

OCCUPATIONAL LICENSING LITERATURE AND STATE POLICY SCAN

I. INTRODUCTION

Occupational licensing has grown dramatically over the years, leading to a larger share of American workers who need a license to perform their work. Accounting for just five percent of the employed population in the 1950's, licensed workers now comprise more than 25 percent of all employed Americans.¹ Spurred by concerns for public safety, consumer protection or other policy goals, the growth in state licensing over time has created a patchwork of different requirements across states, making it difficult for workers to move their skills across state lines, and costly for them to work in a licensed profession. “When designed and implemented carefully, licensing can benefit consumers through higher quality services and improved health and safety standards,” found the 2016 “Occupational Licensing: Framework for Policymakers” [report](#) from the U.S. Council of Economic Advisers, and Departments of Labor and Treasury, which further noted that current licensure rules impose burdens on workers, employers, and consumers, and “too often are inconsistent, inefficient, and arbitrary.”²

State policymakers play an important role in setting licensure policy and are at the heart of many efforts to strike the right balance needed to protect consumers and promote economic growth and employment opportunity. As described in this report, policymakers are enacting a wide range of strategies to calibrate their regulations to meet the needs of today's consumers, workers, employers and job markets. Occupational licensing research offers important lessons about the effects, costs and benefits of licensing policies, as well as best practices and tools for designing a smart regulatory approach. Drawing from the vast body of occupational licensing research, this report provides an overview of occupational licensing trends and policy issues, summarizes researchers' best practices and recommendations for licensing policies, and highlights state legislative actions that aim to protect consumers, foster employment growth and remove barriers to work.

II. METHODS

This report analyzes occupational licensing literature that address the following questions:

1. What is the current occupational licensing landscape in the United States?
2. What are the educational and training barriers to labor market entry for worker populations targeted by this project?
3. What key findings, trends and recommendations can be gleaned from the research that can inform this project?
4. What are researchers and industry leaders identifying as policy barriers to interstate portability and reciprocity of occupational licensing and labor market entry for workers?
5. What are occupational licensing best practices and state policy recommendations?

To answer these questions, we identified and reviewed a wide range of primary and secondary sources, including reports, literature reviews, articles, white papers, and labor statistics published by federal and state agencies, think tanks, non-profit organizations, academic experts, trade associations and digital media sources. Legislative research tools and databases, such as LexisNexis Statenet and Westlaw, and use of state legislative webpages, provided many of the state legislative examples profiled in this report. The project's expert panel, which represents diverse representation from topical experts, public agencies, and the project's national partners, reviewed the list of sources and offered additional recommendations, a process that assured that relevant and key resources were considered for this research. The complete bibliography is presented in Appendix A.

The report focuses on licensure requirements that affect the types of occupations studied as part of a larger U.S. Department of Labor-funded occupational licensure project, described at right. The 34 occupations studied in this NCSL-led project, summarized in Appendix B, typically require an entry-level education (i.e., less than a bachelor's degree) are licensed in at least 30 states and have a greater than average projected job growth.

Occupational Licensing Research Consortium

In 2017, the Department of Labor's Employment and Training Administration [awarded](#) the National Conference of State Legislatures, in partnership with The Council of State Governments and National Governors Association Center for Best Practices, funding on a three-year project to: 1) ensure that existing and new licensing requirements are not overly broad or burdensome and don't create unnecessary barriers to labor market entry; and 2) improve portability for selected occupational licenses across state lines. The national partners are producing research, including this report, convening state policymakers and experts in the field of occupational licensing, and delivering technical assistance to states.

III. OCCUPATIONAL LICENSING TRENDS AND POLICY ISSUES

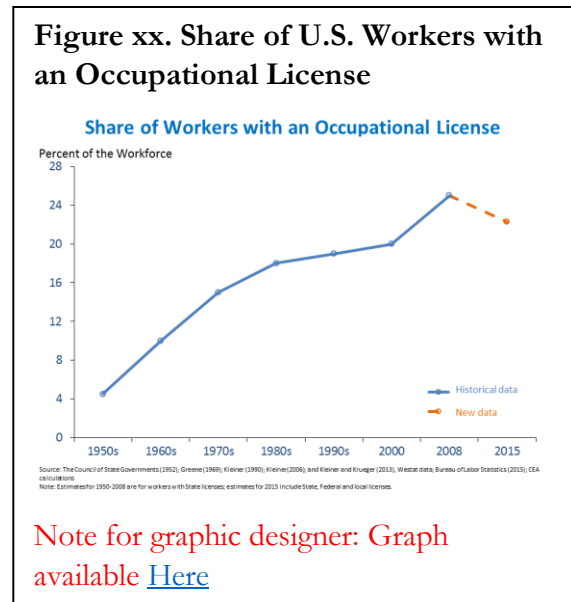
An occupational license is a credential that government—most often states—requires a worker to hold in certain occupations.”³ Aspiring workers must meet state-specific educational, training, testing and other requirements to practice in a licensed profession. While some professions, such as physicians and attorneys, are universally licensed in states, a growing number of occupations are now licensed by states,⁴ including those that are commonly licensed across all states—e.g., cosmetologists, school bus and truck drivers and emergency medical technicians—as well as others, like florists and interior designers, that are licensed in a small number of states. Licensing is just one form of occupational regulation, which also includes less restrictive methods ranging from reliance on market forces to inspections, registration, and voluntary certification—a continuum of approaches that are discussed later in this report.

State Policymaker Roles and Considerations. State legislators play a critical and longstanding role with occupational licensing policies, dating back to the late 19th century when the Supreme Court decision in *Dent v. West Virginia* established states’ rights to regulate certain professions. Shortly after, states began developing their own systems of occupational regulation and licensing. State legislators play a central role in developing and shaping these systems by:

- Establishing licensing requirements for specific occupations;
- Authorizing regulatory boards to license applicants and oversee compliance;
- Reviewing the merits of existing and proposed licensure requirements; and
- Proposing strategies or guiding principles to improve the state’s overall approach to regulating professions.

