

Congress of the United States  
U.S. House of Representatives  
Committee on Small Business  
2361 Rayburn House Office Building  
Washington, DC 20515-6515

**Memorandum**

To: Members, Subcommittee on Economic Growth, Tax, and Capital Access  
From: Committee Staff  
Date: February 26, 2018  
Re: Hearing: “Occupational Hazards: How Excessive Licensing Hurts Small Businesses”

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On Tuesday, February 27, 2018 at 10:00 A.M., the Subcommittee on Economic Growth, Tax, and Capital Access of the Committee on Small Business will meet in Room 2360 of the Rayburn House Office Building for the purpose of examining occupational licensing’s effect on small businesses. This hearing will also examine how easing occupational licensing could reduce workforce gaps and regulatory costs for small businesses.

**I. Trends in Occupational Licensing**

Occupational licensing requires individuals to obtain a license or permission to enter a particular type of employment. There are several types of occupational licensing, but they typically fall into three categories: registration, certification, and licensing.<sup>1</sup> Registration usually requires an individual to file their name with the relevant state or local agency and pay a fee in order to legally practice a particular occupation.<sup>2</sup> Certification allows individuals to practice in a licensed occupation; however, a government entity or association certifies the individual’s experience usually through an examination, and issues a certificate displaying the individual’s qualifications.<sup>3</sup> With licensing, a government entity or association gives permission for an individual to practice that occupation.<sup>4</sup> Without a license, it can be unlawful or even illegal to practice particular occupations without receiving the proper approval. The number of occupations that require these authorizations has also grown in recent years.

The percent of the workforce that needs a license from the government to work has increased from less than 5 percent in the 1950s to almost 33 percent today.<sup>5</sup> Although licensing

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<sup>1</sup> Paul Larkin, *Public Choice Theory and Occupational Licensing*, 39 HARVARD JOURNAL OF LAW AND PUBLIC POLICY 209 (2015), available at [http://harvardjlp.wpengine.com/wp-content/uploads/2010/01/39\\_1\\_Larkin\\_F-1.pdf](http://harvardjlp.wpengine.com/wp-content/uploads/2010/01/39_1_Larkin_F-1.pdf).

<sup>2</sup> *Id.* at 210.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Morris Kleiner, *Reforming Occupational Licensing Policies*, BROOKINGS INSTITUTION: THE HAMILTON PROJECT 5 (2015) available at, [https://www.brookings.edu/wp-content/uploads/2016/06/THP\\_KleinerDiscPaper\\_final.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf).

in certain occupations can help increase consumer and worker safety, there are many occupations that require licensing with minimal or no worker or consumer safety risk. For example, 33 states require that auctioneers obtain a license, and 35 states require a license for contractors that deal with repairing doors.<sup>6</sup> There are 73 occupations that have stronger licensing requirements than emergency technical technicians.<sup>7</sup> In fact, the Federal Trade Commission claims that there are few, if any, benefits associated with the restrictions from occupational licensing.<sup>8</sup> Some research has found that the amount of training needed to obtain a license almost never matches the public health and safety risk of the occupation.<sup>9</sup>

There are also substantial inconsistencies between states regarding requirements for particular occupations. For example, while a barber in Maryland only must pay a \$60 fee and complete 280 days of specialized schooling, a barber in Nevada must pay a fee of \$140 and complete 890 days of specialized schooling.<sup>10</sup> For the previously mentioned auctioneer license, an individual in Missouri must only pay a fee of \$52 and needs no specialized education.<sup>11</sup> An auctioneer license in Tennessee requires a \$650 fee and needs 756 days of specialized education.<sup>12</sup> However, the most glaring inconsistency is that 1,100 occupations are licensed in the United States, but only 60 require a license in all 50 states.<sup>13</sup>

## II. The Impact of Occupational Licensing

Similar to other regulatory burdens, excessive occupational licensing can have adverse effects on consumers, workers, and small businesses. Occupational licensing has been found to increase the prices of goods in licensed industries by as much as 33 percent.<sup>14</sup> Increased licensing requirements often decreases the supply of workers in licensed industries, which can increase the prices consumers must pay.

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*Occupational Licensing: Regulation and Competition: Hearing Before the House Committee on Judiciary*, 115<sup>th</sup> Congress, First Session (2017) (testimony of C. Jarrett Dieterle), available at <http://www.rstreet.org/outreach/testimony-occupational-licensing-regulation-and-competition/>.

<sup>6</sup> INSTITUTE FOR JUSTICE, TABLE 1: NUMBER OF STATES THAT LICENSE 102 LOWER-INCOME OCCUPATIONS (2012), available at <http://ij.org/report/license-to-work/tables/table-1-number-of-states-that-license-102-lower-income-occupations/>.

<sup>7</sup> Dick Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland & Jennifer McDonald, *A National Study of Burdens from Occupational Licensing*, INSTITUTE FOR JUSTICE 160 (2017) [hereinafter IJ License], available at [http://ij.org/wp-content/themes/ijorg/images/ltw2/License\\_to\\_Work\\_2nd\\_Edition.pdf](http://ij.org/wp-content/themes/ijorg/images/ltw2/License_to_Work_2nd_Edition.pdf).

