

Overview and Recommendations for Occupational Licensing in North Carolina

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North Carolina's constitution recognizes as self-evident the right of everyone to enjoy the fruits of their own labor.

North Carolina Constitution, Article I, Section 1:

- ❖ We hold it to be **self-evident** that all persons are created equal; that they are endowed by their Creator with certain **inalienable rights**; that among these are life, liberty, **the enjoyment of the fruits of their own labor**, and the pursuit of happiness.

An occupational license is a receipt of official permission from the government to an individual to work in his chosen field of labor.

A license is costly to prospective workers in several ways:

- ❖ Satisfy educational credits and/or log job experience (tuition and time)
- ❖ Pass any required exams (fees and time)
- ❖ Pay license and renewal fees

Employment grows faster when the hurdles of licensure are not in place.

Employment within an occupation grows 20 percent faster in states where it is *not* subject to licensure than in a state where it is.

Licensing keeps the supply of labor in the regulated field from growing as fast as it otherwise would grow.

Licensing's costs are very large hurdles for the poor, the less educated, minorities, and older workers seeking a new career.

- ❖ "Such licensure hurdles are likely **exceptionally burdensome for lower-income workers**, particularly compared to higher-paid occupations like physicians, attorneys and the like. Not only do **those entering or re-entering the work world typically have fewer resources than those pursuing high-income occupations**, but if they clear these hurdles, they will face an income stream markedly less than the national average."

—Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice, May 2012.

These burdens on low-income workers and would-be workers also represent costs to the society at large.

Discouraging low-income workers from new jobs and independent business possibilities harms their economic stability and self-sufficiency.

It prevents the poor from using what may be the only productive resource available to them:

- ❖ "The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of this most sacred property."

— Adam Smith, *The Wealth of Nations*

Allowing low-income workers greater avenues to entrepreneurship is particularly helpful to low-income areas.

Entrepreneurship offers a ladder out of poverty.

Poor entrepreneurs can lift their communities with them.

- ❖ **"Entrepreneurship may yield a double dividend in low and moderate income communities.** Many of the retail and services establishments available in higher income areas, such as grocery stores, often are not available to low and moderate income people ... [who also] face transportation challenges. **Entrepreneurial activity not only provides income to the entrepreneurs and perhaps others in the community, but also provides needed goods and services."**

— Federal Reserve Bank of Kansas City economist Kelly Edmiston

Occupational licensing is required ostensibly to ensure safety and quality of service work in the regulated field.

The most consistent finding in academic research literature on occupational licensing is *not* that it ensures safety and quality.

Instead, it is that licensing boosts the earnings of those already in the field of labor .

- ❖ "The most generally held view on the economics of occupational licensing is that it **restricts the supply of labor** to the occupation and thereby **drives up the price of labor** as well as of services rendered."

— Morris M. Kleiner, "Occupational Licensing," *The Journal of Economic Perspectives*, Vol. 14, No. 4 (Autumn 2000), pp. 189–202.

What results is what researchers call the "earnings premium" of licensing for service providers in the restricted occupation — 15 percent higher wages (or more) than what they would face in an open field of labor.

Restricting the supply of labor restricts the supply of *jobs*.

❖ "By one estimate, **licensing restrictions cost millions of jobs nationwide and raise consumer expenses by over one hundred billion dollars**. The stakes involved are high, and to help our economy grow to its full potential we need to create a 21st century regulatory system — one that protects public health and welfare while promoting economic growth, innovation, competition, and job creation."

— Obama Administration white paper "Occupational Licensing: A Framework for Policymakers," July 2015 (joint product of the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor)

Higher earnings to service providers means higher prices on consumers to obtain the services of licensed professionals.

Higher prices push price-sensitive consumers to alternatives:

- ❖ forgo necessary work
- ❖ do it yourself (DIY)
- ❖ have a friend or family member do it
- ❖ pay for work under the table
- ❖ find a fly-by-night provider
- ❖ get taken by a scam provider

Research literature is inconclusive (and not very favorable) on safety and quality effects of licensing.

Counterintuitive findings owing to unintended effects of licensing:

- ❖ greater electrocution rates in states with stricter electrical licensing laws
- ❖ higher rates of blindness in states with tougher optometry licensing laws
- ❖ greater rates of poor dental hygiene in states with stricter dental licensing laws
- ❖ greater risk of rabies where restrictions on veterinarians were higher (leaving fewer practitioners available to uncover existing cases)

Occupational licensing is *not the only way* to address safety and quality of service work, but it is the *most restrictive*.

- ❖ "Licensing is the **most restrictive form of occupational regulation** because it **prohibits** anyone from engaging in the activities covered by a "scope of practice" without permission from a government agency. Thus, the power to license can be used to **deny individuals the legal opportunity to work** in a chosen field if they do not have the requisite competencies defined through training and experience. Licensure is most often used when there is **significant risk of harm to the public** if the activities are performed by someone lacking the requisite competencies."

