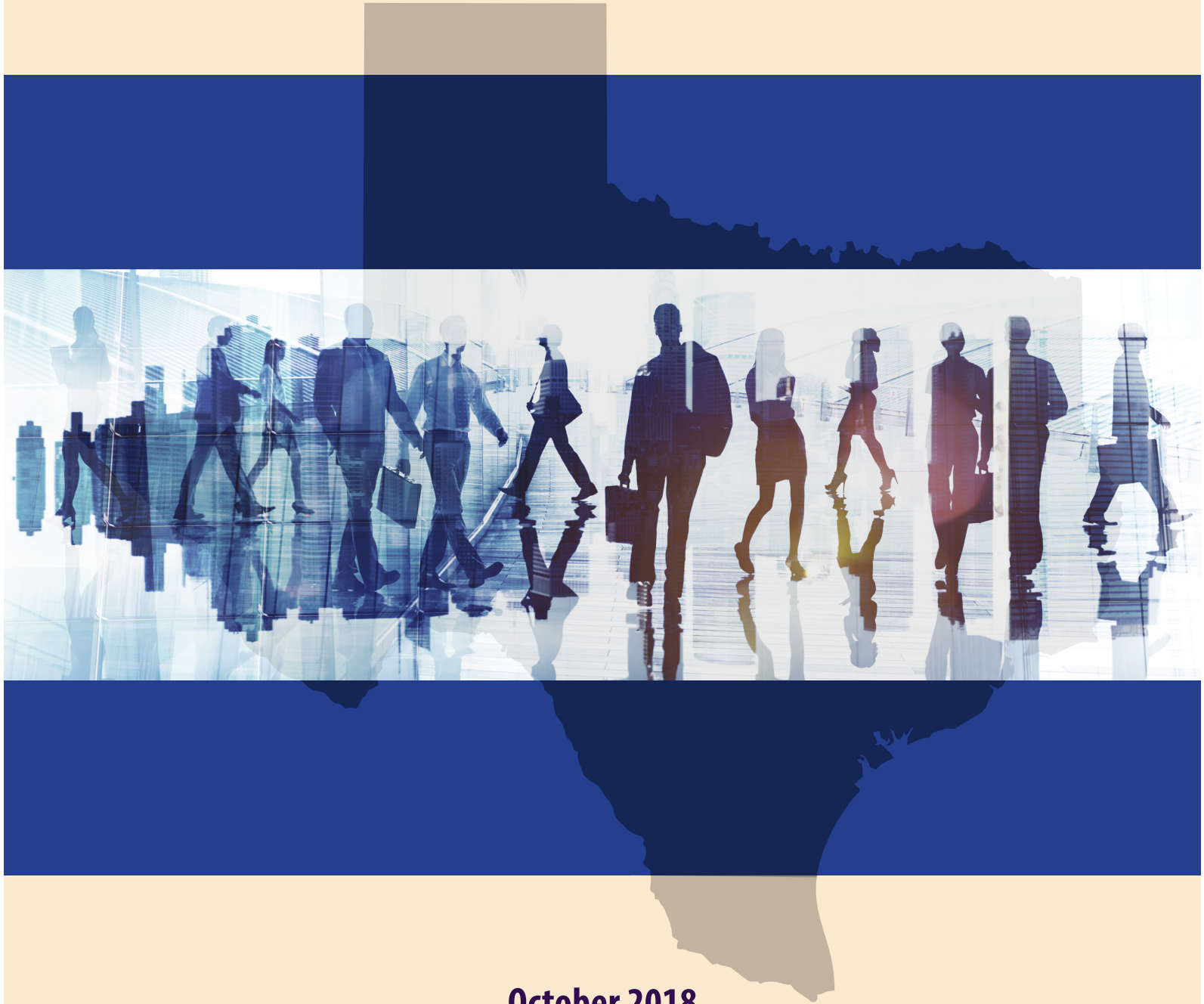


Occupational Licensing: Keeping People Poor



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Executive Summary

Occupational licensing is the most strenuous form of labor market regulation. It requires a person to obtain a government permission slip to work. To obtain this permission slip, individuals must often complete minimum levels of training, pay fees, and complete an exam before being allowed to perform a job or vocation. The intended goal of these licenses is to ensure public health, safety, and welfare by mandating quality standards in a profession. However, the reality is that licensing limits or prevents competition among individuals in an industry and artificially inflates licensed workers' wages at the expense of consumers and potential entrants.

