

**POLITICS**

# The Onerous, Arbitrary, Unaccountable World of Occupational Licensing

Like its predecessor, the Trump administration wants to reform how states issue these certificates, which often have less to do with consumer protection than economic protectionism.

**MICHELLE COTTLE** AUG 13, 2017



President Trump oversees a haircut in Pinellas County, Florida, where barbers are required to hold a license. (STEVE NESIUS / REUTERS)

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For all Donald Trump's flightiness and lack of ideological moorings, in one regard at least, the guy is reasonably steadfast: If Barack Obama supported something, he wants to blow it up or roll it back. Save for filling Antonin Scalia's Supreme Court seat—which, really, should count more as a win for Mitch McConnell—arguably 45's most noteworthy feat thus far has been his dogged quest to unravel his predecessor's legacy.

Which makes it oh-so-interesting to encounter the rare policy parallels between his administration and the last. Among the more sizzling examples to surface of late: the need to overhaul occupational licensing.

I know what you're thinking: What kind of sad creature considers occupational licensing a hot topic? But with more than one in four U.S. workers now required to hold such a license, the answer absolutely should be: everyone.

An occupational license is basically a government permission slip to do certain work. In many places, before one can become a makeup artist, taxidermist, massage therapist, and so on, one must first jump through a variety of hoops—attending classes, taking exams, and paying fees—mostly set at the state level. (Federal and local authorities are fringe players in this game.)

In theory, such licensing protects consumers from being harmed by incompetent or fraudulent providers. (No one wants to get

deep into labor only to discover that her midwife can't tell an umbilical cord from a baby toe.) In practice, however, the process has sprawled far beyond questions of public health and safety, morphing into an onerous, arbitrary, unaccountable mess that, in far too many cases, is less about consumer protection than about economic protectionism.

How does a state decide to license a particular occupation? Typically, workers in that field lobby legislators to establish such a system. Licensing requirements are then determined, and the system is overseen and enforced by a licensing board dominated by practitioners of said field. Any newcomer who attempts to enter that field without a proper license can be shut down by the board.

It's not hard to spot the potential conflict here. For a practicing barber, auctioneer, or funeral attendant, there's a clear incentive to limit new competitors. Existing practitioners control licensing boards. Licensing boards control the flow of new practitioners. And since the boards tend to be (very) loosely overseen by the state, they often operate with scant accountability. It's a classic recipe for abuse.

Stories abound of licensure run amok. Some states require hair braiders to get fully licensed as cosmetologists. Others demand that casket sellers become licensed funeral directors. Many states bar non-dentists from whitening people's teeth. (That last one took a bit of a hit with a 2015 Supreme Court ruling, which I'll get to in a jiff.) Obtaining such licenses can be crazy-expensive and

call for hundreds of hours of training that have no bearing on the work in question. The Institute for Justice, or IJ, a libertarian public-interest law firm, has amassed juicy tales of overreach on its website.

Complicating matters, licensing requirements vary widely by state. In its 2012 report “License to Work,” IJ sliced and diced state data in multiple, illuminating ways. For instance, 33 percent of Iowa’s workforce is licensed, while only 12.4 percent of South Carolina’s is.

Different states, of course, have different rules: All 50 plus Washington, D.C., license pest-control applicators; seven license upholsterers; and only one licenses florists. (If you’re looking to sling posies, think twice before moving to Louisiana.) The state-to-state differences in what it takes to earn a license are equally stark. Iowa requires cosmetologists to have 490 *days* of experience/education; New York calls for only 233. Arkansas demands 1,825 days of experience/education for a painting contractor; Washington state, zero.

Occupational licenses do not transfer across state lines, and research—along with common sense—suggests this curtails worker mobility. (God forbid someone giving pedicures in Pennsylvania try to ply their wares in Idaho without a new license.) Certainly, it poses a burden for folks who move frequently, such as military spouses.

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The authors add up. In 2011, a trio of University of Minnesota and Princeton economists estimated that occupational licensing results in 2.8 million fewer jobs and costs consumers \$203 billion a year.

State lawmakers need to be made aware of these costs, said Dick Carpenter, IJ's director of strategic research and co-author of the book *Bottleneckers*. The title is his term for those who use government power to block competition: "For too long, bottleneckers have gone to legislators, and the case they've made is that there is no cost to licensing," he told me. "The state budget will not be harmed, and any cost will be paid by the fees that applicants pay." In the narrowest sense, licensing boards are self-financed, Carpenter said. "But this ignores other costs, greater costs."

Besides, it's not a binary choice between licensing and doing nothing, he insisted. "There's a menu of regulatory options in between"—mandatory bonding and insurance, registration, inspections, certification. Legislators should think of this menu as a continuum, Carpenter said, and go with the least restrictive option appropriate.

Once licenses are on the books, it's hard to get them off. Trade groups and training schools that benefit from the system lobby hard to keep them in place. Often, the judicial branch has to step in, which is what happened in 2015, when the Supreme Court ruled that the North Carolina State Board of Dental Examiners had overstepped in barring anyone but dentists from performing

teeth whitening. Non-dentists had been charging less for the service, and dentists flipped out. Their licensing board issued cease-and-desist letters. In 2012, Obama's Federal Trade Commission felt moved to file a complaint about the anti-competitive behavior.

Technically, the high court's ruling said that the board in question was not closely connected enough to the state government to enjoy its antitrust exemptions. The decision nonetheless served as a warning shot for all states to keep closer tabs on their boards and perhaps rethink their licensing regimes. "The court decision creates a sense of urgency," Carpenter said.

It's also opened the door for the federal government to goose states toward a saner approach. In a speech to state lawmakers on July 21, Trump's labor secretary, Alexander Acosta, told them to get serious about repealing anti-competitive licensing practices.

Less than a week later, a gaggle of conservative lawmakers—Senators Ted Cruz, Mike Lee, and Ben Sasse, along with Representative Darrell Issa—introduced legislation that would give licensing boards immunity from antitrust suits, but only if a state dramatically reformed (read: dialed back) its licensing regime.

Even more concretely, in February, the acting head of the FTC, Maureen Ohlhausen, launched an Economic Liberty Task Force with an emphasis on curbing overbroad licensing. Education and advocacy will be a big part of the game, Ohlhausen said in her

speech. But if the good-cop approach doesn't work, the commission can go the other way, too: "When warranted, the FTC will bring enforcement actions in appropriate cases."

Despite all the libertarian and conservative energy focused on occupational licensing, it is not a left-right, red-blue issue. Right along with IJ, the Brookings Institution has been pushing reform ideas. Liberal journalists such as Matt Yglesias and Jonathan Chait have denounced the insanity. And it was the Obama administration that got the ball rolling with a 2015 report outlining the need for reform.

Now, it's Trumplandia pressing for change, backed by some congressional support. Hopefully, they won't lose focus. Fixing occupational licensing may not be as attention-grabbing as, say, building a see-through, solar-powered border wall, but it could do an awful lot of good for an awful lot of American workers.

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