According to a 2015 [brief](#) published by the Council on Licensure, Enforcement and Regulation, “civic leaders, elected officials, and courts have struggled to balance legitimate interests in protecting public health and safety with the preservation of free practice.”⁵ Striking the right balance represents an opportunity for policymakers to achieve important public policy goals including consumer protection, job creation, workforce mobility and economic growth. Removing employment barriers for unique populations such as immigrants with work authorization, military families and people with criminal records offers a powerful lever to achieve multiple policy goals—including employment growth, reduced recidivism for employed ex-offenders, enhanced geographic mobility, and economic stability and opportunity for individuals and their families.

Licensure Trends in the U.S. The share of American workers who hold an occupational license has grown five-fold over the last several decades, from around five percent of the employed population in the 1950s to almost a quarter of all employed workers today (Figure xx).⁶ According to the [Council of Economic Advisors](#), a significant increase in the number of licensed professions accounts for two-thirds of this growth, with authors noting that “licensing has expanded considerably into sectors that were not historically associated with it,” such as sales, construction, personal care and protective services.⁷



Of the 1,100 occupations that were licensed in at least one state in 2016, a small number—less than 60—were licensed in every state, illustrating the considerable differences in licensure requirements from state to state.⁸

According to the U.S. Bureau of Labor Statistics (BLS), 22 percent of U.S. workers had a state license to work in their designated occupation in 2016.⁹ Licensure varies depending on occupation type, education attainment, gender, race and ethnicity and other variables, the BLS found, noting that:

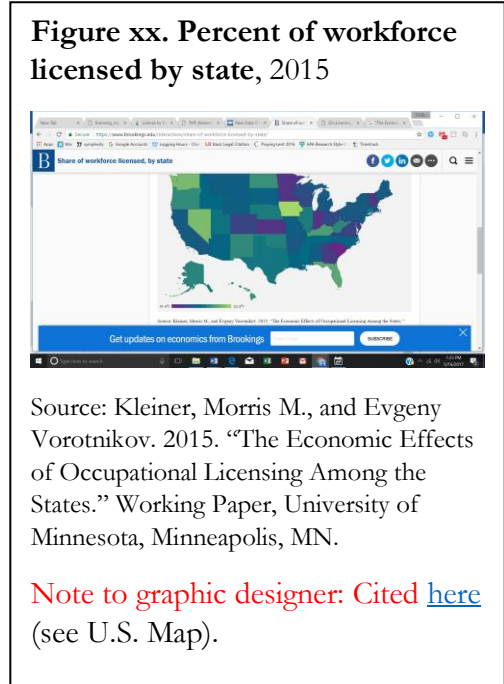
- Almost three-quarters (72.6 percent) of healthcare and technical workers had a license in 2016, as compared with 28 percent of personal care and service workers, and 21 percent of the transportation and moving workforce.¹⁰
- Licensure levels increased with educational attainment: seven percent of people with less than a high school degree held a license, as compared with 14 percent of high school graduates, 24 percent of people with some college or an associate’s degree, and 34 percent of bachelor’s or advanced degree holders.¹¹ Although higher-income professions such as law and healthcare were more likely to have licensed workers, licensing is common in middle- and lower-income occupations.¹²
- Working women over age 16 were more likely to have a license than men (25 percent and 20 percent, respectively).

- Among the major race and ethnicity groups, white workers were the most likely to hold a license (23 percent), as compared with 14 percent of Hispanic workers.¹³

As shown in Figure xx, states vary considerably in the share of their workforce that holds a license, ranging from 12 percent in South Carolina to 33 percent in Iowa. States also differ in which occupations they license. Every state licenses emergency medical technicians, bus and truck drivers, and cosmetologists, while three or fewer states license professions such as home entertainment installers, nursery workers, conveyer operators, and florists.¹⁴

The minimum requirements and costs to obtain and keep a license to work in the same occupation vary widely across states, as can the licensing process itself, with differences in the availability of distance or online learning for continuing education.¹⁵ In contrast to Michigan’s requirement that licensed security guards have three years of education and training, most states require 11 days or less. Licensed cosmetologists in Iowa, Nebraska and South Dakota need 16 months of education, double what is required for their counterparts in New York and Massachusetts.¹⁶ The lack of uniformity across state lines makes it difficult for workers in licensed occupations to move across state lines and raises questions about the rules’ rationale and impact on health and safety, or a worker’s ability to perform the occupational tasks.¹⁷

Potential Benefits of Licensing. When implemented appropriately, licensing can offer important health and safety benefits and consumer protections, and provide workers with clear professional development and training guidelines, as well as a career path for licensed workers.¹⁸ For decades, policymakers have adopted licensure policies to achieve a variety of goals. The Federal Trade Commission’s 1990 [report](#) on the costs and benefits of licensure found that well-designed occupational licensing “can protect the public’s health and safety by increasing the quality of professionals’ services through mandatory entry requirements—such as education—and business practice restrictions—such as advertising restrictions.”¹⁹ The report found that occupational licensing helps consumers when they cannot easily assess the professional’s skills, and when the



costs related to poor quality are especially high, as is the case with emergency healthcare providers. Economist Jason Furman [testified](#) to Congress in 2016 that the argument for licensing “is strongest when low-quality practitioners can potentially inflict serious harm, or when it is difficult for consumers to evaluate provider quality beforehand.” Furman points out that the threats to consumers from incompetent commercial pilots and physicians justify a government intervention; whereas, they face less harm and are better able to assess the quality of florists, barbers or decorators.²⁰

Professional associations argue that licensing protects consumers and promotes public health and safety. While the Professional Beauty Association [supports](#) “commonsense, practical changes,” including a move to more standardized licensing criteria across state lines, it cautions policymakers about the potential consequences of deregulating the 1.1 million professionals working in the beauty industry, [stating](#) that “[f]ormal education and industry regulation is necessary for a professional to learn the techniques, principles, sanitation, and chemical procedures to safeguard consumers, and themselves, against injury and illness.”