Occupational licensure in the U.S. is on the rise. Since 1950, the share of licensed occupations by governments has more than quadrupled, rising from less than 5 percent in the 1950s ([Kleiner and Krueger 2008, 3](#)) to 21.5 percent in 2017 ([Bureau of Labor Statistics](#)). More than 1 in 5 Americans must receive permission of the state, local, or federal government to work in a chosen occupation.

Licensure is associated with artificially inflating wages for an occupation, as much as 15 percent in some cases ([Kleiner and Krueger 2008, 8](#)). Licensing boards postulate that this wage increase is the result of increases in the quality of service. Empirical data calls this explanation into question, with the wage increase likely resulting from decreases in competition created through onerous training requirements and high fees. Consumers and potential entrants to the occupation shoulder the vast majority of costs associated with the artificially high wages of licensed workers. An estimate of the total economic cost of licensure to Americans is \$203 billion, with the loss of 2.85 million jobs ([Kleiner 2011, 3](#)).

Texas' licensing laws are ranked 21st most burdensome by the Institute for Justice as the state regulates a wide variety of occupations, from interior decorators to cosmetologists to doctors ([Carpenter et al., 20](#)). The requirements for these occupations are often incongruous with the actual danger they present to the public. For example, cosmetologists have more strenuous regulations than emergency medical technicians (EMTs) in Texas. In particular, individuals who want to be cosmetologists must complete 10 times more days of training (350 vs. 35) than EMTs in Texas. Texas added licensing requirements for at least 22 occupations between 1993 and 2012 ([Timmons et al. 2018, 25](#)). From 1999 to 2015, the number of licenses issued by the Texas Department of Licensing and Regulation (TDLR) increased from 116,000 to 650,000 ([3](#)) or a 460 percent increase for only a subset of state-licensed occupations. This growth is substantially faster than population growth in Texas of 37.5 percent from 20 million to 27.5 million for the same period. Fortunately, the 85th Texas Legislature repealed the licenses for shampooers and eyebrow threaders ([SB 2065](#)).

People should have the opportunity to gain employment in whichever occupation best satisfies their desires. Unfortunately, that is impossible in many

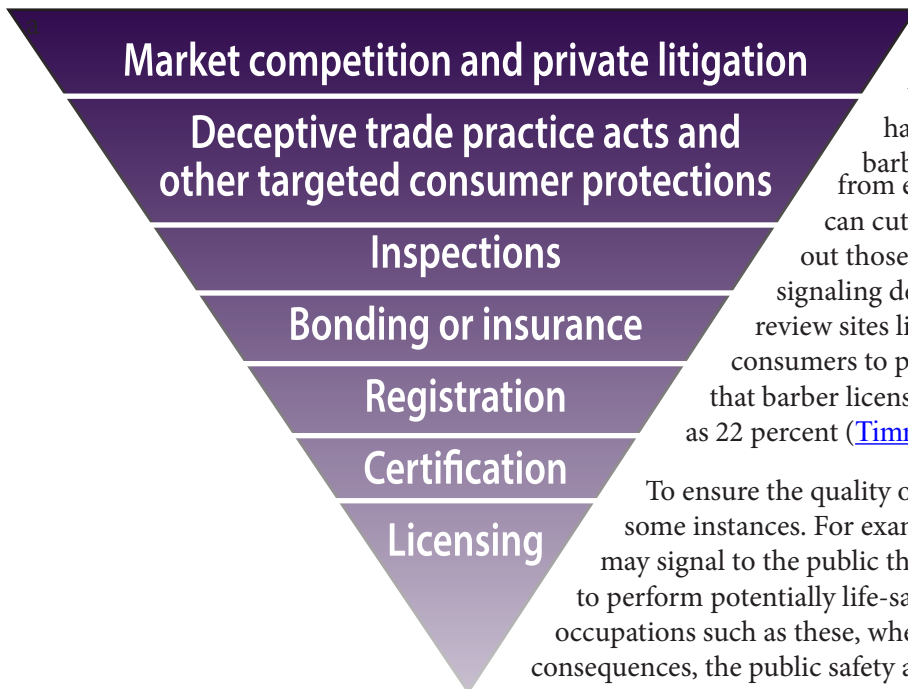
Key Points

- Occupational licensing is the most strenuous form of labor market regulation available to state, local, and federal governments.
- The intent is to protect the public from harm caused by unqualified or untrained service providers.
- Texas' licensing laws are ranked 21st most burdensome as the state regulates a wide variety of occupations, from interior designers to cosmetologists to doctors.
- Licensure results in inflated wages and decreased competition for incumbents, stifling innovation and burdening consumers with artificially high costs.
- The Texas Legislature should eliminate unnecessary labor market barriers to opportunity while considering other options to protect the public's health, safety, and welfare.

occupations today because of occupational licensing. While licensure is intended to protect people from harm caused by unqualified or untrained service providers, it is often used as a barrier to entry, which prevents competition and contributes to artificially higher wages and less quality outcomes.

