



Do We Really Need to License Your Lawncare Guy

Chris Edwards

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Whatever is wrong with the U.S. economy, we are told, a scarcity of jobs isn't on the list. Since mid-2020, job openings have soared to record levels. The catch is that many potential workers who were forced out of work at the height of the pandemic are staying on the sidelines: the labor force participation rate, the portion of Americans able to work who choose to work, has yet to recover.

Actually, declining labor force participation is hardly a new phenomenon. After peaking in 2000 at 67 percent, the rate has fallen relentlessly to a tad more than 62 percent. And while a number of factors help to explain the decline — among them, the aging of the baby boomers and a paucity of affordable childcare — it should serve to highlight a little-discussed problem that undermines productivity, exacerbates inflation and reduces Americans' access to the jobs they really want. The culprit: occupational licensing regulations.

All states bar individuals from entering some occupations unless they fulfill specific education, experience, testing and often “moral character” requirements. Licensing rules vary widely by state, but they typically go beyond standards that seem like common sense to ensnare professions ranging from manicurists to travel agents to auctioneers. But happily, there's hope for change that increases job mobility and stimulates competition without putting consumers at risk. Indeed, the latest data suggest that licensing has peaked, and it may now be starting to decline as a result of state reform efforts.

Ties That Bind

Most people are comforted by the fact that the surgeon cutting them open has had years of training and experience, and most want assurance that their kid's trigonometry teacher knows the difference between a sine and a sign. But the licensing of doctors and teachers hardly explains why the share of U.S. jobs requiring an occupational license increased from 5 percent in the 1950s to 22 percent in 2021. And it certainly doesn't explain why the number of occupations requiring a license in at least one state rose from about 30 in 1920 to about 1,100 today.

Interestingly, there is no clear red-state/ blue-state pattern in these regulatory interventions. Some 17 percent of workers in California are in jobs that require licenses, while the figure is 24 percent in “free-market” Idaho. The barriers particularly affect young people starting their careers, people with low incomes, people switching occupations and people moving between states.

If the state-by-state differences aren't related to health, safety or job complexity, what gives? Interest-group politics. Current members of professions tend to favor increasing licensing requirements to limit entry and reduce competition.

Reasons for Licensing

The usual rationale for occupational licensing is that it protects consumer health and safety, or that consumers have too little information to make informed choices on their own. That's the theory, anyway. But when you run it up the flagpole, the experts aren't inclined to salute. Morris Kleiner, an economist at the University of Minnesota, reviewed the relevant research in 2015, finding there "is little evidence that the licensing of many different occupations has improved the quality of services." That same year, an Obama administration task force drew similar conclusions. Ditto for occupational regulation in other countries. A report from the OECD found that "there is very little empirical evidence of a positive link between the stringency of regulations and the quality of services."

Whatever the motive for occupational licensing (and I'll get to that), the states are most definitely listening to a variety of drummers when they pick and choose their marching orders. Athletic trainers, for example, are not licensed in California — feel free to declare yourself one. But in Nevada they take the occupation very, very seriously: athletic trainers must have a college degree and pass an exam, then pay \$666 for an initial license and \$150 for annual renewals.

Auctioneers are not licensed in about half the states. But in North Carolina they must graduate college, pass an exam and pay \$450 for an initial license and \$250 for annual renewals. Heating, ventilation and air conditioning (HVAC) contractors are unlicensed in a dozen states. But the vigilant legislators of Nevada (them again) demand passage of an exam, along with a payment of \$1,135 for an initial license and \$600 for biennial renewals.

So if the state-by-state differences aren't related to health, safety or job complexity, what gives? Interest-group politics. Current members of professions tend to favor increasing licensing requirements to limit entry and reduce competition. And when they are numerous, well-funded and well-organized, they make their influence felt — typically through membership on state regulatory boards. No surprise, then, that a 2022 study by the Institute for Justice, a public-interest law firm, concluded that occupational licensing is usually driven by provider groups, not by consumers.

