



TESTIMONY

COLORADO OCCUPATIONAL LICENSING: BARRIERS TO OPPORTUNITY IN THE CENTENNIAL STATE

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Chair Kraft-Tharp, Vice-Chair Coleman, and distinguished members of the House Committee on Business Affairs and Labor:

My name is Matthew Mitchell. I am an economist and a senior research fellow at the Mercatus Center at George Mason University, where I direct the Equity Initiative. Mercatus scholars working on the Equity Initiative study public policies that favor particular firms, industries, or occupations. In recent years, my colleagues and I have been studying occupational licensing laws, and I am grateful for the opportunity to discuss our findings with you.

Attached is a report that my colleagues and I submitted to the Federal Trade Commission, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce.” The report details the now-voluminous economic literature on the deleterious effects of occupational licensure and suggests a blueprint for reform.

In my testimony, I wish to focus on three points:

1. Licensing is a substantial barrier to employment, particularly for many lower-income Americans.
2. Licensing does little to enhance either consumer safety or the quality of services; it does, however, increase prices for consumers.
3. Successful reform is difficult, but not impossible. Policymakers must be able to cast conspicuous votes in the general interest, while special-interest power must be limited.

LICENSURE IS A SUBSTANTIAL BARRIER TO EMPLOYMENT

Licensing represents a significant and growing barrier to work. Nationally, the share of the workforce that is required to have an occupational license has increased more than fourfold in the past 50 years. As of 2015, nearly one in five working Coloradans—17.2 percent of the state’s workforce—was required to be licensed.¹

¹ Morris M. Kleiner, *Reforming Occupational Licensing Policies* (Washington, DC: The Hamilton Project at the Brookings Institution, March 2015), 9.

Aspiring entrants to a large number of professions—ranging from travel guide and gaming supervisor to cosmetologist—are now required by the state of Colorado to obtain a government-issued license to work. It can take years and hundreds or even thousands of dollars to obtain these licenses. Among 34 low- to moderate-income occupations licensed by Colorado, the average aspiring worker is required to spend 260 days in training and pay \$344 in fees before he or she may obtain a license.² This does not count either the cost of the education or the income that people forgo when they spend months in often-unnecessary training. According to the Institute for Justice, Colorado’s licensing laws are the 36th most burdensome in the country.

Licensure is often arbitrary. As shown in table 1, licensing requirements often don’t match the risk posed to the public by certain professions. Compared with emergency medical technicians, aspiring cosmetologists in Colorado must undergo *12 times* as many months of training; would-be bill collectors (who are unlicensed in 20 states) must complete more than *21 times* as much training; and athletic trainers must complete more than *40 times* as much training.

TABLE 1. OCCUPATIONAL TRAINING MISMATCHES IN COLORADO

| Occupation | Days of Education/Experience | Fees |
|------------------------------|------------------------------|---------|
| Emergency medical technician | 35 | \$98 |
| Cosmetologist | 420 | \$177 |
| Pest control applicator | 728 | \$513 |
| Bill collector | 730 | \$1,500 |
| Earth driller/water well | 730 | \$230 |
| Athletic trainer | 1,460 | \$400 |

Source: Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 54–55.

Licensing boards are dominated by members of the professions they oversee. About 80 percent of Colorado occupational licensure boards are required by law to have a majority of their members work in the professions they oversee.³ See table 2 for board composition data in a sample of Colorado boards. Owing to vacancies, many boards are composed entirely of industry insiders. This presents a legal concern in light of the US Supreme Court’s decision in *North Carolina State Board of Dental Examiners v. FTC*, which held that states may be liable for antitrust violations when boards are dominated by members of the professions they oversee and when elected officials fail to actively supervise these boards.⁴ It also creates a practical concern that boards will tend to act as industry cartels, controlling entry of new members rather than ensuring public safety.

² Dick M. Carpenter II et al., *License to Work: A National Study of Burdens from Occupational Licensing*, 2nd ed. (Arlington, VA: Institute for Justice, November 14, 2017), 54.

³ Rebecca Haw Allensworth, “Foxes at the Henhouse: Occupational Licensing Boards Up Close,” *California Law Review* 105, no. 6 (December 2017): 1609.

⁴ *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 135 S. Ct. 1101 (2015).

TABLE 2. COMPOSITION OF SELECT COLORADO BOARDS

| Board or Council | Industry Members | Total Members | Percent Industry |
|---|------------------|---------------|------------------|
| Board of Plumbers ^a | 4 | 7 | 57% |
| Real Estate Commission ^b | 3 | 5 | 60% |
| Motor Vehicle Dealer Board ^c | 6 | 9 | 66% |
| Board of Landscape Architects ^d | 3 | 5 | 60% |
| Board of Social Work Examiners ^e | 4 | 7 | 57% |

^a Colo. Rev. Stat. Ann. § 12-58-103 (West 2018).

^b Colo. Rev. Stat. Ann. § 12-61-105 (West 2018).

^c Colo. Rev. Stat. Ann. § 44-20-103 (West 2018).

^d Colo. Rev. Stat. Ann. § 12-45-105 (West 2018).

^e Colo. Rev. Stat. Ann. § 12-43-402 (West 2018).

Licensing reduces employment opportunities, especially among certain communities. High barriers to employment pose particular difficulties to lower-skilled, lower-educated populations, to immigrants, to those with criminal records, and to those who move frequently, such as military spouses. Eighty percent of the studies Mercatus scholars reviewed find that licensure has a disparate impact on minorities.⁵ Recent research suggests that barriers to entry are associated with greater income inequality and that licensure is negatively associated with absolute income mobility.⁶

LICENSURE DOES NOT SEEM TO INCREASE QUALITY OR SAFETY, BUT IT DOES RAISE PRICES

There is little evidence that licensure increases either the quality of services or the public's safety.