—Program Evaluation Division report on Occupational Licensing Agencies (OLAs), December 2014

States differ greatly over which occupations should fall under the scrutiny of licensure — i.e., they differ on whether there actually *is* a significant risk of harm posed to the public.

The number of state-regulated professions is over 1,100.

Nevertheless, "fewer than 60, or less than six percent, of these are regulated by all of the states."

—Pam Brinegar, "Trends and Issues in State Professional Licensing," *The Book of the States 2004*, Council of State Governments, 2004, p. 448.

Similarly, of the 102 lower-income occupations subject to licensure, "only 15 are licensed in 40 states or more."

— Carpenter et al., "License to Work."

Certification is just the *next step down* in occupational regulation — one that addresses health and safety risks but that does *not* prohibit entry into one's chosen field.

- ❖ "Certification grants individuals the authority to use a protected occupational title while not defining the legal scope of practice allowed. Accordingly, **individuals not certified may still practice** in a given occupation, but they **may not use the protected title**. Certification is most often used **when the public needs assistance in identifying competent practitioners**, but where the risks to health and safety are not severe enough to justify licensure."

—Program Evaluation Division report on OLAs, December 2014

How licensing compares with certification, part I

	Licensing	Voluntary Certification
Mandatory or choice	Required by law	Chosen by service provider
Legality of work	Illegal to work without license	OK to work without certification; criminal to claim certification falsely
Hurdles	Several costly, mandatory hurdles to licensure: licensing board fees, school tuition and fees, time in school, qualifying exams (some licenses require several), examination fees, etc.	No mandatory hurdles; decision to pursue, satisfy private certification service's requirements a voluntary choice
Supply of labor	Fewer service providers, less competition	More competition, greater range of service providers
Consumer choice	Less consumer choice	More consumer choice, greater range of service options
Earnings	Wage premium: higher earnings by blocking competition	No significant wage premium
Consumer costs	Higher costs on consumers from constraint on labor supply	Lower costs on consumers, greater range of choices, service levels

How licensing compares with certification, part II

	Licensing	Voluntary Certification
Low-income entrepreneurship	Especially difficult for low-income individuals to join the industry	More receptive to low-income individuals choosing to join the industry
Low-income communities	Harmed in several ways: higher service costs, less entrepreneurial opportunities, “double blow” against local job creation and local economic growth	Helped in several ways: lower service costs, choice of service levels, more entrepreneurial opportunities, and the “double dividend” of local job creation and local economic growth
Black market	More illegal, under-the-table work from higher consumer costs	Less illegal, under-the-table work
Safety and quality	Safety, quality effects are doubtful — research finds little evidence of safety, quality enhancements	No apparent harm to safety or quality; gets closer to market concerns over safety and quality
Innovation	Resists innovation and improvement	Encourages innovation, lets the market reward new, better service discoveries and improvements
Antitrust	Could even violate antitrust laws	No risk of antitrust violation

For more information, see “Voluntary Certification: An economically robust, freedom-minded reform of occupational licensing” by Jon Sanders, John Locke Foundation Spotlight No. 464, April 9, 2015, johnlocke.org/research/show/spotlights/314.

