

WISCONSIN OCCUPATIONAL LICENSING: BARRIERS TO OPPORTUNITY IN THE BADGER STATE

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Public Hearing

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Chairmen Kapenga and Horlacher, Vice-chairs Harsdorf and Ballweg, and distinguished members of the Senate Committee on Public Benefit, Licensing and State-Federal Relations and the Assembly Committee on Regulatory Licensing Reform:

My name is Matthew Mitchell. I am an economist and a senior research fellow at the Mercatus Center at George Mason University, where I direct the Project for the Study of American Capitalism. In recent years, my colleagues and I have been studying occupational licensing laws, and I am grateful for the opportunity to discuss our findings with you.

Attached to this letter, you will find a report that my colleagues and I have recently published, “The State of Occupational Licensure in Wisconsin.” References for the factual claims made in this letter may be found in the report. In this letter, as in my oral statement, I wish to make the following points:

1. Aspiring entrants to a large and increasing number of professions—ranging from manicurists to bill collectors—are now required by the state of Wisconsin to obtain a government-issued license to work. It can take months and hundreds, even thousands, of dollars to obtain these licenses.
2. There is little evidence that licensure improves quality but considerable evidence that it raises prices and has a disparate effect on minorities.
3. Comprehensive reform should include sharply reducing the number of occupations requiring a license. This reform can be accomplished by setting up an independent commission to examine occupational licensing laws and make recommendations for reform.

I. BACKGROUND

An occupational license requires those seeking to enter a profession to first obtain government permission. In order to obtain a license, prospective licensees may be required to take tests, pay fees, undergo certain training, or meet other requirements such as residency, age, or education. Occupational licensing is ostensibly intended to protect the public from unsafe and low-quality service. But a broad and growing consensus among economists suggests that these rules mostly serve to protect incumbent

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providers from competition, raising consumer prices and limiting opportunities for new entrants in the field without improving quality.

II. THE CASE OF WISCONSIN

A number of facts about licensure in the state of Wisconsin merit attention:

1. Licensure has grown dramatically in recent decades.

Nationally, the share of the workforce required to have an occupational license has increased more than fourfold in the last 50 years. In Wisconsin today, 18.4 percent of the state’s workforce is required to be licensed and 1.9 percent more is certified.

2. Wisconsin’s licensure burdens are significant.

On average, the state requires licensees in 47 low- and moderate-income occupations to undergo 145 days of education and experience, take one exam, and pay \$209 in fees. The highest fee imposed by the state is \$1,570 for a cathodic protection testing license.

3. Wisconsin requires licenses for rarely licensed professions whose work carries little risk to the public.

These professions include fire sprinkler system testers, pipelayers, and bill collectors.

4. Wisconsin licensing laws often impose greater burdens on lower-risk professions such as athletic trainers than on higher-risk professions such as EMTs.

Table 1 shows the mismatch between risk and occupational education and experience requirements.

TABLE 1. OCCUPATIONAL TRAINING MISMATCHES IN WISCONSIN

Occupation	Education or experience (days)	Exams
Emergency medical technician	28	2
Manicurist	70	2
Makeup artist or skincare specialist	105	2
Massage therapist	140	2
Cosmetologist or barber	420	2
Earth driller	730	1
Midwife	730	1
Veterinary technologist	730	3
Athletic trainer	1,460	1
Preschool teacher	1,825	2

Source: Dick M. Carpenter II et al., “License to Work: A National Study of Burdens from Occupational Licensing” (Arlington, VA: Institute for Justice, May 2012).

5. Most Wisconsin licensing boards are dominated by members of the industry that they oversee.

As seen in table 2, most Wisconsin boards are required by statute to consist primarily of license holders, and, owing to vacancies, many boards are composed entirely of industry insiders. This presents a legal concern in light of the Supreme Court’s decision in *North Carolina Dental*, which held that states cannot claim immunity from antitrust laws if active participants in the industry constitute a “controlling number” of board members and if elected officials fail to “actively supervise” the board.¹

It also creates a practical concern that boards will tend to act as industry cartels, controlling entry rather than ensuring public safety.

