

# California Occupational Licensing: Barriers to Opportunity in the Golden State

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Chair Allen, Chair Glazer, and distinguished members of the Senate Select Committee on Aerospace and Defense and the Senate Standing Committee on Business, Professions, and Economic Development:

My name is Matthew Mitchell. I am an economist and a senior research fellow at the Mercatus Center at George Mason University, where I direct the Equity Initiative. Mercatus scholars working on the Equity Initiative study public policies that favor particular firms, industries, or occupations. 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.

Attached is a report that my colleagues and I submitted to the Federal Trade Commission, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce.” The report details the now-voluminous economic literature on the deleterious effects of occupational licensure and suggests a blueprint for reform.

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

1. Licensing is a substantial barrier to employment, particularly for certain populations such as lower-income Americans or the spouses of active-duty military personnel.
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. Policymakers must be able to cast conspicuous votes in the general interest while special interest power must be limited.

## **Licensure Is a Substantial Barrier to Employment, Especially for Certain Populations**

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*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, more than one in five working Californians—20.7 percent of the state’s workforce—was required to be licensed. 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. And in separate research, Kleiner and Evgeny Vorotnikov estimate that licensure may cost between 1.8 and 1.9 million jobs, result in between \$6.2 billion and \$7.1 billion in lost output, and create a misallocation of resources that costs the economy between \$183.9 and \$197.3 billion each year. In California alone, they estimate that licensure has eliminated almost 196,000 jobs, has resulted in \$840.4 million in lost annual output, and has created a \$22.1 billion annual misallocation of resources. By their estimates, California's licensing regime is costlier than that of any other state in the nation.

Aspiring entrants to a large number of professions—ranging from travel guide and door repair contractor to cosmetologist—are now required by the state of California to obtain a government-issued license to work. It can take months and hundreds or even thousands of dollars to obtain these licenses. Among 76 low- to moderate-income occupations licensed by California, the average aspiring worker is required to spend 827 days in training and pay \$486 in fees before he or she may obtain a license. 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, California's licensing laws are the most broad and onerous 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 California must undergo *10 times* as many months of training; would-be animal trainers (who are unlicensed in 41 states) must complete more than *30 times* as much training; and commercial door repair contractors (unlicensed in 26 states) must complete more than *39 times* as much training.

TABLE 1. OCCUPATIONAL TRAINING MISMATCHES IN CALIFORNIA

Occupation	States That License This Profession	Fees	Days of Education/Experience
Commercial drywall installation contractor	25	\$579	1,460
Commercial floor sander contractor	22	\$579	1,460
Commercial painting contractor	22	\$579	1,460
Residential painting contractor	28	\$579	1,460
Commercial door repair contractor	24	\$579	1,460
Tree trimmer	7	\$529	1,460
Animal trainer	9	\$250	1,095
Psychiatric technician	5	\$349	357
Cosmetologist	51	\$125	373
Emergency medical technician	51	\$129	37

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), 52–3.

*Licensing boards are often dominated by members of the professions they oversee.* About half of California occupational licensure boards are required by law to have a majority of their members work in the professions they oversee. See table 2 for board composition data in a sample of California boards. Owing to vacancies or a lack of specificity, some boards may be composed entirely of industry insiders, while on other boards, industry insiders have a governing majority. 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. 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 CALIFORNIA BOARDS

Board or Council	Occupations Covered	Industry Members	Total Members	Percent Industry
Board of Accountancy <sup>a</sup>	Accountants	7	15	47%
Veterinary Medical Board <sup>b</sup>	Veterinarians, veterinary technicians	5	8	63%
Dental Assisting Council <sup>c</sup>	Dentists, dental hygienists, dental assistants	10	15	67%
Structural Pest Control Board <sup>d</sup>	Pest control professionals	unspecified	7	potentially 100%
Landscape Architects Technical Committee <sup>e</sup>	Landscape architects	unspecified	5	potentially 100%

<sup>A</sup> Cal. Bus. & Prof. Code § 5000 (Lexis 2019).