To promote the prosperity of all Texans, the Texas Legislature should eliminate unnecessary licenses while protecting the public's health and safety. Steps in the right direction would include reviewing all licensed occupations in Texas, eliminating the requirements that do not serve any public interest, and reducing licensing requirements to the point that they no longer harm workers, consumers, and economic activity. Similar to Nebraska and Colorado, Texas could tell the Texas Sunset Advisory Commission to review a large number of licensing boards and applicable licenses, instead of the whack-a-mole approach today, ensuring that all licensing boards are reviewed every six years. Some licenses could also be converted to less restrictive forms of regulation, like registration or certification handled by an occupation's association, which could allow the government to maintain some form of oversight while minimizing the effects on employment and ultimately economic activity. In general, licensing simply provides a signal for qualified workers, but there are many private-market ways, like Yelp, to do this today. For the sake of prosperity among workers, something must be done about the onerous governmental regulation of occupations.

Figure 1. Alternatives to occupational licensing



Source: [Johnson](#)

Arguments around Occupational Licensure

Occupational licensing is the most strenuous form of labor market regulation available to state, local, and federal governments. Licensure statutes mandate that a person cannot be employed in a specified field until they have completed the minimum requirements of competency, as outlined by licensing boards. The intent is to protect the public from harm that could be caused by unqualified or untrained service providers. Proponents of licensure argue that there is a substantial increase in quality created by the educational requirements of licensure.

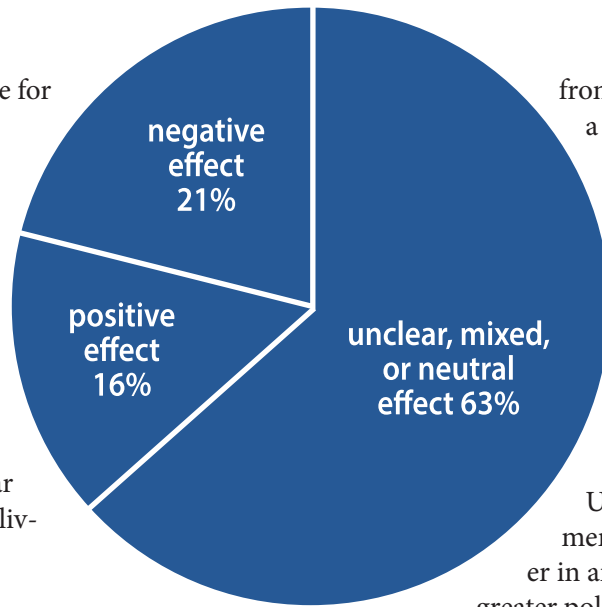
However, occupational licensing and regulation of occupations are not synonymous. **Figure 1** depicts some of the available alternatives to occupational licensing.

There are many other ways to provide oversight of professions and protect the public from undue harm without imposing the associated high costs of occupational licensing. In the food industry, restaurants are subject to inspections. Tree trimmers may be required by law to obtain bonding and insurance to practice. Rather than licensing opticians like several other states, Texas required that opticians be subject to certification prior to 2015. The law previously protected titles such as “registered dispensing optician” but opticians could practice in the state without obtaining certification ([Timmons and Mills](#)). None of these regulations limit entry into the regulated professions.

Licensing does limit entry, however, and may not be protecting consumers. Barbers in Texas are required to complete 1,500 clock hours of training and pass two exams in order to cut hair ([Carpenter et al., 130](#)). Barring a highly unexpected accident, the only harm a customer risks when entering a barbershop is receiving a bad haircut. Proponents argue that the licensure of barbers ensures that the license keeps bad barbers from entering the market while signaling that they can cut hair well. However, the market naturally weeds out those who are not qualified or competitive through signaling devices such as word of mouth and online service review sites like Yelp. Excessive licensing, instead, forces consumers to pay a higher price for haircuts. Research suggests that barber licensing may inflate the wages of barbers by as much as 22 percent ([Timmons and Thornton, 740](#)).

