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A Primer on **OCCUPATIONAL LICENSING**

- **What is occupational licensing?**
- **How does it affect employment and consumer costs?**
- **What options exist for reform?**

A Primer on **OCCUPATIONAL LICENSING**

What is occupational licensing, how does it affect employment and consumer costs, and what options exist for reform?

I. What is Occupational Licensing?

Occupational licensing, or job licensing, is the system in which government-mandated credentials are required to work in certain jobs and professions. To obtain a license, an individual often will have to acquire a minimum level of education, experience and training, along with payment of initial and renewal fees. An occupational license is, in effect, a government permission slip to work in a particular field.

The occupational licensing system sprang from a desire to regulate certain professions to protect health and public safety. But what began as a way to ensure minimum training and professional standards for physicians, pharmacists and dentists has grown into a web of red tape for hundreds of professions, affecting millions of workers. Government credentials are needed in Wisconsin to be a dance therapist, a buttermaker, a bartender, an elevator helper and a soil erosion inspector.

The creeping, unchecked growth of licensing regulations and their impact on millions of workers nationwide have generated bipartisan concern in recent years. Free-market advocates from Adam Smith to Milton Friedman have long identified occupational licensing as a protectionist scheme to use government to insulate incumbents from competition.



But in 2015, President Barack Obama's Council of Economic Advisers issued a white paper highlighting the costs and burdens of occupational licensing in the United States. The report cited the "substantial costs" that "raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines."¹

Morris Kleiner, a professor at the Humphrey School of Public Affairs and the AFL-CIO Chair in Labor Policy at the University of Minnesota, has studied the impact of occupational licensure for decades. "Because people need to get licenses for so many kinds of jobs, it's becoming harder for them to break into certain occupations," observes Kleiner. "That's especially true for low-income workers."²

Wisconsin issues over 1 million occupational licenses for 280 different credential types.

Even the U.S. Supreme Court has weighed in on the potential negative impact of occupational licensing. In a 2015 case with antitrust implications for occupational licensing boards, Justice Anthony Kennedy warned of the "risks licensing boards dominated by market participants may pose to the free market."³

Given that new research has shown how licensing disproportionately harms military spouses, the formerly incarcerated, immigrants and low-income workers, it's not surprising that people of all political persuasions are working to minimize the impact of licensing regulations on employment, consumer costs and worker mobility.

II. Occupational Licensing in Wisconsin

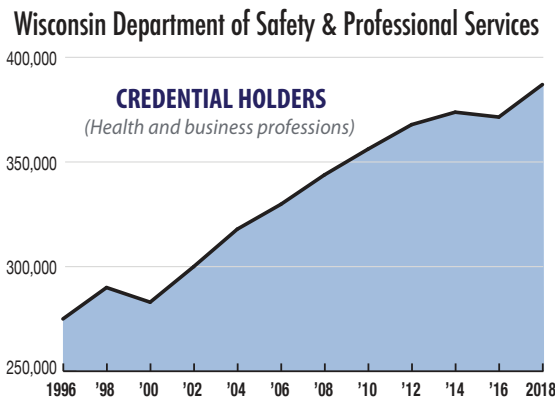
In 1950, just 5% of the American workforce needed a license to work. Recent estimates put that number at between 20% and 25%.⁴ The growth in Wisconsin matches national



trends. According to a 2018 Wisconsin Department of Safety and Professional Services (DSPS) report, “Wisconsin issues over one million occupational licenses for 280 different credential types.”⁵ More than a dozen different state agencies regulate occupational licenses in Wisconsin. Seventy-five percent of licenses are regulated by DSPS, where the number of active license holders in health and business professions has increased from 275,000 in 1996 to 387,000 in 2018 — a 40% increase in just over two decades.⁶

In 1950, just 5% of the American workforce needed a license to work. Recent estimates put that number at between 20% and 25%.

As licensing grows in Wisconsin, its impact on the labor supply, the cost to consumers and the hurdles for workers will only increase.



III. The Research on Occupational Licensing

Limits Employment and Opportunity

What occupational licensing does, in practice, is use government to enact barriers to entry into certain fields. Unless an individual completes the steps to earn a government credential, he or she is forbidden by law to work in certain jobs or professions. This restricts the labor supply with predictable consequences.

