



Barriers to Braiding **Illinois Analysis**

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Introduction

This report supplements the Institute for Justice’s 2016 study *Barriers to Braiding: How Job-Killing Licensing Laws Tangle Natural Hair Care in Needless Red Tape*.¹ The study investigated whether (1) braiding licenses keep people out of work and (2) braiding poses risks that justify occupational licensing. This report uses data—complaints filed regarding Illinois hair braiders—that we intended to include in *Barriers to Braiding* but were not available at the time.

IJ finally received the complaints in November 2018 following a four-and-a-half-year freedom-of-information legal battle against the Illinois Department of Financial and Professional Regulation that ended with a victory at the state supreme court.² Unfortunately, the hair braiding records provided are meager, severely limiting our ability to update *Barriers to Braiding*.

Data Collection Challenges

FOIA Request

In September 2013, IJ filed a request under the Illinois Freedom of Information Act for complaints regarding cosmetologists and hair braiders going back to 2011,³ when the state instituted its specialty braiding license. Around the same time, we filed similar requests in 14 other states⁴ and the District of Columbia. Nine states and D.C. provided records with little fuss,⁵ though some states redacted some personal information like social security numbers to protect people’s privacy. However, the Illinois Department of Financial and Professional Regulation, which administers the state’s braiding license and handles braiding complaints and FOIA requests, was unhelpful from the beginning.

First, the IDFPF missed its legal deadline to respond, despite taking an extension. Only after we followed up, soliciting a response, did the department respond. It denied the request, citing six FOIA provisions it claimed exempted the records from disclosure. The department failed to explain the factual basis for its claimed

exemptions as required by law, providing justifications only later at our insistence. Prior to the denial, the IDFPF never requested that we reduce or otherwise amend the request’s scope, and after the denial, it evaded our attempts to understand its justifications. In the single follow-up exchange we had with the department, a staff member stated the denial was to protect the people making complaints. However, the staff member refused to explain why simply removing some personal information was insufficient to protect people’s privacy.⁶

IJ filed an administrative appeal with the Illinois Office of the Attorney General, but this also failed to produce records. Instead of a binding opinion, the OAG informed us it would issue an advisory opinion—a nonbinding interpretation of the law. However, it never did so.⁷

Lawsuit

With all other avenues to obtain the records exhausted, IJ sued the IDFPF in December 2014. In state trial court, the department responded to our lawsuit with the same FOIA exemptions it had cited in its denial.⁸ The department also made a new argument, claiming a small provision in a larger bill amending the state’s cosmetology law prohibited it from disclosing complaints.⁹ Although the law was enacted 11 months after we filed our FOIA request,¹⁰ the department argued it applied anyway.¹¹

Seemingly bemused by this argument, the court said, “it seems that the Department is arguing that so long as it can stall a response sufficiently to permit a change in law to occur that it should benefit from that change in the law even though the law itself that it is relying on doesn’t say that it applies to FOIA requests that have been unresolved up to the point that it was passed.”¹² It swiftly dismissed the IDFPF’s claimed exemptions and determined the new confidentiality law did not apply retroactively.¹³

The IDFPF appealed the trial court’s decision. For the appeal, the department abandoned its claimed exemptions and instead argued only that the confidentiality law applied to our request. Unfortunately, the state appeals court agreed, reversing IJ’s trial court victory.¹⁴

IJ appealed to the Illinois Supreme Court, and, in May 2018, the high court reinstated the trial court's decision, finding that the confidentiality law did not apply retroactively to our request and ordering the department to disclose the complaints.¹⁵

Records Received

In November 2018, the IDFPR finally sent the complaint records we requested more than five years earlier. Unfortunately, the records are too limited for the analysis we intended. While other states that provided records redacted some personal information, like social security numbers, the department went much further, redacting the names of people who filed complaints (complainants) and the names, license numbers and other identifying information of the people they complained about (respondents), leaving only the complaint description and date.

