



Reducing Licensing Barriers Will Get Millions Back to Work

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Introduction

The coronavirus pandemic has drastically changed how people work and interact. Tens of millions of Americans are working and communicating to friends and family from home while a limited number of schoolchildren are spending time in classrooms. Many businesses have been devastated, while others have learned to adapt or already were in a position to serve consumers at home.

Even after the COVID-19 vaccine is administered, life and work will be different than it was before 2020. Some of the changes that will make it easier for Americans to remain or become employed are less obvious than others, including how state and local governments are temporarily and permanently reducing regulatory barriers for licensing and certification for dozens of jobs and professions.

When Americans think of individuals who must have licenses or be certified to do their jobs, they are likely to pick the obvious examples of doctors, dentists, nurses, attorneys, accountants, teachers, plumbers, and contractors. But they would likely be surprised to know that three states and the District of Columbia all require six years of experiences and fees between \$1,120 and \$1,485 for interior designers to be able to practice their profession.¹ While state and local governments consider licensing requirements to be necessary to provide premium services and protect public health and welfare, many critics call them barriers to entry that end up increasing prices with no guarantee of superior quality.

Licensing laws are particular to each state, meaning that an attorney, physician, hairstylist, or contractor who passes an exam or takes hours of classes for certification in one state must do the same to practice their profession in another state. There are only a handful of federal certifications that cross state lines, including airline pilots.

At the start of the pandemic, healthcare workers in hard-hit states, particularly New York and New Jersey, were under intense pressure to keep up with the number of people who needed hospitalization. When many of them became sick, and in some cases died from COVID-19, medical professionals from across the U.S. in states that were not as impacted by the virus offered to help.² But state licensing laws did not allow them to cross the border and practice medicine. The lifting of restrictions on the practice of medicine accelerated efforts that had been begun several years ago to expand the ability of Americans to work outside of the state in which they had first obtained their license or certification.

The pandemic has had a critical impact on licensed professions from hairstylists to instructors to healthcare providers. When people were unable to work, they could not get paid. If they could not go to school, they could not finish their studies to get a degree or license in a timely manner to apply for a job.

To get the economy moving again, people need to be able to return to work and run their businesses. States need to act to permanently remove unnecessary regulatory barriers in the

workplace. People are struggling to make ends meet and enabling access to work will allow them to get back on their feet and continue to recover from the pandemic.

Background

Licensing and certification regulations impose a high cost on individuals and businesses with substantial and time-consuming education and examination requirements. An occupational license gives an individual permission to perform their chosen profession, like healthcare, teaching, and salon services. An individual can face fines or jail time for practicing certain professions without a license or not following stringent regulations.³

However, many of these requirements are irrelevant to public health or safety, and often make little sense. The Institute for Justice (IJ) reported that to becoming a licensed cosmetologist takes 11 times as much training as it does to become a licensed emergency medical technician.⁴ The organization's November 2017 report, *License to Work*, which studied the "burdens from occupational licensing," found that of the 102 lower-income occupations studied, requirements include on average, up to a year of education or experience, an exam, and more than \$267 in fees.⁵ Liam Sigaud of the American Consumer Institute Center for Citizen Research reported that in Maine, emergency medical technicians are required to complete 120 hours of training, while barbers are required to have 1,500 hours of instruction.⁶ One would expect performing medical or public safety functions would require more training hours than cutting hair.

In the 1950s, only 4 to 5 percent of occupations required licenses. The Heritage Foundation Senior Legal Research Fellow Paul Larkin Jr. reported in May 2017 that the percentage of occupations that now require licenses have "multiplied over 500 percent" since then.⁷ Occupational licensing jobs now comprise more than 25 percent of the economy, and the U.S. Bureau of Labor Statistics (BLS) expects occupations requiring a license to increase by 5.2 percent between 2018 and 2028.⁸ In June 2019, the BLS reported that "43 million people in the United States held a professional certification or license."⁹

The number of licenses that are required by each state vary greatly. The IJ report found that only 23 of the 102 occupations they studied are licensed by 40 states or more.¹⁰

According to the IJ, Hawaii¹¹ ranks first for the "most burdensome licensing laws" and Nebraska¹² ranks last. California¹³ ranks first for the "most broadly and onerously licensed state" while Wyoming ranks last.¹⁴ Louisiana¹⁵ and Washington¹⁶ tie for the most occupational license requirements at 77 each, while Wyoming¹⁷ has the fewest at 26.