To ensure the quality of a service provider, licensing may be logical in some instances. For example, the licensing of physicians and surgeons may signal to the public that these professionals are qualified and trained to perform potentially life-saving procedures safely and effectively. In occupations such as these, where inexperience or mistakes could lead to fatal consequences, the public safety argument may readily apply. The same theory of

Figure 2. Quality effect of occupational licensure



public safety is not necessarily true for interior decorators though. When estimating the effects of occupational licensing on the quality of services, however, the evidence is generally ambiguous. **Figure 2** shows the quality results of occupational licensure found in 19 studies compiled by McLaughlin et al. (5).

The majority of studies find occupational licensing has an unclear effect on the quality of services delivered to consumers.

The Trade-off with Union Membership

Source: McLaughlin et al. (5)

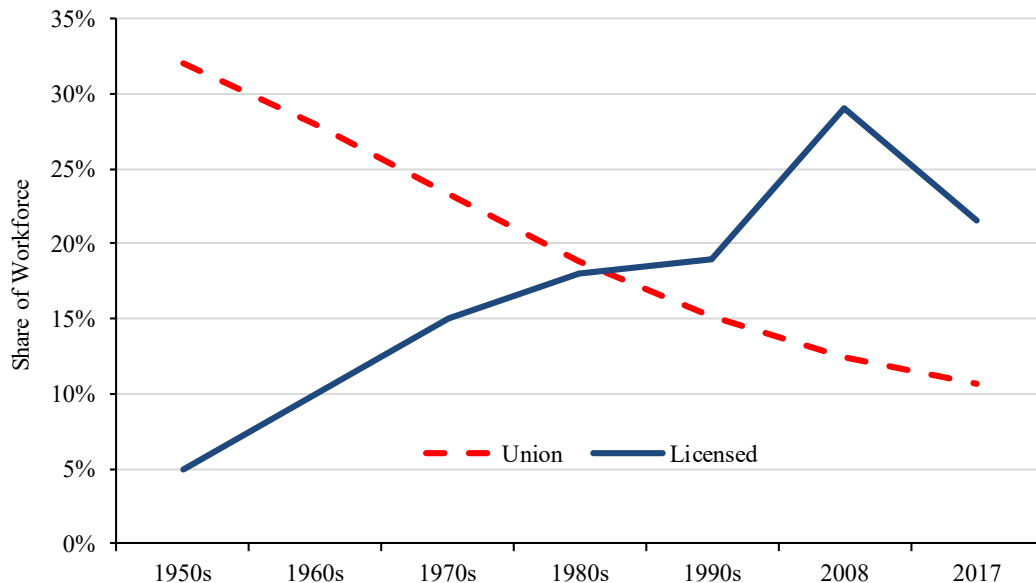
Union membership has been declining steadily in the U.S. while the share of occupations licensed has been increasing. **Figure 3** shows the share of the U.S. labor force that is either a union member or in a licensed occupation.

The surveys which were used to compute the percentages of licensed workers in 2008 and 2017 were different so the suggested decline in the share of licensed occupations could be misleading. However, as the U.S. economy shifted

from a manufacturing economy toward a service-based economy, licensure has largely taken the place of unionization (Kleiner and Krueger 2009, 3). In fact, there is a negative 93 percent correlation in this period between these two measures as there is a very close relationship between declines in unionization and increases in licensed occupations.

Unions, like licensing entities, allow members of an industry to group together in an effort to increase wages and provide greater political representation. Also like unions, licensing organizations engage in rent-seeking behavior that is harmful to consumers through artificially high wages and reduced employment. However, in right-to-work states like Texas that can reduce a union’s influence on an occupation’s market, workers have the option to join a privately run union. Workers in a licensed occupation do not have such an option because of governmental regulation that directly distorts those markets. In other words, unions can be less obstructive than licensed occupations. The inverse relationship between these two labor market distortions is a worrisome trend because fewer barriers to competition that

Figure 3. Share of the U.S. workforce in a union or in a licensed occupation since 1950



Sources: Bureau of Labor Statistics, Kleiner and Krueger (2009), and Hirsch and Macpherson

would give workers and consumers more choices and let people prosper would mean a decline in both union membership and licensed occupations.

Licensing in Texas

A General Picture

A wide variety of occupations have licensing requirements in Texas, ranging from interior designers to EMTs. According to the Institute for Justice’s study *License to Work* that examined the national licensing requirements for 102 low- to moderate-income occupations, Texas ranks 21st for the most burdensome licensing requirements in the nation (Carpenter et al., 22). The Institute for Justice identified preschool teachers and athletic trainers as examples of the most burdened in the state, with both needing 1,460 days of education and training to obtain a license. Texas also requires massage therapists and auctioneers to become licensed. Both Oklahoma and California do not issue state licenses for massage therapists. Oklahoma, New Mexico,

and California are among a group of 20 states that do not license auctioneers.

