

spotlight

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GUILD BY ASSOCIATION

Aggressive Occupational Licensing Hurts Job Creation and Raises Consumer Costs

KEY FACTS: • North Carolina features over 50 occupational licensing boards. The state licenses more occupations than most other states and is one of the more aggressive in licensing jobs for the poor or less educated.

• At its core, an occupational license is a grant of permission from the government to an individual to enter the field of work he desires.

• The supposed purpose for occupational licensing is to ensure safety and quality. In practice, its motivation is to protect current members of a profession from competition and thereby make them wealthier. Its costs are dispersed among consumers and would-be professionals blocked from the field.



**CAROLINA
CRONYISM**

• Economists studying occupational licensing generally find it restricts the supply of labor and drives up the price of labor and services. They find similarity between licensure and medieval guilds.

• Licensing has grown tremendously. In the 1950s, nearly one in 20 workers needed a government license; now that number is approaching one in three.

• Research is mixed over whether licensing actually has a positive effect on safety or quality. States differ greatly over which occupations even need state licensure.

• Without state licensure, who would ensure safety and quality? Private providers of reviews and certification, internet sites and consumer applications, social media, and competitors and market forces. The government would still enforce safety and quality through the court system.

• This report recommends six ways to de-guild North Carolina's economy:

1. Reduce the number of licensing boards and licensed job categories.
2. Reform and merge licensing boards.
3. Encourage reciprocity.
4. Apply a principle of "least-cost state."
5. Enact sunset provisions with periodic review for current licensing boards.
6. Enact sunrise provisions for any future licensing board.

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In 2009, Steve Cooksey was hospitalized with Type II diabetes, the same disease that had killed his grandmother. Determined not to suffer the same fate and not wanting to spend the rest of his life on insulin and other diabetes drugs, the Stanley, N.C., man turned to dieting. Through the carbohydrate-limiting, high-protein “Paleo” diet and exercise, Cooksey lost 78 pounds, got off the insulin, and then got into blogging about his experiences.

Through his blog, DiabetesWarrior.net, Cooksey freely answered readers’ questions about controlling diabetes through diet and also offered paid life-coaching services to readers adopting the Paleo lifestyle. In doing so, Cooksey ran afoul of the North Carolina Board of Dietetics/Nutrition. In January 2012, the State Board told Cooksey that, free or not, he could not offer personal dieting advice without a license and even that his private e-mail messages and telephone conversations amounted to unlicensed and illegal dietetic assessment and advice. The board gave Cooksey 19 pages’ worth of his own writings with passages marked with red pen to explain what he was not allowed to say. Threatened with a misdemeanor conviction, jail time, and thousands of dollars in fines, Cooksey discontinued his life-coaching and advice column. Then he sued the state for violating his speech rights (the suit is ongoing).¹

Apart from the issue of free speech, the spectacle of a state licensing board threatening a blogger raises other concerns: Is it the State of North Carolina’s business to determine who gets to offer advice about eating? How many potential criminal acts of unlicensed eating advice are given out daily across the state? Why have we erected a bureaucracy around this idea? Do other states have them? Who is helped or harmed by it? Is it really necessary?

Reasons for Occupational Licensing

At its core, an occupational license is a grant of permission from the government to an individual to enter the field of work he desires. In other words, without government’s approval, an individual could not legally set up shop in the profession of his choosing. Such a drastic imposition by government on personal liberty — q.v., North Carolina’s Constitution, Article I, Section 1, recognizes the right of all persons to “the enjoyment of the fruits of their own labor”² — should have a strong and compelling basis. Licensing is thought to serve the state’s interest in protecting its citizens from fraudulent or negligent providers and to ensure safety and quality of the services provided.

For example, the Dietetics/Nutrition Act of 1991 that established the Board of Dietetics/Nutrition included this stated purpose:

It is the purpose of this Article to safeguard the public health, safety and welfare and to protect the public from being harmed by unqualified persons by providing for the licensure and regulation of persons engaged in the practice of dietetics/nutrition and by the establishment of educational standards for those persons.³

Similar language is to be found in other legislation establishing state licensing boards.