Finally, occupational licensing helps consumers when traditional market mechanisms—such as a provider’s concern about possible litigation or damaged reputation—fail to protect them from poorly-trained or fraudulent providers. Licensure offers the public an assurance that the individual has met certain educational, training or experience standards.

Today’s information-sharing economy and the growth in online consumer review websites helps consumers evaluate provider quality and reputation, prompting some experts to recommend that regulatory approaches be updated to account for enhanced access to information and strong provider incentives to deliver high-quality services.²¹

Benefits and Costs

The intent of occupational licensure is to:

- Safeguard public health and safety;
- Protect consumers through minimum educational requirements and industry oversight;
- Support career development and pathways for licensed workers and enhanced professionalism for licensed workers;
- Step in when competitive market forces (e.g., litigation or reputation) fail to achieve desired outcomes.

However, unnecessary licensing requirements have been found to:

- Reduce employment in licensed occupations;
- Reduce geographic mobility;
- Reduce wages for unlicensed workers relative to their licensed counterparts;
- Increase the price of goods and services;
- Disproportionately burden low-income and the four populations examined in this report.

The Costs of Licensure. In order to realize the benefits of occupational licensure, rules must “closely match the qualifications needed to perform the job, a goal that is not always achieved or may not be maintained when licensing expands and jobs change,” found a 2016 [report](#) prepared by the Council of Economic Advisers and the Departments of Labor and Treasury. More recently, the [Federal Trade Commission](#) asserted that unnecessary licensure regulations “erect significant barriers and impose costs that cause real harm to American workers, employers, consumers and our economy as a whole, with no measurable benefits to consumers or society.” In 2017, Acting FTC Chairman Maureen Ohlhauser asserted that “occupational licensing disproportionately affects those seeking to move up the lower and middle rungs of the economic ladder, as well as military families and veterans.”²² She noted that licensing requirements “can prevent individuals from using their vocational skills and entering new professions, as well as starting small businesses or creating new business models.”²³

The growth of occupational licensing in the states, and the inconsistent requirements among them has come at a steep price to workers, employers, consumers and government. “In occupational licensing, the prevalent costs are increased prices to consumers for goods and services and lost job opportunities for aspiring workers,” noted Carpenter and McGrath in a 2015 [policy brief](#). Moreover, economics professor at University of Minnesota’s Center for Human Resources and Labor Studies Morris Kleiner [asserted](#) that “With growth of licensing laws has come a national patchwork of stealth regulation that has, among other things, restricted labor markets, innovation, and worker mobility.” Kleiner further asserts that licensing resulted in 2.85 million fewer jobs nationally, with an annual cost to consumers of \$203 billion.”²⁴

The burdens to American workers vary by state and occupation. The Institute of Justice’s 2012 [License to Work](#) report [ranked](#) states based on the burdens imposed across 102 low- and moderate-income licensed occupations. The state comparisons revealed several inconsistencies across states: many occupations are licensed in a small number of states; the same occupations have significantly different training requirements across states; and licensure requirements do not always align with public health or safety concerns. Researchers point out that cosmetologists require an average of 372 training days, significantly higher than emergency medical technicians who need an average of 33 training days.

Effects on Employment and Wages. Research indicates that unnecessary licensing requirements [reduce](#) employment in licensed occupations and [reduce](#) wages for unlicensed workers relative to

their licensed counterparts. Occupational licensing requirements—including the need to pass exams, attend continuing education, and pay licensing and renewal fees—present significant barriers to entering a licensed occupation and can reduce total employment in that profession.

- A recent [study](#) found that the number of required exams for barber licensure was “robustly associated in a negative way with the number of barber shops per capita in a state.”²⁵ In other words, the more tests, the fewer barber shops, indicating that the examination requirements had a dampening effect on employment in that occupation.
- A 2015 Goldwater Institute policy report found that licensing hampers entrepreneurship, especially for lower-income entrepreneurs such as construction workers, Slivinski found in a 2015 Goldwater Institute [report](#). The report concluded that states with higher rates of licensure for low-income occupations had lower rates of low-income entrepreneurship.
- Similarly, a 2016 [study](#) found that licensing imposed significant barriers for women entrepreneurs in Missouri by “restricting entry and re-entry into professions, reducing employment, and creating economic inequity.” The authors recommend licensing remedies that provide adequate consumer protections without unduly burdening professionals, such as certification, registration, bonding and insurance, and inspection. The report also recommends that the legislature consider other tools to assess the need for new and existing regulations, including periodic sunrise or sunset reviews, cost-benefit analyses, increased reciprocity with other states, or deregulating an existing licensing board.

Occupational licensing results in higher wages for licensed workers, which in turn increases consumer costs. Slivinski notes that licensing leads to wage inequality in the following ways: “first by keeping people from entering higher-wage occupations, and then by raising wages for those already in high-income occupations.”²⁶ While higher wages benefit licensed workers, wage disparity can lead to “inefficiency and unfairness, including reducing employment opportunities and depressing wages for excluded workers, reducing workers’ mobility across State lines, and increasing costs for consumers.”²⁷

Effects on Costs and Competition. Research indicates that licensing requirements increase the price of goods and services. Occupational licensing imposes costs in the form of fees and educational requirements on American workers, often because of arbitrary rationale and inconsistent rules across states. The requirements drive away potential workers, especially those for whom the

costs of licensure are too high. “By imposing requirements on people seeking to enter licensed professions—such as additional training and education, fees, exams, and paperwork—licensing reduces employment in the licensed occupation and hence competition, driving up the price of goods and services for consumers.”²⁸

Effects on service quality and public health and safety. Researchers find little evidence that licensure improves the quality of services or protects consumers from harm. “Economic studies have found little impact of occupational licensing on service quality in occupations that are not widely licensed; even in occupations that are widely licensed, studies have found few impacts of tougher requirements for licensing on health measures or quality outcomes,” Kleiner wrote in a 2015 [paper](#) published by the Brookings Institution.