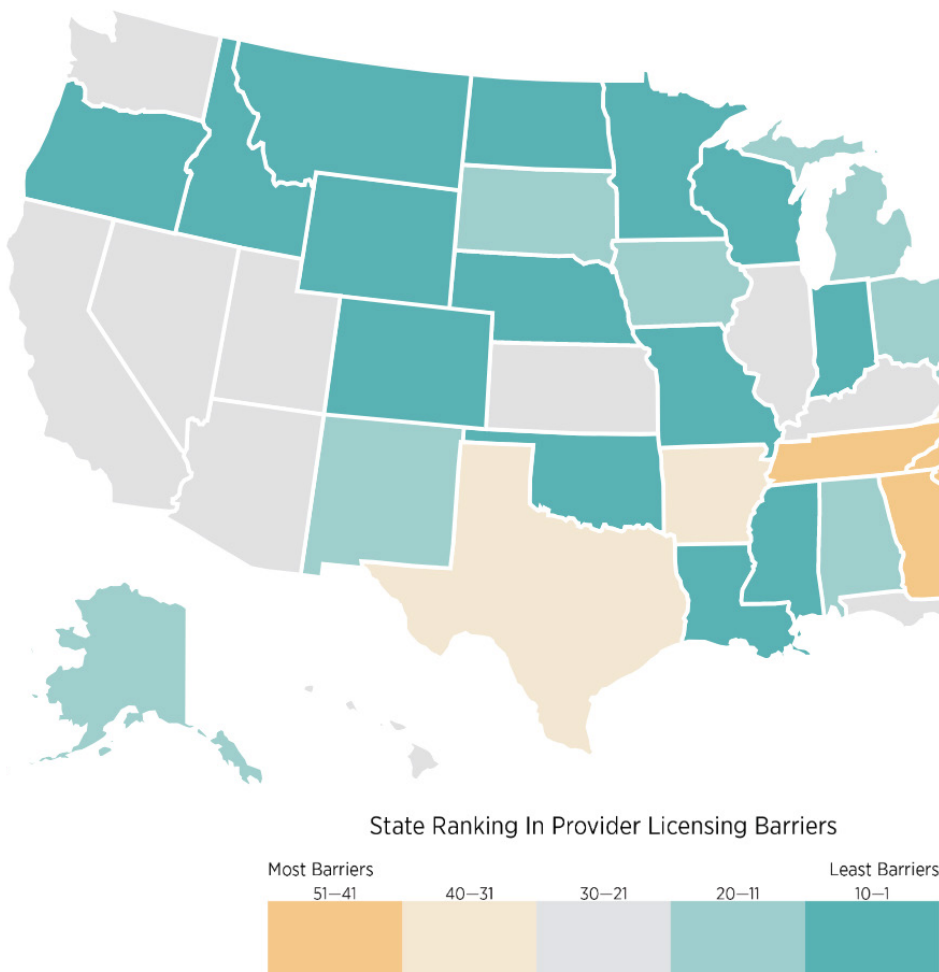
The penalties for violating licensing statutes are as varied as the licenses required in Texas. Interior designers who work in the state without a license or the supervision of a licensed designer face a Class C misdemeanor (Texas Occupations Code 1053.351). The more general punishment mandated by TDLR is a fine of up to \$5,000 per day of violation, with no maximum fine amount stated (Texas Occupations Code 51.302).

Health Care

Figure 4 provides a ranking of states based upon medical providers’ ability to provide services without occupational licensing barriers. The Mercatus Center provides the ranking in their Healthcare Openness and Access Project.

In this ranking, Texas ranks in the bottom decile of all states nationally—it is ranked 43rd with three other states. Bordering state Arkansas shares the same ranking. All other

Figure 4. Ranking of medical professionals’ ability to provide services without government licensing.



bordering states (including Louisiana, a state that licenses florists) have much lower barriers for medical providers.

Two examples of specific barriers to medical professionals in Texas are a restrictive practice environment for nurse practitioners and a general lack of direct access for physical therapists.

In order to provide primary care in the state, nurse practitioners must enter into a written agreement with physicians each year. Texas rules and regulations very clearly subordinate nurse practitioners to physicians and prevent medical providers from practicing to the full extent of their training. While this restriction raises the cost of health care for everyone, it especially hurts those in rural areas where there are severe doctor shortages (Davidson, 2). Millions of rural

Source: Bryan et al.