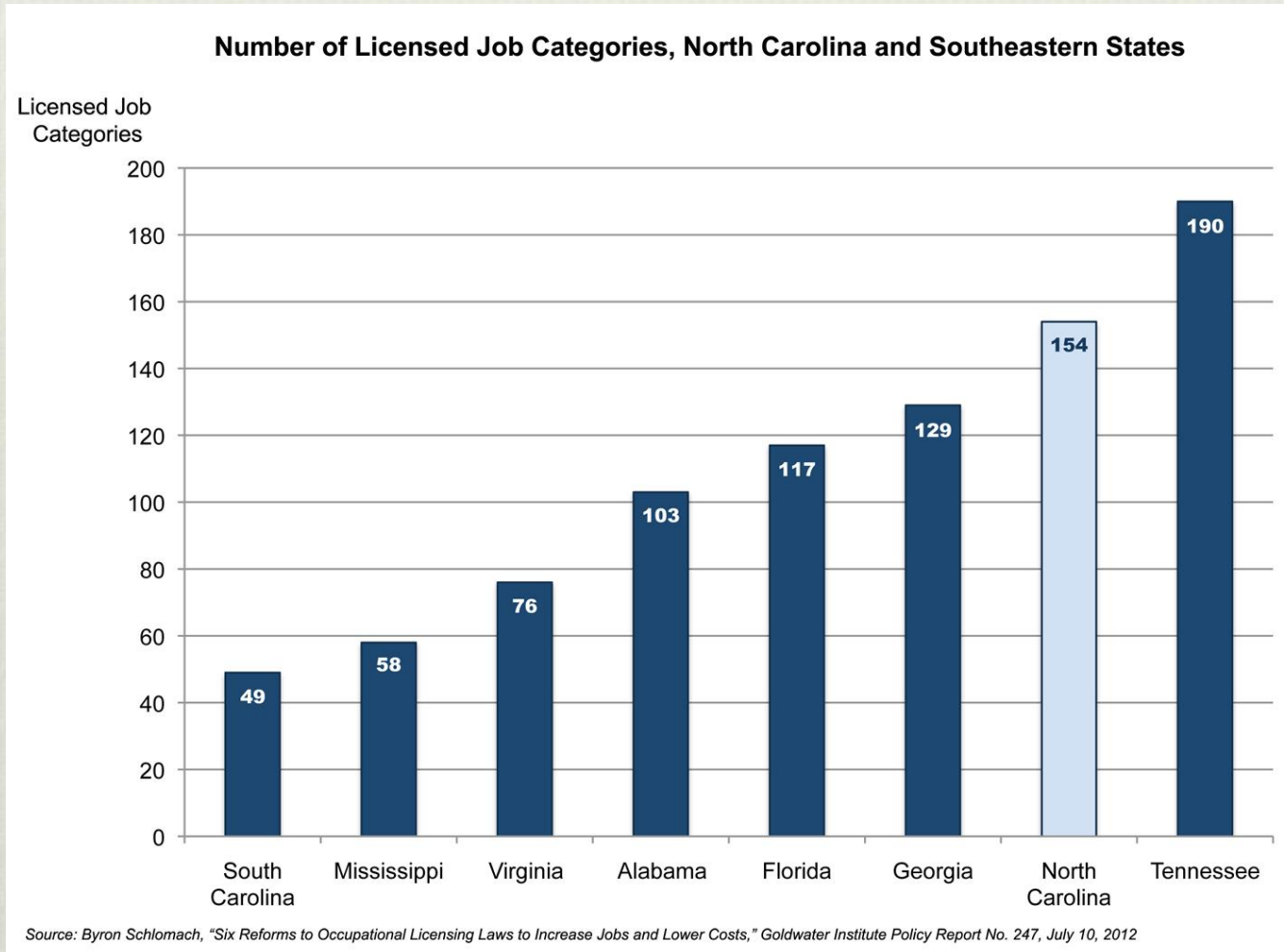
Absolute comparisons among states are difficult because states differ in how they define and list licensed occupations.

NC is more restrictive than most states in the nation

- ❖ Summers licensing report (tied-12th most restrictive)
- ❖ Schlomach licensing report (tied-15th most restrictive)
- ❖ CareerOneStop unadjusted count (30th)
- ❖ Mercatus occupational freedom category (39th most free)
- ❖ Institute for Justice low-income licensed occupations (tied-17th most restrictive)

White House report shows that 22.0 percent of North Carolina's workforce is licensed by the state — which would rank 22nd highest

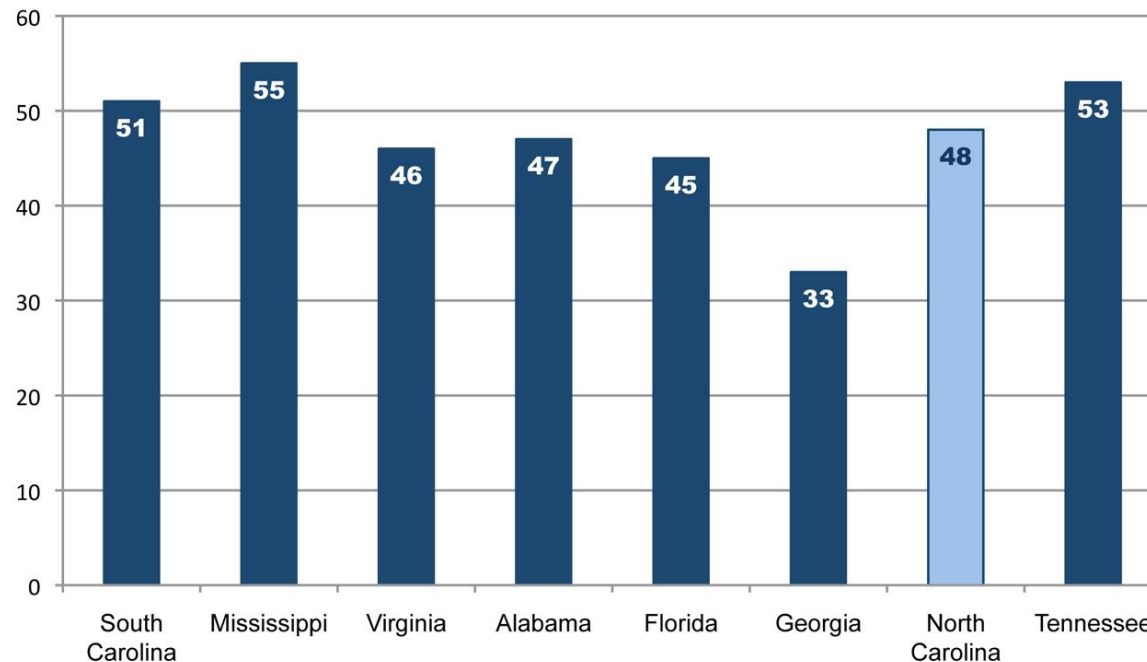
NC is more restrictive than all her neighbors but TN in overall licensed occupations ...



