

**OCCUPATIONAL HAZARDS: HOW EXCESSIVE  
LICENSING HURTS SMALL BUSINESS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC GROWTH,  
TAX, AND CAPITAL ACCESS  
OF THE  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES  
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### Questions for the Record:

None.

### Answers for the Record:

None.

### Additional Material for the Record:

None.



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TUESDAY, FEBRUARY 27, 2018

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON SMALL BUSINESS,  
SUBCOMMITTEE ON ECONOMIC GROWTH,  
TAX, AND CAPITAL ACCESS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 10:04 a.m., in Room 2360, Rayburn House Office Building, Hon. Dave Brat [chairman of the Subcommittee] presiding.

Present: Representatives Brat, Chabot, Evans, and Clarke.

Chairman BRAT. Good morning. I apologize for running a few minutes late. Then I will call this hearing to order.

Last year, the Subcommittee held a hearing examining the small business labor market. At that hearing, we heard that job vacancies across America at an all-time high. We also heard that there are millions of Americans sitting on the sidelines not looking for work and that undue regulations can cost the American economy almost \$2 trillion every year.

With this in mind, the Subcommittee is here today to examine a particular set of regulations that may increase prices for consumers, increase job vacancies, and hurt small businesses: occupational licensing.

In its simplest definition, occupational licensing requires a business or an individual to request permission from the government to practice certain occupations. The percentage of the workforce that requires an occupational license has increased from less than 5 percent in the 1950s to almost 33 percent today.

Although some occupations can be dangerous and need specialized education, research shows that the amount of training required for a license almost never matches the risk of an occupation.

There are also significant inconsistencies between state requirements for licensing. For example, while an individual in Missouri must only pay a \$52 fee and does not need specialized training to be an auctioneer, Tennessee requires a \$650 fee and 756 days of specialized training for the same license.

But one of the most telling statistics about licensing is that while there are 1,100 occupations in the United States that are licensed in at least 1 State, only 60 require a license in all 50 States. This inconsistency hurts workers' mobility, and most importantly, small business.

This morning we will hear from a distinguished panel about how the Federal Government can help provide solutions to reduce li-

censing barriers on small businesses. I thank you all for being here this morning.

And I yield to the ranking member for his opening remarks, Dwight Evans.

Mr. EVANS. Thank you, Mr. Chairman, for holding this hearing.

Licensing is a process by which the State requires a worker to meet basic standards at the local, State, and Federal level before they are able to perform a job. While the origin of these limits had noble goals of protecting the safety and well-being of residents, we can think of instances where the requirements have proved burdensome and bear little resemblance to the function they were intended.

It makes sense to license electricians, EMTs, daycare workers. The harm done by an unskilled person working in one of these professions is much more serious than that of a hairdresser and travel guide. Nevertheless, occupational licensing persists and has become ever more burdensome across the Nation.

Since the 1950s, the number of licensed workers has jumped from just 5 percent of the workforce to nearly 30 percent today. That is nearly one in four workers.

Yet, not every occupation is regulated consistently across States. Fewer than 60 occupations are regulated in all 50 States, showing a substantial difference in which occupation States chose to regulate.

Making the situation worse for workers, many of whom are striving to be small business owners, are the fees required, the training costs, and time spent studying and testing.

While the requirements serve a functional purpose, they are also a barrier for entrepreneurs to enter an occupation, especially for low-income and immigrant workers.

Today's hearing will give us the opportunity to learn more about the genesis of professional licensing and its evolution. Though this issue is primarily one for the States to take up, it is nevertheless important for us to bring it to the forefront because it has an effect and can help guide policymakers at the Federal level.

I yield back the balance of my time. Thank you, Mr. Chairman. Chairman BRAT. Thank you, Mr. Evans.

If Committee members have an opening statement prepared, I ask they be submitted for the record.

I would like to take a moment to explain the timing lights for you. You will each have 5 minutes to deliver your testimony. The light will start out as green. When you have 1 minute remaining, the light will turn yellow. Finally, at the end of your 5 minutes, it will turn red. I ask that you try to adhere to that time limit as best you can.

And with that we will go to introductions.

Our first witness this morning is Jarrett Dieterle, senior fellow at the R Street Institute here in Washington. He also serves as the Institute's director of commercial freedom policy, focusing on regulatory affairs, occupational licensing, and other commercial freedom issues.

Thank you very much for coming to testify with us today. And you may proceed.

**STATEMENTS OF MR. C. JARRETT DIETERLE, SENIOR FELLOW, R STREET INSTITUTE; MR. KEITH HALL, PRESIDENT AND CHIEF EXECUTIVE OFFICER, NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED, ANNAPOLIS JUNCTION, MD; MR. FRANK ZONA, OWNER, ZONA STUDIOS, NORWELL, MA, TESTIFYING ON BEHALF OF THE PROFESSIONAL BEAUTY ASSOCIATION; AND MORRIS KLEINER, PH.D., PROFESSOR, HUMPHREY SCHOOL OF PUBLIC AFFAIRS, UNIVERSITY OF MINNESOTA, MINNEAPOLIS, MN**

**STATEMENT OF C. JARRETT DIETERLE**

Mr. DIETERLE. Thank you, Chairman Brat, Ranking Member Evans, and the Subcommittee, for inviting me to testify today. As the Subcommittee may know, and was just mentioned, I direct the R Street Institute's work on commercial freedom policy, including our study of occupational licensing.

In many ways, occupational licensing has become one of the major labor policy issues facing today's workforce. As mentioned, it is currently estimated that one out of four Americans needs a government license to work. And the average license requires almost a year of educational training, passing an exam, and paying over \$250 in fees.

The human cost of excessive licensing is easy to overlook, but consider the story of Sandy Meadows, a widow from Louisiana, who began arranging flowers, the main skill she knew after her husband's death. Louisiana stopped her by denying her a floristry license, and according to her attorney, she ultimately died alone and in poverty, unable to support herself.

Licensure acts as a barrier to entry for low and middle-income Americans seeking to enter new professions. It is these populations that are least able to overcome the high fees and the burdensome educational requirements that many licenses mandate. Licensing can also hurt entrepreneurs and small businesses trying to enter new markets, all the while protecting incumbent business from competition.

While licensing requirements are often enacted in the name of health and safety, they can only rarely be justified on those grounds. The sheer variance in licensing standards shows this. For example, in States where interior designers are licensed, the designers are required to complete 6 years of training, whereas the national average for emergency medical technicians is a mere 34 days.

The empirical research available has also notably failed to demonstrate a clear connection between more stringent licensing and better safety outcomes.

Importantly, in fields where health and safety concerns are legitimate, there are often less burdensome alternatives to licensing that can still ensure safety, options like inspections or bonding, third-party rating systems.

In recent years, there has been growing bipartisan recognition of occupational licensing, but there has yet to be a broad systemic repeal of licensing laws across the country.

While most licensing, as mentioned, takes place at the sub-national level, the Federal government can still play a role. Today, I will focus on just a few options.

First, Congress has several legislative options that would materially reform occupational licensing. One is the Alternatives to Licensing that Lower Obstacles to Work Act, the ALLOW Act, which was introduced by Chairman Brat and Representative Meadows in the 114th Congress.

The ALLOW Act would utilize Congress' constitutional authority over the District of Columbia to establish a template for occupational licensing reform that other States could follow.

It would also tackle the problem of military spouse licensure by allowing military spouses who work at Federal military installations to be exempt from State licensing requirements.

Another option is the Restoring Board Immunity Act, which draws upon recent Supreme Court precedent by offering States a safe harbor from Federal antitrust law in exchange for reforms to their licensing boards.

In addition to these bills, licensing in Federal Government agencies and contracting should be reviewed. The Federal Government workforce and contractors together make up over 5 percent of our country's workforce, and the Federal Government controls the licensing requirements for those positions. Congress could order a review, for example, of licensing requirements across Federal agencies and contracts and identify ones to eliminate.

And finally, the Federal Trade Commission's licensing work could be expanded. The FTC is empowered with research and advocacy powers under Federal law, which it has used to file advocacy comments and establish its Economic Liberty Task Force, which focuses on licensing.

Congress could enhance the FTC's licensing work by passing a specific line item appropriation that directs more money to the agency's efforts. Or it could simply direct the FTC to spend more of its existing budget on occupational licensing work.

Hopefully, this testimony has successfully highlighted the issue of excessive licensure and given Congress and the Subcommittee some options to consider.

I thank the Subcommittee for inviting me to testify here today, and I would be happy to answer any questions today or in the future. Thank you.

Chairman BRAT. Thank you, Mr. Dieterle.

Our next witness is Keith Hall, President and CEO of the National Association for the Self-Employed. He is a certified public accountant and has provided consulting and tax services to small businesses for over 20 years.

Thank you for testifying this morning, and you may begin. Thank you, Mr. Hall.

#### **STATEMENT OF KEITH HALL**

Mr. HALL. Thank you. Chairman Brat, Ranking Member Evans, thanks again for the chance to be here to represent small businesses.

More specifically, I am here to represent over 30 million self-employed and micro-business owners, a big part of our economy. I

know I am preaching to the choir here, but over 70 percent of all new jobs, half of all the employees in this country, 99 percent of all businesses are small businesses.

I see it as my job to help those small businesses be more successful, and I think that is the goal of this Committee as well. I also believe that the primary asset all those small businesses have is their time.

Now, throughout the long debate over tax reform, we only asked for two things: We asked that the proposals be simple and that they be fair. And as we talk about occupational licensing, I think those are the same two parameters to focus on, simple and fair.

In anticipating this meeting today, we surveyed our members and we found that 68 percent of our members say that they are encumbered in their success because of occupational licensing. That is a big number.

Now, we have each referred to the license to work issue by the Institute of Justice that noted the dramatic increase in the number of licenses that there are today, and I think that is very important. But to me the scary part is how many Americans out there chose not to go into a new profession or chose not to start a new business just because of the licensing. And that is something we can't validate by a survey. That is really scary.

I think the concerns of our members are threefold. One, the cost of licensing, both money and time. Two, the inconsistency of licensing requirements from State to State and city to city. And then three, the impact of those two on low-income and less-advantaged members of our community. I think those are very important.

I think the first and most important step is increasing awareness and support, making this known. The fact that we are here today talking about this is a great first step.

We strongly support the efforts of the FTC and what they are working on through the Economic Liberty Task Force. They have honed in on a number of specific occupations to promote uniformity and reciprocity State to State. I think encouraging that States providing uniformity in licensing, allowing the transition of workers from State to State, is very critical. I think that is particularly important to our veterans and their spouses, as Mr. Dieterle kind of referred to.

I mentioned earlier that I am here representing 30 million micro-business owners. That number is expected to be 50 million by 2025. To put that in perspective, that is roughly one-third of all the tax returns filed in this country will have a Schedule C attached to it as part of the income for those families.

One of the reasons for that growth is growth in technology. As technology has made the world smaller, small business owners find themselves expanding their community, not just in their locality, but throughout the State, in many cases multiple States, and even throughout the world. I think it is inevitable that that trend is going to continue. Expanding that nature of our communities shouldn't be something that is restricted by occupational licensing.

