

LICENSING SHOULD NOT BE BIGGER IN TEXAS:

A ROADMAP FOR LICENSING REFORM



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Licensing Should Not Be Bigger in Texas: A Roadmap for Licensing Reform

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Introduction

Occupational licensing laws aim to ensure public health, welfare, and safety by establishing a minimum quality standard in a profession. They require that professionals in specified fields complete minimum levels of training or education, pay fees, and pass an exam before being allowed to perform a job or enter a vocation. Licenses are essentially permission slips the government gives professionals. While occupational licensing may come from good intentions, the practice can have serious adverse consequences like reducing competition among individuals in the licensed industry and artificially inflating licensed workers' wages, all at the expense of consumers and potential entrants to the industry, often without improving the quality of services provided.

Today, occupational licensing is the most widespread labor market institution, affecting more workers than either unionization or the minimum wage ([Kleiner & Krueger, 2010](#)). Initially, these laws were limited to a handful of professions, but since the 1950s the number of professions—and the percentage of workers licensed—has grown substantially. The share of workers who are required to obtain a license by states has more than quadrupled, rising from 5% in the 1950s to 21.3% in 2021 ([Bureau of Labor Statistics, n.d.](#)).

In 2015, the Obama administration summarized economic research on the effects of occupational licensing ([Department of the Treasury, 2015](#)). Some highlights include:

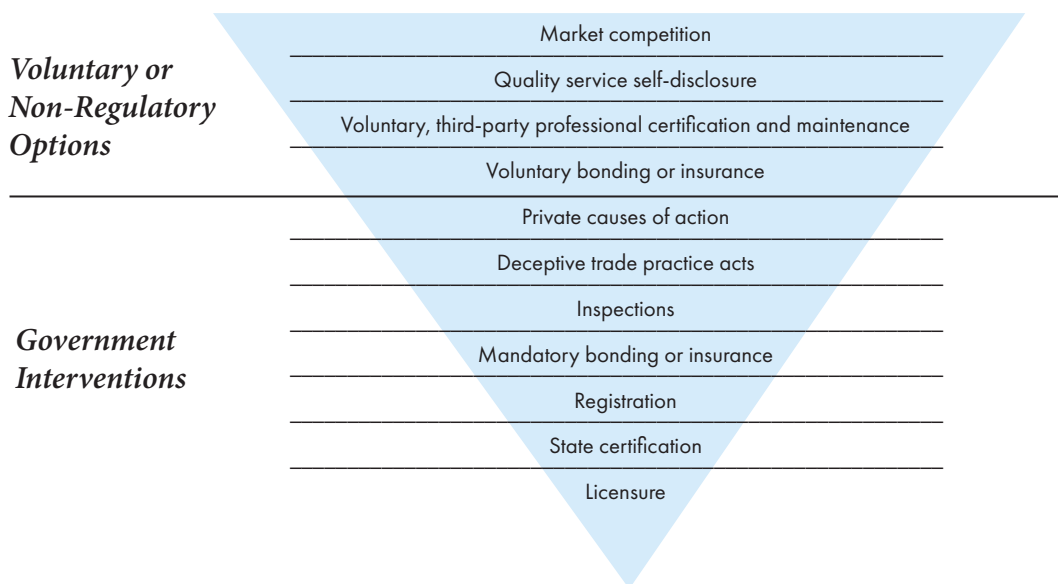
- Occupational licensing raises the price of services by 3% to 16%.
- Occupational licensing places unique burdens on military families and individuals with criminal records.
- Research consistently finds that licensing reduces the supply of workers in a profession.
- Less than 17% of studies find any evidence that occupational licensing improves quality.

Demonstrating the bipartisan nature of licensing reform, the Trump administration issued an executive order in late 2020 highlighting many of these conclusions ([Exec. Order No. 13966, 2020](#)). The Biden administration also signaled support for licensing reform the following year ([Exec. Order No. 14036, 2021](#)).