Regardless, many researchers find the protections to extend more to those who are already within the regulated industry than to consumers. Occupational licensing uses the power of the state to impose several hurdles on prospective entrants to a field, including the (often recurring) cost of the license and fees, mandated credit-hours of academic instruction (which costs time as well as money), passage of a qualifying exam or exams (which also includes exam fees), and supplemental education, among others. Surveying the literature, University of Minnesota professor of Labor Policy Morris M. Kleiner found that “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.”⁴

Kleiner echoes Milton Friedman and Simon Kuznets in finding similarity between occupational licensing and medieval guilds.⁵ Friedman found this similarity so strong that he opened with it in his chapter on occupational licensure in his seminal 1962 work *Capitalism and Freedom*:

The overthrow of the medieval guild system was an indispensable early step in the rise of freedom in the Western world. It was a sign of the triumph of liberal ideas, and widely recognized as such, that by the mid-nineteenth century, in Britain, the United States, and to a lesser extent on the continent of Europe, men could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority.⁶

Nevertheless, Friedman noted, “In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state.”⁷ Research by Kleiner and Alan B. Krueger illustrated that retrogression starkly. The study noted that in the 1950s, nearly one in 20 workers needed a government license to work in a chosen field. By the 1980s, it was about one in six; by 2000, one in five. In 2006 that number was approaching one in three (29 percent).⁸

Occupational Licensing in North Carolina

In his chapter Friedman cited research by Walter Gellhorn, “the best brief survey I know” on the subject, which included this nugget: “As long ago as 1938 a single state, North Carolina, had extended its law to 60 occupations.”⁹ Three-quarters of a century later, if state licensing in North Carolina were *pared down* to 60 occupations, it would represent a sizeable increase in Tar Heels’ freedom to make a living.

Currently, North Carolina features over 50 occupational licensing boards (see Table 1).¹⁰ The state licenses more occupations than most other states. A July report on occupational licensing by Byron Schломach of the Goldwater Institute found North Carolina tied with Massachusetts for 15th most licensed job categories among the states at 154. Among its nearest neighboring states, North Carolina comes in second (Tennessee has 190). Georgia licenses 129; Virginia, 76; and the other Carolina, South Carolina, licenses only 49 job categories.¹¹ A study conducted in 2007 by Adam B. Summers for the Reason Foundation, using slightly different criteria for counting and comparing licensed job categories across the states, had North Carolina tied with Massachusetts, Oregon, and Vermont for 12th most licensed job categories.¹²

Furthermore, according to a May 2012 study published by the Institute for Justice, North Carolina is also one of the more aggressive states in licensing occupations that often employ the poor or less educated. That study, conducted by Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, focused on 102 lower-income occupations often subject to licensing in individual states, ranging from construction trades to cosmetology to bartending, dental assisting, and more. Such occupations are ideal entry points into the job market, the report notes, and their importance to a state’s economy is not insignificant —half of those licensed lower-income occupations are possible sources of new job creation and independent business starts. For those reasons the report questions the social cost of making entry into those fields so difficult for the poor — the average cost to aspiring workers in those fields was \$209 in fees, nine months in the classroom paying for education and training, and one exam.¹³

Carpenter et al. found North Carolina tied with New Jersey for 17th most licensed lower-income occupations. North Carolina licenses 48 of the 102 lower-income occupations they highlighted (see Table 2).¹⁴

Playing Favorites with Special Interests

If, as Friedman wrote, removing the guild system was such an indispensable step in freedom’s rise, then what does its apparent return via government licensure — i.e., requiring people who pursue certain trades or occupations to obtain, at cost, the leave of a governmental authority — mean for freedom in society?

While the ostensible justification for occupational licensing is public safety, in practice the actual motivation for it is to protect current members of the profession from competition and thereby make them wealthier. The cost of this protection is borne by consumers and would-be professionals blocked from the field. It often goes unnoticed, however,

given that it is dispersed, and there could be no comparison of existing prices with the foregone *lower* prices that would have resulted from greater competition in the market.

The benefits of it are concentrated on the current members, those who can afford to cross all the hurdles, those employed in licensing or providing services necessitated by the licenses (trade schools, testing companies providing licensing exams, members of the boards, etc.), and the state in revenue from licensing fees. Kleiner and Krueger found the wage effects of licensure to be significant — earnings in licensed occupations around 15 percent higher than they would otherwise be.¹⁵ Kleiner found the licensing wage premium to be greater for higher-waged licensed occupations, such as dentistry (earnings 30 percent higher).¹⁶ Instead of the case being the state vs. the professionals, the two sides work in concert against the interests of new competitors and consumers.