Hawaii's licensing laws require on average 988 days in education and experience with an average of more than \$430 in annual fees.¹⁸ In addition to the educational, experience, and fee imposition, the state also requires two examinations for most occupations. Nevada follows in second place to Hawaii by requiring 860 days of education and experience, with more than \$700 in annual fees on average along with two exams.¹⁹ By comparison, Nebraska only requires 188 days of education and experience on average with only \$76 in fees and one exam.²⁰

California is considered to be the "most broadly and onerously licensed state," with 76 licenses among the 102 studied, an average of 827 days of education requirements, \$486 in

annual fees, and two exams.²¹ The minimum average age for licenses is 15. However, Wyoming only requires \$345 in fees, 280 days of education, two exams for most occupations, and an age requirement of 11 to have a license.²²

Deregulation Before the Pandemic

In July 2015, the Obama administration released a framework of policy recommendations that included an overview of various initiatives related to easing the negative impact of occupational licensing while ensuring quality and consumer protection. While the framework suggested the benefits of licensing are to promote health and safety, as well as a “move toward greater professionalization,” there were concerns about the costs and requirements for licensing that discourage competition and employment, as well as the pursuit of employment. The framework also raised the specter of more restrictive licensing laws that would lead to higher prices for consumers.²³

In July 2017, then-Labor Secretary Alexander Acosta called for the removal of unnecessary licenses at the American Legislative Exchange Council’s 44th Annual Meeting. He reminded the attendees that “in 1950, only 1 in 20 jobs required a license and now 1 in 4 jobs require licenses in order to legally work.”²⁴ Secretary Acosta also said removing these barriers would create millions of jobs “without spending a single dime.”²⁵

In June 2019, the Trump administration met with governors from around the nation to discuss workforce freedom and mobility. President Trump recognized the work done by Arizona Gov. Doug Ducey (R), for signing into law “‘universal licensing recognition,’ which accepts occupational licenses granted in many states.”²⁶

When the Trump administration announced the Governor’s Initiative on Regulatory Innovation on October 1, 2019, to reduce regulatory barriers in the workplace, the coronavirus was not on anyone’s mind, and few expected that a global pandemic would threaten the United States and shut the nation down forcing tens of millions of people out of work. The initiative included the following six principles on workforce freedom and mobility that were important at the time they were introduced, but have now become critical to help the country move forward to full economic recovery:

“Principle 1: States and territories should eliminate unnecessary occupational licensing regulations.

Principle 2: States and territories should ensure that all occupational licensing regulations, including those currently in force, are the least restrictive necessary to protect consumers from significant and substantiated harm, ensure worker safety, and promote competition.

Principle 3: States and territories should ensure that occupational licensure boards consider the negative effects of any proposed regulation on consumers and job seekers.

Principle 4: States and territories should recognize the occupational licenses of other States and territories for those individuals who hold a license in good standing and who have not been subject to any complaint or discipline related to their license.

Principle 5: States and territories should eliminate requirements that needlessly prevent individuals with a criminal record from earning a living in a field unrelated to their criminal conviction.

Principle 6: States and territories should take immediate action to ensure that military spouses who accompany their spouses on permanent change-of-station orders are not adversely affected by occupational licensing regulations.”²⁷

The IJ report on occupational licensing burdens found that Florida had the fifth most burdensome licensing laws.²⁸ Following up on the administration’s principles in an effort to improve that ranking, Gov. Ron DeSantis (R) announced an occupational licensing agenda in October 2019 that would eliminate barriers to the workplace. In June 2020, he signed into law the Occupational Freedom and Opportunity Act, which added endorsement and reciprocity provisions, reduced education requirements to obtain a license, and removed certain license fees. The law also removes examination requirements for landscape architects applying for an endorsement if they had held a license in another state or U.S. territory, endorses current and active barber and cosmetologist licenses from out of state, and allows veterinarians to be licensed by endorsement if they had taken a state, regional, national, or other exam that is equal to or more difficult than the exam required by the state.²⁹

