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The de-licensing of occupations in the United States

Occupational licensing directly affects nearly 30 percent of U.S. workers today and continues to grow in density and scope. In this article, we identify and analyze those rare instances when occupational licensing laws have been eliminated—what we refer to as "de-licensing." We also discuss recent examples in which courts decided to limit the scope of occupational licensing laws, and we analyze recent efforts (almost uniformly unsuccessful) of a few states to de-license groups of occupations. The reason proposed for most of these efforts is that excessive levels of licensing have hindered job creation, especially for people with lower levels of education. We argue that the paucity of successful de-licensing efforts is due to intense lobbying by associations of licensed professionals as well as the high costs of sunset reviews by state agencies charged with the periodic review of licensing and its possible termination.

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Unions and occupational licensing share several common characteristics. For example, both unions and occupational licensing have had roughly equal effects on relative wages, at least on average, with effects in the 10- to 15-percent range, as H. G. Lewis first estimated several decades ago for unions and Morris Kleiner and Alan Krueger most recently observed for occupational licensing.[1] Furthermore, the proportions of the labor force represented by unions and by licensing (their "densities") at their peaks have been roughly equal at 30 percent. Of course, the big difference here is that union density peaked nearly 50 years ago and has been falling since, while licensing density continues to rise.

In this article, we focus on another characteristic that unions and licensing have in common: the possibility of cessation of coverage. With unions, this outcome can be attained by a decertification election that removes a union as an exclusive bargaining representative of workers. With licensing, it can be attained by legislation (or, in rare cases, by court decisions), eliminating the requirement that an individual must have a license to practice the

occupation in question. For the latter case, we have elected to use the term “de-licensing.” We believed that we had coined a new term, but the word “delicense” is sometimes used (although rarely) to refer to the process of depriving a person of a license to practice an occupation because of, for example, unethical behavior or malpractice. To avoid confusion, we shall use our term (with a hyphen) to refer to the elimination of a license as a legal requirement for practicing a particular occupation. In this context, it is the best word to use. “Deregulation” is a much more general term and can describe many types of occupational deregulation, such as moving from a regime of licensing to one of certification or to registration.

This article is the first to document and analyze attempts at the state level—both successful and unsuccessful—to de-license certain occupations in the United States over the past several decades. We also analyze the sources, motivations, and mechanisms behind such efforts. In addition to de-licensing, we further analyze several highly publicized cases of reductions in the scope of licensure, as well as recent state-level attempts to de-license collectively certain groups of occupations. We end by suggesting reasons de-licensing attempts have been so uncommon.

Background

Each year, hundreds of petitions are filed with the National Labor Relations Board to hold a union decertification election. From 2001 through 2010, the number of such petitions has averaged over 700 a year. Of those petitions in which a union decertification election is held (about half of such petitions), unions lose about 60 percent of the time.[2] The point is that union decertification in the private sector, while certainly not common, is by no means rare.

On the other hand, attempts (successful or otherwise) to eliminate occupational licensing are seldom encountered. As Kleiner notes, “It is rare for an occupation to become deregulated by a government agency, for the regulatory powers of a licensing board to be stripped by the legislature, or for the licensing board to ask to be terminated.”[3] How rare is de-licensing? Our analysis of the past 40 years has uncovered only a handful of cases in which an occupation licensed at the state level was de-licensed by legislative action. As we will show, state sunset committees have occasionally recommended that specific occupations be de-licensed, only to have the committee recommendation not acted on. The sunset review process is one that involves periodic reviews—usually called “legislative audits”—of licensing and licensing boards (as well as other public agencies) and their possible termination, unless continued by the legislature.[4] In other cases, legislative bills recommending the de-licensing of certain groups of occupations have been drafted only to die in committee, fail to be passed by the state legislature, or go unsigned by the governor. In the following sections, we document and analyze these cases. The few examples of complete de-licensing that we have uncovered over the past 40 years are from reviewing state legislative audit committee records, reports of the Council on Licensure, Enforcement and Regulation (CLEAR),[5] and various other sources.

Addressing de-licensing is important because it raises several questions. Once an occupation is licensed, is it likely to remain licensed, or do effective mechanisms exist to periodically reevaluate whether the continued licensing of the occupation is in the public interest? What effects has de-licensing had or could be expected to have on the numbers of practitioners and earnings levels in the de-licensed occupation? Various studies have found that licensing, much like unions, can reduce practitioner numbers while increasing earnings.[6] Does de-licensing cause converse effects? That is, would de-licensing increase the number of practitioners while decreasing earnings? If so, how sizable are these effects and how rapidly would they occur? These questions are

particularly important because the extent to which job regulation (such as licensing) inhibits job growth and the potential for deregulation to promote job growth have recently become important national issues.