... but in the middle in low-income licensed occupations

Number of Licensed Low-Income Jobs, North Carolina and Southeastern States
(Of the 102 lower-income jobs identified by the Institute for Justice*)

Low-Income
Jobs Licensed



Source: Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice, May 2012, www.ij.org/licensetowork.

* "The 102 occupations studied are those recognized by the [Bureau of Labor Statistics] in which practitioners make less than the national average income and where the occupation is licensed in at least one state."

North Carolina has a long history of restrictions on occupational freedom

- ❖ "As long ago as 1938 a single state, North Carolina, had extended its law to 60 occupations."
— Walter Gellhorn, "The Right to Make a Living," *Individual Freedom and Governmental Restraints*, Baton Rouge: Louisiana State University Press, 1956, p. 106, as cited by Milton Friedman, *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962, p. 139.

New occupational licensing boards — regulating additional occupations — continue to be added

- ❖ 30: Number of boards in NC at the end of the 1970s
- ❖ 7: Number of boards added during the 1980s
- ❖ 9: Number of boards added during the 1990s
- ❖ 5: Number of boards added during the 2000s
- ❖ 2: Number of boards added since 2010

(Note: This count is short by two boards.)

2014 Program Evaluation Division (PED) report

- ❖ Found insufficient oversight to ensure boards protect the public efficiently and effectively
- ❖ Called for review of 12 boards
- ❖ Suggested consolidating 10 boards

Boards to review according to the PED report:

1. NC Board of Electrolysis Examiners
2. NC State Board of Registration for Foresters
3. NC Interpreter and Transliterator Licensing Board
4. NC Board of Landscape Architects
5. NC Landscape Contractors' Registration Board
6. NC Locksmith Licensing Board
7. NC State Board of Opticians
8. Board of Examiners of Fee-Based Practicing Pastoral Counselors
9. Cape Fear River Navigation and Pilotage Commission
10. Morehead City Navigation and Pilotage Commission
11. NC Board of Recreational Therapy Licensure
12. NC State Board of Refrigeration Examiners

2012 Institute for Justice study of 102 lower-income occupations subject to licensing

Six out of 48 lower-income occupations licensed in NC are licensed in *fewer than half* of U.S. states:

- ❖ Landscape contractor (10 states)
- ❖ Optician (22 states)
- ❖ Sign language interpreter (16 states)
- ❖ Crane operator (18 states)
- ❖ Locksmith (13 states)
- ❖ Weigher (24 states)

Recommendations

To uphold North Carolinians' self-evident right to enjoy the fruits of their own labor.

1. Promote voluntary certification over occupational licensing wherever possible

- ❖ Realize that "significant risk of harm to the public" is a high standard to reserve for truly significant risks
- ❖ Ensure state law adequately punishes fraudulent claims of certification
- ❖ Encourage certification and promote public awareness of certification
- ❖ Trust consumers and service providers to know their needs and choose accordingly

2. Allow more occupational freedom in North Carolina

- ❖ Eliminate questionable boards and licenses
- ❖ Set a numeric goal and effective date, such as:
 - *By 2021 have the same number of licensed occupations as SC, or*
 - *Move 1/3 of licensed occupations into certification by 2020*
- ❖ Work with boards to pinpoint questionable licenses wherever possible
- ❖ Apply the principle of sunset provisions with periodic review to boards (cf. the Regulatory Reform Act of 2013)

3. Apply strong sunrise provisions against proposed new boards

These could include requiring:

- ❖ actionable evidence that the occupation, without state regulation through licensing and despite private certification and other alternatives, presents a clear threat to public health, safety, or welfare
- ❖ objective, thorough cost/benefit analyses
- ❖ consideration of how many other states have determined the occupations merits strict state oversight via licensing — if few do, then there is no clear need for licensing there and certainly no perception of significant risk of harm

4. Make getting a license less burdensome

- ❖ Expand recognition of other states' licenses
- ❖ Work with boards to reduce fees, education/experience requirements, and examination requirements when possible

1. Voluntary certification
2. More occupational freedom
3. Strong sunrise provisions
4. Lesser burdens

"... the enjoyment of the fruits of their own labor"

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