number and typically well organized. Economists and political scientists have long blamed this

24. Patrick A. McLaughlin, Matthew D. Mitchell, and Anne Philpot, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, November 2017), 5.

25. US Department of the Treasury, Council of Economic Advisers, and US Department of Labor, *Occupational Licensing: A Framework*, 14.

pattern of diffuse costs and concentrated benefits for the persistence of inefficient and inequitable policy.²⁶ And this pattern has made licensing reform an uphill battle, even though experts on across the political spectrum tend to agree that current licensing laws are inefficient and anticompetitive.

Drawing lessons from successful reform. Despite the advantages enjoyed by special interests, history affords a number of examples in which the general interest has prevailed.²⁷ In areas as varied as trade, race relations, and airline policy, special interests have occasionally lost their privileges while general and diffuse interests have benefitted from a more level and open playing field.

There are a number of important lessons to draw from these cases,²⁸ but perhaps the most important is that institutional reforms must permit policymakers to cast conspicuous votes in the general interest and limit the power of special interests to dominate the process.

In the case of occupational licensing, five potential reforms follow this pattern:

1. *An independent commission.* One potential reform would be to establish an independent commission. If initiated in the next few months, the panel's remit could be to evaluate rules that were suspended during the COVID-19 pandemic, and if initiated sometime in the future, the panel could have a broader remit to evaluate all regulations.²⁹ It should be composed of experts familiar with the economic literature on licensure and with no financial stake in the current regime. It should be charged with identifying and eliminating burdensome and anticompetitive licensing laws. And, ideally, lawmakers should be bound to take its advice in whole or not at all. This type of structure can ensure that state licensing regimes serve the general interests of the public and not the special interests of protected industries.
2. *Requiring less restrictive means of regulation.* The state of Nebraska recently adopted a reform that highlights a different approach.³⁰ There, the Occupational Board Reform Act of 2018 requires legislative committees to review 20 percent of licenses under their jurisdiction each year and all licenses under their jurisdiction every five years. The review process requires committees to gather information on the number of licenses the board has "issued, revoked, denied, or assessed penalties against" and on the reasons for these actions. It also requires committees to review board composition, assess board activities, and to compare these activities with the ways other states regulate the occupation.

Most importantly, the act stipulates that licenses are warranted only when they address "present, significant, and substantiated harms," and if such harms are found to exist, the

26. Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Second Printing with New Preface and Appendix, Revised (Cambridge, MA: Harvard University Press, 1971); Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 40th anniversary ed. (New York: W. W. Norton & Company, 1969); James Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1991).

27. Matthew D. Mitchell, "Overcoming the Special Interests That Have Ruined Our Tax Code," in *For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century*, ed. Adam Hoffer and Todd Nesbit (Arlington, VA: Mercatus Center at George Mason University, 2018), 327–50.

28. Again, see Mitchell, "Overcoming the Special Interests." But briefly, these lessons are (1) ideas matter, especially in the long run, (2) institutions matter too, (3) go for the "grand bargain," (4) reform requires good leaders, (5) sometimes it takes a special interest to beat a special interest, (6) never let a crisis go to waste, and (7) embrace permissionless innovation.

29. For more details on this approach, see Patrick A. McLaughlin, Matthew D. Mitchell, and Adam Thierer, "A Fresh Start: How to Address Regulations Suspended during the Coronavirus Crisis," (working paper, C. Boyden Gray Center for the Study of the Administrative State at George Mason University, Arlington, VA, forthcoming).

30. Legis. B. 299, 105th Leg., 2nd Sess. (Neb. 2018).

legislation requires policymakers to use the “least restrictive” regulation necessary to protect consumers from undue risk. Finally, the act establishes the following hierarchy of regulations, from least restrictive to most restrictive:

1. Market competition
 2. Third-party or consumer-created ratings and reviews
 3. Private certification
 4. Specific private civil cause of action to remedy consumer harms
 5. Deceptive trade practices under the Uniform Deceptive Trade Practices Act
 6. Mandatory disclosure of attributes of the specific goods or services
 7. Regulation of the process of providing the specific goods or services to consumers
 8. Inspection
 9. Bonding or insurance
 10. Registration
 11. Government certification
 12. Occupational licensure
3. *Reversing the burden of proof.* Arizona has taken a third approach.³¹ There, the recently passed Right to Earn a Living Act aims to strengthen existing law, which had declared, “the right of individuals to pursue a chosen business or profession, free from arbitrary or excessive government interference, is a fundamental civil right,” and had directed courts to “apply heightened judicial scrutiny to cases involving occupational licenses and the right to earn a living.”

The new act stipulates that “any person may file an action in a court of general jurisdiction to challenge an occupational regulation” and creates a presumption *against* a state agency’s authority unless the regulation is “demonstrated to be necessary to specifically fulfill a public health, safety, or welfare concern.” The law clarifies that “health, safety or welfare . . . does not include the protection of existing businesses . . . against competition.” These new provisions provide an avenue of relief to individuals harmed by occupational licensing and create a new accountability mechanism for regulators.

4. *Easing burdens for particular populations.* Because licensure can be especially burdensome for particular populations, many states have moved to ease burdens for specific categories of workers.