In January 2019, Idaho Gov. Brad Little (R) signed two executive orders that built on his 2017 Licensing Freedom Act Executive Order. The first order, the Red Tape Reduction Act, requires state agencies to repeal two regulations for every new regulation proposed. The second order, the Licensing Freedom Act of 2019, establishes “sunrise and sunset processes” to decide if a new law is needed and which current laws should be eliminated, and to review existing and future occupational licensing laws to decide if they are needed.³⁰ In March 2020, Gov. Little signed into law SB 1351, the Occupational Licensing Reform Act, which establishes an Occupational and Professional License Review Committee and a process to allow universal licensure of those who received licenses in other states.³¹ Idaho is now the least regulated state in the country³² and is projected to have a \$405 million surplus despite the coronavirus pandemic.³³

Not only did Idaho pass occupational licensing reforms before the coronavirus, but the state in 2018 also allowed pharmacists to perform rapid diagnostic tests for common illnesses and prescribe medication.³⁴ Other states that implemented similar laws before the pandemic include Arizona,³⁵ Colorado,³⁶ and Texas.³⁷

As the pandemic has spread and persisted, many states have taken measures to reduce the bureaucratic red tape required for licensing. Unlike Idaho and Florida, most of these actions have been temporary and require further action if these changes are to be made permanent.

Deregulation During the Pandemic

On May 19, 2020, President Trump issued an “Executive Order on Regulatory Relief to Support Economic Recovery.” The EO called for federal agencies to “address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility. They should also give businesses, especially small businesses, the confidence they need to re-open by providing guidance on what the law requires; by recognizing the efforts of businesses to comply with often-complex regulations in complicated and swiftly changing circumstances; and by committing to fairness in administrative enforcement and adjudication.” The EO also called for the heads of all agencies to review “any regulatory standards they have temporarily rescinded, suspended, modified, or waived during the public health emergency, any such actions they take pursuant to section 4 of this order, and other regulatory flexibilities they have implemented in response to COVID-19, whether before or after issuance of this order, and determine which, if any, would promote economic recovery if made permanent ...”³⁸

The premise of the EO and the need to review all regulations that have been changed in any manner during the pandemic to determine if they should be made permanent applies equally to state and local governments.

Also on May 19, the Department of Labor published a list of 33 states that suspended, waived or eliminated regulations related to healthcare licenses and telemedicine to make it easier to deliver necessary services to their citizens during these uncertain times and in the current mobile society.³⁹

On July 16, 2020, President Trump delivered remarks at the White House on how “rolling back regulations” has helped the American people since he took office.⁴⁰ He noted that regulatory relief raised household incomes by \$3,100 per year, and that “for every one new regulation issued, we pledged that two federal regulations would be permanently removed.”⁴¹ President Trump also invited several guests to talk about how deregulatory measures helped their businesses, medical practices, and states. Among the speakers were Idaho Gov. Brad Little, Alaska Gov. Mike Dunleavy (R), Joe Cambria of Cambria Truck Center in New Jersey, Arizona rancher Jim Chilton, and Dr. Amy Johnson, a nurse practitioner in rural Virginia.⁴²

“Whether it’s a small business that wants to break through and remove the regulatory friction that existed there before. But as this economy changes as a result of what’s taking place, you have to free up all Americans to have that freedom to create a new opportunity,” Gov. Little said at the event.⁴³

Gov. Dunleavy also applauded President Trump for his work on telemedicine deregulation as Alaska communities are hundreds of miles from each other. He said the work that has been done is “going to save lives.”⁴⁴

Before the pandemic, states did not have many options for telemedicine, especially for people in rural areas. But McKinsey & Company reported that telemedicine usage increased from 11 percent to 46 percent in the past year and could grow into a \$250 billion industry.⁴⁵

New Jersey Gov. Phil Murphy (D) signed a bill into law on March 20 that temporarily enables licensing boards to speed the recognition of out-of-state licensing and allow greater access to telemedicine.⁴⁶ South Carolina⁴⁷ and Texas⁴⁸ are other states that have enabled fast-track recognition for licenses outside of the state. Many other states, including Maine,⁴⁹ Mississippi,⁵⁰ and North Carolina⁵¹ allow out-of-state professionals to provide telemedicine to their residents.