Now, I hate pointing out issues without offering some solutions, so I think there are three things that we should focus on.

One, we can support and amplify the FTC's Economic Liberty Task Force. I think that is through unique funding opportunities. I think that is a critical first step.

Two, formally encourage trade associations and other organizations to review their licensing based on removing the barrier to entry.

And then third, find some way to support scholarship programs through associations that can provide some financial assistance for some of those entries, particularly to the more disadvantaged Americans that we have.

Now, I am not here to ask Congress to enact a new law eliminating licensing, because obviously licensing is still important. We want to make sure that the professionals we rely on provide quality services to us. But I am asking that we as a Committee, we as association leaders use our influence to make sure that this issue is evaluated based on what it is, which is a barrier to economic growth.

I think a vast majority of small businesses only want two things, and that is for it to be simple and for it to be fair. And if we can figure out a way to do that, as always, small business owners will take care of the rest.

And, again, I appreciate the opportunity to be here, and thanks for holding the hearing today.

Chairman BRAT. All right. Thank you both very much.

Mr. Zona, you got the hint here. They all have three solutions, so we are looking forward to your three solutions.

Our third witness is Frank Zona, owner of Zona Salons, which has three locations in the Boston metro area. Mr. Zona is the third generation of his family to run the business, which originally started in Sicily and later moved to the United States. He will be testifying this morning on behalf of the Professional Beauty Association, where Mr. Zona also sits on their government affairs board.

Thank you very much for being here today, and we look forward to your testimony. Thank you.

#### **STATEMENT OF FRANK ZONA**

Mr. ZONA. Thank you, Chairman Brat and Ranking Member Evans and Subcommittee members.

I am not sure if my family was actually licensed in Sicily. I should just get that on the record right away.

I want to thank you for the opportunity to participate in this hearing regarding excessive occupational licensing on small business. Thanks for the work you do as a Committee. As a small business owner, it really matters to me. I really do look at it as a resource and appreciate it.

I also appreciate my fellow witnesses here because I am still learning, myself, sometimes about the environment I do business in. And I appreciate their work.

I am here, first and foremost, representing myself, a small business owner from Massachusetts. It is a third-generation salon business, and I employ about 75 people in those three locations. We are stuck at 75. I have been stuck at 75 for about 3 years, in part due to licensing, which I will explain as I go along.

Inside the industry, I am active in it, in the Professional Beauty Association. I appreciate those comments about the role of associations, because I do think that is part of it. PBA is a national non-profit representing all segments of the industry. So that would be salons, like myself, spas, barber shops, the individual professional, manufacturers and distributors, and licensed professionals.

The diversity of membership made it a little difficult for me to even prepare my testimony today because that is a lot of different points of view. So I think the view of a for-profit school owner who is preparing people for their licensing exam is different than my point of view possibly. And a manufacturer and distributor of products that are distributing through the professional channel have probably never sat on a licensing board. I have. So I am going to approach this from my own point of view.

In the past, I have testified to House Ways and Means on tip income reporting. I have served on the Massachusetts Task Force on the Underground Economy and the Board of Cosmetology, and I am happy to share my experience in that. And then outside the industry, I am a board member of Work Inc., a leader in the field of providing work opportunities for people with disabilities. So in all my roles I have really been focused on how to get people in, not keep them out.

Since I am testifying for myself, I will describe my business. It is really services. Our revenue is derived from services in retail, 90-10 split. That is pretty typical in the industry. Retail, of course, have been affected by e-commerce.

Less unusual in my own industry is that I employ my workers. And I represent really only about 13 percent remaining of my industry that employs workers. The great majority now are classified as self-employed. I see that really as a challenge, both on the licensing side and just the competitive side. And I don't know what all of the implications are, but it is significant to know that fact. It does create a different landscape and a lot of movement in the industry, and that movement has the implication of labor, taxes, and licensure.

In my business, we are offering what we should: health insurance, disability, retirement, training and development. We are even now looking at student loan assistance. But the truth is, is that 65 cents of every dollar is currently going to cost of labor, and I am trying to figure out how do I fit it all in.

None of this changes the fact that if I want to grow Zona, I have got grow head count. And as members of this Committee well know, head count is hard for all businesses in a 4 percent unemployment environment. Now, take that 4 percent and let's slice it up and say, of that 4 percent, who holds a license in cosmetology and wants to work in an employment situation. So low unemployment, worker classification, high turnover.

Here is another problem: There is only one way into my industry, and that is through a program that is going to lead to licensure. In Massachusetts, that is the lowest standard of hours that there are in the country. Massachusetts and New York are 1,000 hours. That still, for practical purposes, means the better part of a year for someone to go to cosmetology school and somewhere in the band of \$12,000 to \$22,000. So that is a big issue.

Since our business model is upper mid-market, we still have preparation to do, we still have training to do, because the license provides a necessary, important, I believe, level of standards, but we are not done there.

And our entry-level duties is really a focus of mine when it comes to getting people in, because there is a fair amount of attrition from the industry. There might be someone who goes to beauty school, and then once they are in the actual job, they develop a skin condition and they are out of the business in a short order of time because they were never really exposed to that in the training. But they still have the \$20,000 student loan, right?

So how do you get people in at the front end to try an industry so that you have less problems with student loans, with a variety of things. So those duties, shampooing hair, blow drying hair, could give people a chance to enter partially before committing that kind of resources.

I can't fill these entry-level jobs right now. There is no licensing mechanism to do that. Someone has to do the whole deal to try to find out if they want to try it.

As you know, for-profit education is being scrutinized, further regulated, on both the Federal and State levels. Putting the politics of for-profit aside, there are 30 percent fewer schools today than there were just a few years ago. In my own State, there are 10 fewer. So not only is school difficult, there are fewer of them, so there just aren't the graduates. I personally attempted to purchase a school. And when I looked at the environment, I was like, no thanks, I will stick with cutting hair.

But it leaves us salon employers almost entirely independent. So what do we do about it? I am not prepared to say licensing should go away. I need the foundation. I need the commitment. But I do think employers, like myself, should be designed in, particularly at the entry level, creating reforms where appropriate.

I believe we do need boards with industry participants with the right controls. I do not think the Federal Government should be completely dictating to a State, but there is legitimacy to the conversation and to the Federal Government's economic freedom and competitiveness concerns.

I do think we need to move past just the public safety argument to recognize that licensing also impacts public welfare. The beauty industry is a people business. And the labor intensiveness triggers not only safety concerns, but also public interest concerns.

I think licensing does present a barrier, but there are a lot of barriers, and it is not necessarily an absolute barrier. If it was unregulated, I am not sure how I feel about it, because in an unregulated environment I think entry into an occupation is not barrier-free. Movement is not barrier-free, workplace barriers, informational barriers, cultural barriers, discriminatory barriers.

I would be happy to talk about the nail salon issue in New York where it was licensing that helped find some exploitation there.

But I definitely believe that occupational licensing can and should be looked at for some opportunities of reform and can be a tool to get people in, not keep them out.

Thank you very much.

Chairman BRAT. Great. Thank you, Mr. Zona.

I now yield to our ranking member for the introduction of the next witness.

Mr. EVANS. Thank you, Mr. Chairman.

Good morning. It is my pleasure to introduce Dr. Kleiner, a professor at the Humphrey School of Public Affairs and the Center for Human Resources and Labor Studies, both at the University of Minnesota Twin Cities. He is also a research associate in labor studies with the National Bureau of Economic Research and serves as a visiting scholar in the Economic Research Department of the Federal Reserve of Minneapolis.

He has published extensively in the top academic publications on the topic, including three books on occupation regulation. Mr. Kleiner has also testified internationally and domestically on occupation regulations and provided guidance to a variety of agencies, including the FTC, the Treasury, DOJ, to name just a few. He received his doctorate in economics from the University of Illinois.

#### **STATEMENT OF MORRIS KLEINER**

Mr. KLEINER. Thank you, Chair Brat and Ranking Member Evans and the other members of the Subcommittee.

Let me start with my conclusions, and as echoed in an article that appeared last week in *The Economist* magazine, because it establishes that wage and other benefits of occupational licensing are concentrated primarily among the individuals who are already well paid.

Evidence indicates that occupational licensing can hamper mobility, making it harder for workers to take advantage of job opportunities in other regions. There is relatively little evidence to show that occupational licensing has actually improved the quality of delivered services in many fields, although it has been shown to increase prices and limit economic output.

Government should require cost-benefit analysis prior to new licensing rules, allow practitioners to cross borders without economic penalties, and reduce regulations in certain occupations.

First, occupational licensing makes it more difficult to enter an occupation and move across political jurisdictions. While licensing may be an effective means of boosting wages for some occupations, licensed workers are not always better off. Empirical evidence indicates that licensing can hamper mobility, making it harder for workers to secure jobs in other States.

Occupational licensing can thus serve as a deterrent to geographic movement in several ways. For instance, licensing is typically administered at the State level and workers may have to repeat many of the requirements and investments necessary to gain licensure when moving across State borders.

In some partially licensed occupations, for example, in interior design, if you are moving from an unlicensed State to a licensing State, you must go through the full set of requirements in order to get a license.

Another issue is that relicensing requirements can be prohibitive in terms of both time and money, thereby discouraging workers from moving to other licensing jurisdictions where greater opportunities often exist.

Beyond its detrimental effect on workers, this lack of mobility can harm consumers, especially in rapidly growing areas. To the extent that licensing slows the influx of new workers and inhibits greater competition, consumers are unable to access services at the lowest cost. Small businesses are not as likely to hire workers at existing wages, creating what they perceive as shortages.

Second, licensing can affect consumer prices via several channels, from restrictions on worker mobility to limits on advertising and commercial practices. The impact of licensing on wages ranges somewhere between 5 to 33 percent, depending on the type of occupational practice and location.

Third, occupational licensing reduces the ability of individuals to enter regulated occupations. For example, occupational licensing can reduce labor supply by between 17 to 27 percent. Men respond to occupational licensing with larger restrictions in labor supply than women.

Longitudinal data show that the longer an occupation is licensed, the greater the ability to limit entry and raise wages for its workers.

In addition, immigrants have lower levels of licensing than natives, suggesting that it serves as a barrier for this growing group in the U.S. economy.

Overall, licensing and the lack of consistency across State borders with respect to education and training of licensed practitioners can carry broad implications for the economic well-being of individuals.

Evidence indicates that licensing influences the allocation of labor in critical areas of the economy, such as healthcare, construction, and education, and it has an important influence on employment, wage determination, employee benefits and prices.

Some even suggest that licensing dampens the rate of innovation and misallocates resources within an occupation by setting fixed, and in some cases, arbitrary rules.

In terms of suggestions, first, State licensing should require that the Federal Government should encourage cost-benefit analysis prior to the approval of new licensing standards. Second, licensed individuals should be allowed to move across political jurisdictions with minimal retraining or residency requirements. And third, where feasible, government should reclassify certain licensed occupations through a system of certification or remove regulations on some professions entirely.