As I have noted, Ohio has already eased the burden on those with criminal histories by requiring agencies to determine, before workers have applied for their license, whether a criminal record will disqualify them from obtaining it.³² As next steps, the state could bar boards from denying a license in cases where the underlying crime was unrelated to the profession, bar boards from denying a license on the basis of old convictions or arrests without conviction, or require boards to consider evidence of rehabilitation.³³

Another approach is to waive the application fees of those below a certain income level.³⁴

31. S. B. 1437, 53rd Leg., 1st Sess. (Ariz. 2017).

32. OHIO REV. CODE ANN. § 9.78 (West 2019).

33. Sibilla, *Barred from Working*.

34. H. B. 2372, 53rd Leg., 1st Sess. (Ariz. 2017).

Because licensure imposes particularly steep burdens for peripatetic military personnel and their spouses, a number of states have moved to ease that burden for this particular population. The most common approach, adopted by every state but Connecticut, is to somehow recognize out-of-state licenses of current or former military personnel, their spouses, or both.³⁵ Such recognition can take a number of forms. In Tennessee, Texas, and Utah, for example, active-duty military personnel and their spouses may work without a license so long as they possess a valid out-of-state license.³⁶ In the other 46 states that recognize out-of-state licenses, state agencies must grant in-state licenses to those military personnel and their spouses who currently possess valid out-of-state licenses.³⁷ In 32 states, regulators are required to conduct an expedited review in order to determine the validity of out-of-state licenses.³⁸ In 35 states, regulators are required to issue temporary licenses during the review period.³⁹ These temporary licenses can be helpful because they permit recently relocated members of the armed forces or their spouses to get to work right away.

Although these approaches are certainly beneficial for these populations, they fail to alleviate the burden borne by most licensed workers.⁴⁰

5. *Ease burdens relative to other states.* Ohio could also ease burdens relative to the prevailing burdens in other states. For an example of such reform, in the waning days of her administration, Governor Susana Martinez of New Mexico issued an executive order calling on agencies to justify their education and training requirements if those requirements were in excess of the national average or if few other states licensed the profession.⁴¹ This executive order had little effect, though, because many of the burdens are codified in statute.

Nevertheless, legislatures could apply this idea to all licensing requirements. Indeed, they could take it even further by, for example, requiring that training requirements be 50 percent of the national average for a given profession or equal to those of the least-restrictive state for that profession.

6. *Universal licensing recognition.* Another approach—also pioneered in Arizona—allows any state residents who are currently licensed by another state to obtain an occupational license in their state of residence.⁴² Although economists and antitrust officials have long recommended licensure portability, this proposal takes the idea a few steps further than other proposals.⁴³ Typically, licensure portability reforms have focused on particular professions, such as nursing, and have required multiple states to agree to an interstate compact. That type of reform may

35. "Military Spouse License Recognition Options," US Department of Labor, accessed January 13, 2020, https://www.veterans.gov/milspouses/military_spouse_txt.htm.

36. "Military Spouse License Recognition Options."

37. "Military Spouse License Recognition Options."

38. "Military Spouse License Recognition Options."

39. "Military Spouse License Recognition Options."

40. Because both equity and freedom are worthy goals, there is a philosophical tradeoff here. When burdens are especially steep, piecemeal reforms may be desirable even if they increase inequity. On the other hand, when policy is especially inequitable, more equity may be worthwhile, even if it raises burdens. Beyond the philosophical tradeoffs, there may be political economy tradeoffs. For example, inequitable policy may lead to higher burdens by reducing the political pressure for reform. For a general discussion of nondiscriminatory policy, see James M. Buchanan and Roger D. Congleton, *Politics by Principle, Not Interest: Toward Nondiscriminatory Democracy* (Cambridge: Cambridge University Press, 1998).

41. New Mexico Exec. Order No. 2018-037 (July 10, 2018).

42. H. B. 2569, 54th Leg., 1st Reg. Sess. (Ariz. 2019).

43. Bilal Sayyed, Tara Isa Koslov, and Karen A. Goldman, *Options to Enhance Occupational License Portability* (Washington, DC: Federal Trade Commission, 2018).

still be susceptible to the sort of regulatory capture problems that have long dominated state-level licensure.⁴⁴

Universal licensure recognition, however, would allow legislators to serve the general public by easing licensure burdens while mitigating the sort of special-interest pleading that so often dominates regulatory reform. Interestingly, the previously mentioned reform may be a stepping-stone to this kind of reform. In Arizona, the universal recognition bill simply amends previous statutory language that had recognized the out-of-state licenses of active-duty military personnel and their spouses so that all Arizona residents with out-of-state licenses could work.

None of these approaches are mutually exclusive. Indeed, they all reinforce one another and aim to correct for a natural imbalance that tends to favor concentrated and organized interests over diffuse and unorganized interests. Policymakers who value consumer protection, lower prices, and greater opportunities for employment—especially among lower-skilled and lower-educated populations—would do well to consider these reforms.

Thank you for the opportunity to share my research with you today. I look forward to answering any questions you may have.

Sincerely,

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44. George J. Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2, no. 1 (1971): 3-21; Brink Lindsey and Steven Teles, *The Captured Economy: How the Powerful Enrich Themselves, Slow Down Growth, and Increase Inequality* (New York: Oxford University Press, 2017). See chapter 5 of Lindsey and Teles in particular.