De-licensed occupations at the state level

As we discuss in the following subsections, our research of state legislative audit committee records, CLEAR reports, and various other sources has revealed only eight instances of the de-licensing of occupations over the past 40 years.

Barbers in Alabama

The National Association of Barber Schools (NABS) (which no longer exists) formerly published annual reports listing the various barber licensing requirements for all states.[7] According to its reports, in the early 1970s, Alabama was the only state without a barber licensing law, although the NABS data also indicated that "some Alabama counties had barber laws." Effective in 1973, the Alabama legislature passed a licensing law that required barbers hereafter to have completed 1,500 hours of barber school instruction and obtained a minimum of 12 years of formal education. Although a grandfathering exception existed,[8] shortly after the 1973 law passed, the reported number of barbers practicing in Alabama fell sharply. The law was in effect for approximately 10 years until 1983, when Alabama state barber licensing requirements were dropped. After that time, Alabama was again the only state in the United States not licensing barbers, although seven counties—Baldwin, Lauderdale, Jefferson, Mobile, Madison, Morgan, and Shelby—continued to do so. Interestingly, cosmetologists—whose haircutting services are close substitutes for those of barbers—continued to be licensed over this period.

In 2000, a bill was introduced in the Alabama senate to again license barbers, but the bill did not pass. However, in 2012, another barber licensing bill was introduced, and in May 2013, it became law. As its sponsor stated, "In a business where personal services are being administered, there is a duty to make those services safe and sanitary with the highest level of care."[9]

The new Alabama law requires that all barbers be licensed, with fines of $500 and up to 30 days in prison for those who practice without a license. To become a licensed barber, one must complete at least 1,000 clock hours of instruction in a school of barbering and pass an examination. (A person already working as a barber on the effective date of the act is grandfathered, however.) Finally, the act replaces the Alabama Board of Cosmetology with the Alabama Board of Cosmetology and Barbering, which now regulates barbers as well as cosmetologists, aestheticians, manicurists, and natural hairstylists.[10]

The licensing regime for barbers in Alabama has been unique in its transformation from a situation of no licensing to one of licensing, with the cycle repeated. Interestingly, to be a licensed cosmetologist in Alabama requires 50 percent more hours of schooling than the number of hours to be a licensed barber (1,500 hours vs. 1,000 hours), despite the similar services of each occupation.

Morticians (funeral directors) in Colorado

Currently, morticians are commonly referred to as "funeral directors," although the term "undertaker" is also still used. Funeral directors arrange the details and handle the logistics of funerals. They help set up the locations, dates, and times of wakes (viewings), memorial services, and burials. Often, funeral directors also practice embalming, and sometimes, different titles are used for those who do or do not practice embalming and/or

cremation.[11] For example, Colorado refers to funeral directors who practice embalming as “mortuary science practitioners.”

Funeral directors are licensed in all states except Colorado. After state auditor and sunset committee reviews, the Colorado legislature repealed the mandatory licensing of funeral directors in 1981 and abolished its 70-year-old licensing board. However, a “title protection” requirement is still in place. The Colorado statute states the following:[12]

> A person shall not advertise, represent, or hold oneself out as or use the title of a funeral director unless the applicant has at least 2,000 hours practicing or interning as a funeral director and has at least fifty funerals or graveside services.

Similar title protection requirements apply to mortuary science practitioners and embalmers. The Colorado statute means that, although a person does not need a license to practice legally, he or she may not use the title ordinarily associated with the practice unless the requirements have been met.

Since the repeal of the licensing requirement for funeral directors in 1981, proponents of licensing have frequently attempted to reinstitute the licensing of funeral directors and other practitioners of mortuary science. In its role as a “sunrise review” committee, the Office of Policy, Research and Regulatory Reform of the Colorado Department of Regulatory Agencies (DORA) has repeatedly recommended against reimposing licensing, arguing that “there is no evidence that a licensing board could improve existing oversight.”[13]

Naturopaths in Virginia

According to the American Association of Naturopathic Physicians, naturopathic medicine encompasses exercise, changes in lifestyles, and certain natural therapies. Naturopathic doctors or “naturopaths” combine traditional natural healing methods with modern medical science. Colleges of naturopathic medicine appeared in the United States as early as 1902; however, in the middle of the 20th century, interest in naturopathic medicine declined with the widespread use of antibiotics and scientific medicine. However, in the 1970s, interest was renewed with the growing popularity of alternative medicine.[14]

Currently, 16 states have licensing laws for naturopaths, and some of these laws date back to the early decades of the 20th century. To receive a license, naturopaths must graduate from an accredited 4-year naturopathic medical school and pass a board examination.[15]

