



Occupational licensing should not be used to keep honest Americans out of work

Clark Neily

August 8, 2017

When people hear that it is illegal to sell floral arrangements in Louisiana without government permission, or that you can go to jail for practicing interior design without a license in Florida, or that Utah requires more training to braid hair than to practice law, they tend to say, “That’s crazy.” But that’s only true if you think the primary purpose of such regulations is to protect consumers from bad apples. All too often, occupational licensing has a more sinister purpose: To protect industry insiders from competition and innovation.

Consider taxi cabs, for example. Until recently, most cities had a medallion system, whereby anyone who wanted to charge money for driving people around town had to apply for permission or purchase a medallion from an existing company. So valuable was the ability to participate in this government-created monopoly that New York City taxi medallions were selling for more than one million dollars in 2013. But now the price is less than a quarter of that amount and plunging. What happened? Two words: Uber and Lyft, which overwhelmed taxi cabs’ stranglehold on the transportation market with an irresistible combination of modern technology, superior service, and lower prices.

Speaking of New York City, the Internet erupted in howls of outrage last week over a law that permits only licensed kennels to provide dog-sitting services. Enforcement of that restriction will sideline sharing-economy services like Rover.com that match pet owners with pet sitters who typically charge far less than kennels do. And given the city’s well-known antipathy towards Airbnb—the Office of Special Enforcement reportedly devotes 95 percent of its time scrutinizing rental listings for violations of the city’s picayune rental rules—perhaps it was only a matter of time before dog-sitters got the same treatment at the hands of kennel operators that Airbnb providers have been receiving from the hotel industry and its friends in city government.

Ralph Waldo Emerson famously said that if a man makes a better mouse trap, the world will beat a path to his door. But nowadays his competitors are just as likely to beat a path to the nearest statehouse, with lobbyists in tow, seeking legislation to banish the innovator’s superior product from the marketplace. And nowhere is that shabby dynamic—crony capitalism dressed up as consumer protection—more pronounced than in the field of occupational licensing.

Once upon a time, the only occupations that required a license were true professions like law and medicine. Indeed, in the 1950s, just one in 20 of U.S. workers needed the government's permission to pursue their chosen vocation. But today the figure is 25 percent and climbing. This puts extraordinary power in the hands of bureaucrats to decide who may put food on their family's table through honest labor and who may not.

According to the Institute for Justice study License to Work, 35 low- and moderate-income occupations—from barber and cosmetologist to dietetic technician—require on average more than a year of costly education and training. And the amount of training often has nothing whatsoever to do with the amount of knowledge required to do the job or the potential risk to the public from poor performance. To take just one example, the average cosmetologist spends 372 days in training; the average emergency medical technician just 33.

So what can be done about the proliferation of innovation-stifling occupational licensing laws? Quite a bit, actually. First, we can make sure policymakers understand how costly occupational licensing really is: besides higher prices and fewer choices for consumers, occupational licensing costs more than \$200 billion per year and nearly three million fewer jobs nationwide.

Next, policymakers should recognize the array of options available short of full-blown licensure. These options include bonding or insurance requirements, mandatory inspections, registration, and certification by private credentialing bodies.

Finally, judges must take a more active role in protecting Americans' constitutional right to earn an honest living free from unreasonable government regulation. That is the standard set by the U.S. Supreme Court for more than a century, but decades of judicial abdication, including by the Supreme Court itself, have left the right of occupational freedom with little real substance.

Recognizing the need for reform in this and other areas, the Federalist Society has launched the Regulatory Transparency Project, in which teams of experts are tasked with identifying costly regulations that harm consumers by unreasonably restricting competition. The goal of the project is to help raise public awareness and show that regulatory reform is an issue that should concern citizens and policymakers across the political spectrum.

America is the wealthiest nation in the history of the world. That is our legacy, but it may not be our future. Overregulation is destroying the engine of American prosperity by stifling innovation, destroying jobs, and discouraging people from supporting themselves through honest work. The first thing to do when you find yourself in a hole is to stop digging. America's economic prospects would be much brighter if policymakers would keep that in mind in deciding whether to enact—or repeal—occupational licensing laws.

Clark Neily is the vice president of criminal justice at the Cato Institute, a nonprofit libertarian group based in Washington, D.C.