Key Points

- Occupational licenses should only be required where there is a clear and convincing need to protect the health and safety of the public and the license is reasonably expected to achieve that protection.
- Texas has taken important strides in recent years to reduce the number of unnecessary occupational licenses, but more needs to be done.
- Occupational licenses should be reviewed and eliminated if determined to be unnecessary to protect the health and safety of the public.

Figure 1
Alternatives to Occupational Licensing



Note. Chart reproduced from *The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing*, Institute for Justice, 2017 (https://ij.org/wp-content/uploads/2017/11/Inverted-Pyramid_FINAL.pdf).

Research consistently finds evidence that licensing laws increase wages for professionals in a range of licensed occupations, by as much as 15% according to some studies (Kleiner & Krueger, 2010). However, these increased wages come at a cost to consumers who are forced to pay higher prices for these services. Potential entrants to the industry also face higher costs to work in their chosen profession or are prevented from working in that profession entirely. In total, licensing has an annual cost of at least \$7 billion in lost economic output and results in a loss of almost 2 million jobs (Kleiner & Vorotnikov, 2018).

Occupational licenses should be thoroughly reviewed to determine the costs and benefits and the necessity of each license in Texas and nationwide.

Licensing: The Theory and the Evidence

Occupational licensing is generally designed to provide consumer protection against harm from services. Licensing laws mandate education and training requirements to establish a minimum standard of quality. It is often difficult to assess quality before actually receiving the service, which makes consumers vulnerable to low-quality professionals. Therefore, states require that those seeking to enter a given profession undergo a specified training program. The aim is to reduce the likelihood that these professionals will harm the consumers of their services and to consequently give the consumers themselves more

confidence in these professionals. Occupational licensing is the most strenuous form of labor market regulation available to state, local, and federal governments.

It is important to note that regulation of occupations and professions is often not necessary and, when it is determined to be necessary, that occupational licensing is not the only option for such regulation. Policymakers have a number of options that are less onerous than occupational licensing. **Figure 1** shows the various forms of occupational regulation from market competition to licensing.

Occupational licensing is like a blunt instrument that is often less effective than other forms of regulation at responding to specific risks associated with a profession. For instance, while public health and safety are a concern for the restaurant industry, chefs are not subject to licensure. Instead, restaurants are subject to inspections to prevent the spread of food-borne illnesses. Low-quality tree trimmers also pose a risk to consumers, where mistakes can result in hundreds of thousands of dollars in damages; yet instead of licensing, many states require tree trimmers to obtain bonding and insurance to practice. Finally, until 2015, Texas relied on certification to regulate opticians. The law previously protected titles such as “registered dispensing optician” but opticians could practice in the state without obtaining certification (Timmons & Mills, 2018). None of these regulations limit entry into the regulated

professions to the same extent as licensing, but they still provide consumers with some measure of protection and allow the professionals to voluntarily become certified. Consumers may prefer the touted higher level of training and certification or they may choose to select a provider based on personal referrals or ratings. In these instances, the choice is with the professional and the consumer.

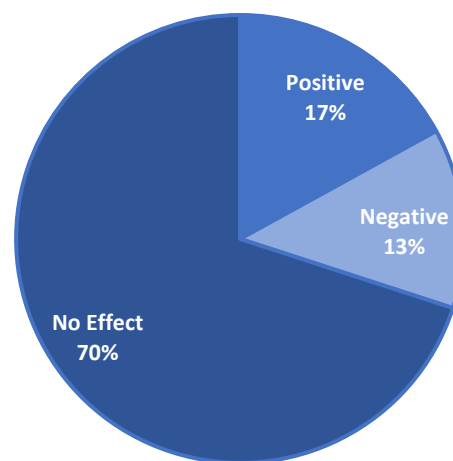
Licensing laws prohibit work in some professions before meeting minimum levels of education, passing exams, and paying fees to the state. These requirements for entry are set and enforced by licensing boards and agencies, which are often comprised of active market participants. In many cases, the potential competitors of the applicants for a license are often the gatekeepers to the very market they are trying to enter (Friedman, 1962). In these instances, competition is restricted by those who have a self-interest in limiting the number of licenses granted at the expense of consumers and aspiring market participants.