Virginia had previously licensed naturopaths but discontinued licensing in 1972, partly because the state only had four licensed naturopaths. Owing to renewed public interest in naturopathic medicine, a sunrise review for possible relicensing was conducted in 2005,[16] but not until 2011 was a bill introduced in the legislature to again license practitioners. Lobbyists representing the Medical Society of Virginia strongly opposed the bill, and eventually, it was tabled. The Society argued that training requirements for naturopaths are not comparable with those of physicians and that it wished to protect the public interest by not confusing consumers.[17]

The stance of the Medical Society on the relicensing of naturopaths presents an interesting contrast with that of cosmetology groups in Alabama, which over the decades have strongly supported the licensing of barbers.[18] This contrast may be because if consumers view two service providers as close substitutes, with differences nearly indistinguishable (barbers and cosmetologists, for example), then both groups of practitioners may benefit from the licensing of each occupation. However, if consumers do not consider two service providers to be close substitutes

and consider them more easily distinguishable (e.g., physicians and naturopaths), the licensed occupation (physicians) in its economic interest should oppose the licensing of the unlicensed occupation (naturopaths). This opposition would help prevent consumers from viewing the alternative service as a closer substitute because of the enhanced status that licensing can confer.[19]

Private investigators in Colorado

In 1977, the Colorado Supreme Court removed statewide licensing requirements for private investigators (PIs), ruling that the licensing statute was unconstitutional since it did not clearly explain the scope of its effects.[20] The Professional Private Investigators Association of Colorado formed in 1978 to establish a framework for a new licensing statute. However, subsequent sunrise reviews on four separate occasions (1985, 1987, 2000, and 2006) by DORA of Colorado have all recommended against reinstituting licensing requirements to perform the activities of a PI, while a number of bills brought to the state legislature have also been unsuccessful.

PI licensure was again addressed in 2011. The sunrise application claimed that regulating PIs would serve two purposes: (1) It would prevent “charlatans, liars, cheats and criminals” from practicing, and (2) it would help PIs access sensitive information via motor vehicle records, court documents, and so forth. Although DORA once more recommended against outright licensure, it this time proposed a more modest form of regulation. The regulation would require PIs to have either a surety bond or errors and omissions insurance and to pass a jurisprudence examination that would test a candidate’s knowledge of current Colorado laws relevant to the PI occupation. This regulatory oversight, DORA argued, would help protect consumers and provide an avenue of recourse for consumers who have been harmed financially by PIs.[21] Nonetheless, in March 2011, the Colorado legislature passed the Registration of Private Investigators Voluntary Licensure Act, which provided potential PIs with the option to obtain a license. The act allows a PI in Colorado to obtain a voluntary PI license if certain requirements are met (such as obtaining 4,000 hours of experience and passing a criminal history record check). Also, any PI who does not obtain a license is prohibited from using the title “licensed private investigator.” (A violation is a class 2 misdemeanor, with fines up to $1,000 and 1 year in jail.) In effect, the law functions as a certification statute. Proponents supported the bill for the reasons just discussed, whereas opponents claimed that certification would lead to eventual licensing. All but four states (Idaho, Mississippi, South Dakota, and Wyoming) currently regulate PIs.

Egg candlers in Colorado

Besides occupations of funeral director and PI, Colorado also has de-licensed the occupation of egg candler, citing existing regulations as an “unnecessary burden.” Eggs are generally “candled” and graded before consumption. Candling involves a candler holding eggs up to a light source to determine the condition of their yolk, white, and air sac through the shell.[22] Candling can be used to detect abnormalities and to monitor the growth and development of an embryo inside the egg. Colorado began requiring egg candlers to obtain a license in 1956.[23] Although the production, sale, and grading of eggs are regulated in all states, only six other states besides Colorado (Georgia, Iowa, Montana, South Dakota, Tennessee, and West Virginia) have issued a separate egg candler or egg grader license in addition to an egg wholesaler license.[24]

In 1994, a sunset review by DORA of the so-called Colorado “Egg Law”—a set of statutes in which the state Department of Agriculture regulated egg handling and grading—recommended removing licensing requirements for egg candlers. The recommendation of DORA was based on the declining numbers in the occupation and the

fact that egg candlers "already worked for wholesalers who had an economic interest in ensuring [that] the eggs they sell meet all standards and grades."[25] After the review, the General Assembly of Colorado instituted the recommendations of DORA and passed them into law. Colorado has not tried to reinstitute licensing requirements for egg candlers.