Texans and many inner-city residents have difficulty getting health care—medical, dental, as well as mental and behavioral—when they need it. There is a shortage of providers, both an insufficient number of doctors as well as maldistribution. Research suggests that allowing nurse practitioners the freedom to work to the full extent of their medical training could contribute \$8 billion more in economic activity annually and create more than 97,000 new permanent jobs in Texas ([Perryman Group, 29-30](#)). In Texas, Advanced Practice Registered Nurses (APRNs) cannot treat patients without a Prescriptive Authority Agreement (PAA), an expensive contract with a physician who delegates his authority to write prescriptions. In major metropolitan hospitals, the institution pays the cost of the PAA for their APRNs, which averages \$20,000 per contract with some priced over \$100,000 ([Peacock and Martinez-Gouhier, 138](#)). These prices make it impossible for APRNs to practice independently, particularly in underserved areas, without a hospital paying the cost of the PAA.

Direct access provisions for physical therapists allow patients to receive services without a physician referral. Texas has one of the most restrictive provisions in the United States—only permitting patients to see a physical therapist without a referral if it was previously given within the last year and the referring physician is notified within five days ([American Physical Therapy Association](#)). Essentially, direct access to physical therapists does not exist in the state. Physical therapists provide patients with less invasive (and less costly) treatment for pain, which may be preferable in many cases. A recent study, for example, documents that patients visiting a physical therapist directly are less likely to be prescribed opioids for treatment of neck pain ([Horn et al., 226](#)).

Labor Market Effects

Employment

Licensure could cost Americans 2.85 million jobs, according to one estimate ([Kleiner 2011, 3](#)). Licensing regulation has also been found to reduce the rate of job growth by 20 percent, and the costs associated with licensing are estimated to be anywhere from \$34.8 billion to \$41.7 billion ([Summers, 36](#)). This job loss is caused by extra barriers to entry from licensure requirements. Potential entrants are deterred from entering a profession with excessive training requirements, often a year or longer, which prohibits them from earning competitive wages until the training is complete. The excessively high fees also deter entry into many licensed professions, especially among lower-income individuals who cannot afford to pay such high fees to potentially get a job.

McLaughlin et al. also note that licensing requirements are especially harmful to military spouses ([6](#)). These spouses often work in licensed professions but the licensing requirements vary from state to state and are often not reciprocal. This means that military spouses have to complete the training requirements again, in a field in which they may already be licensed, every time they and their spouses relocate to a new state. This creates a high burden on military families and families that relocate often. In general, occupational licensing appears to be associated with reductions in migration between states ([Johnson and Kleiner, 1](#)). Licensure also presents a barrier to employment for many immigrant workers through the requirement of domestic work experience ([McLaughlin et al., 7](#)).

There is a statistically significant increase in hourly wages created by occupational licensure with little evidence of a significant increase in quality of service.

Wages

Kleiner and Krueger find that occupational licensing arbitrarily inflates wages similar to unions by about 15 percent ([8](#)). Licensing of massage therapists is found to increase hourly earnings by as much as 16.2 percent ([Timmons and Thornton, 371](#)). In another study, Timmons and Mills find evidence that optician licensing results in inflated hourly earnings of a similar magnitude ([2](#)). The empirical evidence seems to agree; there is a statistically significant increase in hourly wages created by occupational licensure with little evidence of a significant increase in quality of service.

Licensing has a negative effect on lower income households. For example, licensing increases wages by only 3.6 percent to 5.1 percent for the lowest-earning 30 percent of workers while it increases wages for the top 30 percent of earners by 10 percent to 24 percent ([Kleiner and Vorotnikov, 19](#)). Considering the poor have less disposable income, costs associated with licensing regulation would constitute a large portion of their income, decreasing their opportunities to enter that occupation. Licensure in low- to moderate-income occupations is also associated with reductions in absolute upward mobility and increases in income inequality,

as much as 6.7 percent and 15.4 percent, respectively ([Timmons et al. 2018, 2](#)).

Proponents of licensure and members of licensing boards posit that the increase in average wages is the result of an increase in quality of service. The research indicates the higher wage is more likely the result of a decrease in competition caused by licensing requirements. The cost of this increase is shouldered entirely by the consumers through higher prices and less quality service and by potential entrants to the occupation.