TABLE 2. COMPOSITION OF SELECT WISCONSIN BOARDS

Board/council	Statutory board composition			Actual board composition		
	Industry members	Total	Percentage industry	Industry members	Total	Percentage industry
Respiratory Care Practitioners Examining Council	3	5	60%	3	3	100%
Athletic Trainers Affiliated Credentialing Board	4	6	67%	4	4	100%
Occupational Therapists Affiliated Credentialing Board	5	7	71%	4	4	100%
Hearing and Speech Examining Board	8	10	80%	7	7	100%
Dentistry Examining Board	9	11	82%	9	9	100%

Source: Wisconsin Department of Safety and Professional Services, “License/Permit/Registrations,” accessed August 16, 2017, <http://dsps.wi.gov/Licenses-Permits/Credentialing>.

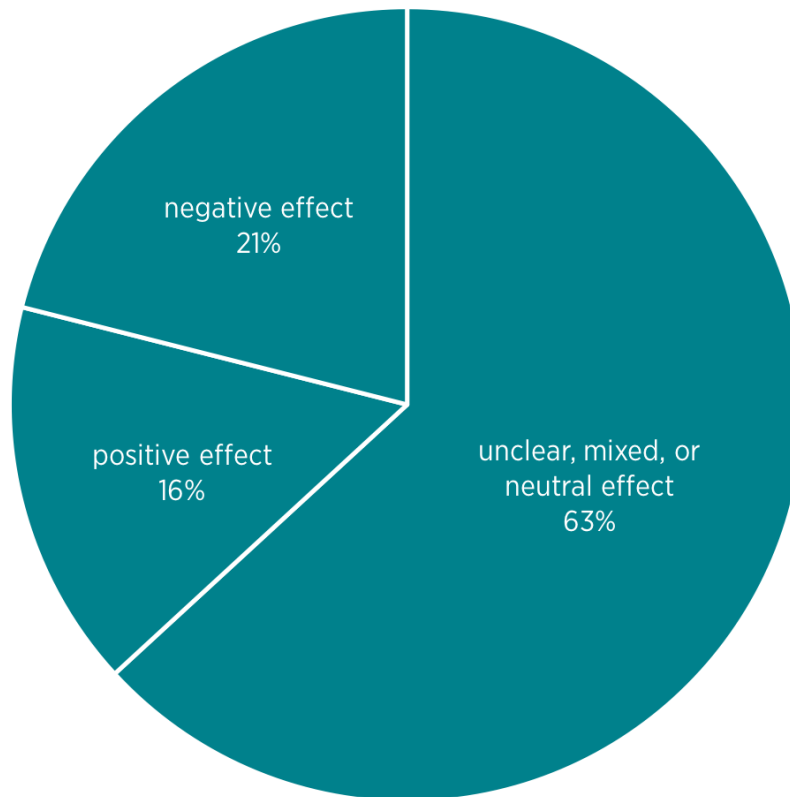
III. EFFECTS OF OCCUPATIONAL LICENSING

1. Though licensure is ostensibly supposed to increase quality, the evidence is mixed at best.

Numerous surveys by both academic economists and government officials find that studies assessing the effect of licensure on quality are most likely to find a neutral, mixed, or unclear effect. Figure 1 presents the results of the most comprehensive survey to date.

¹NC State Bd. of Dental Exam’rs v. FTC, 135 S. Ct. 1101 (2015).