Effects on Geographic Mobility. Licensing rules limit geographic mobility for licensed workers. Licensed workers are less likely than unlicensed workers with similar education to move to a new state, in part because they may be required to complete new training and educational requirements or pay fees.²⁹ “This patchwork of licensing laws restricts worker mobility—which is costly not only for workers, but also for employers, consumers and the economy at large,” [wrote](#) Jason Furman from the Council of Economic Advisers.³⁰ The requirements disproportionately affect low-income workers for whom the costs—e.g., for meeting educational and training requirements and licensing fees—represent a larger share of their income than they do for higher-income workers. According to the 2016 Council of Economic Advisers report, restrictions on worker mobility “should be weighed as costs, both to a State’s own population and to employers in that State who may be seeking to hire licensed workers from a broader, national labor pool,”³¹ Moreover, Furman asserted in his 2016 congressional [testimony](#) that mobility barriers prevent workers from “matching with the jobs best suited to their skills, which in turn makes our labor market less efficient, reducing productivity and wages.”³²

Effects on Specific Populations. The barriers described above are especially problematic for low-income individuals, people with criminal records, members of the military and their spouses, and immigrants with work authorization. In 2017, Nunn wrote that “...[E]xcessive licensing imposes costs on a wide variety of distinct groups, including people with criminal records, immigrants, military families, low-skilled workers, and entrepreneurs—not to mention consumers.”³³ According to Nunn, an “inflexible vision of how work should be organized” has needlessly prevented

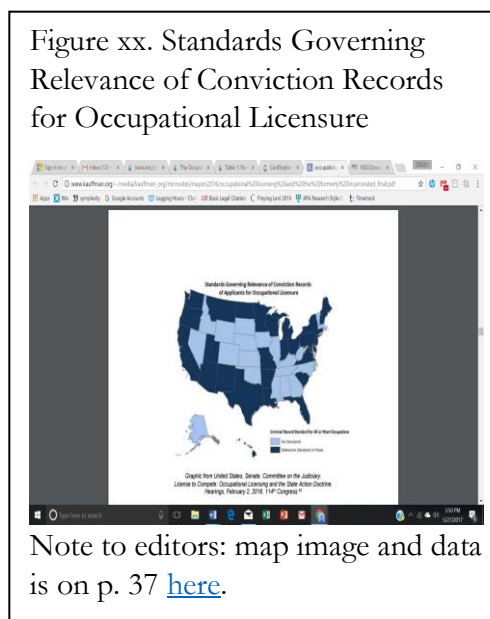
individuals with criminal records, military veterans and others from entering licensed professions. The burdens facing specific worker populations are summarized below.

Active-Duty Military, Veterans and Spouses. Licensing requirements make it difficult for the 360,000 service members who leave or retire from active duty, guard and reserve service each year, from entering occupations that they may be qualified to practice.³⁴ Licensing is a burden for the highly-mobile population of military spouses, one-third of whom work in occupations that require licenses or certification.³⁵ As compared to civilians, military spouses are ten times more likely to have moved across states in the last year, making it difficult and costly for them to obtain a new license every time they move to a new state.³⁶ The burdens may deter military spouses from participating in the labor market altogether.

Immigrants with Work Authorization. The current licensure system deters skilled immigrants with work authorization from working in jobs for which they have experience and training, hampering their ability to contribute their skills to the U.S. economy.³⁷ While 30 percent of working-age immigrants had a college degree in 2010, research suggests that costly and duplicative licensing requirements make it difficult for skilled immigrants with work authorization to find employment that utilizes their skills.³⁸

People with Criminal Records. In 2016, economist Stephen Slivinski [found](#) that having a good job reduces the likelihood that a former offender will recidivate. Individuals with a criminal record are more likely to succeed and less likely to re-offend if they have a job.³⁹ However, people with a criminal record—one-third of all Americans—can be denied an occupational license in half the states, regardless of whether their criminal record relates to the job they are seeking or how long ago the conviction occurred.⁴⁰ As shown in Figure xx, 21 states require a direct relationship between the license being sought and the applicant’s criminal history, while the other 29 states lack such standards. The American

Bar Association found more than 27,000 state occupational license restrictions for former offenders, such as provisions that list “good moral character” as a requirement for obtaining a license.



Low-Income or Unemployed Workers. Licensing is especially costly to low-income Americans and unemployed or dislocated workers who may lack resources needed to pay for the needed education and training, as well as licensing fees and other licensing costs. The Institute for Justice’s 2012 License to Work [report](#) found that states impose licensing burdens and costs on low-income occupations. For example, in Arizona, licenses average \$450 in fees, 599 training days, and are required for 64 low-income jobs. According to Veronique de Rugy of George Mason University’s Mercatus Center, “[b]y placing barriers to entry on jobs that could otherwise be performed by low-income individuals, these states remove the bottom rung of the ladder of opportunity for the citizens who need it most.”⁴¹

IV. STRIKING A BALANCE: OCCUPATIONAL REGULATION OPTIONS AND BEST PRACTICES

The costs of occupational licensing have “generated calls, from both sides of the political spectrum, to rethink the system,” Kleiner observed in a 2015 [analysis](#).⁴² As described below, research suggests various policy considerations and options for policymakers involved in developing or refining their state’s regulatory approach.