The barriers created by licensing requirements limit entry but are often unable to protect consumers. For instance, in Texas, barbers and cosmetologists are required to obtain a license before being able to practice. Barbers and cosmetologists must complete 1,000 clock hours of training and pass exams to cut hair. This is down from 1,500 hours due to legislation and newly adopted rules in 2020 (Texas Department of Licensing and Regulation [TDLR], 2020). Barring a highly unlikely and unexpected accident, the only harm a customer risks from a haircut is receiving a bad haircut. While supporters contend that licensing protects consumers from low-quality haircuts, the market naturally weeds out poor barbers and cosmetologists. Traditional word of mouth and online service review sites like Yelp can help consumers find high quality professionals that meet their hair needs. Excessive licensing does, however, force consumers to pay higher prices for haircuts. Research suggests that barber licensing may inflate the wages of barbers by as much as 22% (Timmons & Thornton, 2010).

This is not to say that licensing is never appropriate or effective. In some cases, like for physicians and surgeons, licensing can ensure that these professionals are qualified and trained to perform potentially life-saving procedures safely and effectively. In such occupations where inexperience or mistakes could more often lead to fatal or serious consequences, the public safety argument is more likely to apply. In addition, when consumers are unable to discern the quality of the provider prior to purchase, low-quality services pose an additional risk. A serious assessment of occupational licensing must consider both the costs of

licensing and the benefits it provides. Even in instances where licensing should have a positive effect on the quality of services, evidence remains mixed. One study has found that occupational licensing of midwives at the turn of the 20th century reduced maternal mortality (Anderson et al., 2020). Reducing Certified Public Accountant (CPA) licensing requirements, however, does not appear to reduce the quality of candidates (Meehan & Stephenson, 2020). In addition, stricter licensing requirements for real estate agents do not appear to improve quality (Chung, 2020). Further, recent research examining consumers choosing home contractors online shows that users are much more interested in peer reviews than contractor licensing status (Farronato et al., 2020). **Figure 2** shows the quality results of occupational licensure found in 30 studies, which are included in the appendix. The majority of studies have found that occupational licensing in most cases has either no effect or an unclear effect on the quality of services delivered to consumers.

Figure 2
Effect of Licensing on Service Quality



Note. Calculations from Quality results of occupational licensure found in 30 studies listed in the appendix and from *The Effects of Occupational Licensure on Competition, Consumers, and the Workforce*, Mercatus Center, 2017 (<https://www.mercatus.org/publications/corporate-welfare/effects-occupational-licensure-competition-consumers-and-workforce>).

Importantly, when occupational licensing is reformed or removed, consumers and workers seem to benefit. Timmons and Thornton (2019) found that when barber licensing requirements were removed in Alabama, the number of barber shops increased. Similarly, Meehan and Stephenson (2020) found that reforms to CPA licensing requirements have increased the number of exam takers.

The Effects of Licensing

Employment

Because occupational licensing requirements must be completed before an individual can begin practicing in the licensed professions, they pose a barrier to entry to that profession. Education and training requirements, often lasting a year or longer, prohibit an individual from earning a competitive wage until completing the requirement. High fees can also deter entry into many licensed professions, especially among lower-income individuals who cannot afford to pay them. Licensing requirements thus push many aspiring professionals away from their chosen professions, leaving them to opt for low-paying jobs without licensing requirements.