According to a 2017 Wisconsin Institute for Law & Liberty study, states with burdensome licensure rules (fees, training hours, exams and age requirements) had lower employment in 10 low- and moderate-income occupations.⁷ This is consistent with the Institute for Justice's 2018 study that found that licensing costs the nation's economy between 1.8 million and 1.9 million jobs annually — as many as 37,000 jobs in Wisconsin.⁸



For low-income workers, licensing can make the first rung of the ladder of opportunity difficult to attain. Inflexible training requirements and costly licensing fees can close the door on various professions for those with limited means. According to the Institute for Justice, of the 42 low- and moderate-income jobs that Wisconsin licenses, the average fee amounts to \$259 and the average training period is 214 days.⁹

Raises Prices

Occupational licensing raises the price of consumer goods and services from licensed professions by restricting the labor supply, fencing out competition and applying a wage premium that often accompanies licensed professions. The W.E. Upjohn Institute for Employment Research estimates that licensing costs the U.S. economy \$203 billion annually in higher prices to consumers.¹⁰ A 2016 Wisconsin Institute for Law & Liberty study estimated that licensing costs Wisconsin nearly \$2 billion annually in higher consumer prices.¹¹

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Hinders Worker Mobility

The standards for licensing vary from state to state, resulting in a patchwork of regulations that can make it difficult for licensed workers to relocate. The Institute for Justice found that of 102 lower-income occupations with licensing



regulations in at least one state, just 23 occupations are licensed in 40 or more states.¹² This lack of uniformity and consistent rules and regulations has been highlighted in the case of military spouses, who are 10 times more likely than the civilian population to move across state lines. According to the National Conference of State Legislatures, one-third of military spouses work in occupations that may require a license.¹³

The difference in licensing red tape among states can prove decisive in a worker's decision to move across state lines. Easing or even removing certain barriers could prove critical for Wisconsin, given the current labor shortage. For instance, a 2018 DSPS review of occupational licensing in Wisconsin highlighted the training requirements for certified nursing aides (CNAs) as a potential barrier.¹⁴ Wisconsin currently requires 120 hours of training for CNAs, while neighboring Minnesota requires just 75 hours.

Occupational licensing drives up consumer costs by an estimated \$203 billion annually.

Inconclusive Evidence on Value to Health and Public Safety

The central interest of state government as it relates to occupational licensing is to protect health and public safety. For certain occupations that are widely and consistently licensed, such as physicians and dentists, this is easier to understand. But for occupations that are licensed in some states but not in others, or whose regulations vary widely across states, the evidence for licensing's impact on quality or safety is less obvious. For instance, the training requirements for a licensed cosmetologist range from 2,300 hours in Oregon to 1,000 hours in Massachusetts or New York, though there is no evidence that increased hours result in better or safer services (Wisconsin requires 1,550 hours). Further, academic research on the impact of licensing on

quality or safety has been overwhelmingly inconclusive.¹⁵ New licenses are usually created under the pretext of public safety but often without input from the public or consumers. Rather, decisions regarding licensing requirements are largely determined by individuals actively practicing in the field they're tasked with regulating. This creates the possibility — whether intentional or not — of self-dealing and “license creep,” the practice of increasing licensing requirements to fence out aspiring professionals from a particular field.

IV. Options for Occupational Licensing Reforms

Sunrise Review Laws

To address the rapid and widespread growth of occupational licensure, many states have recently passed broad and bipartisan legislative reforms aimed at ensuring that existing and new occupational licenses actually promote public safety, are the least-restrictive form of regulation and are in the best interest of consumers. Sunrise laws require the review of all proposed occupational licenses through this lens. For example, policymakers, when considering the creation of a new license, also must consider less-restrictive options such as inspections, mandatory bonding or insurance, registration or certification.¹⁶

At least 14 states have sunrise review laws.¹⁷ These reviews are typically conducted by legislative committees.¹⁸ Generally, if the review committee determines that the proposed license will not enhance public safety, the license is denied and a less-restrictive form of regulation is considered. In order for a new license to be created under this law, there must be a clear and present danger to the public that cannot be addressed through any other form of regulation.

Proposed legislation in Wisconsin¹⁹ would establish a sunrise review process in which a designated state agency must evaluate five aspects of a proposed license:



- The harm posed to the public if the practice remains unregulated.
- Whether the public will benefit from the new, proposed license.
- Whether the proposed license is the least-restrictive form of regulation possible.
- An analysis of licensure requirements for the profession in other states.
- An estimate of the financial burden imposed on an individual or business as a result of the new requirement.