Numerous states use "sunrise reviews" when considering whether to impose new licenses. IJ studied 494 of these reviews in 15 states over the period 1985 to 2017. It found that industry groups initiated 83 percent of the reviews, generally with the goal of jawboning lawmakers into imposing licensing. The IJ cites two examples: the Maine Association of Wetland Scientists sought licensure of soil scientists, and the Vermont Alarm and Signal Association sought licensure of burglar alarm installers.

Sunrise reviews have the potential to check runaway licensing when performed by independent experts. Indeed, just 20 percent of the reviews examined by the IJ recommended adding new licensing rules. Thus, experts usually find that the costs of licensing outweigh the benefits.

But state legislatures often ignore the experts. An example in Georgia: lactation consultants, who are health professionals clinically managing breastfeeding. Such consultants, eager to compete

for customers, often get voluntarily certified to signal their professional skills. But Georgia legislators decided that breastfeeding was too important to leave to the experts. They imposed licensing in 2016 in spite of a state sunrise review that recommended against it. The 2016 law threatened to put 800 lactation consultants out of work, many of whom were experienced and voluntarily certified.

The IJ study noted that Georgia's lactation consultant license requires two years of college courses and more than 300 hours of supervised clinical work. The penalty for practicing without a license: a \$500 fine per violation. The Georgia law is currently on hold due to litigation.

Many other states have imposed licensing even after state reviews recommended against new regulation. Examples include athletic trainers in Florida, Hawaii and Washington (take that, Nevada); hearing aid fitters in Colorado; HVAC technicians in South Carolina and West Virginia; landscape architects in Colorado, Vermont and Virginia; massage therapists in Colorado, Georgia and Virginia; car salespeople in West Virginia; nutritionists in Hawaii; plumbers in South Carolina and West Virginia; tattooists in Minnesota and Virginia; and timekeepers in mixed martial arts in Hawaii.

Another factor to consider is the impact of occupational licensing on economic mobility. Licensing has a disproportionate impact on small businesses ranging from nail salons to auto repair shops, restricting entrepreneurship by younger workers with modest nest eggs and a lack of formal training.

Costs of Licensing

Since the goal is typically the cartelization of service providers, it's not surprising that these regulations impose substantial burdens on society. Morris Kleiner estimated that the costs to consumers in terms of higher prices totaled \$203 billion annually. Some of that money amounts to a windfall redistribution to providers. But a chunk is a dead weight loss in the form of less efficient provision of services.

There were some benefits, too — presumably licensing did keep some unqualified surgeons out of the operating room. But a report from the Federal Trade Commission suggests that the overall costs of licensing far outweighed the benefits. And in any case, the choice isn't really between no licensing and cartelization as usual. Even libertarians would like someone to be looking over physicians' shoulders.

There are other costs as well — costs hidden in the inefficiencies created by added market rigidity. Consider the pandemic. Adapting to the dislocation created by Covid-19, the U.S. economy has seen large flows of workers across industries since 2020. For example, leisure and hospitality lost about 1 million workers, while transportation and warehousing gained about 700,000. (Less bar-hopping, more Amazon.) And however wrenching, the flexibility to adapt is a hallmark of a healthy market economy.

Another (and arguably more important) factor to consider is the impact of occupational licensing on economic mobility. Licensing has a disproportionate impact on small businesses ranging from nail salons to auto repair shops, restricting entrepreneurship by younger workers with modest nest eggs and a lack of formal training. Stephen Slivinski, an economist at the conservative

Pacific Legal Institute, found that rates of entrepreneurship are lower among lower-income residents in states where licenses are required for larger numbers of occupations that are linked to small business.