Methods

Barriers to Braiding investigated two questions using data from states with specialty braiding license or registration schemes. First, do braiding licenses keep people out of work? And second, is braiding safe, or does it pose risks that justify occupational licensing? In answer to the first question, we found a link between higher licensing burdens and fewer braiders relative to a state's black population. This analysis did not require complaint data, so we were able to include Illinois and two other states, Pennsylvania and South Carolina, for which we did not have full complaint records¹⁶ alongside the 10 jurisdictions for which we did have full records.



To investigate the second question, we obtained complaints regarding cosmetologists and hair braiders and analyzed them to determine what types of complaints are made against braiders and how often. We found the probability of a licensed/registered braider receiving any complaint, let alone one from a consumer, was very small. Most complaints came from cosmetology insiders and alleged the unlicensed practice of braiding or cosmetology. Few invoked health and safety concerns. For unlicensed braiders, too, we found most complaints were about licensure status. Moreover, we found only a small number of complaints overall. And no claims alleging harm were verified by licensing boards.

Without complaint data, we could not include Illinois in these analyses in *Barriers to Braiding*. We hoped to update the report when we finally received Illinois' records. However, the records we received are so limited that we could not update most of our analyses. Specifically, without either the names or the licensing statuses of people who had complaints filed against them, we could not determine whether a complaint was against a licensed or an unlicensed braider. And without the names of people who filed complaints, we could not tell whether a complaint was filed by a consumer, the licensing authority, a licensee or someone else. This meant we could not determine the probability of a licensed braider receiving a complaint at all, let alone from a consumer.

With all the redactions, we also could not link complaints to any follow-up actions or complaint resolutions. This meant we could not determine whether the IDFPF verified any health and safety complaints.

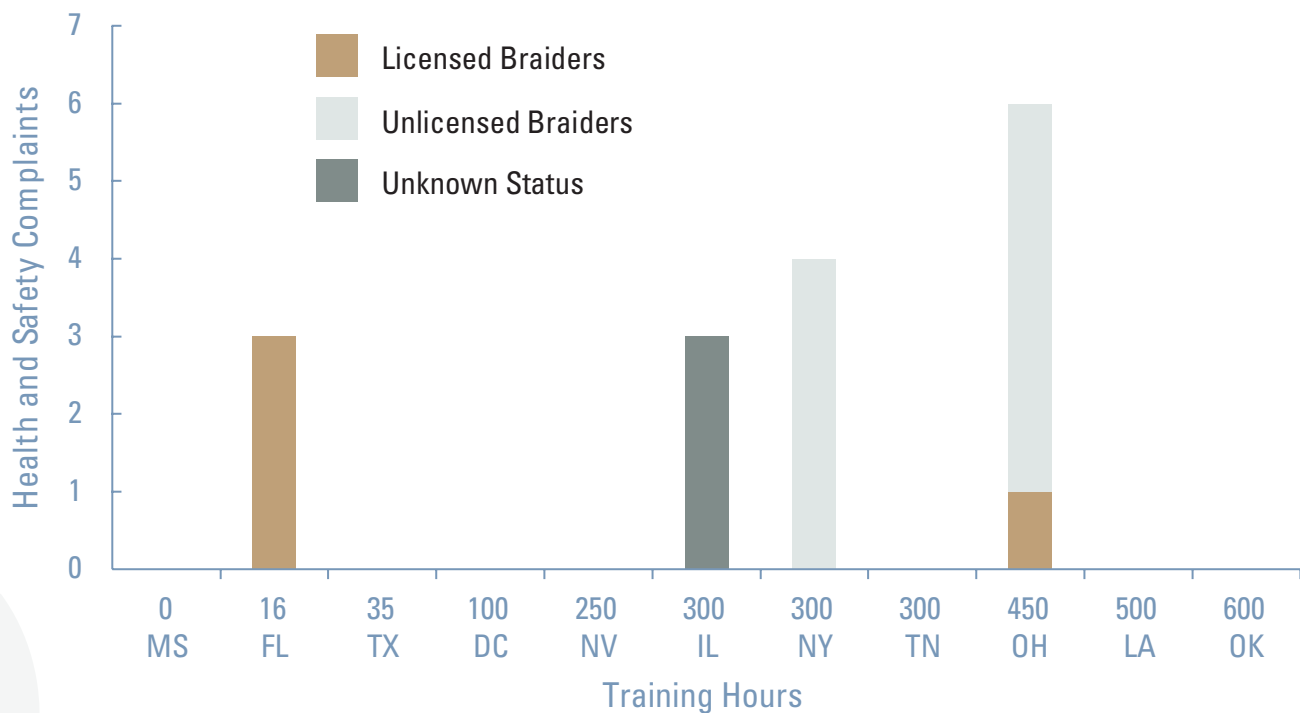
Ultimately, IJ could update only two *Barriers to Braiding* analyses—and then only partially: (1) our categorization of complaints by issue, whether unlicensed braiding, unlicensed cosmetology, health and safety, or other and (2) our comparison of training hours required for a braiding license to the number of complaints involving health and safety issues.