Research consistently supports the preceding. Kleiner and Vorotnikov (2018), for example, estimate that licensing results in the loss of almost 2 million jobs nationally. Blair and Chung (2019), as well as Kleiner and Soltas (2019), find that occupational licensing reduces employment in licensed professions by 27% and 29%, respectively. The economic cost of licensing on Americans has been estimated to range anywhere from \$34.8 billion to \$41.7 billion (Summers, 2007). This job loss is caused by extra barriers to entry from licensure requirements. The Commission to Study and Review Certain Penal Laws performed a review of the state, county, and municipal occupational licensing laws in Texas. It found that, in total, these laws cost the state more than 140,000 jobs and resulted in \$431.5 million in reduced output annually (Thompson, 2018). Not only does stricter occupational licensing result in less hiring by firms, but these laws may also motivate the firms to change location, choosing nearby jurisdictions without licensing requirements (Plemmons, 2022).

Because licensing laws are passed at the state level, it makes it more difficult for licensed professionals to relocate to another state with different licensing requirements. The added cost of meeting training requirements in a new state, reapplying for licensure, and waiting up to several months for the application to be decided pose a significant cost for those considering a move. It appears that licensing is associated with reductions in migration between states (Johnson & Kleiner, 2020). These requirements are especially harmful to military spouses, who frequently move as their spouse is transferred to their next assignment (McLaughlin et al., 2017). These spouses often work in licensed professions, but the licensing requirements vary from state to state and are often not reciprocal. This means that military spouses have to complete the training requirements again, in a field in which they may already

be licensed, every time they and their spouses relocate to a new state. This creates a high burden on military families and families that relocate often (McLaughlin et al., 2017).

Wages

Kleiner and Krueger (2010) find that occupational licensing inflates wages by about 15% on average. Licensing of massage therapists is found to increase hourly earnings by as much as 16.2% (Thornton & Timmons, 2013). In another study, Timmons and Mills (2018) find evidence that optician licensing results in inflated hourly earnings of a similar magnitude. The empirical evidence seems to agree: There is a statistically significant increase in hourly wages created by occupational licensure with little evidence of a significant increase in quality of service.

Licensing has a negative effect on lower-income households. For example, licensing increases wages by only 3.6% to 5.1% for the lowest-earning 30% of workers, while it increases wages for the top 30% of earners by 10% to 24% (Kleiner & Vorotnikov, 2017). Because many professions that do not require a traditional four-year college degree have licensing requirements, individuals from lower-income backgrounds are often forced to forego employment in licensed professions. Costs associated with licensing regulation have a disproportionate impact on the poor as it would constitute a larger portion of their disposable income, decreasing their opportunities to enter that occupation. Licensure in low- to moderate-income occupations is also associated with reductions in absolute upward mobility and increases in income inequality, as much as 6.7% and 15.4%, respectively (Timmons et al., 2018).

The Texas Department of Licensing (2022) alone currently licenses roughly 860,000 people. Importantly, licensing and enforcement by a centralized oversight agency such as TDLR, which is not comprised of licensed professionals, lessen their influence. For instance, individual licensing boards are prone to capture by the professions they are designed to regulate because they are largely comprised of members of the professions themselves. Although most licensing boards include members who represent the public, representation is highly skewed toward incumbent professionals in the field. Incumbent professionals have a vested interest in limiting competition. Regardless, public representatives do not guarantee licensing boards will not be captured by professionals; public members are more likely to defer to practitioners in the field when it comes to regulation due to their relative lack of experience (Summers, 2007).

Licensing in Texas

Texas requires licenses for an array of occupations, ranging from universally licensed professions like physicians to rarely imposed licenses like auctioneers and animal control officers. According to *License to Work* by the Institute for Justice, Texas licenses 37 of the 102 low- to moderate-income occupations included in the study ([Carpenter et al., 2017](#)). From 1993 to 2012, Texas added licensing requirements for 22 low- and moderate-income professions ([Timmons et al., 2018](#)). Additionally, Texas ranked 21st for the most burdensome licensing requirements in the nation in 2017 ([Carpenter et al., 2017](#)). Moreover, Texas ranks last in the Cato Institute's Freedom in the 50 States Occupational Freedom ranking ([Ruger & Sorens, 2021](#)).

