

COMMENTARY

Need a license to do your job? That may be excessive

Congress should curb this costly scheme that imposes barriers.

By Morris M. Kleiner JANUARY 17, 2018 — 6:52PM

Occupational licensure, a legal process that establishes qualifications to practice a trade or profession for pay, has become one of the most significant labor market regulations in the United States.

While only about 5 percent of the workforce needed a license to work in the 1950s, it is now required for about 25 percent of American workers. As a regulatory scheme, occupational licensing dwarfs both the minimum wage and unionization in terms of its coverage of the American workforce.

When many people think of occupational licensing, they think of doctors, lawyers, dentists. There are important arguments that many professions require licensing due to health and safety concerns. But today licensing can extend to jobs such as being a florist, upholsterer or interior designer. The practical impact of extending licensing to such professions is to decrease the number of people in those jobs — because before people can work, they must get costly training, pass tests and pay licensing fees.

Excessive licensing has other costs. First, licensing works as a barrier to entry for low-income workers who lack the resources or time to take costly courses and enter apprenticeship programs. This limits their ability to move into higher-paying occupations.

Second, licensing limits the mobility of workers. For example, teachers and electricians have difficulty moving across state lines to seek new opportunities without taking new tests and additional classes. This is a special problem for military spouses, who have little control over where they will live.

Third, licensing makes it far more difficult for ex-offenders to get a new start, as they are often shut out of many occupations, ranging from emergency medical technicians to cosmetology.

Policy analysis estimates suggest that the costs in higher prices to consumers and reduced economic growth are as much as \$203 billion annually.

Despite the best efforts by many policymakers and academics, we hear little about the problems of excessive occupational licensing. Part of the reason is that most licensing statutes are enacted at the state or local level, not in Washington. However, given the growth of occupational licensing and its influence on the economy and jobs, these are national issues, and Congress should get involved.

A 2015 decision by the U.S. Supreme Court has provided an important opening for Congress to begin to address occupational licensing and its economic and labor market costs. In the landmark decision of *North Carolina Board of Dental Examiners vs. Federal Trade Commission*, the court held that the state dental board unlawfully restricted trade by not allowing nondentists to offer teeth-whitening services. The court reasoned that the dentists who served on that licensing board had a conflict of interest and that they were trying to use their regulatory position to protect themselves against competition from a lower-wage provider.

As a result of this Supreme Court decision, members of state licensing boards that engage in anticompetitive practices can be sued under the antitrust laws. That has had a negative effect on some state licensing boards. Sarah Oxenham Allen, the senior assistant attorney general of Virginia, said in a statement before Congress: "Private individuals already have begun expressing hesitation to serve on state boards because of the treble damages risk, and many state constitutions inhibit the ability of states to indemnify board members from treble damage liability." In Florida, the chair of the state Podiatry Board stepped down because of potential lawsuits due to anticompetitive practices.

The efficient functioning of these boards is in many cases necessary for health and safety reasons, and we would want people with expertise about the profession and its services serving on them.



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Dentistry is one of the professions that requires occupational licensure for health and safety reasons.

Given the problems with licensing, plus the new antitrust liability issues, Congress is looking to curb the former and limit the latter. The Restoring Board Immunity Act (RBI) has been introduced in both the U.S. House and Senate. It would establish that individuals who serve on occupational boards are not subject to antitrust liability provided that their state has implemented clear occupational licensing reforms.

States would be required to actively supervise occupational boards to ensure that they are protecting the public interest instead of advancing private economic interests such as restricting the supply of practitioners or expanding the scope of work over which the regulated occupation has a monopoly. Equally important, states would be required to examine licensing laws through, for example, periodic cost-benefit reviews to ensure that the licensing of an occupation is still serving a public purpose.

If states take these steps, then licensing boards would have immunity from antitrust liability.

This proposal addresses two problems. It ensures that state licensing boards will have high-quality professionals serving without fear of lawsuits, and it reduces excessive regulations promoted by the licensed occupations, which are interested in the maintaining of high salaries by limiting access to the professions. The nonpartisan approach to these issues is one where consumers, advocates of economic growth, and more efficient and equitable labor markets gain.

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