Theoretically, licensure might increase quality if it acts as a well-designed screening system. On the other hand, it might decrease quality by limiting competition. Reviews of the academic literature by scholars at the Mercatus Center and by officials in the Obama administration suggest that the two effects roughly cancel each other out (though more studies find that licensure reduces quality than find that it enhances it).⁷

There is abundant evidence that licensure raises prices. Economic theory is unambiguous: supply restrictions such as licensure tend to raise prices. And the evidence supports this theory. A Mercatus assessment of 19 peer-reviewed studies, finds that licensure is associated with higher prices in all 19.⁸ Reviewing many of the same studies, Obama administration officials similarly concluded that the association between licensing and higher prices is “unequivocal.”⁹

SUCCESSFUL REFORM IS DIFFICULT BUT NOT IMPOSSIBLE

Licensing reform efforts are difficult to implement successfully. The consumers and the aspiring professionals who suffer from anticompetitive licensing regimes are numerous and typically politically

⁵ Patrick A. McLaughlin, Matthew D. Mitchell, and Anne Philpot, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce” (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, November 2017), 7.

⁶ On income inequality, see Patrick A. McLaughlin and Laura Stanley, “Regulation and Income Inequality: The Regressive Effects of Entry Regulations” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, 2016). On absolute income mobility, see Brian Meehan, Edward Timmons, and Andrew Meehan, *Barriers to Mobility: Understanding the Relationship between Growth in Occupational Licensing and Economic Mobility* (Washington, DC: Archbridge Institute, 2017).

⁷ US Department of the Treasury, Council of Economic Advisers, and US Department of Labor, *Occupational Licensing: A Framework for Policymakers*, July 2015, 13; McLaughlin, Mitchell, and Philpot, “The Effects of Occupational Licensure,” 4.

⁸ McLaughlin, Mitchell, and Philpot, 5.

⁹ Department of the Treasury et al., *Occupational Licensing*, 14.

unorganized. On the other hand, the industry insiders who benefit from these regimes are comparatively few in number and typically well organized. Economists and political scientists have long blamed this pattern of diffused costs and concentrated benefits for the persistence of inefficient and inequitable policy.¹⁰ And this pattern has made licensing reform an uphill battle, even though experts across the political spectrum tend to agree that current licensing laws are inefficient and anticompetitive.

Drawing lessons from successful reform. Despite the advantages enjoyed by special interests, history affords a number of examples in which the general interest has prevailed.¹¹ In areas as varied as trade, race relations, and airline policy, special interests have occasionally lost their privileges while general and diffused interests have benefited from a more level and open playing field.

There are a number of important lessons to draw from these cases.¹² But perhaps the most important is that institutional reforms must permit policymakers to cast conspicuous votes in the general interest and limit the power of special interests to dominate the process.

In the case of occupational licensing, three potential reforms follow this pattern:

1. *Creating an independent commission.* One potential reform would be to establish an independent commission. It should comprise experts familiar with the economic literature on licensure and with no financial stake in the current regime. It should be charged with identifying and eliminating burdensome and anticompetitive licensing laws. And, ideally, lawmakers should be bound to take its advice in whole or not at all. This type of structure can ensure that state licensing regimes serve the general interests of the public and not the special interests of protected industries. More details on this approach can be found in the attached report.
2. *Requiring less restrictive means of regulation.* The state of Nebraska recently adopted a reform that highlights a different approach.¹³ There, the Occupational Board Reform Act of 2018 requires legislative committees to review 20 percent of licenses under their jurisdiction each year and all licenses under their jurisdiction every five years. The review process requires committees to gather information on the number of licenses the board has “issued, revoked, denied, or assessed penalties against” and the reasons for these actions. It also requires committees to review board composition, assess board activities, and compare these activities with the way other states regulate the occupation.

Most importantly, the act stipulates that licenses are warranted only when they address “present, significant, and substantiated harms,” and if such a harm is found to exist, the legislation requires policymakers to use the “least restrictive” regulation necessary to protect consumers from undue risk. Finally, the act establishes the following hierarchy of regulations, from least restrictive to most restrictive:

¹⁰ See, for example, Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Second Printing with New Preface and Appendix, revised (Cambridge, MA: Harvard University Press, 1971); Theodore J. Lowi, *The End of Liberalism: The Second Republic of the United States*, 40th anniversary ed. (New York: W. W. Norton & Company, 1969); James Wilson, *Bureaucracy: What Government Agencies Do and Why They Do It* (New York: Basic Books, 1991).

¹¹ See Matthew D. Mitchell, “Overcoming the Special Interests That Have Ruined Our Tax Code,” in *For Your Own Good: Taxes, Paternalism, and Fiscal Discrimination in the Twenty-First Century*, ed. Adam Hoffer and Todd Nesbit (Arlington, VA: Mercatus Center at George Mason University, 2018), 327–50.

¹² Again, see Mitchell, “Overcoming the Special Interests.” But briefly, these lessons are (1) ideas matter, especially in the long run, (2) institutions matter too, (3) go for the “grand bargain,” (4) reform requires good leaders, (5) sometimes it takes a special interest to beat a special interest, (6) never let a crisis go to waste, and (7) embrace permissionless innovation.

¹³ Legis. B. 299, 105th Leg., 2nd Sess. (Neb. 2018).