Since 2017, Texas has made progress in reforming occupational licensing. The Legislature and TDLR have reduced the number of licenses required and the educational requirements for others, making it easier for those seeking to enter certain professions. The 85th Texas Legislature removed more than 15,000 licensing requirements ([SB 2065, 2017](#)). For instance, they repealed the licenses for shampooers and eyebrow threaders after the Texas Supreme Court decision in *Patel v. Department of Licensing & Regulation* ([2015](#)). They also reduced the required education for barbers and removed the criminal penalties for falsely claiming to be a registered interior designer ([HB 1894, 2019](#)). In 2021, the Texas Legislature again eliminated a number of required licenses regulated by TDLR, such as for polygraph examiners, combative sports matchmakers, and event coordinators. The legislation also combined a number of separate licenses such as for barbers and cosmetologists, wig dispensers, and barber and cosmetology instructors ([HB 1560, 2021](#)). HB 1560 also directed TDLR to continue to study and report to the Legislature on the possible elimination of additional licenses, such as for auctioneers.

The Texas Legislature has taken other important steps toward reform, including giving people with a criminal record a second chance by making them eligible for a professional license ([HB 1342, 2019](#)), and amending the Occupation Code to prohibit municipalities from charging registration fees to those who hold air conditioning and refrigeration licenses ([HB 871, 2021](#)).

Gov. Abbott has been involved in licensing reforms as well. In 2019, the governor directed the heads of licensing boards to reduce licensing requirements, lowering fees, education, and prohibitions for criminal records where appropriate ([Platoff, 2019](#)). In addition, he directed

agencies to reduce licensing fees to 75% of the national average. In December 2020, the Texas Comptroller's office compiled a list of 774 license types from 47 states entities ([Hegar, 2020](#)). The report also identified 29 statutory provisions regulating occupational licenses that were abolished during the previous legislative session.

Licensing Reforms

Require Least Restrictive Form of Regulation

As the support for licensing reform has grown in recent years, states like Arizona, Tennessee, and Louisiana, for example, recently passed a "Right to Earn a Living Act" ([SB 1437, 2017](#); [HB 2201, 2016](#); [HB 1062, 2022](#)). These laws instruct legislators to use the least stringent form of regulation to meet occupational licensing goals—for instance, relying on market competition, bonding, or certification instead of licensing. Upon enacting the Right to Earn a Living Act, licensing boards are required to complete a comprehensive review of the need for licensing legislation within one year, detailing the specific harms that could result from unlicensed professionals and comparing the costs and benefits of the current licensing regulations. Boards must be able to demonstrate how the regulation is necessary to prevent specific harms to the public for licensing to stand. Citizens are also given standing to challenge occupational licensing laws in court if they inflict economic harm and block entry into professions. The laws place the burden on government to provide compelling evidence on the possible harm to the public that could be inflicted by unlicensed professionals, a change in departure from the current standard where the government is presumed to be justified in its decision to regulate a profession.

Reciprocity and Universal Recognition

State level occupational licensing laws make it difficult for people to move to a new state and begin working, forcing them to spend months retaking education or training, passing exams, and waiting for the application process. Reciprocity would provide for states such as Texas to accept licenses issued by another state if that state also accepts those issued by Texas. While reciprocity agreements exist in Texas in some cases, the process should be standardized and expanded to allow for more universal recognition. Beginning with Arizona in 2019, a growing number of states have implemented universal recognition of out-of-state licenses ([Arizona Governor, 2019](#)). Universal recognition reduces the barriers to interstate mobility created by licensing laws, helping attract workers from out of state or making it easier for those who choose to move to begin

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working in their new state of residence. Both consumers and professionals stand to benefit from universal recognition. Professionals who are already licensed in another state could move to Texas and begin working immediately. Consumers would benefit from an increase in the number of professionals in the state, which encourages more competition and makes services more widely available and convenient. While universal recognition effectively reduces barriers to interstate mobility, it does not address the underlying problem of unnecessary barriers to entry into licensed professions.