Interior designers in Alabama

Interior designers make interior spaces functional, safe, and attractive for most types of buildings (e.g., offices, homes, shopping malls, and restaurants). They also select colors, furniture, flooring, wall coverings, lighting, and other materials for the interiors of buildings.[26] Some claim that no clear distinction exists between the occupation "interior designer" and the more familiar occupation "interior decorator," although the American Society of Interior Designers contends that the former occupation requires more education and experience.[27]

In 1982, Alabama became the first state to regulate interior designers by enacting a titling (certification) law. This meant that, while no one was prohibited from practicing interior design, a person could not refer to or advertise oneself as an "interior designer" without meeting certain legal requirements, such as obtaining a minimum number of years of education and experience and passing an examination. About two dozen other states followed the Alabama law with interior designer title protection laws of their own. Several others (Nevada, Louisiana, and Florida, along with the District of Columbia) went further by requiring a license to practice. According to the Institute for Justice, obtaining a license in these three states is among the most demanding of all licensed occupations.[28] Then in 2001, Alabama also began requiring a license for its interior designers to practice. However, 3 years later (2004), an Alabama state court declared the law unconstitutional—a decision that was later upheld by the Supreme Court of Alabama. Therefore, the Alabama law has reverted to a title protection law.

In the last few years, several other states also have seen their interior designer title protection statutes declared unconstitutional or modified. The Connecticut law was found unconstitutional in 2009, with a U.S. District Court ruling that it "restricted commercial speech."[29] And a similar statute in Texas was in danger of the same fate, but the Texas legislature passed a new law in 2009 that provided for voluntary registration of interior designers. The Texas law effectively stripped away title protection. Currently, no restrictions exist in Texas on those who may call themselves interior designers, although only those who register may call themselves "registered" interior designers. Other court challenges have been made in Florida, New Mexico, and Oklahoma.[30]

Watchmakers in Minnesota and Wisconsin

Minnesota began to regulate watchmakers in 1943.[31] In that year, the Minnesota Board of Examiners in Watchmaking was established. The Minnesota law defined watchmaking as "the repairing, replace [sic], rebuilding, readjusting or regulating of the mechanical parts of watches, and the repairs thereof and the manufacturing and fitting of parts designed for use or used in watches."[32] Minnesota law required all persons engaged in this occupation to have a registration certificate. However, Minnesota later amended the law to require a license with annual renewal. Applicants for a license were required to have served an apprenticeship and to pass an examination. The Board could also revoke licenses of persons for incompetence or unethical conduct.

The Minnesota law was repealed in 1983 when the number of watchmakers in the state had dropped to fewer than 100.[33] Many other states had also attempted to license watchmakers, but eventually, the courts struck down most attempts.[34] Nonetheless, a number of other states have set up certification procedures for watchmakers.

As for Wisconsin, a law was passed in 1937 requiring that watchmakers be licensed.[35] A five-member Board of Examiners administered the statute, administered examinations, and issued "certificates of registration." In 1979, the Board was abolished, thereby ending the licensing requirement. Wisconsin watchmakers became eligible for a refund of the fees that they had been required to pay for their licenses.

Restricting the scope of licensing

In addition to the examples of complete de-licensing just mentioned, a number of cases have occurred in which the scope of licensing has been either reduced or prevented from expanding.[36] By "scope," we are referring to how broadly the licensing regulations are interpreted concerning occupations whose characteristics share some similarities with those of the licensed occupation. One occupation in particular should be noted—hair braiders. Hair braiders do exactly what the name implies, and braided hair is especially popular among African American women. However, in many states, hair braiders have been required to hold a cosmetology license, which can require as many as 2,000 hours of training. Cosmetology training, however, has little to do with hair braiding. In fact, most schools of cosmetology do not teach the technique. In a 1998 case that attracted national attention, the California cosmetology board alleged that a hair braider was practicing without a license. The penalty for practicing without a license is 1 year in jail and a fine.[37] However, a U.S. District Court later struck down as unconstitutional the California law requiring that hair braiders obtain a cosmetology license to practice their trade, ruling that it violated the due process clause of the 14th Amendment.[38]

Another suit that attracted national attention was filed in Utah in 2011 against the state's cosmetology law. The Utah law stipulated that anyone working on hair must hold a cosmetology or barber license, which required 2,000 hours of training.[39] The hair braider in this case had learned traditional hair braiding in her native Sierra Leone. The state board denied her request to practice without a cosmetology license. But in August 2012, a federal judge ruled that Utah's requirement was unconstitutional. In his ruling, the judge stated, "Utah's cosmetology/barbering licensing scheme is so disconnected from the practice of African hair braiding, much less from whatever minimal threats to public health and safety are connected to braiding, that to premise [the plaintiff's] right to earn a living by braiding hair on that scheme is wholly irrational and a violation of her constitutionally protected rights."[40] In March 2013, the Utah legislature passed a revised cosmetology and hair braiding bill, which provides an exemption from the cosmetology licensing requirement for a person who is in the business of hair braiding.[41] The law also lowered the training requirement for a cosmetology license from 2,000 hours to 1,600 hours.