These proposals should lead to employment growth in affected occupation and a reduction in consumer prices. Replacing licensing with certification in certain occupations, thereby providing more competition, would in most cases result in substantial gains in economic growth and employment without measurable harm to consumers.

Chairman BRAT. Great. Thank you, Dr. Kleiner. I went to high school in Minnesota, and I am an econ professor for 20 years out here.

I will yield myself 5 minutes for a few questions.

You got right to it in your comments. And you are all way too polite. I want you to kind of get into what is really going wrong here, too.

So in Virginia we had a guy named Jim Buchanan who won a Nobel Prize in economics for regulatory capture and all this kind of thing. And you mentioned, I want to hear, I am going to ask you about the black market if you overregulate.

But what I am interested in, any metrics. You kind of started off with an interesting thing, that some of the higher-priced industries that have been around have more regulation and certification.

And so, I mean, are there any other metrics like that, just real quick, off the top of your head, that you can think of? How do you identify? Mr. Zona said he has huge variety even within his industry on certification. Some it is good. Some it is bad.

The American people, if you knock doors, politics, door-to-door, and ask people, "Do you want more or less regulation?" I am stunned. They still say more. If you go to a small business, they say the opposite. Everybody kind of wants safety, but they don't get there is \$2 trillion in downside from regulation on the economy.

And so are there any quick metrics, just because we are limited for time, that come to mind? How do you identify the people who are gaming the system versus whether there is a legitimate social need for some minimal certification?

Dr. Kleiner, I want to start with you here.

Mr. KLEINER. Well, thank you, Chair Brat and Ranking Member Evans.

Certainly there have been estimates. There was a white paper put out by the previous administration which identified many of the costs, both in terms of over \$200 billion in lost output and, in addition, a reallocation of resources from relatively well-off licensed practitioners from consumers.

So the thought experiment would be a relatively lower-wage waiter or waitress having to pay more for dental services. So there is the reallocation, it is a reverse Robin Hood effect in terms of reallocation of resources from poor consumers to relatively well-off licensed practitioners.

Chairman BRAT. Mr. Zona.

Mr. ZONA. I mean, there is such a variety of licensed occupations. So I look at mine with pride, but really recognizing that it is at the lower end of occupations relative to other licensed ones.

And so I don't know. I don't know on that upper end. I just know that in mine the issue of worker classification, the challenge that I face at being increasingly fewer of me that are actually employing their people, I don't know how to extrapolate the economics of that. But it is the biggest challenge that I face.

Chairman BRAT. Yeah. And in your industry, because sometimes up here in D.C. you have the big businesses, there is big everything, big airlines, big banks, big insurance, big everything. So there you go, okay, are they regulating to keep out the small guy?

One thing I haven't heard anyone comment on: As bureaucracies form, you get fees. You are the director of an association that is going to certify, so your new interest now is to do certification. I mean, so is it big business putting pressure on certificates or is some of this just the nature of bureaucracy—"Hey, once you start certifying, let's do more, we need to add more safety stuff, we need to add more of this."

And the harm comes when Mr. Dieterle mentions this poor woman that has no subsistence. She has no job. And so you always add to regulation— “Oh, this is good, the shop should have this, this, and this.”

We have kind of a daycare crisis in this country. I looked into that. We have churches that are willing to do it, seniors that are willing to watch kids, and they can't do it because of the regulation of the building.

You have a free daycare solution built into the economy sitting there, but you can't do it. And the harm comes to the moms and dads who need some daycare and whatever. No one ever sees the harm. That is always the hidden part that is brushed aside.

And so have you ever seen, any of you seen just this kind of inherent nature built into bureaucracies themselves, that once you start certifying, they take pride in their industry, but there is a downside?

Mr. ZONA. I will comment once more quickly and let others.

It is interesting, because I don't think our industry on the trade association side has really made a significant effort to certify. It happens from manufacturers. But it is a very fragmented industry, and maybe many of the ones that are licensed are. And it has been licensed since, I want to say, the 1920s.

So it has been convenient, I suppose the word would be, for the industry to say that is for the State boards to do, right? And so I think this conversation and the pressure, if you will, from Congress and the States, all of this has been healthy. It gets us paying attention and maybe doing more as an industry than we have in the past.

Chairman BRAT. Good.

And I am over my time. I am going to come back to it when we go around. But right now I would like to yield to the ranking member, Mr. Evans, for his questions.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. Hall, in many instances professional associations request a State legislature to enact licensing regulations. How do we balance the need to ensure quality service while also ensuring competitiveness in the market?

Mr. HALL. I think that is a great question. And I think that is exactly why we are here. That is the hard part. Because, clearly, licensing, making sure professionals provide adequate services, even above-adequate services, I think that is very important. But when that licensing becomes a barrier to starting your own business or a barrier to a new job, I think that is when we have a problem.

So I think the first thing to do, how we can implement that, again, is what we are doing today, increase awareness. And I think the FTC's efforts through their task force, I think that is a good first step to raising awareness. This hearing as well.

I think a critical factor is finding some way to have States come together so that there is some ability for reciprocity. I think each of us has talked about being able to move and provide services in other States.

Mr. EVANS. While you are at that point, going to my next point, then, how do we encourage States and local governments to standardize where appropriate without trampling their autonomy?

Mr. HALL. Great question.

Mr. EVANS. I know the chairman doesn't want the idea of micro-managing Richmond. So the fact of the matter is, how do we strike that balance without—States.

Mr. HALL. I think we are in our 241st consecutive year of arguing over Federal Government versus State government, and we probably will continue to do that.

And I think at the end of the day, and I certainly yield to you guys, this is your expertise, not mine, but using our influence in this Committee, in the Federal Government, back in our constituencies to let them recognize this is a problem for their industries as well.

We kind of have that human nature thing of we want to control what we have, we want to control our association, our industry, and it is kind of scary to open it up to others, when the actual fact is, the more we open it up, the more everything grows. And I think that communication, that awareness is the number one thing, I believe, we can do today to make a difference at the State level.

Mr. EVANS. Dr. Kleiner, your reaction to what I just asked in terms of questions from your perspective of that balance of autonomy?

Mr. KLEINER. Ranking Member Evans, I think that these issues are a continuing issue of tension. And certainly one potential solution might be the Restoring Board Immunity Act, which is a tradeoff of allowing board members to be immune from antitrust litigation.

For the States examining very closely the three issues that I mentioned, in terms of doing cost-benefit on new occupations becoming regulated. Questions of migration. And then looking at issues of reducing regulation and examining do all these 800-plus occupations that are licensed in at least one State, do they all need to be licensed?

And certain States, such as Michigan, have chosen to deregulate and move from licensing to certification of many occupations. Colorado has done that. And several governors have taken the lead and have vetoed new occupations that are seeking to become—moving from either certification or no regulation to becoming licensed.

Mr. EVANS. What was the incentive for those States to take that kind of action?

Mr. KLEINER. I think part of it was the governors looking at issues that this Committee is looking at and saying, Do these occupations need to be regulated? What have been the effects on small businesses of what they would perceive or many small businesses would perceive to be labor shortages in certain areas?

Businesses coming to the legislature and saying, Well, do we really need to have people do what might be considered scope of practice? That is, there are certain jobs that, for example, a plumber or electrician has to oversee the work of someone who is actually doing the work. So there are scope of practice issues which are also a question and are they creating inefficiencies in the economy.

So all these are issues that have been brought to the States and have led both the legislature, in some cases, and the governors to move in many cases to reduce regulation.

Mr. EVANS. Mr. Chairman, why I asked that question, I was a legislator for 36 years, so a little special place in my heart at the State level. So I yield back the balance of my time.

Chairman BRAT. Thank you very much.

And at this time I would like to yield 5 minutes to Ms. Clarke from New York.

Ms. CLARKE. Thank you, Mr. Chairman, and thank you to our ranking member. I also want to thank our panelists for sharing your insights this morning.

Professional licensing has existed for almost as long as industry itself. This vital service ensures that consumers are protected from hucksters and receive nothing but the best quality service from qualified professionals in everything from their door repairmen to their hair stylists and barbers.

However, as has been stated in the testimony of our expert panelists here this morning, burdensome licensing procedures can also price entrepreneurs out of the market and prevent consumers from having access to the best number of professionals in their area. When this happens, everyone loses.

As just one example, a vegetation pesticide applicator in New York State must pay \$3,000 and undergo 66 hours of training in order to be licensed, while the same licensed professional in Nevada must pay \$450 and undergo 16 credit hours of training. It is tough to tell from these facts alone whether \$3,000 is too much or \$450 is too low.

However, the fact remains that this is a huge disparity that is not fully accounted for by the vegetation alone. We must therefore do what we can to ensure that licensing standards are fair and uniform without harming consumers or professionals.

So, Dr. Kleiner, occupational licensing is primarily a State function. What role, if any, does the Federal Government have in reforming and/or creating a standard for these laws?

Mr. KLEINER. Thank you for your question.

Certainly the States can provide moral suasion, or the Federal Government can provide moral suasion to the States in terms of implementing and moving toward reducing burdensome licensing. And also, under the Federal Trade Commission, there can be trade-offs that can be granted in terms of reducing regulations on members of the board.

For example, right now, many State board members are concerned or perhaps won't even serve on State boards because they are fearful of being sued under a recent Supreme Court case involving North Carolina Dental v. the Federal Trade Commission, which the Federal Trade Commission won that particular case, and board members are concerned about their service on boards.

So the tradeoff might be immunity from lawsuits and reducing burdensome regulations that affect both small businesses and consumers.

Ms. CLARKE. And, Mr. Hall, how can we make it less expensive for entrepreneurs to become licensed?

Mr. HALL. That is a great question. I think technology over time can help us with that process. I think education, training, online access to those materials can help with the overall cost.

For those industries that require travel to a local school, if those can then be expanded to online applications, I think that is another way to reduce the cost.

I think the more scary thing again for me is, just like your specific example, when you live in one State and you may have a barrier to entry of what you choose to spend your life doing of \$3,000 and 10 weeks of training, you move across the State line and now it the only costs you \$456. That seems to be a disparity that doesn't make sense.

So I certainly believe decreasing the cost is one of the priorities we should manage, especially for those lower-income people who are looking for a way to take care of themselves and their families. I think that is very important. But at the same time finding some way to communicate amongst the States, getting them to communicate amongst one another to find some uniformity and reciprocity that can make the whole process easier.

Ms. CLARKE. Thank you.

Mr. Dieterle, in your testimony you spoke of opportunity hoarding. How can we best create a system of licensing that benefits all?

Mr. DIETERLE. That is a great question.

I think it was previously mentioned there are several Federal tools, such as the Restoring Board Immunity Act, that would potentially position the Federal Government to really kind of investigate and incentivize State boards, that are mostly comprised of self-interested economic actors, to kind of clean up and reexamine how they operate. And I think that that would go a long way towards getting rid of some of the low-hanging fruit of situations where there is kind of just blatant opportunity hoarding going on.