Designated Office to Review Licenses

Another solution could be similar to LB 299 (2018) in Nebraska, which creates a dedicated office that reviews licensure requirements and ensures that they are not unnecessarily burdensome on the state economy. Section 14 of LB 299 (2018) establishes the state standard of licensing as “the least restrictive regulation which is necessary to protect consumers from undue risk ... that clearly threaten[s] or endanger[s] the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest.” Texas already uses a similar “least restrictive” standard in its sunset reviews, but reviews are only conducted on twelve-year cycles. Adding initial and more frequent reviews by sunset or another central office such as the Office of the Governor’s Division of Regulatory Compliance could help prevent new licensing legislation from being implemented (sunrise provisions). In addition, Colorado has had a long-standing Office of Policy, Research, and Regulatory Reform that conducts

regular sunset and sunrise reviews of occupational licensing laws.

Mississippi created an Occupational Licensing Review Commission (OLRC) to provide active oversight of all licensing boards in the state ([HB 1425, 2017](#)). The OLRC comprises three members: the governor, the secretary of state, and the attorney general. The OLRC must approve all new regulations or changes to existing regulations. Boards must present evidence of a serious threat to public health and safety, and they must show that the regulation would be the least restrictive means of protecting the public. Due to its success, the Mississippi Legislature expanded the OLRC’s power to conduct a regular review of all existing licensing regulations ([Summerhays, 2021](#)). In its reviews, the OLRC considers whether licensing is the appropriate form of regulation and whether it has been implemented at the appropriate level for specific licensing requirements.

Drawing on previous examples, Texas should consider implementing a program where the Texas Sunset Advisory Commission or another office reviews a broader number of licensing boards and their applicable licenses on a regular basis. While the Texas Sunset Advisory Commission already reviews occupations when the specific agency or department is under review, considering occupational licenses prior to implementation on a more frequent basis would provide more opportunity to reduce unnecessary licenses prior to implementation.

Conclusion

Texas has taken important steps to reduce the burden of occupational licensing requirements. Despite these efforts, more should be done. Texas continues to perform poorly in national rankings of the restrictiveness of labor market regulations. Licensing laws operate as a barrier to entry, preventing competition from entering the labor market. Licensing requirements for the same profession often vary widely between states, suggesting that the standards do not always align with quality and protection of the public. Additionally, by maintaining strict regulations, licensing can significantly reduce the supply of professionals in a field, shielding incumbents from competition and raising their wages. It is potential entrants and consumers who bear the burden of licensure.

Ultimately, licensing laws harm Texans by limiting prosperity, holding back would-be entrepreneurs, and forcing consumers to pay higher prices. Meanwhile, licensing often fails to achieve its stated goal of protecting the health and safety of the public. Texas should continue to build upon its past licensing reforms in systematically reviewing regulations and reducing unnecessary barriers to entry. Focusing on clear standards for licensure, imposing only the least restrictive forms of regulation, moving to some form of

universal recognition, and implementing effective sunset/sunrise reviews can help ensure that licensing laws serve rather than burden consumers and aspiring professionals.

Ensuring that unnecessary licensing laws are removed, and necessary ones are appropriately designed will help Texans achieve the American Dream by removing the roadblocks that stand in their way. ★

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Appendix: Research on the effect of occupational licensing on quality¹

Positive effect:

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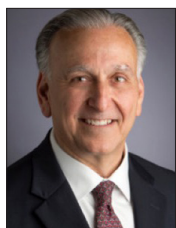
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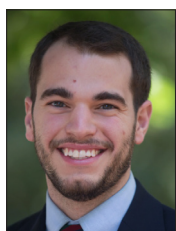
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