Several other states also have recently reduced the training requirements for hair braiders. For example, Illinois passed a law in 2010 stating that hair braiders who have practiced for at least 2 years are exempt from obtaining a license. Other hair braiders are now required to complete 300 hours of training in braiding methods and sanitation, much less than the number of training hours required for cosmetologists. A number of other states (e.g., Arizona, California, and Mississippi) have recently exempted the occupation of hair braiding from cosmetology licensing.[42] In addition, in June 2013, Oregon passed a law exempting "natural hair care" (including braiding) workers from certain educational requirements required for cosmetology and barbering. However, the law still subjects such workers to the regulatory authority of the Board of Cosmetology and Oregon Health Licensing Agency.

A few other licensed occupations have seen the extent of their jurisdiction—their scope—cut back in recent years. For example, Louisiana had for many years determined that selling burial caskets was solely within the scope of licensed funeral directors. In other words, only licensed funeral directors could sell caskets. When monks at a

monastery just outside New Orleans began to make and sell handcrafted caskets, they were issued a cease-and-desist order from the Louisiana Board of Embalmers and Funeral Directors, the state licensing board.[43] The monks then filed suit, claiming that their right to due process under the 14th Amendment was being violated under the Louisiana funeral director licensing law. In 2011, a U.S. District Court ruled in favor of the monks, but the case was appealed.[44] In October 2012, the 5th U.S. Circuit Court of Appeals issued an opinion in favor of the monks, ruling that restricting the right to sell caskets was either unconstitutional or an abuse of state regulatory power.[45] And in March 2013, the Court of Appeals issued its final decision, rejecting the state's claim that it had the power to enact legislation restricting the right to sell caskets to only licensed funeral directors. At the time of this writing, the state of Louisiana was considering appealing the decision to the U.S. Supreme Court.

In other cases involving laws restricting the sales of caskets and funeral-related items, federal courts have ruled against such laws in Mississippi (2000) and Tennessee (2000), although a federal court refused to strike down a similar Oklahoma law.[46]

Attempts to de-license groups of occupations collectively

As previously noted, our research has discovered only eight instances in the past 40 years of the successful de-licensing of an occupation at the state level. And in four of these cases, attempts to relicense the occupations followed soon afterward. However, as discussed in the following subsections, several multiple-occupation de-licensing proposals have recently occurred at the state legislative level, which have so far been unsuccessful. These de-licensing proposals have not gone through the sunset review process. Instead, the proposals have been made in the context of legislative concern that excessive government regulation (of which occupational licensing is one example) may have inhibited job growth.

North Carolina

In 2011, the North Carolina House of Representatives proposed a bill (House bill 587) entitled "An act to promote North Carolina job growth through regulatory reform." It was nicknamed the North Carolina "Jobs Bill," and its purpose was to "remove bad regulations, stop new bad regulations from being enacted, prevent regulatory burdens from impacting growth and hiring, and to remove barriers to market entry for entrepreneurs, including the reassessment, reduction, or removal of State licensure programs."[47] Among its other features, the bill would create a special 12-member Legislative Study Commission on Occupational Licensing, with members appointed by the governor, the state legislature, and the public.[48] The commission's duties would be to

- "identify outdated and unnecessary occupational licensing laws that should be repealed
- identify existing occupations that are regulated that do not require licensing
- study alternatives to occupational licensing laws that would work effectively
- study to what extent occupational licensing laws create barriers for individuals, including low-income individuals, from entering into new occupations."[49]

The bill referred to no specific occupations. Although portions of the bill were later incorporated into a Senate bill that was passed (Regulatory Reform Act of 2011),[50] the terms related to occupational de-licensing were dropped.

Florida

In 2011, the Florida House approved a bill that would deregulate 14 licensed occupations, including auctioneers, athlete agents, hair braiders, interior designers, and professional fundraising consultants and solicitors. Support for the bill stemmed from the belief that excessive regulation, such as unnecessary licensing, had hindered the growth of jobs in the state. The bill ultimately failed after it was rejected in the Senate.[51] In 2013, the Florida House and Senate introduced similar bills (Deregulation of Professions and Occupations—House bill 1189 and Senate bill 720) but both died in committee.[52]

New Hampshire

In 2011, state House bill 446 proposed the repeal of the licensing of more than a dozen occupations licensed at the state level, including barbers, cosmetologists, massage therapists, hunting/fishing guides, and court reporters.[53] After much debate and several amendments, the bill was defeated in January 2012. The next year, however, a new bill, House bill 1265, was introduced that would establish criteria for boards and commissions to regulate occupations as authorized by law.[54] The bill would also create a committee to determine the appropriate level of regulation for each occupation. The language of the bill appears to criticize licensing, as sections I and II of House bill 1265 state:

- Section I: “Occupational licensing requirements are usually implemented at the request of the very groups that are regulated, and not by the consumers they ostensibly protect. Licensing requirements create barriers to entry and decrease competition, which increase prices, although there is little evidence that there is an offsetting increase in consumer protection. . . .”
- Section II: “Licensing often requires formal postsecondary education. This requirement closes doors and reduces upward mobility for those who do not pursue higher education. When licensing requirements are not based on demonstrated skills, they close off opportunities to advance for persons who learn on the job or pick up skills on their own without formal education.”