Beyond recognizing out-of-state licenses, states like Colorado⁵² and Massachusetts⁵³ are expediting licensing for new medical professionals. In response to the medical needs stemming from the current pandemic, Colorado and Pennsylvania⁵⁴ allow retired medical professionals to practice. Iowa Governor Kim Reynolds (R) announced in a Proclamation of Disaster Emergency that medical professionals can practice before receiving their license.⁵⁵

While these measures will allow more access to telemedicine around the nation and enable medical professionals to work, they should be made permanent. On August 3, 2020, President Trump signed an executive order that would expand telemedicine services during the pandemic, focusing on rural communities.⁵⁶ The executive order would also extend telemedicine services even after the pandemic ends.⁵⁷

On June 10, 2020, the Ohio House of Representatives unanimously passed HB 673, which will reduce regulatory barriers to help the state recover and reopen from the coronavirus pandemic. If it passes the Ohio Senate and is signed by Gov. Mike DeWine (R), the legislation will help students by temporarily waiving some of the requirements or extending the time needed for state certification in healthcare, education, and other industries which have been negatively impacted by statewide closures of businesses.⁵⁸

When the pandemic first hit the United States, businesses related to cosmetology, including barbershops, hair and nail salons, and spas were among the first to be forced to shut down. On August 17, 2020, the Utah Legislature passed HB 6605,⁵⁹ which temporarily adjusts the requirements for cosmetology and associated professions by clarifying that online instruction can comprise up to 50 percent of the educational requirements instead of the original 30 percent as recommended by the Department of Education.⁶⁰ The bill enables barber, cosmetology, electrologist, hair design, and nail technology schools to continue teaching and accrediting students. This authorization would expire by December 31, 2020 and the bill has a sunset date of July 1, 2022. While businesses can apply for an extension of distance learning beyond December 31, the state should consider making these changes permanent to give more teaching options to instructors.⁶¹

Not only have states worked on deregulation, members of Congress are also trying to help people return to work.

On July 30, 2020, Sens. Ted Cruz (R-Texas) and Martha McSally (R-Ariz.) introduced the Cost Recovery and Expensing Acceleration to Transform the Economy and Jumpstart Opportunities for Businesses and Startups Act (CREATE Jobs Act).⁶² This bill would reform expensing and restructure the tax code. Sen. Cruz noted that instead of passing a “short-term spending measure” this bill would create hundreds of thousands of jobs and increase wages, and Sen. McSally stated that the bill would remove “unnecessary tax barriers,” to help businesses around the nation expand or bring work back home.⁶³ The bill “applies neutral cost recovery to rental units and commercial structures, and makes the bonus-depreciation provisions of the Tax

Cuts and Jobs Act (TCJA) permanent, and preserves full-expensing for research and development (R&D) spending.”⁶⁴

The Tax Foundation estimates that the CREATE Jobs Act would increase GDP by 5.1 percent, increase wages by 4.3 percent, and create more than one million full-time jobs. The removal of these tax barriers would help rebuild businesses and accelerate America’s economic recovery.⁶⁵

The Impact of Licensing Requirements on Military Families

The need for new licenses as Americans move to new states has long had a significant economic impact on military families in which a non-military spouse has a professional license. In far too many cases, the time it would take to obtain a license when the family moves to a new state is longer than the time the post will last.

The University of Minnesota (UM) reported on May 26, 2020 that, “According to the Department of Defense (DoD), the military spouse unemployment rate is at 24 percent and frequent military moves can make it more difficult for spouses to hold down a career.”⁶⁶ Despite the DoD’s efforts beginning in 2011 to increase portability of license for military spouses, much more needs to be done for the 35 percent of military spouses who require a license or certification to work.⁶⁷

Military families move more than civilian families, therefore military spouses are far more likely to have to be relicensed each time the service member is reassigned to another state. This creates an unusual hardship on military families, particularly in states like Hawaii,⁶⁸ Nevada,⁶⁹ and California⁷⁰ which require 988, 860, and 827 days in education on average, respectively, for licensed positions. Military families move every two to three years on average which, given the time required in these states for licensing, often prevents a military spouse from obtaining gainful employment.⁷¹

While 45 states recognize or choose to recognize some licenses of military spouses, it remains challenging to get more licenses recognized.⁷² The struggle has been going on for years, and reform needs to happen to enable these spouses to work even after the family is transferred. While the UM report noted that 34 states have approved a transferable nursing license agreement for military spouses, and 10 more are considering joining them, much more needs to be done to help military spouses and civilians alike.

Dining and Drinking Deregulation

The food and beverage industries have been among the most heavily impacted by the pandemic. In many cities, restaurants remain closed to indoor dining or are limited to 25 percent capacity or less. And states like Maine⁷³ and New York⁷⁴ have taken away licenses from restaurant and bars when they do not comply with local restrictions. Nonetheless, many restaurants and bars have been able to innovate to save at least some of their business, like using nearby parking lots for drive-in dining and increasing takeout and delivery. In other cases where restaurants and bars have been forced to reduce hours of operations to save money⁷⁵ or cut costs,⁷⁶ some states and localities have permitted bars to provide delivery and to-go orders for alcohol.