I think, in addition to the enforcement efforts that the FTC has, they also have an advocacy role, as I mentioned in my testimony. And a lot of times when licensing laws are proposed at the State level, a lot of State legislatures act as part-time institutions, composed sometimes of amateur legislators, and a lot of times the only voice in the room in those situations is the industry and the people that want licensing.

And the FTC can, for example, file advocacy comments sometimes at the State level and kind of bring more of a competition, market-oriented analysis to it, suggest maybe alternatives to licensing that are not as burdensome but still protect health and safety.

So I think that kind of using that advocacy power and enforcement power of the FTC, in particular, would be a way to address some of the situations where there is just kind of blatant opportunity hoarding going on.

Ms. CLARKE. Very well.

I thank you, Mr. Chairman. I yield back.

Chairman BRAT. Very good.

I just wanted to ask a couple more questions, and then if the ranking member has a couple or if anyone else wants to continue.

But Dr. Kleiner suggested doing cost-benefit analysis on small businesses and certifications, whatever. For smaller firms, I love

the idea intuitively, but economists, we can make the numbers scream and go our way, and we can torture the data until it says what we like it to say.

And so our Catholic brothers and sisters have this thing called the preferential option for the poor. And what that means to me in this context—or could mean. I mean, I would like to hear it. For me, the preference or the option should always go to the poor, right? Before you certify and exclude people from a lifetime calling or profession, you better have a real good reason to inhibit someone's liberties.

So someone has their talents, it is their passion maybe. They want to go into a livelihood. And then some certification is going to say, "You can't do that with your life." Wow. So that is kind of interesting.

So my own bias is clearly on behalf of the poor and the creativity and the startup there. And so I will just ask you, Mr. Dieterle, if you can give an example or two of where the poor are getting crushed in terms of opportunity.

And then if the others want to think of: All right, Brat, you are exaggerating too much, there are some clear cases where you have got to have certification, because if you don't, this is what is going to go wrong. So if someone wants to think of the counter-example.

But give us a couple examples that you have run across where someone at the lower end of the income distribution, just getting started, has just had their life stifled by these regs.

Mr. DIETERLE. Yeah. I think it is the same thing you are saying, just maybe different words for it, a presumption of liberty, I think. That the presumption is that if it is safe, that you should be able to practice in a certain profession.

And there are a lot of cases where there isn't that presumption. The presumption runs the opposite way. The presumption runs that it is totally legitimate to have this license. And, of course, there are safety concerns, quality concerns, even if that hasn't been proven. And that actually really bites people at the local level.

I mean, anecdotally, if you want stories, there are stories of a lot of immigrant communities that practice African natural hair braiding, for example. They have come to the United States, they want to be able to continue practicing that tradition of theirs and a skill that they know. And several States, Missouri and others, have stopped them from doing that. They have had to shut their businesses.

There was a gentleman in Tennessee—

Chairman BRAT. Let's just go through these one-by-one.

So on the hair braiding, does anyone have a compelling reason on the safety side or the reg side why that person shouldn't be allowed to do that without a certificate? I mean, is there some compelling—I mean, it is just interesting.

Keep going. Sorry to interrupt you.

Mr. DIETERLE. And there may be arguments for it. I mean, a lot of the issue with that, to be fair, is that, again, it is kind of a scope of licensure issue. They are required to go to cosmetology school and a lot of those schools don't even teach natural hair braiding. So maybe you could make an argument that there is

some quality, safety concern there, but it is not narrowly targeted to actually address that issue.

Another example is a gentleman in Tennessee. Actually, Tennessee just passed a law. It is not an old law. It is 2015. And they said that anyone that is a barber in the State had to have a high school education and this gentleman didn't.

I don't know about anyone else in this room, my high school did not teach barbering. That was not a class that was taught. And so it is really, again, totally unclear. Maybe, again, yes, there are health and safety concerns there. Maybe you could look at inspections, maybe you could look at bonding, other alternatives to licensing. Maybe licensing is appropriate.

But it certainly seems like the burden of requiring a high school degree in that situation, or like D.C. did with childcare, requiring college degrees now for childcare workers in the District, seems just totally out of proportion to that.

And that is actually affecting those people that, again, are usually low-income populations, from actually being able to have that presumption of liberty and that presumption that they can work in a field and better their lives.

Chairman BRAT. Right. And so then a counter case where the certification, there is a clear need.

Dr. Kleiner, if you want to make a comment.

Mr. KLEINER. Mine was really in terms of what I call scope of practice. So veterinarians—and this is a case that was from the Institute for Justice—precluded individuals who were horse tooth filers from filing the teeth of horses. They said that only a licensed veterinarian could provide those services.

Veterinarians are relatively better paid than individuals who do this manually, yet the individuals who did this manually were not allowed because of scope of practice issues and the ability of the veterinary.

Individuals who were on the veterinary board, who were almost all veterinarians, voted and precluded and got in the rules and regulations that only veterinarians could deal with the front end of a horse. Anyone can deal with the back end.

Chairman BRAT. That is a good one.

Ranking Member, do you have any closing comments?

Mr. EVANS. One last question, Frank, if I could. Frank, in your testimony you stated there are other public interest concerns that are presented in licensing outside of the public safety argument. How can we address these barriers, if not through licensing?

Mr. ZONA. So trade associations are obviously part of that. It is communication, right, when the chairman said, What is the opposite argument?

Coming from the industry, I mean, I totally agree. I don't think the industry was even prepared, as many aren't, when some of these commonsense problems come about, like hair braiding, shampooing, et cetera.

So we have got to figure that out, and I think it is getting figured out.

On the other hand, the thing I worry about is information to people, because in my occupation, for an example, licensing really represents the one point that you certainly have with everyone.

So there was a New York Times expose, if you will, on the exploitation of workers in nail salons that was discovered and dealt with to a degree because of licensing.

I am an association person. I am a joiner. I am someone who likes to be involved. But the truth of the matter is most people are just trying to get through the day if they are working and they are in business. I mean, today's payroll, I have my sister doing it and I can be here.

But most people just aren't going to be joiners. I know there are a lot of members. But you get my point, is that I do think that the point of contact is something to really consider.

So I don't know if I have answered your question, but I think the industry or profession has to play a bigger role, but I also think that we have to be careful about losing a point of contact to communicate with people.

Mr. EVANS. I yield back the balance. Thank you, Mr. Chairman. Chairman BRAT. Great.

Well, I would just like to thank you all very much for coming in, and thank you very much for your testimony.

I think the panel worked very well together. I think it was worthwhile. As Mr. Hall said, part of it is just getting the conversation going.

You all had great recommendations on steps to put forward. You all put forward very credible evidence in your testimony. And our staffs are going to take that into account and then move forward and make some progress on this.

Thank you very much for being here today.

And with that, we will adjourn.

I better run through the formalities, too. I also ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record. Without objection, so ordered.

This hearing is now adjourned. Thank you all.

[Whereupon, at 10:59 a.m., the Subcommittee was adjourned.]

**A P P E N D I X**

## STATEMENT

Congressman Dwight Evans, Ranking Member

Subcommittee on Economic Growth, Tax and Capital Access

House Committee on Small Business

“Occupational Hazards: How Excessive Licensing Hurts Small  
Business”

Tuesday, February 27, 2018

Thank you Mr. Chairman for holding this hearing. Licensing is a process by which the state requires a worker to meet basic standards at the local, state, and federal levels before they are able to perform a job. While the origin of these limits had noble goals of protecting the safety and well-being of residents, we can think of instances where the requirements have proven burdensome and bear little resemblance to the function they were intended.

It makes sense to license electricians, EMTs, daycare workers, and anesthesiologists. The harm done by an unskilled person working in one of those professions is much more serious than that of a hairdresser, travel guide, or florist. Nevertheless, occupational licensing persists and has become ever more burdensome across the nation.

Since the 1950s, the number of licensed workers has jumped from just 5 percent of the workforce to nearly 30 percent today—that’s nearly 1 in 4 workers. Yet, not every occupation is regulated consistently across States. Fewer than 60 occupations are regulated in all 50 States, showing substantial differences in which occupations States choose to regulate.

Making the situation worse for workers, many of whom are striving to be small business owners, are the fees required, training costs, and time spent studying and testing. While the requirements serve a functional purpose, they are also a barrier for entrepreneurs to enter an occupation—especially low-income and immigrant workers.

Today’s hearing will give us the opportunity to learn more about the genesis of professional licensing and its evolution. Though this issue is primarily one for the states to take up, it is nevertheless important for us to bring it to the forefront because it has an effect and can help guide policymaking at the federal level. Licensing requirements have exploded to new fields, some that merit regulation and others that raise the question of whether there is too much licensing.

States have broad powers to regulate their workers and have a duty to protect their residents. Requirements for training, fees, and

examinations can keep qualified individuals from starting a business or entering a new profession. Most importantly, licensing restricts the entry of many immigrants, minorities, and low-income entrepreneurs. For example, mandates for college degrees, English proficiency, and residency requirements have been found to exclude these workers from obtaining licenses in many professions.

And a lack of uniformity among the states in their licensing rules impact many entrepreneurs attempting to move to another market where they see an opportunity for business growth. This is especially prevalent for military families who often move from one jurisdiction to another. States should not be hindering growth in these viable markets for business expansion or creation—they should be fostering these self-starters.

As more Americans begin to take risks and start their own businesses, it is vital to bring licensing requirements to their attention. Balancing the need for market competition with the need for consumer protections will give small firms the certainty they require, ensuring their success.

I thank all the witnesses for being here today and I look forward to your comments.

Thank you and I yield back.



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Feb. 27, 2018

**To:** House Committee on Small Business, Subcommittee on Economic Growth, Tax, and Capital Access

**From:** C. Jarrett Dieterle, Director of Commercial Freedom and Senior Fellow, R Street Institute

**Re:** Written testimony for hearing on “Occupational Hazards: How Excessive Licensing Hurts Small Business”

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I thank the subcommittee for inviting me to testify on occupational licensing. As the committee may know, I direct the R Street Institute’s work on commercial freedom policy, including our study of occupational licensing.

Occupational licensing has become one of the major labor policy issues facing today’s workforce. One out of every four Americans needs a license simply to pursue their occupation.<sup>1</sup> This is why several scholars recently described occupational licensing as “one of the nation’s principal forms of economic regulation.”<sup>2</sup>

According to the Institute for Justice, the average license requires almost a year of educational training, passing an exam, and the payment of \$267 in fees.<sup>3</sup> The human cost of excessive licensing is easy to overlook, but in fact, it is significant. After her husband’s death, Sandy Meadows, a woman from Louisiana who never before had to provide for herself, began doing so by arranging flowers—the primary skill she knew. Louisiana stopped her by denying her a floristry license because she could not pass a complicated practical exam which was judged by incumbent florists in the state. According to her attorney, she ultimately died alone and in

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<sup>1</sup> Dick M. Carpenter, et al., “License to Work,” Institute for Justice, 2<sup>nd</sup> Edition, November 2017, p. 6, [http://ij.org/wp-content/themes/ijorg/images/tw2/License\\_to\\_Work\\_2nd\\_Edition.pdf](http://ij.org/wp-content/themes/ijorg/images/tw2/License_to_Work_2nd_Edition.pdf).