The New Hampshire bill would instead support certification, or “voluntary licensing,” which is “better for consumers than licensing” and which “[s]imilar to licensing . . . sends a signal to consumers about who has met the government’s requirements.”[55]

In late 2013, a legislative study committee recommended against advancing the bill for consideration. However, the sponsor of the bill indicated that, at some future time, he will again advance the bill for legislative consideration.[56]

Indiana

In January 2012, House bill 1006 was introduced in the Indiana General Assembly that would eliminate mandatory licensing for barbers and cosmetologists, as well as for dieticians, hearing aid dealers, PIs, and security guards.[57] The sponsor of the bill stated that “regulations are killing small businesses.” However, its sponsor withdrew the bill 1 week after it was introduced presumably because of opposition to the bill, namely from cosmetologists (whose training requirements in Indiana are 1,500 hours and at least 10 years of education).

Soon after the bill was proposed, it was denigrated as the “right to work for less” bill, an acknowledgment that licensing raises earnings. The bill was also criticized because, despite its purported aim of reducing government bureaucracy and saving taxpayer dollars, it would allegedly cause the state to lose more than $1 million in revenue from licensing fees. (Many licensing regimes generate surpluses for state coffers, which may be another obstacle

for those seeking deregulation.) Finally, the criticism was raised that, without licensing, many beauty schools would move out of state, thereby eliminating teaching jobs and reducing profits for beauty school operators.[58] As the bill's sponsor put it, "Even though I agree with the overall goal of the legislation—that being less government involvement—I understand that this is not the year to do it, and this is not the legislation to do it with. I decided to withdraw the bill because we can do better."[59]

The Indiana state senate passed a similar bill (Senate bill 520) in February 2013.[60] This bill would create a committee to "eliminate, reduce, and streamline employee regulation" (the so-called "ERASER committee"). It would also automatically eliminate licensing requirements for some 14 occupations (e.g., dieticians, beauty workers, and massage therapists) over a 5-year period unless the legislature voted to retain them. However, the bill failed to receive a hearing in the state house.

Michigan

The Michigan Office of Regulatory Reinvention (ORR) released a report to the public in April 2012 recommending the complete deregulation of 18 occupations (about half of them licensed), among them acupuncturist, auctioneer, interior designer, dietician, nutritionist, and speech pathologist.[61] The ORR based its recommendations on the findings of a special committee made up of lawyers, business owners, policy analysts, academics, and officials from the Michigan Department of Licensing and Regulatory Affairs (LARA). Noting that Michigan is among the most heavily regulated states with respect to occupational licensing, the LARA director stated that "occupational regulations, while in many cases necessary to protect consumers and public health, operate as a barrier to entry into a given profession."[62] According to LARA, the recommendations are expected to encourage business growth and job creation by removing barriers to entry and allowing employers to hire qualified employees without government dictating an employee's qualifications.[63] Any changes in licensing or other occupational regulations must still be implemented through the state legislature. The Michigan legislature has considered a number of bills that would deregulate several of the occupations just listed, but not one is a licensed occupation.

Texas

In June 2013, House bill 86 was signed into law and described as "relating to the criteria for review by the Sunset Advisory Commission."[64] Strictly speaking, the act was not designed to de-license groups of occupations but rather to furnish the Texas Sunset Advisory Commission with a broader set of criteria for de-licensing an occupation. Specifically, the act (effective in September 2013) requires that when the commission reviews an agency that licenses an occupation, the commission will consider the following:

1. Whether the occupational licensing program serves a meaningful, defined public interest and provides the least restrictive form of regulation that will adequately protect the public interest
2. The extent to which the regulatory objective of the occupational licensing program may be achieved through market forces, private or industry certification and accreditation programs, or enforcement of other law
3. The extent to which licensing criteria, if applicable, ensure that applicants have occupational skill sets or competencies that correlate with a public interest and the impact that those criteria have on applicants, particularly those with moderate or low incomes, seeking to enter the occupation
4. The impact of the regulation, including the extent to which the program stimulates or restricts competition and affects consumer choice and the cost of services. The Texas statute also creates a sunrise process for proposed new licensing of occupations, with criteria similar to those just stated.[65]