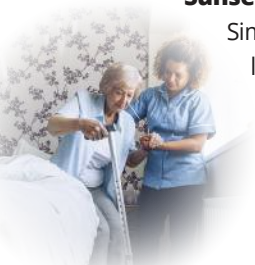
This legislation would ensure that all new regulations protect the public through the most effective, appropriate and cost-effective approach. These determinations would be based on empirical evidence, rather than anecdotes. Using less-restrictive forms of regulation included in the bill — such as registration, certification, bonding or market competition, for instance — would maintain public safety while ensuring that new individuals are able to enter the field and marketplace competition is protected.

At least 14 states have sunrise review laws, and 36 have sunset review laws.

Other states have found success with sunrise review laws. From 1985 to 2005, for instance, Colorado's sunrise review agency examined 109 proposals and favored regulation only 12 times.²⁰ The legislature created new regulation in only 19 instances. Additionally, sunrise reviews recently have prevented the regulation of occupations such as paid tax preparers and sign language interpreters (Colorado), herbal therapists (Hawaii), behavior analysts and massage therapists (Vermont), perfusionists (Virginia) and lactation consultants (Washington).²¹

Sunset Review Laws

Similar to sunrise reviews, sunset review laws require a review of all existing licenses and/or licensing boards after a set number of years. If the current



license or licensing board cannot explicitly state the public safety benefit of their existence, they are eliminated or re-evaluated for another, less-restrictive form of regulation. Thirty-six states currently have some form of sunset review.

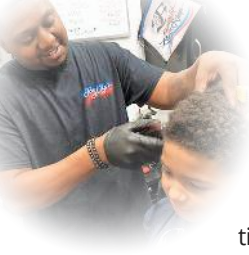


In Ohio, for instance, all licensing boards expire every six years unless the legislature actively decides to renew them.²² Nebraska recently passed bipartisan legislation that requires a legislative review of one-fifth of all licensing regulations every year.²³ Lawmakers must first determine whether there are “present, significant and substantiated harms” that justify the current license and then determine whether a less-restrictive form of regulation would suffice using the line of reasoning set by the Institute for Justice’s Inverted Pyramid²⁴ — a hierarchy of less restrictive alternatives to licensing. Sunset review laws were recently passed in Vermont,²⁵ Arizona²⁶ and Louisiana.²⁷

Universal Licensing Recognition

Other states have passed licensing laws that make it easier for individuals who move across state lines to continue working in their licensed profession. Perhaps the most comprehensive is Arizona’s universal licensing recognition law, which recognizes all licenses for those who have been licensed for at least a year, are in good standing in all states where they are licensed, do not have any past or pending investigations or complaints, have paid all applicable licensing fees and meet all residency, testing and background check requirements.²⁸ Pennsylvania and Montana passed similar laws that make it easier for professionals licensed in other states to work in their states.

Recognition laws often are geared toward military members and their spouses, who frequently move across state lines. Universal licensure recognition removes unnecessary barriers such as additional education or work experience for someone who already has been working successfully in a field.



Alternatives to Licensing

A good starting point for any discussion of occupational licensure is for policymakers to consider less-restrictive alternatives. These options are often appropriate ways to address public safety concerns without producing the unintended consequences that we've identified. These options may include private causes of action, deceptive trade practice acts, inspections, mandatory bonding or insurance, registration or state certification.²⁹

Even options such as consumer ratings websites, voluntary certification, voluntary bonding or market competition can inform and protect consumers while allowing individuals to earn a living without the burdensome, state-driven requirements of licensing. An occupational license — the most restrictive form of government regulation of work — should be considered only when other options are deemed inadequate. ❌

About the Authors



Julie Grace is a policy analyst for the Badger Institute's Center for Opportunity.



Collin Roth is director of communication and policy analyst at the Wisconsin Institute for Law & Liberty.

Endnotes

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BADGER INSTITUTE

700 W. Virginia St.
Suite 301
Milwaukee, WI 53204
414.225.9940
info@badgerinstitute.org
badgerinstitute.org



300 E. Kilbourn Ave.
Suite 725
Milwaukee, WI 53202
414.727.9455
info@will-law.org
will-law.org