Specifics drive home the point. The Institute for Justice relates the story of Ilumi Sanchez, a Dominican emigrant who opened a small daycare business in Washington, DC. She had extensive experience providing childcare and a college degree from her home country. But she did not have the U.S. college associate's degree that the DC government required for licensed childcare, and so they shut her down. Sanchez did not have the time or money to obtain the relevant sheepskin, as she was supporting herself and trying to earn a living. But this story did have a happy ending: the U.S. Court of Appeals for the DC circuit struck down the associate's degree requirement in 2022.

The daycare issue resonates with me because my children were cared for by an immigrant from Iran, who had no degree or formal training in childcare. How did my wife and I know that we could trust our toddlers with her? Because we had become acquainted with her as a neighbor who had raised five children of her own. We recommended her to friends, and she was able to build a small daycare business in her home. Occupational regulations, even those motivated by concern for consumers, do not account for this sort of local knowledge, which can be a far better predictor of quality and reliability than a college degree.

Repealing Licensing

In response to growing evidence, public-interest challenges to licensing have made some headway in both legislatures and courts. In my view, the burden should be on those who defend occupational licensing, particularly when it can't be even nominally justified by health and safety considerations. That was the reasoning behind Florida's decision in 2020 to repeal licensing for interior designers, nail technicians, hair braiders and boxing announcers.

States can pursue such reforms by performing (expert, unbiased) cost-benefit analyses on all current licensing requirements, and then schedule votes to repeal those that do not generate overall net benefits. Such analyses can be routinized as part of periodic "sunset reviews" performed on state programs and regulations on a rotating basis. Recent bipartisan legislation in Utah created an Office of Professional Licensure Review, which will perform sunrise reviews for proposed new licenses along with sunset reviews on existing licensing requirements every 10 years.

Cost-benefit analyses offer a formal, accountable way to focus reforms, but a simpler way is to examine the experience in other states to see whether licenses are needed. And sometimes this is a no-brainer: Florida knew that repealing licensing for interior designers made sense because there is no record of problems (mismatched wallpaper colors? uncomfortable sofas?) in states that do not license the occupation.

In many cases, compulsory licensing displaces private mechanisms that are likely superior. In information technology, employers generally rely on workers proving qualifications through voluntary private certification programs. Such certifications encourage skill accumulation and signal worker abilities to employers. And while the process can be abused — incumbents still have incentives to make certification difficult — this approach does not pose a hard barrier to employment since they are voluntary and employers are free to ignore them.

There is ongoing special interest pressure for policymakers to pile on new licensing requirements. But there is also political momentum in many states to reverse course and start repealing the really embarrassing ones.

This is not to say that changes are all in one direction. There is ongoing special-interest pressure for policymakers to pile on new licensing requirements. But there is also political momentum in many states to reverse course and start repealing the really embarrassing ones. Indeed, the latest data suggest that, under the shadow of bad publicity, the momentum behind licensing has peaked. The Bureau of Labor Statistics reports that the percentage of employed persons requiring licenses dipped (albeit slightly) from 22.4 percent in 2015 to 21.9 percent by 2021.

The IJ, for its part, examined licensing in 102 occupations in both 2017 and 2022 and found that states have dumped more exclusionary requirements than they've added. Makeup artists were delicensed by Florida, Minnesota, Mississippi and Nebraska, and shampooers were delicensed by Missouri, New Hampshire, Tennessee and West Virginia. Another four occupations — animal trainers, locksmiths, mobile home installers and taxi drivers — were delicensed by two states each.

Mobility Reforms

There is another way to skin this cat. Short of repealing licensing, state policymakers can liberalize their rules by opening their economies to workers licensed in other states. The need for greater interstate mobility of professionals was made clear early in the Covid-19 crisis as states faced surging demand for doctors and nurses that could not be met with locally licensed practitioners. Every state passed temporary emergency orders to liberalize aspects of medical licensure, and there are efforts in numerous states to make these advances permanent.

Telehealth is one medical area ripe for permanent reform. While Americans are free to travel between states to receive medical care, doctors have generally been barred from treating out-of-state patients over the internet. That dam, happily, is showing cracks: more than a dozen states have dropped the requirement.