In May 2014, the Sunset Advisory Commission prepared a staff report for the Texas Department of State Health Services, recommending de-licensing of six occupations. The Department is responsible for issuing licenses for a number of health occupations. The six licensed occupations recommended for de-licensing were dietitians, dyslexia therapists and practitioners, medical physicists, radiologic technologists, perfusionists, and respiratory care practitioners. A Senate bill (202, 84th legislative, 2015–2016) that would make several of the recommended changes is currently in committee.[66]

Connecticut

In January 2013, a bill (Senate bill 324) was introduced in the Connecticut Senate entitled “An act requiring the commissioner of consumer protection to undertake a study of occupational licenses.”[67] The bill recommended eliminating those licenses that are not necessary to protect the public health or safety. The reason was to relieve individuals and small businesses by eliminating unnecessary regulatory burdens. At the time of this writing, the bill had not been voted on.

Missouri

In February 2013, the Missouri House introduced a bill (House bill 590) that would allow persons to practice the occupation of interior design, barbering, or cosmetology without having to secure a license.[68] The only restriction was that such a person may not “hold himself or herself out as a registered interior designer” or as a licensed barber or cosmetologist. The bill was not put forward for a vote. Instead, it was referred to the Committee on Downsizing State Government, whose charge is to consider matters on reducing the size of state government and its programs. It has since died in Committee.

In early 2014, a similar bill (House bill 1891) was introduced that would allow persons engaged in a greater number of specified occupations than the number listed in House bill 590 to practice without a license, again as long as the persons do not claim to be licensed.[69] The occupations mentioned in the bill include geologist; the boxing, sparring, wrestling, and karate occupations; massage therapy; interior designer; PI; landscape architect; barber; cosmetologist; embalmer; funeral agent; and athletic agent. As of the time of this writing, House bill 1891 has not been put forward for a vote.

Finally, in February 2014, a bill (House bill 1824) was introduced that would restrict the imposition of licensing requirements on occupations not regulated as of January 1, 2015.[70] The bill proposes the following principles:

- All individuals may engage in the occupation of their choice, “free from unreasonable government regulation.”
- All bills introduced in the legislature to regulate an occupation for the first time should only be so regulated if unregulated practice has greatly harmed and endangered the general welfare of the public.
- If the legislature finds that the state has a compelling interest in regulating a previously unregulated occupation, the least restrictive type of regulation should be implemented.

In April 2014, House bill 1824 failed to pass a vote by the Rules Committee. Not surprisingly, the Missouri chapter of the American Massage Therapy Association, as well as by other affected professional groups, strongly opposed both House bill 1824 and House bill 1891.

Minnesota

A Minnesota bill, the “Licensing Relief and Job Creation Act” (House file 2002), was first proposed in 2011.[71] The bill would allow an individual who is practicing without a license in a licensed occupation the right to challenge the licensing requirement in court. Specifically, the bill states that “a person has a right to engage in a lawful occupation free from any substantial burden, unless the government demonstrates it has a compelling interest in protecting against present and recognizable harm to the public health or safety.”[72] In such a case, the type of occupational regulation that should be selected should be “the least restrictive means of furthering that compelling interest.”

The bill was first read in the Minnesota House in January 2012 and was referred to the state Commerce and Regulatory Reform Committee. However, the committee did not vote on or consider the bill in the months following its referral. (The committee has not met since then.) In addition, the chief authors of the bill were not reelected for the following legislative term, most likely killing the bill.[73]

Discussion

In nearly every instance that we analyzed, de-licensing and de-licensing attempts have been met not only with stiff resistance but also usually (when successful) with a movement to reinstitute licensing. Clearly, these results reflect the lobbying power of the occupations in question and their professional associations. But in addition to lobbying power, what other reasons can be offered for the paucity of examples of successful de-licensing?

Milton Friedman offers one reason with his well-known observation that “licensure arrangements almost invariably involve control by members of the [licensed] occupation” (in other words, regulatory capture).[74] Friedman’s perhaps equally well-known observation that the benefits for licensed groups from licensing legislation are high while the costs to the public (consumers) are relatively low and widely dispersed is also conversely true regarding proposals to de-license.[75] In this case, the costs to the licensed groups from such de-licensing are high while the benefits for the public are low and widely dispersed.

Another contributing factor is that, in an accounting sense, licensing and licensing boards are generally expected to (and usually do) pay for themselves. Some may even create small yearly surpluses in their operations. Especially in times of fiscal stress on state budgets, legislatures may be understandably reluctant to eliminate a revenue-producing agency.