Ask Key Questions and Review Available Evidence. According to a 2014 Pew Charitable Trusts’ [report](#), “[e]vidence-based policymaking uses the best available research and information on program results to guide decisions at all stages of the policy process and in each branch of government.” A careful review of costs and benefits data, as well as an accurate understanding about the need for regulations is a critical and foundational step in occupational regulation. The 2016 “Framework for Policymakers” report recommends that policymakers adopt the best practice of “facilitating a careful consideration of licensure’s costs and benefits.”⁴³ Sunrise and sunset provisions offer an important way for policymakers to consider the merits of licensure and its effects on public health and safety, provider supply, administrative costs, and the price of goods and services. The report recommends strengthening sunrise and sunset reviews by providing adequate resources, ensuring that the review process is “insulated against political interference.”

[Suggest a text box] Asking Key Questions: Tools and Resources

The 1994 “[Questions Legislators Should Ask](#)” report published by the Council on Licensure, Enforcement and Regulation, offers guidelines and key questions that can help legislators ascertain the need for regulation and develop the most effective approach. Although the questions were

developed decades ago, legislators may find them applicable in current licensure deliberations (see Appendix C).

The 2016 [How-To Guide](#) provides a step-by-step tool designed to help legislators implement Tennessee’s Right to Earn a Living Act, including suggested questions to ask in hearings, guidance on conducting sunset hearings and strategies for removing unnecessary mandates.⁴⁴

In response to a legislative request for comment on proposed occupational licensure legislation in Nebraska, the Federal Trade Commission’s Office of Policy Planning submitted a [letter](#) to legislators in 2017 expressing support for the state’s “ongoing efforts to review and, where possible, streamline the state’s many licensure requirements.” Finding the expansion of occupational licensing in the state and elsewhere both unnecessary and harmful to consumers and competition, the agency urged legislators, regulators and other policy decisionmakers to use the following framework and questions when considering changes to the occupational licensing law:

- 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? Such harms may include reduced economic opportunities, restricted employment, increases in consumer prices, and reductions in quality or access.
- 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?” **END TEXT BOX**

Develop a Tailored Response. After the problem has been defined, policymakers can select the most effective approach from a continuum of regulatory options, including those listed and defined in Table xx. As stated in the 2016 Framework for Policymakers, “... licensing policies can be designed in many different ways, and the ways in which they are designed and implemented affect workers’ access to jobs, the wages they are paid, the ease with which they can move across State lines, as well as consumers’ access to essential goods and services.” As shown in Table xx, the

spectrum of occupational regulation includes the least restrictive form of no government regulation or relying on market forces, to the most stringent form of regulation, occupational licensing.⁴⁵

Table xx. Definitions of Occupational Regulation Approaches

Regulatory Approach	Approach Defined
No government intervention	Market forces—e.g., the provider’s desire to grow a business and maintain reputation among competitors—incentivize providers to maintain skills and professionalism and deliver high-quality services.
Private civil action	A consumer’s ability to pursue civil action may alone compel providers to deliver high-quality services to avoid litigation or loss of reputation.
Inspections	Random inspections, such as government inspections of restaurants, provide an alternative way to assure cleanliness, safety and necessary skills.
Bonding or insurance	Mandatory bonding or insurance can protect consumers and the public by ensuring that the provider is able to cover the cost of consumer damages.
Registration	States require individuals in certain occupations to register with a governmental agency before practicing and sometimes file a surety bond or fee.
Voluntary Certification	A certificate is a credential that is typically valued by the labor market, but not legally necessary for working a specific occupation. Certified individuals can use a designated title, such as certified mechanic or certified financial planner. Private entities typically provide certificates to people who pass an exam or otherwise demonstrate their skills and knowledge needed for a specific occupation. ⁴⁶
Licensure	An occupational license is a credential that government requires a worker to hold in certain occupations. ⁴⁷ While some professions, such as physicians and attorneys, are “universally licensed,” a growing number of occupations are licensed only in certain states, creating inconsistent licensing requirements across states. ⁴⁸ Prospective workers must meet state educational, training or testing requirements before working in a growing number of licensed occupations. Typically, state legislatures set their own licensing policy and authorize state regulatory boards to license applicants and oversee workforce compliance. ⁴⁹

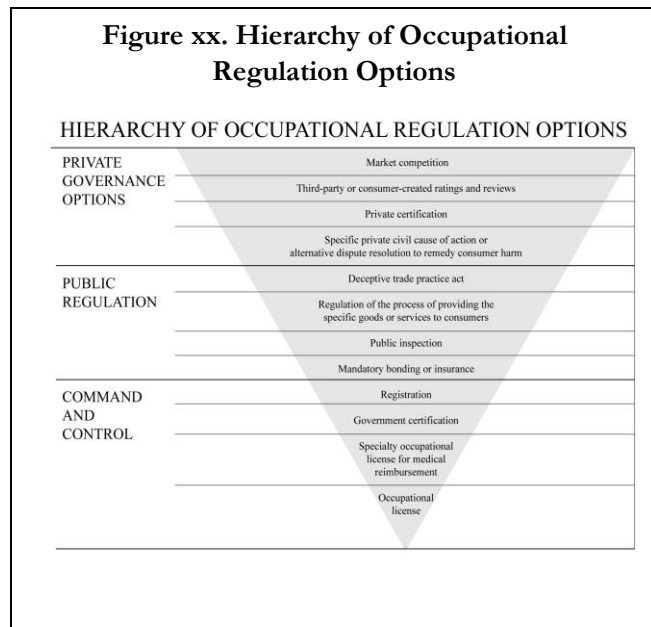
Source: Adapted from CLEAR Resource Brief, “The Balance Between Public Protection and the Right to Earn a Living,” Carpenter and McGrath, 2015.