FIGURE 1. FINDINGS OF STUDIES ASSESSING THE EFFECT OF OCCUPATIONAL LICENSURE ON QUALITY



Sources: **Positive:** Arlene Holen, *The Economics of Dental Licensing* (Washington, DC: Public Research Institute, Center for Naval Analysis, 1978); Samuel Claude Martin, "An Examination of the Economic Side Effects of the State Licensing of Pharmacists" (doctoral dissertation, University of Tennessee, 1982); Roger Feldman and James W. Begun, "The Effects of Advertising: Lessons from Optometry," *Journal of Human Resources* 13 supplement (1978): 247-62. **Unclear, mixed, or neutral:** Kathryn Healey, "The Effect of Licensure on Clinical Laboratory Effectiveness" (doctoral dissertation, University of California, Los Angeles, 1973); John J. Phelan, *Regulation of the Television Repair Industry in Louisiana and California: A Case Study*, Federal Trade Commission, 1974; John F. Cady, *Restricted Advertising and Competition: The Case of Retail Drugs* (Washington, DC: American Enterprise Institute, 1976); Robert J. Thornton and Andrew R. Weintraub, "Licensing in the Barbering Profession," *Industrial and Labor Relations Review* 32, no. 2 (1979): 242-49; Ronald Bond et al., *Effects of Restrictions of Advertising and Commercial Practice in the Professions: The Case of Optometry*, Federal Trade Commission, 1980; Chris Paul, "Physician Licensure Legislation and the Quality of Medical Care," *Atlantic Economic Journal* 12, no. 4 (1984): 18-30; David S. Young, *The Rule of Experts: Occupational Licensing in America* (Washington, DC: Cato Institute, 1987); Morris Kleiner and Daniel L. Petree, "Unionizing and Licensing of Public School Teachers: Impact on Wages and Educational Output," in *When Public Sector Workers Unionize*, ed. R. B. Freeman and C. Ichniowski (Chicago: University of Chicago Press, 1988), 305-19; D. D. Goldhaber and D. J. Brewer, "Does Teacher Certification Matter? High School Teacher Certification Status and Student Achievement," *Educational Evaluation and Policy Analysis* 22, no. 2 (2000): 129-45; Morris Kleiner and Robert T. Kudrle, "Does Regulation Affect Economic Outcomes? The Case of Dentistry," *Journal of Law and Economics* 43, no. 2 (2000): 547-82; David Blau, "Unintended Consequences of Child Care Regulations," *Labour Economics* 14, no. 3 (2007): 513-38; Joshua Angrist and Jonathan Guryan, "Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements," *Economics of Education Review* 27, no. 5 (2008): 483-503. **Negative:** Timothy Muris and Fred McChesney, "Advertising, Consumer Welfare, and the Quality of Legal Services: The Case of Legal Clinics" (Working Paper 78-5, Law and Economics Center, University of Miami, Miami, FL, 1978); Sidney Carroll and Robert Gaston, "Occupational Restrictions and the Quality of Service Received: Some Evidence," *Southern Economic Journal* 47, no. 4 (1981): 959-76; John E. Kwoka, "Advertising and the Price and Quality of Optometric Services," *American Economic Review* 74, no. 1 (1984): 211-16; Mark C. Berger and Eugenia F. Toma, "Variation in State Education Policies and Effects on Student Performance," *Journal of Policy Analysis and Management* 13, no. 3 (1994): 477.

2. The effect of licensure on consumer prices is clearer. By restricting entry into markets, licensure raises consumer prices.

According to a 2015 survey by officials in the Obama administration,

The evidence on licensing's effects on prices is unequivocal: many studies find that more restrictive licensing laws lead to higher prices for consumers. In 9 of the 11 studies we reviewed . . . significantly higher prices accompanied stricter licensing.

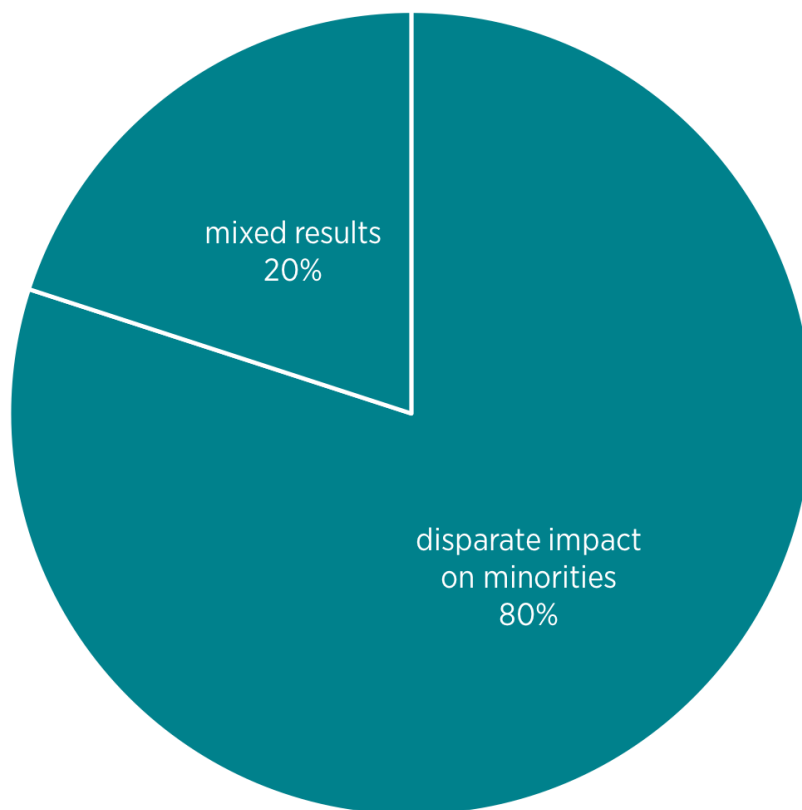
A separate survey found that licensure increased prices in all 19 of the studies reviewed.