<sup>2</sup> D. Berliner, et. al., “Occupational Licensing Run Wild,” released by the Regulatory Transparency Project of the Federalist Society, November 7, 2017, p. 6, <https://regproject.org/wp-content/uploads/RTP-State-Local-Working-Group-PaperOccupational-Licensing.pdf>.

<sup>3</sup> Dick M. Carpenter, et al., at p. 6.

poverty because the Louisiana Horticulture Commission refused to allow her to practice a harmless profession.<sup>4</sup>

Sadly, Sandy Meadows' case is only one example of how occupational licensure acts as a formidable barrier to entry for low- and middle-income Americans seeking to enter new professions. It is these populations that are least able to afford the high entrance costs or dedicate the time to partake in the intense educational requirements that so many licensing regimes mandate.

The result is a government-imposed barrier that arbitrarily limits Americans' ability to work and climb the income ladder to more prosperity. As Brink Lindsey and Steven Teles have pointed out, licensing can be a type of opportunity hoarding that exacerbates income inequality by hurting lower-income workers seeking to join occupations while simultaneously benefitting wealthy incumbent practitioners or businesses in fields like medicine, law, and more.<sup>5</sup> Excessive licensing also hurts small businesses and entrepreneurs that are seeking to find qualified candidates to hire or trying to expand into new markets.

Even worse, occupational licensing restricts geographic mobility, since states often have competing and at-odds licensing regimes, even within the same profession. For example, my colleague Shoshana Weissmann and I have written about how divergent state licensing regimes hurt a woman named Heather Kokesch Del Castillo, who started a health coach business in California but was shut down by state regulators when her family moved to Florida.<sup>6</sup> Although Heather's original state of California did not require a license to offer dietary advice, Florida demanded that Heather become a licensed dietician. Heather was ultimately forced to close her business.

Occupational licensing regimes are usually administered by state licensing boards, which set the requirements for licensing within industries and grant final approve to those seeking licenses. Many times, these boards are stocked with incumbent members of the occupation, who have direct financial incentives to block would-be entrants into the market. This type of economic rent seeking serves to entrench vested interests at the expense of up-and-coming, aspiring workers seeking to improve their lives.<sup>7</sup>

<sup>4</sup> Clark M. Neily, "Just Say 'No' to Government," *American Spectator*, Oct 23, 2013, [https://spectator.org/56825\\_just-say-no-government/](https://spectator.org/56825_just-say-no-government/).

<sup>5</sup> See generally Brink Lindsey and Steve M. Teles, *The Captured Economy*, Oxford University Press, 2017.

<sup>6</sup> Weissmann and Dieterle, "Why Do You Need a College Degree to Give Diet Advice?," *Wall Street Journal*, Jan. 31, 2018, <https://www.wsj.com/articles/why-do-you-need-a-college-degree-to-give-diet-advice-1517439964>.

<sup>7</sup> Edward Rodrigue and Richard V. Reeves, "Four ways occupational licensing damages social mobility," Brookings Institution, Feb. 24, 2016, <https://www.brookings.edu/blog/social-mobility-memos/2016/02/24/four-ways-occupational-licensing-damages-social-mobility/>.

While occupational licensing laws are frequently enacted in the name of health and safety, they can only rarely be justified on those grounds. For instance, various states require a license to practice professions such as hair braiding, shampooing, fortune-telling, and floristry, none of which seem likely to endanger public safety.<sup>8</sup>

As a recent paper for the *Federalist Society* noted, the broad variance in licensing laws and standards across the 50 states undercuts the claim that licensure is necessary to protect the health and safety of consumers in many fields.<sup>9</sup> Furthermore, the discrepancy in the rigor of the requirements between professions similarly undermines health and safety justifications. For example, while cosmetologists are required to complete an average of 386 days of training to obtain a license, the average for Emergency Medical Technicians is a mere 34 days.<sup>10</sup> The empirical research available has also notably failed to demonstrate a clear connection between more stringent licensing requirements and better safety outcomes—although it *has* suggested that more licensing leads to higher prices for consumers.<sup>11</sup>

It is important to note that in fields in which health and safety concerns are legitimate, licensing still may not be the best mechanism for addressing such concerns. There are numerous less-onerous alternatives to occupational licensing that can adequately protect the health and safety of consumers. For example, options like inspections or insurance and bonding can often ensure high quality and safe products and services in a more narrowly-tailored way.<sup>12</sup> Accordingly, licensure should ideally only be used where: (1) there is a quantifiable and demonstrable risk to public health and safety inherent in the occupation; (2) there is little chance a non-licensed individual could competently practice in the occupation; and (3) there are no less-burdensome alternatives available for mitigating the safety risks.

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<sup>8</sup> See generally Dick M. Carpenter, et al., “License to Work”; Angela C. Erickson, “Barriers to Braiding,” Institute for Justice, July 2016, [http://ij.org/wp-content/uploads/2016/07/Barriers\\_To\\_Braiding-2.pdf](http://ij.org/wp-content/uploads/2016/07/Barriers_To_Braiding-2.pdf); Ramesh Ponnuru, “Is Your Fortune Teller Licensed?,” *Bloomberg*, Mar. 31, 2014, <https://www.bloomberg.com/view/articles/2014-03-28/is-your-fortune-teller-licensed>; John-Michael Seibler, “Licensing Laws Have Long Been a Drain on the Economy. But Florida Could Soon See Reform,” Heritage Foundation, Jan. 19, 2018, <https://www.heritage.org/government-regulation/commentary/licensing-laws-have-long-been-drain-the-economy-florida-could-soon>.

<sup>9</sup> D. Berliner, et. al., “Occupational Licensing Run Wild”, p. 11.

<sup>10</sup> Dick M. Carpenter, et al., “License to Work,” p. 25.

<sup>11</sup> A 2015 White House report conducted a literature review of the available empirical research on licensure’s effect on quality and safety, concluding that while there was “compelling evidence that licensing raises prices for consumers,” most research “does not find that licensing improves quality or public health and safety.” See Department of the Treasury, Council of Economic Advisers, and Department of Labor, “Occupational Licensing: A Framework for Policymakers.” July 2015, p. 13, 58-61, [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

<sup>12</sup> Weissmann and Dieterle, “Why Do You Need a College Degree to Give Diet Advice?,” *Wall Street Journal*. For additional alternatives to licensure, see D. Berliner, et. al., “Occupational Licensing Run Wild”, p. 46-47.

### The Status Quo

In recent years, there has been growing bipartisan recognition of the problems posed by excessive occupational licensing requirements. Both the Obama and Trump administrations have highlighted the issue and put resources into studying and addressing it. Similarly, both Democratic and Republican governors from across the nation have focused on the deleterious effects of licensing.

Despite this bipartisan attention, broad scale reform efforts have been somewhat slow to materialize. To be sure, numerous states have enacted licensure reform in recent years. For example, in Arizona, Governor Doug Ducey has pursued licensing reforms along with the state legislature,<sup>13</sup> and both Florida and Oklahoma recently engaged in reform efforts.<sup>14</sup>

Nonetheless, there has yet to develop a broad, systematic repeal of licensing laws across the country. The Bureau of Labor Statistics found that, as of 2014, only eight occupations that were previously licensed had been delicensed at the state level in the prior 40 years.<sup>15</sup> This number has grown in recent years, but it nevertheless underscores the frustration many reformers have felt with the lack of progress toward more widespread licensing reform victories.

This is where the federal government can play a key role as a policy leader. Up to this point, policymakers have predominantly framed occupational licensing as a state issue. While it is true that the bulk of licensing takes place at the sub-national level, the federal government is far from powerless to help.

What's more, the federal government need not overstep its constitutional boundaries to get involved. In fact, Congress and the executive branch have myriad tools at their disposal that can help break the licensing stalemate while still respecting important principles of state authority and federalism.

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<sup>13</sup> "Governor Doug Ducey Enacts Regulatory Reforms To Protect Job Creators & Small Businesses," News Release, Office of the Governor, May 19, 2016, <https://azgovernor.gov/governor/news/2016/05/governor-doug-ducey-enacts-regulatory-reforms-protect-job-creators-small>.

<sup>14</sup> Eric Boehm, "Florida Lawmakers Are Fast-Tracking Licensing Reforms," *Reason*, Jan. 16, 2018, <http://reason.com/blog/2018/01/16/florida-house-passes-licensing-reforms>; Rhett Morgan, "Occupational Licensing Task Force recommendations include criminal justice reform," *Tulsa World*, Jan. 10, 2018, [http://www.tulsaworld.com/business/employment/occupational-licensing-task-force-recommendations-include-criminal-justice-reform/article\\_187d7afb-8d97-565d-a2df-746481d310fb.html](http://www.tulsaworld.com/business/employment/occupational-licensing-task-force-recommendations-include-criminal-justice-reform/article_187d7afb-8d97-565d-a2df-746481d310fb.html).

<sup>15</sup> Robert J. Thornton and Edward J. Timmons, "The de-licensing of occupations in the United States," Bureau of Labor Statistics, Monthly Labor Review, May 2015, <https://www.bls.gov/opub/mlr/2015/article/pdf/the-de-licensing-of-occupations-in-the-united-states.pdf>.

### The Federal Government's Role

The federal government has numerous available options to make an impact in occupational licensing reform. Importantly, all these options avoid raw preemption of state law and recognize the importance of the federal government staying within its constitutionally-designated lane. I will focus on three predominant ones here.

#### *1. Passing federal legislation*

Congress presently has several ready-to-go bills that, if passed, would materially reform occupational licensing burdens. Perhaps the most promising is the Alternatives to Licensing that Lower Obstacles to Work Act (ALLOW Act), which was introduced by Reps. Brat and Meadows in the 114<sup>th</sup> Congress and draws upon congressional control of federal enclaves and property.<sup>16</sup>

Specifically, the ALLOW Act would utilize Congress' constitutional authority over the District of Columbia to establish a template for occupational licensing reform, which other states could then draw upon to enact their own reforms. Under this model, licensing in D.C. would only be permitted "where less restrictive regulation will not suffice to protect consumers from present, significant, and substantiated harms that threaten public health, safety, or welfare."<sup>17</sup>

It would also recognize a "freedom to engage in an occupation," which would bar the government from requiring a license for a profession unless the government could demonstrate an "important government interest" in protecting risks to public health and safety caused by that profession. It would also require it to prove that a licensing mandate was "substantially related" to those concerns.<sup>18</sup> Critically, the law would allow D.C. residents to use the fact that a licensing requirement failed to meet these standards as an affirmative defense in any enforcement action brought against them for lacking a license.<sup>19</sup>

The ALLOW Act would also tackle another growing problem in the occupational licensing arena: military spouse licensure. Because of the transient nature of life in the armed services, military spouses are often forced to move across state lines when their spouse is transferred to a new base. This creates significant challenges for these spouses because states have wildly divergent licensing laws and requirements, and licenses from one state are oftentimes not recognized by another state.