Among its best practices, the 2016 “Framework for Policymakers” report recommends that policymakers “ensure that licensing restrictions are closely targeted to protecting public health and safety, and are not overly broad or burdensome.” The report discourages policies that categorically exclude individuals with criminal records, and supports policies that only exclude individuals whose convictions are recent, relevant, and pose a threat to public safety. In a 2015 paper on occupational licensing reform, Kleiner proposed certification as a substitute for licensing in occupations that don’t pose enough risk to health and safety to warrant licensing, such as locksmiths, ballroom dance instructors, interior designers, pet groomers, and auctioneers. The shift would save states money by

reducing administrative costs otherwise spent on licensure. As described in the following section, Indiana adopted a voluntary state certification program for individuals who wish to use the state-certified designation.

[Suggest a text box here] Tailoring State Responses: Tools and Resources

Institute for Justice legal counsel Lee McGrath developed a hierarchy of regulatory options, which Hemphill and Carpenter later expanded upon, to show a comprehensive continuum ranging from no government intervention all the way to occupational licensure, the most restrictive form of regulation.⁵⁰ As shown in Figure xx, the hierarchy offers a process for policymakers and other stakeholders to begin with the least restrictive method and move down the pyramid to identify an approach that meets public needs without



hampering employment and economic growth.¹ The hierarchy provides a menu of options that policymakers can use to develop regulations that are “proportionate to demonstrable need,” wrote Hemphill and Carpenter in a 2016 [article](#). They went on to note that the process “would identify the problem before the solution, quantify the risks, seek solutions that get as close to the problem as possible, focus on the outcome (with a specific focus on prioritizing public safety), use regulation only when necessary, keep things simple, and check for unintended consequences.”⁵¹ [end text box]

Reduce licensing’s barriers to mobility. The “Framework for Policymakers” report recommends harmonizing licensing requirements across states when possible and form interstate compacts to make it easier for workers who move to another state. In 2017, FTC Chairman Oehlauer stated that “reforms that promote reciprocity among states and credit work experience in place of additional requirements are among the changes that would help remove barriers to entry and

¹ Note to editors: Instead of the black and white pyramid image above, I would like to include a similar, but updated image. It is the orange pyramid on page 3 of this publication. I’m unable to find the image online so it may need to be re-formatted: https://object.cato.org/sites/cato.org/files/serials/files/regulation/2016/9/regulation-v39n3-5_0.pdf

competition, particularly for military families and veterans,”⁵² Existing professional compacts, such as the [nurse licensure compact](#) adopted in [25](#) states, or the [physical therapy interstate compact](#) in effect in 11 states, provide examples of interstate arrangements for specific occupations. The Institute for Justice’s [model](#) state legislation seeks to help states remove barriers, including for people with criminal records, and use the least-restrictive methods to protect public health and safety.⁵³

TEXT BOX: LICENSING BEST PRACTICES FEATURED IN THE *OCCUPATIONAL LICENSING: FRAMEWORK FOR POLICYMAKERS*⁵⁴

Ensure that licensing restrictions are closely targeted to protecting public health and safety, and are not overly broad or burdensome

1. When public health and safety concerns are mild, consider using alternative systems that are less restrictive than licensing, such as voluntary state certification (“right-to-title”) or registration (filing basic information with a state registry).
2. Make sure that substantive requirements of licensing (e.g., education and experience requirements) are closely tied to public health and safety concerns.
3. Minimize procedural burdens of acquiring a license, in terms of fees, complexity of requirements, processing time, and paperwork.
4. Where licensure is deemed appropriate, allow all licensed professionals to provide services to the full extent of their current competency, even if multiple professions provide overlapping services.
5. Review licensing requirements for the formerly incarcerated, immigrants, and veterans to ensure that licensing laws do not prevent qualified individuals from securing employment opportunities, while still providing appropriate protection for consumers.

Facilitate a careful consideration of licensure’s costs and benefits

1. Carry out comprehensive cost-benefit assessments of licensing laws through both sunrise and regular sunset reviews, incorporating criteria like:
 - The presence of legitimate public health and safety concerns or substantial fiduciary responsibilities;
 - Whether existing legal remedies, consumer rating and reputational mechanisms, and less-burdensome regulatory approaches are adequate to protect consumers;
 - The effect that the license would have on practitioner supply;
 - The effect that the license would have on the price of goods and services; and
 - Administrative costs of enforcing the license.
2. Evidence suggests that removing licenses is much more difficult than enacting them, so sunset reviews in particular may be ineffective without certain protections. To strengthen both sunset and sunrise reviews, consider taking such measures as:
 - Providing agencies or sunrise and sunset commissions responsible for conducting the cost-benefit analysis with adequate resources;
 - Ensuring that the cost-benefit review process is insulated against political interference;
 - Legislating that a minimum number of votes be required to overrule the sunrise or sunset agency’s recommendation;

- Appointing specialized committees within State legislatures that are responsible for all licensing issues, and that will work with the State agency in charge of conducting the review.
3. Promote the appointment of public representatives to licensing boards, alongside professional members.

Work to reduce licensing’s barriers to mobility

1. Harmonize licensing requirements to the maximum extent possible across states.
2. Form interstate compacts that make it easier for licensed workers to practice and relocate across state lines, while also enabling state regulators to share practitioners’ performance histories.
3. When forming such an interstate arrangement, avoid categorically excluding individuals with a criminal record or adopting the licensing requirements of the most stringent participating states.
4. If agreeing on common standards for interstate licenses is difficult, consider a “two-tiered” structure that allows states with more flexible requirements to retain their rules while restricting interstate reciprocity to workers who satisfy a higher bar. [END TEXT BOX]

V. STATE OCCUPATIONAL LICENSING APPROACHES

As states grapple with licensure issues and reforms, many are incorporating the available evidence, described in the previous section, on occupational licensing best practices and policy options. State occupational licensing are summarized below.