Within Texas, TDLR alone currently licenses roughly 650,000 people. Texas currently has cosmetology licensure reciprocity agreements with only 21 states even though it has identical requirements compared with mostly all states in the union ([TDLR 2018](#)). This serves as yet another impediment to worker mobility. The regulatory capture phenomenon is strong among licensing boards. Although most advisory boards have consumers on them, representation is highly skewed toward incumbent professionals in the field. Incumbent professionals have a vested interest in limiting competition. Regardless, public representatives are more likely to refer to practitioners in the field when it comes to regulation due to their relative lack of experience ([Summers, 18](#)). Milton Friedman picked up on this trend when he mentioned, “licensure arrangements almost invariably involve control by members of the [licensed] occupation” (140).

Recommended Solutions to Texas’ Licensing Problems

The ideal solution would involve taking a close look at the occupations that are currently licensed in Texas, eliminating the requirements that do not serve any public interest, and reducing licensing requirements to the point that they no longer harm workers, consumers, and economic activity. Occupations that do not present any significant danger to the public should be given the first consideration for review.

Recent Examples of Occupational Deregulation

Recently, the Texas Legislature has taken some important, yet small, steps toward reform including the removal of licensing requirements for natural hair braiders ([HB 2717](#)). In other cases, the Texas Supreme Court has intervened. For example, [eyebrow threading was deregulated](#) in 2015, and then the Texas Legislature in 2017 repealed licenses for shampooers and eyebrow threaders ([SB 2065](#)). Although these are important steps, the more comprehensive reform strategies outlined in this paper would go a long way toward granting all Texans the ability to enjoy the right to earn a living.

Less Restrictive Forms of Regulation

The conversion of “some licenses to less restrictive forms of regulation, like registration or certification, would allow government [to] maintain some form of oversight while minimizing the effects on employment” ([Peacock and Barr, 5](#)). Examples include cosmetologists, athletic trainers, coaches, and HVAC contractors. With respect to occupational licensing barriers to medical providers, the PAA that forces nurse practitioners to enter into a written agreement with physicians every year is responsible for holding back the ability of nurse practitioners to practice to the full extent of their training. This contributes to 232 of Texas’ 254 counties being designated as partially or completely Medically Underserved Areas ([Peacock and Martinez-Gouhier, 138](#)). Eliminating this agreement would be an important step in granting the residents of Texas greater access to care at more affordable prices. Texas should also reconsider the merits of denying physical therapists direct access to patients.

Multi-Step Reform Process

A number of scholars have provided templates for occupational licensing reform. Kleiner, for example, recommends the following four-step reform process ([2015, 17](#)):

1. State agencies would make use of cost-benefit analysis to determine whether requests for additional occupational licensing requirements are warranted;
2. The federal government would promote the determination and adoption of best-practice models through financial incentives and better information;
3. State licensing standards would allow individuals to move across state lines with minimal costs for retraining or residency requirements; and
4. Certain occupations that are licensed would be reclassified to a system of certification or to no regulation.

However, the federal government should be involved as little as possible in occupational regulation given the many diverse sets of criteria in each state along with the extra layer of hardship put on potential workers in an occupation. Instead, Peacock and Barr provide a three-step reform process that scrutinizes new licensing laws while carefully assessing the relationship with public safety. This three-step licensing process includes:

1. The Legislature passes a law authorizing a licensing agency to review the need for licensing or registration in a particular field;

2. The agency must review the need, and then report its findings to the Legislature; and
3. The Legislature then may pass a law requiring licensing or registration of the occupation in question (5).

By putting more steps in the occupational licensing process, there will likely be fewer licenses over time along with more assurance that imposed licenses are necessary.

The ideal solution would involve taking a close look at the occupations that are currently licensed in Texas and reducing licensing requirements to the point that they no longer harm workers, consumers, or economic activity.

Other State Licensing Reforms

Although the role that financial incentives should play at any level of government, especially the federal level, is debatable, states have provided templates for reform. For example, both [Arizona](#) and [Tennessee recently passed a similar “Right to Earn a Living Act.”](#) The laws instruct legislators to seek less intrusive methods (e.g., market competition or bonding) to protect the public and not impose the same regulatory burden as occupational licensing. Upon enacting the legislation, state agencies that license occupations are required to complete a comprehensive review of the need for licensing legislation within one year. Citizens are also equipped with the ability to sue the state if occupational licensing laws inflict economic harm and block access to professions. The laws place the burden on government to provide compelling evidence on the possible harm to the public that could be inflicted by unlicensed professionals.