<sup>16</sup> ALLOW Act, S.3158, 114th Congress (2015-2016), [https://www.congress.gov/bills/114th-congress/senate-bill/3158](https://www.congress.gov/bills/114/congress/senate-bills/3158).

<sup>17</sup> *Id.* § 204(2).

<sup>18</sup> *Id.* § 207(b).

<sup>19</sup> *Id.* § 208.

The problem is significant:

Military spouses were 10 times as likely to have moved to a new state in the past year than the average American, according to a combined 2012 study by the Treasury and Defense departments. Surveys suggest that anywhere from 35% to 50% of military spouses work in professions that require licensure, and nearly 75% of them would need to be relicensed upon transferring to a new state. Perhaps as a result, the unemployment rate for military spouses is 16%, while the national unemployment rate is only 4.1%.<sup>20</sup>

The Department of Defense's State Liaison Office has collaborated with states in recent years to increase military spouse license portability,<sup>21</sup> and states like Florida have passed legislation that allows for out-of-state military spouses to transfer their licenses at no cost.<sup>22</sup> But more should be done.

The ALLOW Act helps alleviate this problem by permitting military spouses who move across state lines and work at a federal military installation to no longer have to obtain a new license in their new state.<sup>23</sup> Scholars such as Paul Larkin have argued that this could be expanded to apply to all federally-owned land.<sup>24</sup>

Congress can and should pass legislation like the ALLOW Act and place it on the President's desk.<sup>25</sup> Doing so would fix discrete policy issues that the federal government is well-positioned to impact, as well as create a reform model in D.C. upon which other states could draw.

<sup>20</sup> Weissmann and Dieterle, *Wall Street Journal*, Jan. 31, 2018; see U.S. Dept. of Treasury and U.S. Dept. of Defense, "Supporting Our Military Families: Best Practices for Streamlining Occupational Licensing Across States," Feb. 2012,

[http://archive.defense.gov/home/pdf/Occupational\\_Licensing\\_and\\_Military\\_Spouses\\_Report\\_vfFINAL.PDF](http://archive.defense.gov/home/pdf/Occupational_Licensing_and_Military_Spouses_Report_vfFINAL.PDF); Brice Stone and Rosalinda Maury, "Military Spouse Employment Report," Issue Lab, Feb. 1, 2014, <https://www.issuelab.org/resource/military-spouse-employment-report.html>.

<sup>21</sup> Amy Bushatz, "Push to Ease Licensing for Military Spouses Remains Patchwork by State," *Military.com*, July 5, 2016, <https://www.military.com/daily-news/2016/07/05/push-ease-licensing-military-spouses-remains-patchwork-state.html>.

<sup>22</sup> Florida House Bill 625, <https://www.flsenate.gov/Session/Bill/2017/615/>.

<sup>23</sup> ALLOW Act, § 101.

<sup>24</sup> Paul J. Larkin Jr., "A Positive Step Toward Occupational Licensing Reform: The ALLOW Act," Heritage Foundation, Legal Memorandum No. 212, July 21, 2017, p. 6, [https://www.heritage.org/sites/default/files/2017-07/LM-212\\_0.pdf](https://www.heritage.org/sites/default/files/2017-07/LM-212_0.pdf).

<sup>25</sup> There are other legislative options at the federal level that also warrant consideration, including the New Hope and Opportunity through the Power of Employment Act (New Hope Act), H.R.2155, 115th Congress (2017-2018) and the Restoring Board Immunity Act H.R.3446, 115th Congress (2017-2018). For more information on the Restoring Board Immunity Act, see: Written Testimony of C. Jarrett Dieterle and Shoshana Weissmann, U.S. House Committee on the Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law, "Occupational

## 2. *Reforming Licensure in Government Agencies and Contracting*

The significant size of the federal workforce provides another opportunity for federal action in the licensing realm. The executive branch employs over 2 million civilian workers.<sup>26</sup> Estimates suggest there are an additional 7.5 million individuals working as federal contractors.<sup>27</sup> Adding these together, this amounts to over 5% of the nation's 160 million person workforce.

The federal government possesses direct or indirect control over the job requirements for these positions, which uniquely situates it to determine what licensing, if any, such jobs require. The Department of Veterans Affairs recently demonstrated the potential for reform in this area.

After a notice-and-comment process, the VA granted "full practice authority" to registered nurses, allowing them to engage in primary care activities outside the direct supervision of doctors in the VA system.<sup>28</sup> This change, known as "scope of practice" reform, frees nurses to practice to the full extent of their degree, rather than being arbitrarily limited as to the services they can provide. Previously, only licensed medical doctors had been permitted to undertake many primary care activities within the VA system.<sup>29</sup> As such, scope-of-practice reform operates as a type of occupational licensing reform by clearing away these arbitrary barriers.

Congress or the President should direct the Government Accountability Office (or another appropriate agency) to conduct a review of all licensing requirements across federal agencies and contracts and identify ones that are irrational or unnecessary. Then, as the VA demonstrated, these requirements can be cleared away or eliminated.

Given the size and importance of the federal workforce, the federal government has a real opportunity to clear away excessive licensing burdens for a significant number of Americans.

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Licensing: Regulation and Competition," Sept. 12, 2017, <https://www.rstreet.org/wp-content/uploads/2017/09/Restoring-Board-Immunity-Written-Statement-FINAL.pdf>.

<sup>26</sup> Office of Personnel Management, Historical Federal Workforce Tables: Executive Branch Civilian Employment Since 1940, <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/historical-tables/executive-branch-civilian-employment-since-1940/>.

<sup>27</sup> John J. DiIulio, Jr., "10 questions and answers about America's 'Big Government,'" Brookings Institution, Feb. 13, 2017, <https://www.brookings.edu/blog/fixgov/2017/02/13/ten-questions-and-answers-about-americas-big-government/>.

<sup>28</sup> Federal Register, Vol. 81, No. 240, 90198, (Dec. 14, 2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29950.pdf>.

<sup>29</sup> C. Jarrett Dieterle, "How The VA Could Become A Policy Leader In Occupational Licensing Reform," *Forbes*, Nov. 9, 2016, <https://www.forbes.com/sites/realspin/2016/11/09/how-the-va-could-become-a-policy-leader-in-occupational-licensing-reform/#31aab9351c29>.

### 3. *Expanding the FTC's Occupational Licensing Work*

The Federal Trade Commission has done significant—but perhaps underappreciated—work in the occupational licensing arena. Congress could empower the agency to expand its efforts.

In 2010, the FTC brought an enforcement action against the North Carolina Board of Dental Examiners for actively seeking to exclude non-dentists from providing teeth-whitening services. The board in question was stocked with incumbent dentists who had an economic interest in limiting competition for the services they provided, including teeth whitening. The case ultimately escalated to the Supreme Court, which ruled that the board violated federal antitrust law because it was not actively supervised by the North Carolina government and was comprised mostly of self-interested economic actors.<sup>30</sup>

As noted, state licensing boards are often packed with industry insiders that have a direct economic incentive to prevent further market entrants into their profession. The boards erect formidable barriers to entry that prevent would-be professionals from entering the market. While quasi-government entities like licensing boards have traditionally been exempt from antitrust scrutiny under the so-called “state action doctrine,” the Supreme Court’s decision in the North Carolina dental board case appears to have ushered in a sea change in the law.

Congress can draw upon and expand this legal precedent by encouraging states with abusive licensing boards to take self-policing measures to restructure their boards. For example, Congress should consider passing the recently introduced Restoring Board Immunity Act, which provides states a safe harbor from federal antitrust exposure if they enact reforms that ensure active state supervision of licensing boards and robust judicial review standards for legal challenges to licensing laws.<sup>31</sup>

Beyond its direct enforcement authority, the FTC is also empowered with research and advocacy powers under federal law. Section 6 of the FTC Act authorizes the agency to “gather and compile information” and to “make public from time to time such portions of the information obtained by it . . . as are in the public interest.”<sup>32</sup> In fact, the FTC “has a long history of engaging in competition advocacy before federal regulators, state legislatures, [and] courts.”<sup>33</sup>

This advocacy can take different forms, but most prominently, under Acting Chairman Maureen Ohlhausen, the FTC has created its Economic Liberty Task Force. The task force has compiled

<sup>30</sup> *N.C. Board of Dental Examiners v. FTC*, 135 S. Ct. 1101 (2015).

<sup>31</sup> See Restoring Board Immunity Act, S. 1649, <https://www.congress.gov/bills/115th-congress/senate-bill/1649>.

<sup>32</sup> 15 U.S.C. § 46(a), (f).

<sup>33</sup> Tara Isa Koslov, “Competition Advocacy at the Federal Trade Commission: Recent Developments Build on Past Successes,” *CPI Antitrust Chronicle*, August 2012, p. 2, <https://www.competitionpolicyinternational.com/assets/Uploads/Koslov-Aug-121.pdf>.

extensive research and resources about the effects of occupational licensing and the potential policy solutions available. It has also hosted numerous roundtable events that bring together stakeholders from across the country to discuss occupational licensing. The FTC's advocacy efforts also include the filing of "advocacy comments" before state political entities that are considering new occupational licensing legislation or rules.<sup>34</sup>

Congress should consider increasing funding for the FTC's occupational licensing work in an effort to solidify it. While Congress traditionally just appropriates general funding to the agency, it could pass a specific line item appropriation and reporting requirement that specifically directs more money toward the agency's licensing efforts. Or Congress might simply direct the FTC to expend more of its existing budget on this work. Increasing funding of government agencies is never a popular argument, but unlike many government expenditures, the FTC's advocacy efforts provide a good return on investment.<sup>35</sup>

In sum, expanding FTC occupational licensing reform advocacy would allow the federal government to exert indirect influence on state-level licensing debates in a way that respects the boundaries of federalism.

### Conclusion

The issue of occupational licensing continues to attract widespread attention among policymakers and commentators. While many at the federal level have dismissed it as a "state issue," this incorrectly diminishes the federal government's unique ability to pursue licensing reform. The federal government has multiple levers available that could make a real difference.

Hopefully this testimony has highlighted some potential options for Congress and the subcommittee to consider, although surely there are additional opportunities, as well. I again would like to thank the subcommittee for inviting me to testify and would be happy to answer any questions, today or in the future.

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<sup>34</sup> Federal Trade Commission, Advocacy Filings, <https://www.ftc.gov/policy/advocacy/advocacy-filings>.

<sup>35</sup> As FTC staff have noted in the past, advocacy comments "can be researched and written by a few staff members within a relatively short time frame," which makes them a much less resource-intensive endeavor than "a fully investigated and litigated enforcement matter." Koslov, p. 4. Similarly, a 1989 American Bar Association Report stated that "the potential benefits" from an FTC advocacy program "exceed the Commission's entire budget." Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission, *reprinted* in 58 Antitrust L.J. 43, 116 (1989).