Updated Results

Illinois' records contained a total of four complaints against braiders through 2012, one in 2011 and three in 2012. All four alleged unlicensed braiding. Additionally, one of the four alleged unlicensed cosmetology, two alleged sanitation issues, and one alleged alopecia and an infection from a sew-in service. Both complaints alleging sanitation issues also complained about “other” issues. The sanitation issue alleged in the first of these complaints was that a salon had ventilation, heat and central air issues. That complaint also suggested the salon's owner was underreporting income to qualify for housing assistance.¹⁷ The second sanitation complaint, which alleged braiders in a salon ate during services and claimed the salon lacked proper equipment and supplies, also said children were present and questioned salon workers' immigration status. Unfortunately, we could not determine whether any of the four complaints were against licensed or unlicensed braiders or whether they were filed by consumers or competitors. Neither could we verify any of the three health and safety complaints.

Figure 5, Health and Safety Complaints vs. Training Hours, 2006–2012, is the only figure we could meaningfully update,¹⁸ albeit only partially. The original figure compared the training hours required for a braiding license to the number of health and safety complaints, distinguishing between complaints received by licensed and unlicensed braiders. On the following page, we have updated Figure 5 to reflect Illinois' health and safety complaints. Because we do not know whether Illinois' complaints were received by licensed or unlicensed braiders, we have had to create a third category: Unknown Status.

Figure 5: Health and Safety Complaints vs. Training Hours, 2006–2012



Note: Texas stopped licensing hair braiders in 2015. Illinois and Nevada began licensing hair braiders in, respectively, September 2011 and June 2011.¹⁹

Conclusion

If we pursued Illinois' complaint records to make *Barriers to Braiding* as comprehensive as possible. Nine other states and D.C. provided their records as requested, but Illinois resisted, forcing us to sue. We took the case all the way to the Illinois Supreme Court. But although we won, the records we received are so limited that we cannot expand our analysis or conclusions much beyond the original study.

The major finding from Illinois' complaints is that there are not very many of them. Across 307 licensed braiders and untold numbers of unlicensed braiders, we found just three health and safety complaints, two of the three about sanitation and the third about consumer harm, and four complaints total over 16 months. This is on the higher side among the states studied, but it is still a small number that does not suggest braiding leads to widespread or fundamental problems in Illinois.

Nor do Illinois' complaints, when considered together with our original results, suggest braiding is a problem nationally. Together, Illinois and the other 10

jurisdictions for which we have full records have more than 10,000 licensed or registered braiders, as well as untold numbers of unlicensed braiders. Yet across these jurisdictions, we found a total of just 134 complaints against braiders over seven years,²⁰ most of them about braiders' licensing status. Only 16 complaints invoked health and safety concerns. And of these, just seven alleged consumer harm. The six such claims reported in *Barriers to Braiding* were not verified by the licensing boards, and it is possible the same is true of Illinois' single complaint alleging consumer harm.

In any event, these numbers are so small that it is impossible to determine whether there are statistically significant differences across jurisdictions and their various regulatory regimes. Even with the addition of Illinois' complaints, the tiny number of health and safety complaints found in *Barriers to Braiding*, and the even tinier number of consumer harm complaints, demonstrates that consumer harm is rare and braiding is overwhelmingly safe. It remains true that braiding licenses do little more than prevent people from earning an honest living.