Establish or remove licensing requirements. During the 2012–2013 legislative sessions, Kleiner found that at least seven new occupations were licensed, including scrap metal recyclers in Louisiana, therapeutic shoe fitters in Alabama, and body artists in the District of Columbia. During the same period, governors in Idaho, Iowa, and Indiana vetoed legislation that would have licensed several new occupations.⁵⁵

A 2015 U.S. Bureau of Labor Statistics [analysis](#) found that state legislatures de-licensed an occupation just eight times over the prior 40 years. For example, Alabama’s legislature de-licensed barbers in 1983, a decision that was later reversed when the legislature licensed barbers in 2013. Colorado and Virginia eliminated mandatory licensing for private investigators and naturopaths, respectively.⁵⁶ A subsequent 2017 analysis by the Wisconsin Institute for Law and Liberty identified additional states—Arizona, Michigan and Rhode Island—that de-regulated occupations after formal reviews found that licensure did not serve a compelling state interest.⁵⁷

Review occupational licensing’s costs and benefits. States have adopted sunrise and sunset reviews, audits and other procedures to weigh the costs and benefits of existing and proposed

occupational licensure. According to the [Council on Licensure, Enforcement and Regulation](#), by 2017 at least 14 states adopted a sunrise process for proposed regulations and 36 states had some form of sunset process for existing occupational licensing laws.

- A sunrise process includes a cost-benefit analysis as part of any proposal to regulate a previously unlicensed profession. For example, in Colorado, the Department of Regulatory Agencies must examine any new proposals to license a previously unlicensed occupation and submit recommendations to the state’s General Assembly. According to economist Jason Furman’s 2016 congressional [testimony](#), under Maine’s sunrise process—in which the Department of Professional and Financial Regulation reviews any legislative proposals to establish a licensing board or expand a current provider’s scope of practice—just one occupation has been licensed since 1995.
- The sunset review process involves periodic reviews or legislative audits of licensing, licensing boards, and their potential elimination unless the legislature acts to continue them.⁵⁸ In 2013, Texas’ [House Bill 86](#) identified criteria for the state’s Sunset Advisory Commission to use when de-licensing an occupation, such as examining whether licensing serves a “meaningful, defined public interest and provides the least restrictive form of regulation that will adequately protect the public interest.” In 2014, the commission recommended de-licensing several occupations, prompting the 2015 passage of [H.B. 202](#) which carried out many of the commission’s recommendations, such as eliminating licensure for opticians, contact lens dispensers, personal emergency response providers and other providers.

Easing the burdens of licensure. Legislatures have increasingly proposed and enacted legislation to lessen requirements, shift to a less restrictive approach (such as voluntary certification), or restrict the scope of an existing license requirement as it applies to a specific type of worker. The 2015 Occupational Licensing Framework found that since 2012 many states have passed legislation to promote reciprocity for spouses of active military service members.⁵⁹ In recent years, several states, including those listed below, proposed legislation that would remove or lessen occupational requirements that were believed to stifle employment growth.

- Florida legislators proposed legislation in [2011](#), [2013](#) and [2017](#) that if passed, would have de-regulated specific licensed occupations, such as hair braiders, interior designers and professional fundraising consultants.

- In 2016, [Georgia](#) and [Illinois](#) prohibited state agencies from barring ex-offenders from working in certain occupations unless their criminal record related to the applicant’s work.
- In 2013, Indiana lawmakers passed Senate Enrolled [Act No. 421](#) requiring the Indiana Professional Licensing Agency to establish a process for allowing workers in certain occupations to certify that they met specified qualifications. Pursuant to the law, in 2014 the agency submitted a [report](#) to the Legislative Council establishing a voluntary process for self-certification registration, in which individuals who chose to complete a certification process list their names in a state registry. Registered individuals can use the title “state-certified” while other individuals who chose not to register can still work in the occupation without using the state-certified designation. The report concluded that by moving away from licensure and towards certification “Indiana will realize significant economic benefits including lower unemployment, fewer administrative costs, and greater competition in its labor markets. Residents will realize lower prices, more job opportunities, and the ability to make better choices about the services they buy and professionals they hire.”
- In 2016, Tennessee lawmakers enacted [Public Chapter No. 1053](#), the Right to Earn a Living Act, declaring that the “burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.” The law requires state agencies to limit licensing requirements to those needed to protect public health, safety and welfare.

Several states have taken steps that exempt certain types of workers from a licensure requirement, sometimes in response to a federal court ruling that found it unconstitutional. Following court cases that deemed licensure as unconstitutional for hair braiders, for example, several states have revised their cosmetology licensure laws to exempt hair braiders. The Utah legislature passed a revised cosmetology and hair braiding [law](#) in 2013 that exempted hair braiders from licensing requirements and reduced the cosmetologist training requirements from 2,000 hours to 1,600 hours. Other states, including California, Oregon and Mississippi, also exempted hair braiders from licensure.⁶⁰

Maryland’s 2016 [Senate Bill 830](#) created a limited cosmetology license for blow-dry only salons, reducing the required training hours from 1,500 to 350 hours.

Enact broad licensing reforms. In recent years, some states have considered or enacted broad changes to the state’s overall occupational regulatory approach. Despite the overall growth in occupational licensure described above, Kleiner notes that “several proposals have been made to

slow the growth of occupational licensing in favor of certification.”⁶¹ Indiana’s approach, described above, represents a shift in the direction of voluntary certification.

- In 2016, Gov. Jack Markell signed an [executive order](#) establishing and tasking the Delaware Professional License Review Committee with examining state licenses and recommending legislative or regulatory actions that would remove “unnecessary or overly burdensome” requirements.
- In April 2017, Mississippi Gov. Phil Bryant signed [H.B. 1442](#), authorizing the governor, secretary of state and attorney general to approve any new regulation passed by a state licensing board before the rules take effect, and to review all current regulations to ensure that they comply with state law. The law aims to avoid liability under federal anti-trust laws through a clearly-defined state policy that increases economic opportunities for all citizens and uses the “least restrictive regulation necessary to protect consumers from present, significant and substantiated harms that threaten public health and safety.” The law offers alternative methods for protecting the public (see right).
- In 2016, Tennessee’s General Assembly passed the Right to Earn a Living Act, [H.B. 2201](#), directing the legislature’s government operations committees to conduct a thorough review of the state’s licensing laws and make recommendations for eliminating or loosening requirements that do not protect consumer health and safety.