<sup>8</sup> *Occupational Licensing: Regulation and Competition: Hearing Before the House Committee on Judiciary*, 115<sup>th</sup> Congress, First Session (2017) (testimony of Maureen K. Ohlhausen, Acting Chairman of the Federal Trade Commission), available at [https://www.ftc.gov/system/files/documents/public\\_statements/1253073/house\\_testimony\\_licensing\\_and\\_rbi\\_act\\_sept\\_2017\\_vote.pdf](https://www.ftc.gov/system/files/documents/public_statements/1253073/house_testimony_licensing_and_rbi_act_sept_2017_vote.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> INSTITUTE FOR JUSTICE, *License to Work: A National Study of Burdens from Occupational Licensing* (2012), available at <http://ij.org/report/license-to-work/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Jared Meyer, *FTC Sets its Sights on Occupational Licensing*, FORBES (April 17, 2017), available at <https://www.forbes.com/sites/jaredmeyer/2017/04/17/ftc-sets-its-sights-on-occupational-licensing/#7fd7602977ae>.

<sup>14</sup> CHARLES KOCH INSTITUTE, *Occupational Licensing Affects Prices, Not Quality* (2016), available at <https://medium.com/charles-koch-institute/occupational-licensing-affects-prices-not-quality-93bb4483d7a4>.

Excessive occupational licensing can have negative effects on American workers as well. Because licensing restricts hiring, studies have found that these regulations cost the American economy up to 2.85 million jobs.<sup>15</sup> The costly and time consuming nature of licensing also disproportionately affects minorities, lower-income workers, and the elderly who change careers.<sup>16</sup> While veterans gain practical skills and experience in the military, many of them are required to pay for and undergo duplicative training classes for a license that increase the cost and burden for veterans transitioning into civilian occupations.<sup>17</sup> In addition, while local, state, and federal governments have initiatives in place to help disadvantaged workers gain employment, occupational licensing can reduce the effectiveness of these efforts.

Unwarranted occupational licensing may also contribute to the decline of interstate mobility in the United States. As mentioned previously, occupational licensing requirements steadily increased throughout the second half of the 20<sup>th</sup> century and into the 21<sup>st</sup> century. At the same time, migration declined from about 20 percent from the 1940s until the 1990s to a mere 11.2 percent today.<sup>18</sup> A 2017 study by the National Bureau of Economic Research reaffirmed the connection between these two statistics as well.<sup>19</sup> That study also examined the interstate migration of 22 licensed occupations and found that the between-state migration rate for individuals in occupations with state-specific licensing exam requirements is 36 percent lower relative to members of other occupations.<sup>20</sup> It also examined the effect of states adopting reciprocity agreements for lawyers and found that reciprocity agreements increased interstate mobility.<sup>21</sup> While several factors have caused mobility rates to decline, occupational licensing can add to the problem.

Undue occupational licensing may also inhibit small business growth. In a study that examined librarians (licensed in 19 states), respiratory therapists (licensed in 35 states), and dietitians and nutritionists (licensed in 36 states), states with fewer licensing regulations saw these occupations grow 20 percent faster than states with more rigorous occupational licensing requirements.<sup>22</sup> Research also shows that licensing typically stifles entrepreneurship in lower income occupations. According to a study by the Goldwater Institute, states that license more than 50 percent of the low-income occupations had an average entrepreneurship rate that was 11 percent lower than the average for all states, and the states that licensed less than a third had an average entrepreneurship rate that was about 11 percent higher.<sup>23</sup> While occupational licensing

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<sup>15</sup> *Id.* at 6.

<sup>16</sup> Stuart Dorsey, *Occupational Licensing and Minorities*, 7 LAW AND HUMAN BEHAVIOR, 171-173 (1983), available at [https://www.jstor.org/stable/1393539?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/1393539?seq=1#page_scan_tab_contents).

<sup>17</sup> DEPARTMENT OF LABOR, EMPLOYMENT AND TRAINING ADMINISTRATION, LICENSING AND CERTIFICATION FOR VETERANS: STATE STRATEGIES FOR SUCCESSFULLY REMOVING BARRIERS 3, available at <https://www.dol.gov/vets/media/licensingcertifications.pdf>.

<sup>18</sup> UNITED STATES CENSUS BUREAU, AMERICANS MOVING AT HISTORICALLY LOW RATES (2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-189.html>.

<sup>19</sup> Janna Johnson, Morris Kleiner, *Is Occupational Licensing a Barrier to Interstate Migration?* NATIONAL BUREAU OF ECONOMIC RESEARCH 15 (2017), available at <http://www.nber.org/papers/w24107.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Morris Kleiner, Alan Krueger, *Analyzing the Extent and Influence of Occupational Licensing on the Labor Market*, NATIONAL BUREAU OF ECONOMIC RESEARCH 6 (2009), available at <http://www.nber.org/papers/w14979.pdf>.

<sup>23</sup> Stephen Slivinski, *Bootstraps Tangled in Red Tape*, GOLDWATER INSTITUTE (2015), available at <https://goldwaterinstitute.org/article/bootstraps-tangled-in-red-tape/>.

affects small businesses at all points of a business cycle, current low unemployment rates and high job vacancy rates have a pronounced effect on small businesses.