As noted earlier, over the past several decades, sunset laws have been passed in several states—about 36 since the 1970s. These laws require the periodic review of certain programs and agencies (such as occupational licensing and licensing boards). The periodic reviews are commonly called performance audits or legislative audits, and they result in a recommendation to either continue or discontinue the licensing of the occupation under review.[76] How effective have these laws been? About half the states that had passed sunset laws later repealed or suspended them, while many others have limited the frequency of the audits. Moreover, in theory, a legislature's decision to terminate or continue licensing is based on the sunset review panel's recommendation. But in fact, these reviews rarely recommend de-licensing. Rather, from our study of performance audits across the states, they usually recommend that the licensing of the occupation be continued. In those rare instances when a performance audit does recommend de-licensing, we have found that the legislature usually ignores the recommendation and votes to continue to license the occupation. Hawaii is an example.

On at least three occasions since the 1980s, the Hawaii Legislative Auditor Office has recommended the complete deregulation of the barbering and beauty worker occupations. However, the Hawaii legislature voted each time to continue licensing the two occupations. Other occupations in Hawaii that have been recommended for de-licensing include mechanics, bail bond agents, dispensing opticians, and sanitarians (also known as public health inspectors), but again, in each case, the audit committee's recommendations were not implemented.[77]

The experiences in other states have been similar to that of Hawaii. For example, DORA of Colorado released a sunset report in 1999 recommending the complete deregulation of manicurists and cosmeticians (aestheticians), but the legislature did not act on the recommendation.[78] And in 2004, DORA suggested sunsetting the regulation of respiratory therapists, but the legislature did not act on the recommendation. Maryland is another state with a history of sunset reviews that recommended de-licensing only to have the legislature not act on the recommendations. The occupations in question were foresters (with reviews recommending terminating forester licensing made in 1982, 1992, and 2012), interior designers (2003), and environmental sanitarians (2011).[79] These examples of failed sunset reviews are further evidence of the lobbying power and legislative influence that many licensed groups possess through their licensing boards or their professional associations. Sunset reviews are also time-consuming and costly. As a result, many of these laws and the sunset review committees that were created have been subsequently limited, suspended, or repealed. A major reason is that the process demands much time of legislators and review committees.

Economist William White has recognized that licensing can bring with it "ratchet" effects that may make it more difficult to eliminate than to introduce in the first place.[80]Ratchet effects can occur because of grandfather clauses, which exempt existing practitioners from newly legislated licensing requirements. The result is that wages may not rise immediately with the onset of licensing requirements, since the supply of workers will not fall until those who are grandfathered leave the occupation. The reverse is not true, however. Should de-licensing occur, wages may be expected to fall immediately with the inflow of new workers with lower qualifications into the occupation. The net result is that the immediate losses to practitioners from de-licensing are likely to be greater than the gains from licensing. Hence, the resistance to de-licensing is likely to be greater as well.

Finally, as we have seen, a number of recent attempts have occurred at the state level—nine as of 2014—to de-license collectively certain groups of occupations. Although these attempts were unsuccessful, the occupational groups proposed for deregulation share some common characteristics. They usually number about one or two dozen, they generally are occupations that require relatively low levels of education, and their deregulation is not

likely to sacrifice public health or safety. In most cases, hair workers (barbers, cosmetologists, and hair braiders) are among the occupations proposed for de-licensing. One reason often given is that excessive government regulation, such as occupational licensing, hinders job creation and growth, especially for those with lower levels of education and incomes. Nevertheless, these de-licensing bills have generally been met with stiff opposition and have consequently been withdrawn, defeated, or sent back to committee.

Conclusion

We believe this article is the first to uncover and analyze instances of the successful de-licensing of occupations at the state level. Of course, some cases may have been overlooked. The reasons are many, including that no central clearinghouse exists that collects records of de-licensing as well as that some state legislative audits are incomplete and not always available. In addition, imprecision and ambiguity are often found in the use of the terms “license,” “certification,” and “registration.” Unfortunately, the three terms are sometimes used interchangeably, with confusion the occasional result. Furthermore, often what appear to be occupational licenses are in fact simply business licenses. Occupational licenses are issued to individuals giving them the right to practice, whereas business licenses are issued to companies. Still, the de-licensing of an occupation no doubt rarely occurs. Recent attempts in nine states to collectively de-license groups of occupations have shown more potential, but as of yet, they have been almost uniformly unsuccessful.

Finally, we believe the several instances of de-licensing that we uncovered give researchers an unusual opportunity to analyze the effects that de-licensing has had on the numbers of practitioners and on earnings levels. As such, they constitute interesting natural experiments. A small but growing number of studies have found that licensing reduces practitioner numbers while it raises earnings. But what about the reverse effects of de-licensing on numbers and earnings? How sizable are these effects and how rapidly do they occur?

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certification or registration of the hundreds of regulated occupations and professions." Its website includes regular updates on licensing developments, both in the United States and other countries, and sunset reviews.

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