State “compacts” are another way to streamline the flow of medical services over state lines. Compacts are interstate agreements that recognize out-of-state licenses for specific occupations. The Nurse Licensure Compact, for example, allows nurses in 39 states to practice in other states that are compact members. Other multistate compacts exist for doctors, physical therapists, clinical psychologists and emergency services personnel.

One clever backdoor reform on the agenda in many states is loosening occupational rules for military spouses, who are often forced to move to keep their families intact. About 35 percent of military spouses are employed in occupations that require a license, and politicians have a hard time opposing measures that are seen as supporting the military. That said, relaxing licensing for military spouses should be viewed as the thin edge of the wedge — other spouses (and non-spouses) face similar problems and deserve relief as well.

Another means to the same end are universal recognition laws, which have been passed by 18 states in recent years. These laws allow for expedited — but not automatic — licensing approval across all occupations for residents who hold similar licenses in other states. These state laws differ with respect to fees, exam requirements, minimum years of experience and other hurdles. Perhaps the broadest reform has been Arizona's law passed in 2019, which recognizes all

licenses issued in other states even if the occupational requirements are different than Arizona's own. As then-governor Doug Ducey pointed out, "You don't lose your skills simply because you pack up a U-Haul and move to Arizona."

Crime and Punishment

Until quite recently, about half the states routinely denied occupational licenses to people with any criminal record, whether or not the conviction was relevant to the license sought. But there is growing realization that such rules make little sense if we expect people with past legal troubles to reboot their lives in a productive manner. This is a big issue since close to half of all American men who are unemployed have some sort of criminal record.

Wait; it gets worse. Some states impose "good moral character" restrictions that give licensing boards broad discretion to deny applications even to those convicted of minor offenses — or even those who have a record of arrests that never led to a conviction. The good news here is that many states are finally seeing the error of their ways. Since 2015, 39 states have eased licensing restrictions on individuals who have had a brush with the law. Nine states (including California, New York, Illinois and Michigan) now prohibit licensing boards from considering arrests that did not lead to convictions.

The stigma has been reduced in other ways, too. Some states now automatically deny licenses only for convictions directly related to the occupations being pursued — a marijuana possession conviction shouldn't prevent you from becoming an undertaker. And some go further. Oklahoma, for example, doesn't count nonviolent convictions more than five years in the past. The state also bars boards from making licensing decisions based on vague good character clauses, and it guarantees the right of appeal for those denied licenses.

Even where licensing makes sense, states should work to reduce the costs of compliance and to accept out-of-state licenses to improve mobility. States that are chronically losing population, such as New York and Illinois, should be particularly receptive to out-of-state licensees to sustain their skilled workforces.

More to Come

The licensing reform wave is likely to continue. One reason is that the initiatives are often bipartisan, finding sympathizers among squishy-soft liberals and hard-hearted conservatives alike. A second is that established multistate institutions, including the National Governors Association and National Conference of State Legislatures, are leading the way. Yet a third is that a number of states, including Idaho, Nebraska, Ohio and Utah, have established licensing review agencies that will create ongoing pressure to repeal excessive requirements.

Licensing may (or may not) be appropriate in technical professions where there are substantial health and safety concerns, and there are inadequate market incentives to weed out incompetence. But even where licensing makes sense, states should work to reduce the costs of compliance and to accept out-of-state licenses to improve mobility. States that are chronically losing population, such as New York and Illinois, should be particularly receptive to out-of-state licensees to sustain their skilled workforces.

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The Declaration of Independence asserted that every citizen has the right to “life, liberty and the pursuit of happiness.” Certainly, freedom to use one’s labor in a chosen occupation is central to that pursuit in contemporary America. As such, policymakers should lean against attempts to impose new licensing rules, and they should look for ways to reduce existing requirements that only serve special interests.

Chris Edwards is the Kilts Family Chair in Fiscal Studies at the libertarian Cato Institute in Washington.