Another solution could be similar to LB 299 in Nebraska, which creates a dedicated office that reviews licensure requirements and ensures that they are not unnecessarily burdensome on the state economy. Section 14 of LB 299

establishes the state standard of licensing as “the least restrictive regulation which is necessary to protect consumers from undue risk ... that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest” ([LB 299, Sec. 14.2](#)). Texas might also try to replicate the success other states have had with either eliminating existing licenses (sunset) or preventing new licensing legislation from implementation (sunrise). Only eight instances of occupational licensing were removed between 1973 and 2013 nationwide and three of them were in Colorado ([Thornton and Timmons 2015, 3-7](#)). Colorado has had a long-standing Office of Policy, Research, and Regulatory Reform that conducts regular sunset and sunrise reviews of occupational licensing.

Similar to Nebraska and Colorado, Texas should consider implementing a program where the Texas Sunset Advisory Commission reviews a broader number of licensing boards and their applicable licenses on a more frequent basis. This would help ensure that all licensing boards are reviewed in a timely manner while continuing to provide oversight of those that should remain and recommending those that should go. This could prevent licensing boards from re-instating unnecessary regulation after legislative review in order to further limit competition. Fortunately, the Texas Sunset Advisory Commission already reviews occupations when the specific agency or department is under review, but this whack-a-mole approach is time-consuming, meaning more time spent reviewing a few when people are made poor because they cannot enter licensed occupations. By considering a larger number of occupations in their review, the result will likely contribute to a greater opportunity for Texans to enter a particular profession whether they have a criminal record or do not have the resources to get the license.

Specific Occupational Regulation to Eliminate or Fight

There are a number of low-hanging fruit that should be considered first when determining whether occupations are a threat to the health, safety, and welfare of the public. One that should be considered for elimination is the interior design registration that is governed by the [Texas Board of Architectural Examiners](#). There is little reason for an interior designer to be registered and then have a criminal penalty for falsely using the term “registered interior designer.” Others that are good candidates for reform are barber and cosmetologist licenses, or at least level the playing field for those wanting to get a license. [Rimann and Cho](#) note that two bills in the 2017 session could have achieved the latter, but there is more work to do to eliminate barriers to entry in these types of occupations.

There are other types of occupations that appear on the verge of having barriers to enter erected. These include roofing registration that would take action against small roofing contractors with licensure or registration programs to supposedly increase public safety. Instead of adding government barriers to the roofing labor market that would artificially raise prices and distort the roofing market, there should be a push for more information in the private market to signal which roofers are safe, reliable, and affordable through online sites like Yelp ([Rimann](#)). Given the recent bad actors after Hurricane Harvey along the Gulf Coast in Texas, there will likely be more calls for regulating roofers. Texas should resist that urge and instead use current law to weed out bad actors.

Conclusion

Licensure is the most stringent form of labor market regulation in the United States. The licensure requirements for most occupations vary widely from state to state. Licensure is intended to protect the public from harm caused by unqualified or untrained service providers but is more commonly used as a barrier to entry, preventing competition

from entering the labor market. Proponents of licensure argue that licensure increases the quality of the services licensed, but the empirical research makes this claim dubious at best. More likely, licensing boards continue to maintain stringent regulations in an attempt to arbitrarily increase the wages of those who have already obtained the license, forcing potential entrants and consumers to shoulder the cost. Licensure has similar effects as unions, creating unnaturally high wages and allowing disproportionate political representation. As union membership has declined steadily in this country, licensing has increased just as steadily, potentially making the situation worse for many Americans.

Licensure results in increased wages and decreased competition, stifling innovation and burdening consumers with high costs and lower quality services. Licensing is especially harmful to lower-income earners, many of whom do not have the luxury to devote an entire year to pass a cosmetology exam then pay a license fee. To promote the prosperity of all Texans, the Texas Legislature should act to eliminate these barriers to opportunity while protecting the public's health, safety, and welfare. ★

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Dr. Ginn is a leading free-market economist and former university lecturer who was honored with the "Champion of Freedom" award from Grassroots America—We The People. He is passionate about finding ways to let people prosper in Texas and beyond through sound research on the benefits of restraining government spending, cutting and ending taxes, and eliminating government barriers to competition.

He is a first-generation college graduate and earned his doctorate in economics from Texas Tech University. He gives keynote speeches, appears in major media outlets, publishes papers in top-ranked academic journals, writes policy research on critical issues, and works to turn papers into policy.



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Timmons' research has been cited in other scholarly journals, the popular press, by the White House, and in a Senate hearing on occupational regulation. Dr. Timmons has presented his research across the United States and in the United Kingdom and Italy. He has worked as a visiting research fellow at the Collegio Carlo Alberto in Moncalieri, Italy. Dr. Timmons has been a member of the Saint Francis University faculty since 2008 and serves as coordinator of the economics major.

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About Texas Public Policy Foundation

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