The Balance Between Public Protection and the Right to Earn a Living

Occupational Licensing
Dick M. Carpenter II, Ph.D., Institute for Justice

What we studied
- Data collected: fees, time spent in education/experience, number of exams, minimum age, minimum grade level.
- Ranked states and occupations by difficulty of entering occupations due to licensing requirements.
What we found
- Licenses require of aspiring workers, on average, $209 in fees, one exam and about nine months of education and training.
- Thirty-five occupations require more than a year of education and training, on average.
- At least one exam is required for 79 of the occupations.
- Interior design is the most difficult to enter.

What we found
- Licensing requirements appear arbitrary.
  - Only 15 are licensed in 40 states or more, and on average, the 102 occupations are licensed in just 22 states.
  - Licensure requirements vary considerably across states. E.g., 10 states require four months or more of training for manicurists, Alaska demands only about three days and Iowa about nine days.

What we found
- Licensing requirements appear arbitrary.
  - The difficulty of entering an occupation often does not line up with the public health or safety risk it poses.
    - E.g., 66 occupations have greater average licensure burdens than emergency medical technicians. The average cosmetologist spends 372 days in training; the average EMT, only 33.
The Balance Between Public Protection and the Right to Earn a Living

David E. Harrington, Kenyon College

“...the most significant progress in deregulating funeral markets had been accomplished by the Institute for Justice” Harrington (2007).

<table>
<thead>
<tr>
<th>Case</th>
<th>Challenged</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Charles Brown v. David Hovatter, President of the Maryland State Board of Morticians</td>
<td>~ only funeral directors may own funeral homes</td>
<td>Won in Fed District Court</td>
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### Case Challenged Outcome

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<tr>
<td>St. Joseph Abbey v. Castille</td>
<td>Only funeral directors may sell caskets in LA</td>
<td>Won in 5th Circuit Court of Appeals</td>
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<td></td>
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<td>“Celebrate! Read the story and buy a casket!”</td>
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**Case Challenged Outcome**

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<td>Ernest F. Heffner, et. al. v.</td>
<td>PA's Funeral Director Law</td>
<td>Sweeping Win in Fed District Court; Currently</td>
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<tr>
<td>Donald J. Murphy, et. al</td>
<td></td>
<td>in 3rd Circuit</td>
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<tr>
<td>Verlin Stoll, et al. v.</td>
<td>All funeral establishments must have preparation rooms</td>
<td>Awaiting decision of Ramsey County Court</td>
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<tr>
<td>Minnesota Department of Health,</td>
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<td>Mortuary Science Section</td>
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**Market for Cremations**

- **Supply**: 
  - **Market for Cremations**: Curve representing the supply of cremations.
  - **Average Cost**: Point indicating the average cost of cremations.
  - **Demand**: Vertical line indicating the demand for cremations.
  - **Quantity**: Horizontal axis representing the quantity of cremations.
Origins of Issue

Occupational Licensing as a topic in economics dates to the comments by Adam Smith that trades conspire to reduce the availability of “skilled craftsmen” in order to raise wages (Smith, 1776, reprinted 1936).
Update of “Licensing Occupations: Ensuring Quality or Restricting Competition?”

- Review and Update

- Key findings—Overview of Occupational Licensing—Big Picture

- Unanswered questions—What happens within occupations to workers and consumers?—It develops a rationale for this new Volume.

Stages of Growth and Licensing

1) Use of terminology from W.W. Rostow “Stages of Economic Growth”

2) Model Development—How Do Occupations evolve from low regulation to universal licensing?

3) Outcomes for the persons in the occupation and consumers.

What Are the Stages of State Regulation for the Occupations that I Analyze?

[Diagram showing States Licensed across different occupations]
Lessons from an analysis of case studies

- Individuals in *Licensed Occupations* gain more the longer the occupation is highly regulated
  
- *Attainment of a license matters* rather than being in an occupation that has some regulation or *is covered* by a licensing law (lawyers v. engineers)

Lessons for Policy Makers

- What are the appropriate policies and enforcement mechanisms at various stages of occupational regulation? (none to all?)
- Gains to members of the occupation from regulation include wages, employment, and control over entry
- Are there stages of regulation where workers and consumers gain?
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Occupational Licensing Reforms
Lee McGrath, Legislative Counsel, Institute for Justice

Licensing is big.
Biggest issue in labor economics today.

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<tr>
<td>Licensing</td>
<td>29% of all workers</td>
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<tr>
<td>Unionism</td>
<td>11% of all workers</td>
</tr>
<tr>
<td>Minimum wage</td>
<td>5% of hourly-paid workers</td>
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Licensing is costly.

- Increases unemployment by 0.5% - 1.0%
- Increases consumer prices by 15% or more

Offers few benefits to consumers.

- Licensing offers no incremental consumer economic protection over a competitive labor market.
  - Real consumer protection comes from reputation, competition, legal remedies, and intermediaries.
- Does little to improve health and safety.

Regulatory problems:

- Licensing is anti-competitive.
  - Trade groups lobby for licensing to benefit members.
  - They often also want grandfathering.
- Licensing boards are often captured.
  - Licensees often control boards.
  - Board’s funding often comes from license fees.
  - Boards rarely revoke licenses.
- Licensing laws are often arbitrary.
Summary:

- Occupational licensing produces (intended) bad outcomes:
  - Less opportunity and higher unemployment.
  - Less competition and higher prices.
  - Limited protection of public health and safety.
  - No incremental consumer economic protection.

Opportunities:

- Increase jobs
  - Reforms could help lower unemployment rate.

- Increase prosperity
  - Consumers could save billions through lower prices.

Alternative Approach:

- Policy makers should use the least restrictive type of occupational regulations to protect consumers.
  
  1. market competition/no regulation;
  2. a provision for private civil action;
  3. inspections;
  4. bonding or insurance;
  5. registration;
  6. voluntary certification; or
  7. occupational license.
Proposal 1: Reduce, Convert or Repeal.

- Reduce qualifications required to be licensed.
- Convert licenses to a less restrictive type of occupational regulations.
- Repeal licenses for low-to-moderate income occupations.


- Create a statutory right to an occupation.
  - Require legislators to find a real reason before adopting new occupational regulations.
  - Require legislators to use least restrictive type of occupational regulation when adopting new regulations.
  - Shift burden of proof to government in administrative and judicial challenges to existing occupational regulations.

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