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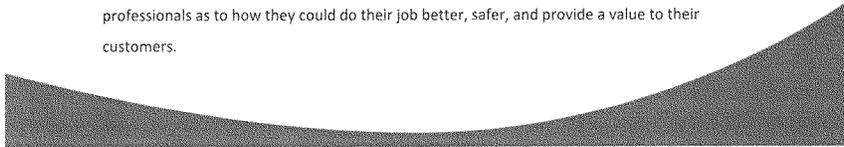
Written Testimony  
Committee on Small Business  
Subcommittee on Economic Growth, Tax, and Capital Access  
"Occupational Hazards: How Excessive Licensing Hurts Small Business"  
United States House of Representatives  
Washington, D.C.

Delivered by Keith Hall  
President and Chief Executive Officer  
National Association for the Self-Employed  
February 28, 2018

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Thank you, Chairman Brat and Ranking Member Evans, for the opportunity to provide some insight as to the impacts of occupational licensing on the millions of self-employed and micro-business owners, I am proud to represent the National Association for the Self-Employed (NASE) as President and CEO. The NASE represents the 27 million self-employed and micro-business owners (10 employees or fewer), as well as providing educational resources for those looking to start and grow their businesses. Founded in 1981, the association has been the leading voice advocating for America's smallest businesses in all areas of public policy, to ensure lawmakers truly understand the uniqueness of the largest sector of the total small business community, the self-employed.

Before I begin, I think it is important to acknowledge at the forefront that there are professions and occupations that should have licensing requirements and continuing education credit hours. We all know laws change, best practices are introduced, all of which informs millions of professionals as to how they could do their job better, safer, and provide a value to their customers.

A decorative graphic at the bottom of the page consisting of a dark, textured, curved shape that tapers towards the center, resembling a stylized wave or a modern architectural element.

However, what concerns me regarding those job duties that require licensing are three-fold:

- 1) the licensing barriers of money and time
- 2) the inconsistency of licensing requirements from state to state and locality to locality
- 3) the impact on minorities and other vulnerable populations.

In an NASE snapshot survey for our members conducted last week, 70% indicated that they must adhere to some level of licensing tied to their profession. This is trend of requiring licensing is supported by the excellent 2017 2nd edition *“License to Work”* report by the Institute for Justice, which found, *“in the 1950s, about one in 20 American workers needed an occupational license before they could work in the occupation of their choice. Today, that figure stands at about one in four.”*

The NASE has been pleased to see the issue of licensing being tackled by the highest levels of our federal government, we continue to be incredibly supportive of the *Economic Liberty Task Force* established by the acting Federal Trade Commissioner chairman, Maureen Ohlhausen, which has been convening stakeholders together to identifying ways in which the federal government can safely advocate for decreased licensing requirements while supporting state initiatives that do the same.

As it relates to the financial burden, of the 102-occupational license reviewed and included in the 2017 Institute for Justice report, they found that on average it cost an individual \$267 in fees and one exam, and nearly a year of education and experience. For an individual looking to enter the workforce or make a career shift, the financial costs of securing the appropriate licensing requirements is a significant barrier. It should be noted that both the Institute of Justice report and the *Economic Liberty Task Force*, both express concern as to the impact of the financial barrier on the most economically disadvantaged citizens, causing a barrier to entry and mid-level jobs that could have a substantial impact on the lives of those individuals if it wasn't for the cost associated with moving into that profession.

As it relates to the inconsistency of licensing requirements from state to state and locality to locality. This is the most challenging for our dynamic population of entrepreneurs that are more mobile and creative in the way in which they work. The figures and states are just overwhelming to an entrepreneur looking to move his or her business from one state to another. Especially, if that individual is looking to relocate say to the popular Golden State, California, which requires the largest number of occupational licenses and imposes steep requirements to attain proper licensing.

While the FTC has honed in on 23 occupations, ranging from dentists, electricians, and sellers of contact lens, that could benefit from standardization, it really is going to require states to understand the importance of creating an environment in which entrepreneurs can easily traverse geographic areas without fear of run-

ning afoul of complex licensing requirements that are vary widely from state to state.

As I stated at the beginning of my testimony, some licensing requirements are necessary, but what has become evident in our own research is that for many of our members, nearly 68% in our snapshot poll, said that they find the licensing requirements hinder their ability to operate their small business. What we don't know in our research but could speculate is that for many Americans, they do not pursue a profession or job because of the barrier that the licensing requirements pose.

As always, the NASE, likes to not just identify problems but rather, put forth creative solutions to those problems we identify! I would propose several ideas that I know are advocated for by many other organizations, including:

- 1) Support and amplify the FTC's *Economic Liberty Task Force*;
- 2) Work to encourage Associations and organizations to review their own licensing requirements, which will turn, encourage state and local governments to review their licensing requirements
- 3) Support scholarship and other avenues in which Associations or states could provide financial recourse for the costs related to licensing.

As we continue to move to a more dynamic and mobile economy, we will need to ensure that your physical location shouldn't dictate the work you are permitted to do, but rather, that entrepreneurs should be encouraged to traverse across state lines and conduct business in a safe way, but that doesn't unduly burden them in a way that could impact their livelihood.

Thank you and look forward to your questions.



February 23, 2018

Chairman Dave Brat  
 U.S. House of Representatives  
 Subcommittee on Economic Growth, Tax and Capital Access  
 2361 Rayburn House Office Building  
 Washington, DC 20515

**RE: Occupational Hazards: How Excessive Licensing Hurts Small Business**

Dear Chairman Brat and Honorable Subcommittee Members,

Thank you for the opportunity to participate in this very important hearing regarding the impact of excessive occupational licensing on small business. Thank you for all the work you do as a committee. I view the committee, the members, and programs as an important resource. I look forward sharing and learning from the dialogue with you and my fellow witnesses.

I am here - first and foremost - representing myself; a small business owner from Massachusetts. I own and operate a third-generation salon business. Zona employs approximately 75 people across three locations in suburban Boston. We are stuck at 75 people in part due to licensing - which I'll explain as I go along.

Inside the industry I'm an active member of the Professional Beauty Association (PBA). PBA is a national nonprofit trade association that represents all segments of the professional beauty industry including manufacturers, distributors, salon and spa owners, and licensed beauty professionals. This diversity in membership makes it difficult for me to adequately represent each segment. The view of a for-profit school owner is different than a self-employed stylist. A manufacturer or distributor who moves product through the salon channel has probably never sat in a state board meeting. So, I am going to approach this as a salon employer looking to grow employment.

In the past, I've testified to the House Ways & Means committee on tip income reporting, I've served on the Massachusetts Taskforce on the Underground Economy, and I've served on the board of cosmetology for the State of Massachusetts. Outside the industry I'm a board member of Work Inc. a leader in the field of providing **work** opportunities for individuals with disabilities. In each of these roles, my focus has always been on how to get people in — not keep them out.

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Since I'm testifying for myself, let me describe my business: Our revenue is derived from services and retail in a 90/10 split. These percentages are not unusual. Retail used to be bigger, but has been reduced by e-commerce. Where I am less usual is that I employ my workers. Eighty-seven percent of workers in my industry are classified as self-employed. This worker classification landscape creates a lot of movement in the industry, and the movement has implications to labor, taxes, and licensure.

My business offers health insurance, disability, retirement, training and development. We're looking now at a student loan assistance program, but challenged by the fact that we're already committing .65 cents of every dollar to cost of labor. None of this changes the fact that if I want to grow Zona, it comes down to growing employee headcount. As the members of this committee well know, growing headcount is hard for all businesses in a 4% unemployment environment. Add licensing and now we're looking for a thin slice of 4% - available workers who happen to hold a cosmetology license - and want an employment situation.

Low unemployment. Worker classification. High turnover. Here's another problem: There's only one way into the industry: through a school program leading to a licensure exam. In Massachusetts that's a 1000-hour program. This is the fewest hours in the country, but it still converts to spending the better part of a year in school and spending between \$12,000 - and \$22,000.

Since our business model is upper mid-market, the preparation a license provides requires our own additional training program that includes not only more advanced technical training, but the soft skills that lead to a higher level of professionalism. Our "entry level" duties include shampooing and blow-drying and assisting established stylists. Our model drives higher earnings. However, I cannot fill these entry-level jobs. As you all know, for-profit education is being scrutinized and further regulated on both the Federal and State levels. Putting the politics of for-profit education aside, there are 30% fewer schools today than there were just a few years ago. In my own state, there are 10 fewer schools. I personally attempted to purchase a school and exited because it's too much risk. But that still leaves salon employers almost entirely dependent on something they have no control over.

So, what do we do about it? I'm not prepared to say that licensing should go away. I need the foundation and the commitment. But employers should be designed in - particularly at the entry level. Let's create reform where appropriate to better fit the current realities of trades and professions.

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I believe we need boards with industry participants - with the right controls. I do not think the Federal Government should be dictating to States, but there's legitimacy to the Federal Government's economic freedom and competitive concerns.

In my industry, I think we need to move beyond the public safety argument. It's also public welfare. The beauty industry is a people business and will stay that way. The labor intensiveness of it not only triggers legitimate safety concerns, but other public interest concerns. It's not as simple as calling licensure a complete barrier. In an unregulated environment, entry into an occupation is not barrier-free. Movement is not barrier-free. There are workplace barriers, informational barriers, social network barriers, cultural barriers, and discriminatory barriers. Occupational licensing if reformed where appropriate and applied properly can improve my industry and help individuals and businesses grow.

I look forward to our conversation.

Respectfully,

Frank Zona  
Owner, Zona Salons

Attached Documents:  
Economic Snapshot of the Salon Industry  
National Industry Profile  
National Infographic  
Post-Election Findings  
Witness Disclosure Form  
Written Testimony

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Presented to The Committee on Small Business, Subcommittee on Economic Growth,  
Tax, and Capital Access

“Occupational Hazards: How Excessive Licensing Hurts Small Business”

Tuesday, February 27, 2018

Room 2360 Rayburn House Office Building

Regulating Occupations

Testimony of:

Professor Morris Kleiner  
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February 27, 2018

Chair and members of the Committee on Small Business, Subcommittee on Economic Growth, Tax, and Capital Access

My name is Morris Kleiner. I testify before you today on my own behalf and not as a representative of the University of Minnesota or any other organization with which I am affiliated.

I have a Ph.D. in economics from the University of Illinois at Urbana-Champaign. I am a professor at the Humphrey School of Public Affairs at the University of Minnesota Twin-Cities. I also teach at the University's Center for Human Resources and Labor Studies. I am a visiting scholar at the Federal Reserve Bank of Minneapolis, a Research Associate at the National Bureau of Economic Research headquartered in Cambridge, Massachusetts, and a Visiting Scholar at the Upjohn Institute for Employment Research in Kalamazoo, Michigan. I have worked in government, including military service, and consulted for many public and private sector organizations. My research specialty includes the analysis of institutions, such as occupational licensing, in the labor market. I have published in the top academic journals in labor economics and industrial relations, and I am the author, co-author, or coeditor of eight books. Three of these books focus on occupational regulation and were published in 2006, 2013, and 2015 by the Upjohn Press. These books have been the leading volumes on occupational regulations based on sales and citations to the work in Google Scholar.

