

UNTANGLING OCCUPATIONAL LICENSING RED TAPE

A Quick Guide for Reform



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LICENSE TO WORK

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The Inverted Pyramid: A Hierarchy of Less Restrictive Alternatives to Licensing

Occupational licensing is the most burdensome way to regulate work. It creates barriers for aspiring workers, limits competition, raises consumer prices and inhibits mobility—with

little evidence of improved quality or consumer protection. Licensing reform starts by recognizing that there are alternatives, both voluntary and regulatory, that protect consumers without

putting up roadblocks to honest work. Before licensing—or continuing to license—an occupation, lawmakers should demand more than insiders' anecdotes. Licensing should be

based only on empirical evidence of widespread, significant and permanent harm to public health and safety that cannot be addressed by the less restrictive alternatives presented here.

Voluntary or Non-Regulatory Options

Market competition & consumer ratings websites

Market Competition & Consumer Ratings Websites
Markets harness the power of reputation through word of mouth and online platforms like Yelp, Google and Angie's List. Market competition creates incentives to develop professional skills and deliver high quality at reasonable prices.

Quality of Service Self-Disclosure
In many fields, providers share information about their past performance through references or by linking to online consumer reviews, signaling that they take customer satisfaction seriously.

Voluntary Certification
Certification from a non-governmental organization, like the National Institute for Automotive Service Excellence, indicates that a provider has attained certain qualifications and adheres to industry standards.

Voluntary Bonding or Insurance
Providers often get bonded or purchase liability insurance, giving consumers recourse if something goes wrong. Bonding and insurance companies have strong incentives to insist providers are financially sound and follow industry standards.

Quality of service self-disclosure

Voluntary, third-party professional certification and maintenance

Voluntary bonding or insurance

Private causes of action

Deceptive trade practice acts

Inspections

Mandatory bonding or insurance

Registration

State certification

Licensure

Government Interventions

Private Causes of Action

Private causes of action give consumers the right to sue providers at fault for injury or loss, compelling practitioners to maintain high standards to avoid litigation. If needed, lawmakers can make litigation easier by allowing consumers to sue in small claims court and recover costs and attorneys' fees.

Deceptive Trade Practice Acts

Consumers can sue fraudulent businesses under deceptive trade practice acts. These laws also give attorneys general the power to investigate and bring civil or criminal suits against bad actors. If needed, lawmakers can strengthen these laws or direct the attorney general to enhance enforcement.

Inspections

In industries such as food service and beauty care, inspections help ensure sanitary practices, and in fields like construction, they provide a practiced eye to spot potential hazards. Inspections closely target potential harms and could be applied to other occupations.

Mandatory Bonding or Insurance

Mandatory bonding or insurance can give consumers and third parties an avenue for redress and encourage the adoption of industry standards. Some states already employ this alternative in fields such as tree trimmers, HVAC contractors and auctioneers.

Registration

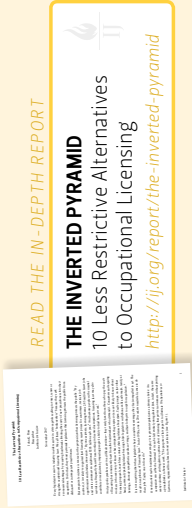
Registration with the secretary of state or department of consumer protection can deter fly-by-night operators. It also supports enforcement of other alternatives to licensure. Some states require registration for occupations licensed elsewhere, as with construction contractors.

State Certification

State certification signals that providers have attained certain credentials, established and verified by the government. Non-certified providers remain free to practice, but they may not call themselves certified.

Licensure

When imposed, licensing requirements should be narrowly tailored to mitigating harm, and the scope of practice should be carefully drafted to prevent encroachment on competing fields.



Strategies for Occupational Licensing Reform

Occupational licensing reform, championed by policymakers and scholars across the ideological spectrum, can expand economic opportunity without sacrificing public safety. The following strategies offer lawmakers concrete ways to rein in out-of-control licensing and mitigate its ill effects.

Repeal needless licenses—and refuse to adopt new ones

Use the inverted pyramid to examine current licenses: Is there empirical evidence of significant, widespread and permanent harm in the field? Are there less restrictive alternatives to licensing? Repeal needless licenses and replace them, if necessary, with less restrictive regulations. Apply the same analysis when new licensing laws are proposed.

Scale back anticompetitive licensing laws and policies

Identify and eliminate “licensing creep”—anticompetitive licensing regulations, often imposed by licensing boards, that encroach on competing fields or outlaw innovative services.

Codify in statute the right to engage in a lawful occupation

Give aspiring workers and entrepreneurs the chance to take unnecessary, anticompetitive licensing restrictions to court—and win.

Implement meaningful sunrise and sunset reviews of licensing laws

Charge a non-partisan, independent agency with producing written reports evaluating the need for proposed and existing licenses. Give it a mandate to use the inverted pyramid to recommend less restrictive regulatory alternatives to licensing.

Rein in anticompetitive behavior by licensing boards

Establish an oversight body to actively supervise licensing boards. Give the oversight body a mandate to promote competition and favor less restrictive regulatory alternatives, curbing boards’ tendency toward anticompetitive behavior and reducing the risk of federal antitrust liability.

Strengthen the rights of people with a criminal record to gain meaningful employment

Curtail license denials based on irrelevant or long-past criminal records. Require case-by-case decisions on license applicants, demand substantial proof of risk of harm to deny a license, and allow applicants to seek a decision before investing in costly education, training or testing.

Improve interstate mobility first by eliminating licensing barriers

Before establishing reciprocity agreements or standardizing licensing requirements, ask whether there is substantial proof that licensing addresses a real problem. If not, tearing down licensing barriers is a better way to improve geographic mobility and expand economic opportunity.

To learn more about occupational licensing and strategies for reform, visit

OccupationalLicensing.com

or contact IJ Senior Legislative Counsel Lee McGrath at lmcgrath@ij.org.