Endnotes

- 1 Erickson, A. (2016). *Barriers to braiding: How job-killing licensing laws tangle natural hair care in needless red tape*. Arlington, VA: Institute for Justice.
- 2 Churney, D. (2018, May 29). IL Supreme Court: Government can't use change in law to deny info requests filed before law changed. *Cook County Record*. <https://cookcountyrecord.com/stories/511434910-il-supreme-court-government-can-t-use-change-in-law-to-deny-info-requests-filed-before-law-changed>; Wimer, A. (2018, May 24). Illinois Supreme Court ruling protects the integrity of the state's Freedom of Information Act [press release]. Arlington, VA: Institute for Justice. <https://ij.org/press-release/illinois-supreme-court-ruling-protects-the-integrity-of-the-states-freedom-of-information-act/>
- 3 Affidavit of Erica Smith in Support of Institute for Justice's Request for Review of the Denial of its FOIA Request at 1, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381) [hereinafter Affidavit].
- 4 The 14 states were Florida, Louisiana, Minnesota, Mississippi, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee and Texas.
- 5 Complaint at 2, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381). Florida, Louisiana, Mississippi, Nevada, New York, Ohio, Oklahoma, Tennessee and Texas are the nine states that provided full complaint data. Oregon adopted its specialty braiding license after data collection began. Pennsylvania provided no records as complaints are explicitly exempt from disclosure under the state's freedom-of-information law. North Carolina and South Carolina provided data that were either incomplete or could not be linked to the licensed braiders. And Minnesota claimed to have no enforcement authority over braiders and thus no complaints to share. Erickson, 2016.
- 6 Affidavit, *supra* note 3.
- 7 Defendant's Answer to Plaintiff's Complaint at 9–10, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381) [hereinafter Answer].
- 8 Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment at 11–14, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381).
- 9 Answer, *supra* note 7, at 11–12.
- 10 The law went into effect 14 months after our request. 225 Ill. Comp. Stat. 410 /4-24.
- 11 Answer, *supra* note 7, at 11–12.
- 12 Transcript Report of the Proceedings at 25, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381).
- 13 Order Granting Motion for Summary Judgment, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381).
- 14 Appellate Order Reversing the Grant of Summary Judgment at 3, 11, Inst. for Justice v. Ill. Dep't of Fin. & Prof'l Regulation, 2017 IL App (1st) 162141 (Ill. App. Ct. 2017) (No. 2014CH19381).
- 15 *Perry v. Ill. Dep't of Fin. & Prof'l Regulation*, 2018 IL 122349, ¶ 71 (Ill. 2018).
- 16 Pennsylvania provided no complaints as such records are exempt from disclosure under state law. South Carolina provided some records, but we were unable to obtain complaints in cases where the cosmetology board took no action.
- 17 This complaint is in a cosmetology complaint file containing two submissions. Only one submission mentions braiding. The other, which is not included in the updated results, complains of other sanitation concerns, among other allegations.
- 18 The only other updatable table or figure is Table 1, “Licensed/Registered Braiders, 12 States and D.C., 2006–2012,” which provides context for a regression model used in *Barriers to Braiding*. This table would only require a minor adjustment—moving Illinois from the “States without Complaint Data” section to the “States with Complaint Data” section. There are no implications for the actual data presented in the table.
- 19 Tex. Occ. Code § 1062.003(b)(8); 35 Ill. Reg. 14983; Ill. Admin. Code tit. 68 § 1175.1405; Nev. Rev. Stat. § 644A.360.
- 20 Illinois, Nevada and Texas had active braiding license or registration schemes for only portions of the study period.

About the Author



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Kathy Sanchez is a strategic research associate at the Institute for Justice. Before joining IJ, Sanchez was a deputy clerk for the Wake County Clerk of Superior Court in North Carolina and a research intern at the John Locke Foundation. She studied political science and public policy at North Carolina State University and is a Master of Public Policy student at the University of Massachusetts Dartmouth.

About IJ

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