Let me start with my conclusions because it establishes that the wage and other benefits of occupational licensing are concentrated primarily among individuals who are already well paid.<sup>1</sup> Evidence indicates that occupational licensing can hamper mobility, making it harder for workers to take advantage of job opportunities in other regions. Moreover, there is relatively little evidence to show that occupational licensing has actually improved the quality of delivered services in many fields, although it has been shown to increase prices and limit economic output. Hence, governments should require cost-benefit analyses prior to new licensing rules, allow practitioners to cross borders without economic penalties, and reduce regulations on certain occupations.

Occupational licensure is the process by which governments establish qualifications required to practice a trade or profession, so that only licensed practitioners are allowed by law to receive pay for doing work in the occupation. During the early 1950s, occupational licensing in the U.S. covered about 4.5 percent of the workforce, but by 2015 it had climbed to 25 percent according to the U.S. Bureau of Labor Statistics. Below I enumerate these issues and suggest how these regulations influence the economy and small businesses. I also provide suggestions for improving current policies.

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<sup>1</sup>Curr, Henry, 2018, "How to Rig an Economy: Occupational Licensing Blunts Competition and Boosts Inequality," *The Economist*, February 17.

First, occupational licensing makes it more difficult to enter an occupation and move across political jurisdictions<sup>2</sup>. While licensing may be an effective means of boosting wages for some occupations, licensed workers are not always better off.<sup>3</sup> Empirical evidence indicates that licensing can hamper mobility, making it harder for workers to secure jobs in other states. Occupational licensing can thus act as a deterrent to geographical movements in several ways. For instance, because licensing is typically administered at the state level, workers may have to repeat many of the requirements and investments necessary to gain licensure when moving across borders. These requirements can include qualification criteria such as good moral character, passing exams, working with or for local practitioners, and engaging in ongoing professional development activities (an investment that continues throughout the worker's career). In the absence of reciprocity agreements—in which one state accepts occupational licenses granted by another—relicensing requirements can be prohibitive, in terms of both time and money, thereby discouraging workers from moving to other licensing jurisdictions where greater opportunities often exist.

Multiple studies have corroborated the negative link between occupational licensing and worker mobility. The licensing of manicurists, for example, can impede cross-state and even international migration—particularly from Vietnam (42 percent of all manicurists in the U.S. in 2000 were Vietnamese). A well-regarded study finds that the requirement of an additional one hundred hours of training reduces the likelihood of having a Vietnamese manicurist in the area by 4.5 percentage points, while states requiring some level of English proficiency were 5.7 percentage points less likely to have a Vietnamese manicurist<sup>4</sup>. In other words, policies that affect migration are not just limited to high-income individuals.

Beyond its detrimental effects on workers, this lack of mobility also can harm consumers—especially in rapidly growing areas. To the extent that licensing slows the influx of new workers and inhibits greater competition, consumers are unable to access services at the lowest cost. Small businesses are not as likely to be able to hire at going wages creating what they perceive as “shortages.” Taken together, these studies support the view that regulation may limit the number of practitioners in many fields, and that a policy of reducing barriers to state or national migration with respect to licensing requirements could benefit workers, small businesses, and consumers.

Second, occupational licensing can affect consumer prices via several channels, from restrictions on worker mobility to limitations on advertising and other commercial practices. The impact of li-

<sup>2</sup>See J. Johnson and M. Kleiner, 2017. “Is Occupational Licensing a Barrier to Interstate Migration?”, NBER Working Paper No. 24107. December.

<sup>3</sup>See both Kleiner, M. M. and A. B. Krueger (2010). “The Prevalence and Effects of Occupational Licensing,” *British Journal of Industrial Relations*, 48, 676/687 and Kleiner, M. M. and A. B. Drueger, “Analyzing the Extent and Influence of Occupational Licensing on the Labor Market,” *Journal of Labor Economics*, 31, S173-S202.

<sup>4</sup>Federman, Maya N., David E. Harrington, and Kathy J. Krynski. 2006. “The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists.” *American Economic Review* 96 (2): 237-41.

censing-related practices on prices ranges from 5 to 33 percent, depending on the type of occupational practice and location<sup>5</sup>. For example, estimates completed in the 1970s showed that the lack of reciprocity in dentistry raises prices by 15 percent. A restriction on the number of hygienists that a dentist may employ increases the average price of a dental visit by 7 percent<sup>6</sup>. More recent national estimates showed that restrictions on the tasks a nurse practitioner can perform without the supervision of a physician raises prices of healthy-child exams by up to 10 percent, with no effect on child mortality or insurance rates for malpractice<sup>7</sup>.

These higher prices could be caused by government regulations intended to reduce the likelihood of poor service in the market<sup>8</sup>. The rationale is that higher prices cause consumers to perceive the service to be of higher quality (even if this is not actually the case) and thereby demand more of the service, which drives up the price further. On the other hand, current practitioners could influence regulatory practices in order to raise their own wages by limiting entry or restricting information on service prices in the market (health care is a prime example of this type of use of regulations)<sup>9</sup>. Under this framework, occupational licensing creates a monopoly in the market, with the long-term impacts being lower-quality services, too few providers, and higher prices.

It is difficult to tell from the empirical studies which of the above causes are more likely. However, regardless of the exact cause, it is possible for regulated high-income occupations, such as dentists and lawyers, to raise prices in ways that may further shift income from lower-income customers to higher-income practitioners, thus potentially contributing to greater income inequality<sup>10</sup>. Furthermore, if wealthier consumers place greater value on (or can afford) higher quality licensed services, then lower-income individuals with less demand (or less ability to pay) might be adversely affected by tougher licensing standards, as they will have even less access to the increasingly higher priced services.

Third, occupational licensing reduces the ability of individuals to enter regulated occupations. For example, occupational licensing can reduce labor supply by between 17%-27%. Men respond to licensing with larger reductions in labor supply than women, regardless of race<sup>11</sup>. Longitudinal data show that the longer an occupation is licensed the greater its ability to limit entry and raise wages

<sup>5</sup> See Kleiner, Morris M. 2006. "Licensing Occupations: Ensuring Quality or Restricting Competition?" Kalamazoo, MI: W. E. Upjohn Institute for Employment Research.

<sup>6</sup> See Kleiner, Morris M., and Robert T. Kudrle. 2000. "Does Regulation Affect Economic Outcomes? The Case of Dentistry." *Journal of Law and Economics* 43 (2): 547-82 and Kleiner, Morris M. 2006. *Licensing Occupations: Ensuring Quality or Restricting Competition?* Kalamazoo, MI: W. E. Upjohn Institute for Employment Research.

<sup>7</sup> Kleiner, Morris M., Allison Marier, Kyoung Won Park, and Coody Wing, 2016, "Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for a Medical Service." *Journal of Law and Economics*, Vol. 59, Vol. 2. May.

<sup>8</sup> See U.S. Executive Office of the President. 2015. "Occupational Licensing: A Framework for Policymakers." Washington, DC: The White House.

<sup>9</sup> Kleiner, Morris M., Allison Marier, Kyoung Won Park, and Coody Wing, 2016. "Relaxing Occupational Licensing Requirements: Analyzing Wages and Prices for a Medical Service." *Journal of Law and Economics*, Vol. 59, Vol. 2. May.

<sup>10</sup> See Kleiner, M. M. and E. Vorotnikov (2017): "Analyzing occupational licensing among the states." *Journal of Regulatory Economics*, 1-27 for a detailed analysis of the issue.

<sup>11</sup> Blair, Peter, 2018, "How much of a barrier to entry is occupational licensing?" Working Paper. Clemson University.

for its workers.<sup>12</sup> In addition, immigrants have lower levels of licensing than natives suggesting that it serves as a barrier for this growing group in the U.S. economy.<sup>13</sup>

New regulatory policies often include “grandparent clauses” that protect existing workers from having to adhere to changes in the licensure process; but, new entrants must meet these higher standards in order to gain entry into the occupation.<sup>14</sup> It takes time for older, less-educated workers to exit the labor market, and for newer workers who have met the higher entry requirements to enter. This process may limit the supply of labor and allow those who are already licensed to work in the occupation to gain economic benefits by limiting employment growth (and thereby competition) in their field. In addition, occupational licensing organizations that represent, for example, accountants, have ratcheted up the requirements to attain a license, in this case from 4 to 5 years of university training, which has served to further limit the supply of licensed practitioners.

Overall, occupational licensing and the lack of consistency across state borders with respect to the education and training of licensed practitioners can carry broad implications for the economic well-being of individuals. Evidence indicates that occupational licensing influences the allocation of labor in critical areas of the economy, such as health care, construction, and education, and has had an important influence on employment, wage determination, employee benefits and prices. Some even suggest that occupational licensing dampens the rate of innovation and misallocates resources within an occupation by setting fixed and in some cases arbitrary rules<sup>15</sup>.

In order to enhance the benefits and reduce the costs of this form of regulation, the following three policies are recommended.<sup>16</sup> First, state governments should require and the federal government should encourage cost-benefit analyses prior to the approval of new occupational licensing standards. Second, licensed individuals should be allowed to move across political jurisdictions with minimal retraining or residency requirements. Third, where politically feasible, governments should reclassify certain licensed occupations to a system of certification or should remove regulation on some professions altogether. These proposals should lead to employment growth in affected occupations and a reduction in consumer prices. Replacing licensing with certification in certain occupations, thereby providing more competition, would, in most cases, result in substantial gains in economic growth and employment without measurable harm to consumers.

<sup>12</sup>Han, S. and Kleiner, M.M., 2016. *Analyzing the Influence of Occupational Licensing Duration and Grandfathering on Labor Market Outcomes* (No. w22810). National Bureau of Economic Research.

<sup>13</sup>Hugh Cassidy and Tennecia Dacass, 2018. “Occupational Licensing and Immigrants,” Kansas State University Working Paper, February.

<sup>14</sup>See Han, S. and Kleiner, M.M., 2016. *Analyzing the Influence of Occupational Licensing Duration and Grandfathering on Labor Market Outcomes* (No. w22810). National Bureau of Economic Research for further details.

<sup>15</sup>Schmidt, James, A. Jr., 2012. “New and Larger Costs of Monopoly and Tariffs”. Economic Policy Paper 12-5. Minneapolis, Minnesota. Federal Reserve Bank of Minneapolis.

<sup>16</sup>Kleiner, Morris M., 2015. Reforming Occupational Licensing Policies. Retrieved from the University of Minnesota Digital Conservancy, <http://hdl.handle.net/11299/190817>.

**Addendum**

Hierarchy of occupational regulations from least to most restrictive: **“Registration”** means a requirement established by a legislative body in which an individual gives notice to the government that may include the individual’s name and address, the individual’s agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. “Registration” does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use “registered” as a designated title. A non-registered individual may not perform the occupation for compensation or use “registered” as a designated title. “Registration” is not transferable and is not a synonymous with an “occupational license.”

**“Certification”** is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body or private certification organization. Upon approval, the individual may use “certified” as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title “certified.” “Certification” is not synonymous with an “occupational license.”

**“Occupational license”** is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