3. Licensure has a disparate impact on minorities and is associated with income inequality.

A recent study of 175 countries found that nations with steeper legal barriers to starting a business tended to experience greater levels of income inequality.

Furthermore, as shown in figure 2, four out of five studies have found that licensing disparately affects ethnic minorities.

FIGURE 2. FINDINGS OF STUDIES ASSESSING THE EFFECT OF OCCUPATIONAL LICENSURE ON MINORITIES



Sources: **Disparate impact:** Stuart Dorsey, “The Occupational Licensing Queue,” *Journal of Human Resources* 15, no. 3 (1980): 424–34; Maya Federman, David Harrington, and Kathy Krynski, “The Impact of State Licensing Regulations on Low-Skilled Immigrants: The Case of Vietnamese Manicurists,” *American Economic Review* 96, no. 2 (2006): 237–41; Joshua Angrist and Jonathan Guryan, “Does Teacher Testing Raise Teacher Quality? Evidence from State Certification Requirements,” *Economics of Education Review* 27, no. 5 (2008): 483–503; David E. Harrington and Jaret Treber, *Designed to Exclude* (Arlington, VA: Institute for Justice, February 2009). **Mixed results:** Marc Law and Mindy Marks, “Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era,” *Journal of Law and Economics* 52, no. 2 (2009): 351–66.

IV. STEPS TO REFORM

Wisconsin policymakers looking to reduce their state’s occupational licensing burden would be wise to follow these steps:

1. Pass legislation that sets an ambitious goal for the elimination of licenses and the reduction of licensing burdens.
2. Establish an independent commission charged with examining the state’s licensing laws. Its first task should be to identify each license the state requires as well as the burdens associated with each license (fees, exams, required training, education, experience, and other limitations). The commission should be charged with evaluating all licenses, should not be dominated by members of the licensed professions, should include consumer representatives, and should include third-party experts such as academics who have no financial stake in licensure. Furthermore, the commission should be guided by a set of criteria for evaluating regulations, as listed in table 3.

TABLE 3. GUIDING PRINCIPLES FOR OCCUPATIONAL LICENSING REFORM

Begin with a blank slate.	Consumer tastes, technology, and prices change, so analysts should not be beholden to past practices and should approach their task as if they were starting anew.
Define the nature of the problem.	Is there a systematic market failure that needs to be addressed? If not, occupational regulation is probably not the answer. Keep in mind that entrepreneurs have an incentive to come up with their own solutions to market failures.
Identify alternative solutions to occupational regulation.	These should include the alternative of deregulation. They should also include reliance on both private governance (competition, bond-posting, reputation feedback mechanisms, third-party evaluation, etc.) and public governance (deceptive trade practice law, registration, certification, etc.).
Identify the potential costs of regulation.	These include higher consumer prices; inconveniences such as diminished access to products and services; higher entrance fees, exam costs, education costs, etc.; rent-seeking waste; production inefficiencies that arise when firms and providers are protected from competition; and dynamic losses that accrue over time as protected firms and providers are less likely to adapt and innovate.
Identify the potential benefits of regulation.	What systematic market failure is the regulation intended to address? Remember that the additional profits of incumbent firms and their employees are not legitimate benefits of regulation since these gains come at the expense of consumers and would-be competitors.
Measure costs and benefits.	Whenever possible, an objective measure of costs and benefits should be produced. When that is impossible, analysts should acknowledge that certain judgements are subjective.

3. The commission should be charged with setting a comprehensive path for licensure elimination and reform. The authorizing legislation should commit elected officials to accepting the commission’s recommendations in their entirety or not at all.

Thank you for the opportunity to share my research with you today. I look forward to answering any questions you may have.

Sincerely,

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ATTACHMENT

The State of Occupational Licensure in Wisconsin (Mercatus on Policy)