The beverage industry has overall been heavily affected by the pandemic due to the restrictions on holding large events like weddings, anniversary and birthday parties, and office events, while tasting rooms and tours for breweries, distilleries, and wineries have mostly been closed to the public. However, states have taken novel approaches to help the industry survive the pandemic.

States that have allowed cocktails-to-go to become permanent or have approved extension dates⁷⁷ include Colorado,⁷⁸ Delaware,⁷⁹ Iowa,⁸⁰ Massachusetts,⁸¹ Michigan,⁸² Missouri,⁸³ and New Jersey.⁸⁴ Other states and the District of Columbia are considering similar measures.

On October 13, 2020, Ohio Gov. Mike DeWine signed into law HB 669, which would permanently allow carryout or delivery for alcoholic beverages.⁸⁵ Buckeye Institute Research Fellow Greg Lawson wrote that the “hospitality and leisure sector had nearly 147,000 fewer people employed when compared to July of 2019.”⁸⁶ The new law will help some of those unemployed workers regain their jobs.

On April 3, 2020, the Federal Highway Administration (FHWA) issued a notice allowing states to decide whether or not they will permit food trucks in rest areas for commercial truck drivers.⁸⁷ Commercial truck drivers, who are an indispensable part of the U.S. supply chain, have encountered numerous hurdles searching for places to eat since the pandemic struck. Truck stops reduced their vendors’ operating hours, and drive-through windows are not designed to service these large modes of transportation.⁸⁸ As a result, truck drivers have been left with fewer dining options.

Following the FHWA’s decision, the governors of Arkansas,⁸⁹ Arizona,⁹⁰ California,⁹¹ Colorado,⁹² Connecticut,⁹³ Indiana,⁹⁴ Minnesota,⁹⁵ New Mexico,⁹⁶ Ohio,⁹⁷ and West Virginia⁹⁸ issued executive orders to allow food truck operators to obtain permits to service highway rest areas. These measures are only temporary and will only remain valid until governors suspend their executive orders. The FHWA’s issue mandates that states must terminate the food truck permits once the Emergency Declaration for the coronavirus pandemic ends. California Governor Gavin Newsom (D) extended his state’s food truck licensing program on June 15, 2020,⁹⁹ while Gov. Brad Little eased restrictions on dine-in restaurants, which led to the Idaho Department of Transportation suspending all food truck permits for highway rest stops on June 12, 2020.¹⁰⁰ It would be much more helpful for truck drivers if Congress would consider repealing the ban permanently.

Many businesses in the food and liquor industries have taken positive measures in order to survive the coronavirus pandemic. Unfortunately, not all restaurants, bars, and distilleries will make it through the pandemic. It is important for these businesses to innovate but also have states ease burdens on them.

Deregulation for the Long Term

It is clear that life will be different even after a vaccine is administered and the coronavirus pandemic is abated. From telemedicine to teaching to service industries, positive

deregulatory measures have occurred all over the country. However, most of these measures are only temporary and do not address the long-term impact of occupational licensing laws.

While the unemployment rate has dropped from 14.7 percent in April 2020 to 6.9 percent in October 2020,¹⁰¹ and the economy grew by a record 33.1 percent annual rate in the third quarter,¹⁰² making deregulatory measures related to occupational licenses permanent will improve the economy more quickly. The U.S. had a 3.5 percent unemployment rate before the pandemic.¹⁰³ Cutting down on barriers to occupational licenses should not only be done during emergencies like the current COVID-19 pandemic, they should also be used as a part of a continuing effort to help families and businesses realize the American Dream. More states need to recognize the importance of passing these permanent free-market solutions to boost the economy.¹⁰⁴

Removing barriers to the workplace permanently will relieve individuals of high fees and burdensome educational requirements for dozens of occupations. With many rules and regulations being suspended during the pandemic, there is no better time than now to permanently reform these laws to enable millions of Americans people to get back to work more quickly, while saving them time and money.

Not only will unnecessary and burdensome requirements be eliminated, but the nation will also be better prepared for the next healthcare and economic crisis.

End Notes

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