<sup>B</sup> Cal. Bus. & Prof. Code § 4800 (Lexis 2019).

<sup>C</sup> Cal. Bus. & Prof. Code § 1601.1 (Lexis 2019).

<sup>D</sup> Cal. Bus. & Prof. Code § 8520 (Lexis 2019).

<sup>E</sup> Cal. Bus. & Prof. Code §§ 5620, 5510 (Lexis 2019).

*Licensing reduces employment opportunities, especially among certain communities.* High barriers to employment pose particular difficulties to lower-skilled, lower-educated populations, to immigrants, to those with criminal records, and to those who move frequently, such as military spouses. Eighty percent of the studies Mercatus scholars reviewed found that licensure has a disparate impact on minorities. Recent research suggests that barriers to entry are associated with greater income inequality and that licensure is negatively associated with absolute income mobility.

Licensure presents an especially steep employment barrier for military spouses. About 35 percent of working military spouses are either licensed or certified. And compared with the broader population, military spouses are 10 times more likely to have moved across a state line in the past year. 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. This helps to explain why, in 2017, the military spouse unemployment rate was 16 percent, nearly four times the national average.

## **Licensure Does Not Seem to Increase Quality or Safety, but It Does Raise Prices**

*There is little evidence that licensure increases either the quality of services or the public's safety.* Theoretically, licensure might increase quality if it acts as a well-designed screening system. On the other hand, it might decrease quality by limiting competition. Reviews of the academic literature by scholars at the Mercatus Center and by officials in the Obama administration suggest that the two effects roughly cancel each other out (though more studies find that licensure reduces quality than find that it enhances it).

*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. A Mercatus assessment of 19 peer-reviewed studies found that licensure was associated with higher prices in all 19. Reviewing many of the same studies, Obama administration officials similarly concluded that the association between licensing and higher prices is “unequivocal.”

## **Successful Reform is Difficult but Not Impossible**

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*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 pattern of diffuse costs and concentrated benefits for the persistence of inefficient and inequitable policy. And this pattern has made licensing reform an uphill battle, even though experts 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. In areas as varied as trade, race-based policies, 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. 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, some potential reforms follow this pattern:

1. *An independent commission.* One potential reform would be to establish an independent commission. It should be comprised 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. More details on this approach can be found in the attached report.

2. *Requiring less restrictive means of regulation.* The state of Nebraska recently adopted a reform that highlights a different approach. 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 boards have “issued, revoked, denied, or assessed penalties against” and the reasons for these actions. It also requires committees to review board composition, assess board activities, and to compare these activities with the way other states regulate occupations. Most importantly, the act stipulates that licenses are warranted only when they address “present, significant, and substantiated harms,” and if such a harm is found to exist, the 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. There, the recently-passed Right to Earn a Living Act strengthens existing law, which had declared that “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. *Recognition of out-of-state licensure for active duty and military spouses.* Because licensure imposes particularly steep burdens for peripatetic military personnel and their spouses, a number of states have moved to recognize the out-of-state licenses of these individuals. Utah, for example, recently permitted active duty military and their spouses to operate without a Utah license so long as they hold a current license from another state or jurisdiction and are in good standing with that other state or jurisdiction. While this approach is certainly beneficial for this population, it fails to alleviate the burden borne by most licensed workers.
5. *Universal licensing recognition.* Another approach—also pioneered in Arizona—allows any state resident who is currently licensed by another state to obtain an occupational license in their state of residence. While economists and antitrust officials have long recommended licensure portability, this proposal takes the idea a few steps further than other proposals. 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 still be susceptible to the sort of regulatory capture problems that have long dominated state-level licensure. Universal licensure recognition, however, would allow legislators to serve the general public by easing licensure burdens while it would mitigate the sort of special-interest pleading that so often dominates regulatory reform. Interestingly, the previously-mentioned reform may be a stepping-stone to this reform. In Arizona, the universal recognition bill simply amended previous statutory language that had recognized the out-of-state licenses of active duty military and their spouses so that all Arizona residents with out-of-state licenses could operate.

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.