Meanwhile, for practitioners in unlicensed fields, the economic promises of licensure can be compelling enough for them to seek legislation to place their own profession under state licensure. For example, since 2000 North Carolina

Table 1. North Carolina’s Occupational Licensing Boards

North Carolina Acupuncture Licensing Board	North Carolina Board of Massage and Bodywork Therapy
North Carolina Board of Architecture	North Carolina Medical Board
North Carolina Board of Athletic Trainer Examiners	North Carolina Board of Nursing
North Carolina Auctioneer Licensing Board	North Carolina State Board of Examiners for Nursing Home Administrators
North Carolina Board of Barber Examiners	North Carolina Board of Occupational Therapy
North Carolina State Board of Certified Public Accountant Examiners	North Carolina On-Site Wastewater Contractors and Inspectors Certification Board
North Carolina Board of Chiropractic Examiners	North Carolina State Board of Opticians
North Carolina Board of Cosmetic Art Examiners	North Carolina State Board of Examiners in Optometry
North Carolina State Board of Dental Examiners	North Carolina State Board of Fee-Based Practicing Pastoral Counselors
North Carolina Board of Dietetics/Nutrition	North Carolina Board of Pharmacy
State Board of Examiners of Electrical Contractors	North Carolina Board of Physical Therapy Examiners
North Carolina Board of Electrolysis Examiners	North Carolina State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors
North Carolina Board of Employee Assistance Professionals	North Carolina Board of Podiatry Examiners
North Carolina State Board of Examiners for Engineers and Surveyors	North Carolina Board of Licensed Professional Counselors
North Carolina State Board of Environmental Health Specialist Examiners	North Carolina Psychology Board
North Carolina State Board of Registration for Foresters	North Carolina Appraisal Board
North Carolina Board of Funeral Service	North Carolina Real Estate Commission
North Carolina Licensing Board for General Contractors	North Carolina Board of Recreational Therapy Licensure
North Carolina Board for Licensing of Geologists	North Carolina State Board of Refrigeration Examiners
The North Carolina Hearing Aid Dealers and Fitters Board	North Carolina Respiratory Care Board
North Carolina Interpreter and Transliterator Licensing Board	North Carolina Social Work Certification and Licensure Board
North Carolina Irrigation Contractors’ Licensing Board	North Carolina Board for Licensing of Soil Scientists
North Carolina Board of Landscape Architects	North Carolina Board of Examiners for Speech and Language Pathologists and Audiologists
North Carolina Landscape Contractors’ Registration Board	North Carolina Substance Abuse Professional Practice Board
North Carolina Locksmith Licensing Board	North Carolina Veterinary Medical Board
North Carolina Marriage and Family Therapy Licensure Board	

**Table 2: Burden of Licensing Requirements for Low-Income Occupations Licensed in North Carolina
Compared with their licensing burdens in South Carolina and Virginia***

Occupation	Licensing Fees			Education/Experience (Days)			Exams		
	NC	SC	VA	NC	SC	VA	NC	SC	VA
Athletic Trainer	\$400	\$350	\$190	1,460	1,460	1,460	1	1	1
Fire Alarm Installer	\$165	\$0	\$345	1,095	0	0	0	2	0
Security Alarm Installer	\$165	\$0	\$100	1,095	0	0	0	2	0
Preschool Teacher	\$85	\$159	\$50	1,825	1,825	1,825	1	1	1
Optician	\$250	\$150	\$300	910	730	730	1	3	3
Pest Control Applicator	\$175	\$100	\$70	730	0	365	1	2	2
Veterinary Technologist	\$270	\$25	\$30	730	730	730	2	1	1
HVAC Contractor (General/Commercial)	\$260	\$310	\$190	730	730	1,516	2	2	2
Barber	\$120	\$165	\$225	722	350	350	3	2	2
Earth Driller	\$250	\$50	\$235	548	0	730	1	1	1
Cosmetologist	\$158	\$80	\$170	350	350	350	2	2	2
School Bus Driver	\$150	\$34	\$35	184	5	10	6	6	6
Landscape Contractor	\$75	N/A	N/A	1,095	N/A	N/A	2	N/A	N/A
Massage Therapist	\$170	\$150	\$105	117	117	117	1	1	1
Auctioneer	\$614	\$870	\$90	19	19	19	2	2	1
Emergency Medical Technician	\$0	\$107	\$0	39	33	28	2	2	2
Skin Care Specialist	\$119	\$165	\$170	140	105	140	2	2	2
Bus Driver (City/Transit)	\$135	\$32	\$35	0	0	5	5	5	5
Truck Driver	\$120	\$20	\$27	0	0	8	4	4	4
Manicurist	\$10	\$120	\$55	70	70	35	2	2	2
Vegetation Pesticide Handler	\$50	\$100	\$70	0	0	365	1	2	1
Security Guard	\$25	\$65	\$50	2	1	3	0	1	0
Weigher	\$25	\$5	\$35	0	0	0	0	0	0
Mobile Home Installer	\$265	\$150	\$175	0	731	731	1	1	0
Mason Contractor (General/Commercial)	\$135	\$250	\$175	0	730	731	1	1	0
Iron/Steel Contractor (General/Commercial)	\$135	\$325	\$175	0	730	731	1	2	0
Door Repair Contractor	\$135	\$250	\$175	0	730	731	1	1	0
Pipelayer Contractor	\$135	\$325	\$175	0	730	731	1	2	0
Carpenter/Cabinet Maker Contractor (General/Commercial)	\$135	\$325	\$175	0	730	731	1	2	0
Insulation Contractor (General/Commercial)	\$135	\$250	\$175	0	730	731	1	1	0
Terrazzo Contractor (General/Commercial)	\$135	\$250	\$175	0	730	731	1	1	0
Paving Equipment Operator Contractor	\$135	\$325	\$175	0	730	731	1	2	0
Drywall Installation Contractor (General/Commercial)	\$135	\$250	\$175	0	730	731	1	1	0
Floor Sander Contractor (General/Commercial)	\$135	\$250	\$175	0	730	731	1	1	0
Glazier Contractor (General/Commercial)	\$135	\$310	\$175	0	730	731	1	2	0
Fisher	\$200	\$25	\$190	0	0	0	0	0	0
Milk Sampler	\$5	\$0	\$0	0	0	0	1	0	1
Cement Finishing Contractor (General/Commercial)	\$75	\$325	\$175	0	730	731	0	2	0
Painting Contractor (General/Commercial)	\$75	\$250	\$175	0	730	731	0	1	0
Sign Language Interpreter	\$923	N/A	\$760	2	N/A	2	3	N/A	3
Makeup Artist	\$129	\$165	N/A	140	105	N/A	2	2	N/A
Crane Operator	\$165			0			3		
Bill Collector Agency	\$1,000			0			0		
Locksmith	\$338		\$234	0		4	1		1
Child Care Worker	\$0	\$0		4	4		0	0	
Sheet Metal Contractor (General/Commercial)	\$135		\$175	0		731	1		0
Animal Breeder	\$50			0			0		
Taxidermist	\$10		\$40	0		0	0		0