What are Least Restrictive Regulations?

Mississippi H.B. 1442 defines least restrictive regulations on the following continuum, listed from least 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 harm under a deceptive trade practice act
5. Regulation of the process of providing the specific goods or services to consumers
6. Inspection
7. Bonding or insurance
8. Registration
9. Government certifications
10. Specialty occupational license for medical reimbursement
11. Occupational license

VI. CONCLUSION

The last several decades have seen a dramatic growth in the number of licensed occupations and the share of workers who have a license to perform their work. The growth in licensure has come at a price to worker wages, consumer prices, employment in licensed occupations, disadvantaged or populations with challenges who want to work in a licensed occupation, and mobility for workers

who want to take their skills across state lines. Moreover, research described earlier suggests that licensing policies do not always achieve intended quality, public health or safety outcomes. At the center of these crucial conversations are state policymakers who establish most occupational licensure requirements and for whom the goals of consumer protection and economic opportunity and growth are paramount concerns. Moving forward, states will continue to learn from one another as they adopt and refine regulatory practices that seek to remove barriers to work and improve portability across state lines.

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APPENDIX B. Occupations Examined in the Occupational Licensing Research Consortium

Summary

Based on two primary criteria (occupation licensed in at least 30 states and occupation requires less than a Bachelor's degree), the list of occupations for inclusion was narrowed to 40. Two additional measures were applied to this list (projected employment growth rate for 2014-2024 at national average or higher and total current employment levels of 10,000 or greater) resulting in a total of 34 occupations. Data are reported for each of the 34 occupations for employment levels, projected growth, entry-level education, wages, on-the-job training, industry representation, geographic representation and compact activity.

LIST OF INCLUDED OCCUPATIONS:

- Barbers
- Bus Drivers, School or Special Client
- Bus Driver (City/Transit)
- Construction and Building Inspectors
- Construction Managers
- Dental Hygienists
- Emergency Medical Technicians and Paramedics
- Hairdressers, Hairstylists and Cosmetologists
- Heating, Air Conditioning, and Refrigeration Mechanics and Installers
- Heavy and Tractor-Trailer Truck Drivers
- Insurance Sales Agents
- Licensed Practical and Licensed Vocational Nurses
- Manicurists and Pedicurists
- Massage Therapists
- Nursing Assistants
- Occupational Therapy Assistants
- Pharmacy Technicians
- Physical Therapy Assistants
- Pipefitters and Steamfitters
- Plumbers
- Preschool Teachers, Except Special Education
- Private Detectives and Investigators
- Radiologic Technologists
- Real Estate Sales Agents
- Real Estate Appraisers
- Respiratory Therapists
- Security and Fire Alarm Systems Installers
- Security Guards
- Skin care Specialists
- Teacher Assistants
- Veterinary Technologists and Technicians
- Vocational Education Teachers, Postsecondary
- Water and Wastewater Treatment Plant and System Operators

Appendix C. Policymaker Questions to Ask When Considering Occupational Licensing Proposals

What is the problem?	<ul style="list-style-type: none"> • Has the public been harmed because the occupation has not been regulated? • Has the public’s health, safety or economic well-being been endangered? • Can proponents’ claims be documented?
Why should the occupation be regulated?	<ul style="list-style-type: none"> • Who uses the services offered by the occupation? Does the public lack knowledge or information to evaluate the providers’ qualifications? • What is the extent of the autonomy of the providers? Do they work independently or under supervision? If supervised, is the supervisor covered under regulatory statute?
What efforts have been made to address the problems?	<ul style="list-style-type: none"> • Has the occupation established a code of conduct or complaint-handling procedures for resolving disputes between practitioners and consumers? • Has a non-governmental certification program been established to assist the public in identifying qualified practitioners? • Could use of applicable laws or existing standards (e.g., civil laws or unfair and deceptive trade practice laws) solve problems? • Would strengthening existing laws help to deal with the problem?
Have alternatives to licensure been considered?	<ul style="list-style-type: none"> • Could an existing agency be used to regulate the occupation? • Would regulation of the employer versus the individual practitioner (e.g., licensing a restaurant instead of its employees) provide the necessary public protection? • Could registration or certification be an acceptable alternative? • Why would use of less stringent alternatives adequately protect the public? Why would licensing be more effective?
Will the public benefit from regulating the occupation?	<ul style="list-style-type: none"> • How will regulation help the public identify qualified practitioners? • How will regulation assure that practitioners are competent? <ul style="list-style-type: none"> ○ Are all standards job-related? ○ How do the standards, training and experience requirements compare with other states? Can differences be justified? ○ Are alternative routes of entry recognized—for example for individuals licensed in another state?
Will regulation harm the public?	<ul style="list-style-type: none"> • Will competition be restricted by the regulated group? • Will the regulated group control the supply of practitioners? Are standards more restrictive than necessary? • Will regulation increase the cost of goods and services to consumers? • Will regulation decrease the availability of practitioners?
How will the regulatory activity be administered?	<ul style="list-style-type: none"> • Who will administer the regulation? • What power will the entity have, and will its actions be subject to review? • How would the cost of administering the regulatory entity be financed?
Who is sponsoring the regulatory program?	<ul style="list-style-type: none"> • Are members of the public sponsoring the legislation? • What provider associations or organizations are sponsoring the regulatory approach?
Why is regulation being sought?	<ul style="list-style-type: none"> • Is the profession seeking to enhance its status by having its own regulatory law? • Is the occupation seeking licensure to facilitate reimbursement? • Is the public seeking greater accountability of the occupation?

Source: Council on Licensure, Enforcement and Regulation, Questions Legislators Should Ask, 1994

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