At the present stage of the business cycle, small businesses are particularly concerned about filling vacancies. There almost 6 million job vacancies, which has increased from a low of around 2.2 million during the Great Recession.<sup>24</sup> According to the January National Federation of Independent Businesses Small Business Optimism Index, the number one labor market concern of small business owners was the lack of qualified workers.<sup>25</sup> Although there are several reasons for the skills gap, occupational licensing can increase this problem for small businesses. This is often due to the fact that small businesses typically lack human resources departments and other recruiting assets to find qualified and motivated employees.<sup>26</sup>

### III. Potential Solutions to Reduce Licensing Burdens

Superfluous occupational licensing can place unnecessary burdens on consumers, workers, and small businesses. Although many regard occupational licensing as more of a state and local issue, there are steps the federal government has taken and has proposed to set a model for state and local governments. For example, while states with restrictions on nurse practitioners did not see a noticeable difference in malpractice insurance claims, states with less flexibility for nurse practitioners had patient exam rates that were 10 percent higher. With this in mind, the Department of Veterans Affairs (VA) amended its regulations at the end of 2016 to permit full practice authority for nurse practitioners.<sup>27</sup> With an estimated 58 million Americans living in areas with a shortage of primary care resources, following the VA's model could provide more affordable health care to some areas of the country.<sup>28</sup>

Ensuring institutions that grant an occupational license do not exhibit collusive or anticompetitive behavior could also reduce the hurdles of obtaining a license. In 2015, the United States Supreme Court decided that if a state licensing board is comprised of mostly active market participants, the board must be actively supervised in order to obtain antitrust immunity.<sup>29</sup> The decision was a step toward ensuring that state licensing boards do not exhibit collusive and anticompetitive behavior.<sup>30</sup>

Legislative proposals have been introduced in Congress to reduce occupational licensing barriers. H.R. 6312, the Alternatives to Licensing that Lower Obstacles to Work Act of 2016, or the ALLOW Act, would use Congress's authority over military bases, national parks, and the District of Columbia to permit workers with occupational licenses from any state to legally

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<sup>24</sup> UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, JOB OPENINGS AND LABOR TURNOVER SURVEY (extracted February 15, 2018), available at <https://data.bls.gov/pdq/SurveyOutputServlet>.

<sup>25</sup> NATIONAL FEDERATION OF INDEPENDENT BUSINESS, *January 2018 Report: Small Business Optimism Index* (2018), available at <https://www.nfib.com/surveys/small-business-economic-trends/>.

<sup>26</sup> <https://www.monster.com/career-advice/article/small-business-attract-talent-1-brand-0709>.

<sup>27</sup> UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, VA GRANTS FULL PRACTICE AUTHORITY TO ADVANCED PRACTICE REGISTERED NURSES (2016) available at <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=2847>.

<sup>28</sup> C. Jarrett Dieterle, *How the VA Could Become A Policy Leader in Occupational Licensing Reform*, FORBES (2016), available at <https://www.forbes.com/sites/realspin/2016/11/09/how-the-va-could-become-a-policy-leader-in-occupational-licensing-reform/#1e546c851c29>.

<sup>29</sup> *North Carolina State Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

<sup>30</sup> *Id.*

practice licensed occupations on federal lands.<sup>31</sup> H.R. 6312 would also establish a model to reduce regulatory barriers that other states could follow.<sup>32</sup> As the study that examined reciprocity for lawyers showed, such a model may also help to alleviate the low mobility rates seen in the United States today.

While H.R. 6312 would only apply to federal land, H.R. 3446, the Restoring Board Immunity Act of 2017, would create incentives for states to reduce licensing barriers. As the *North Carolina Board of Dental Examiners v. FTC* case showed, there is debate whether licensing boards should have antitrust immunity. However, H.R. 6312 would grant state licensing boards antitrust immunity in exchange for implementing a specific protocol to reduce occupational licensing barriers.<sup>33</sup>

#### **IV. Conclusion**

Although the intent of occupational licensing is to promote the health and safety of workers and consumers, licensing has grown steadily over recent decades. The requirements for a license often do not match the public health and safety risks of the occupation. Because occupational licensing can reduce the number of individuals who can legally perform an occupation, it can raise prices and adversely affect lower income and minority workers. Occupational licensing can also have a negative impact on small businesses with fewer resources and difficulty understanding the regulatory environment. The federal government has made efforts to encourage licensing reform while maintaining state government autonomy. By reducing occupational licensing barriers, small businesses could reduce regulatory compliance costs and labor search costs.

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<sup>31</sup> H.R. 6312, 114<sup>th</sup> Congress (2016).

<sup>32</sup> Senator Mike Lee, Remarks on Occupational Licensing, The ALLOW Act (July 12, 2016), *available at* <https://www.lee.senate.gov/public/index.cfm/2016/7/remarks-on-occupational-licensing-the-allow-act>.

<sup>33</sup> H.R. 3446, 115<sup>th</sup> Congress (2017).