*The occupations listed here are the 48 of 102 occupations identified by Carpenter et al. as low-income occupations and that are licensed in N.C.¹⁷

has added licensing boards for respiratory care,¹⁸ locksmiths,¹⁹ interpreters and transliterators,²⁰ on-site wastewater contractors and inspectors,²¹ and irrigation contractors.²² The 2011-12 session of the North Carolina General Assembly witnessed several bills from both sides of the aisle that attempted to extend state licensing to numerous professions. None of the bills passed, but the professions included musical therapists, naturopaths, homeopaths, herbalists, exercise physiologists (personal trainers), pedorthists (makers of orthotic shoes), property managers, X-ray technicians, and radiation therapists. Other bills sought to broaden the landscaping contractor's licenses to cover such services as "horticulture consultation," "planting design," and "low voltage lighting systems"; triple the locksmith license and licensing renewal fees while prohibiting the possession of any locksmithing tools by anyone other than licensed locksmiths; and limit grandfathering of African hair braiders (licensure for which passed in 2010) to those who could prove they had been in that line of work in North Carolina for at least two years prior to the licensing law.²³

Furthermore, as mentioned above, trade schools providing the required training are also among the beneficiaries of licensing laws. In North Carolina, there are two competing providers of training — pre-licensure as well as continuing education — for bail bondsmen, the nonprofit North Carolina Bail Agents Association and the for-profit North Carolina Bail Academy. In the closing moments of the 2011-12 legislative session, Senate Bill 738, originally titled "Liability Insurance Required for ABC Permits," was gutted and replaced with language granting a training monopoly for bail bondsmen to the N.C. Bail Agents Association.²⁴ It passed the House and was approved the next day in the Senate by concurrence. Curiously, the legislator who inserted the bail bondsmen training language has not been identified.²⁵

The Rockford-Cohen Group, parent organization of the N.C. Bail Academy, which would be put out of business by the bill, filed suit and won an injunction in Superior Court. "The court cannot find any factual, logical, or reasonable basis that [the law] serves any other purpose other than to eliminate all current and future competition for the benefit of a private corporation or association in violation of the North Carolina Constitution," wrote Wake County Superior Court Judge Donald Stephens in blocking implementation of the law. The case is ongoing.²⁶

Friedman foresaw those kinds of problems. He warned that

the problem of licensing of occupations is something more than a trivial illustration of the problem of state intervention, that it is already in this country a serious infringement on the freedom of individuals to pursue activities of their own choice, and that it threatens to become a much more serious one **with the continual pressure upon legislatures to extend it.**²⁷ (Emphasis added.)

Examining Licensure's Benefits

As noted above, the expected benefits of occupational licensure are greater public safety and better quality service for consumers, and higher wages for members of licensed professions. How do those benefits stand up?

Public safety

The increased cost to would-be members of a licensed profession, both in time and money in obtaining a license, should discourage less competent or negligent providers. Going further, the prospect of jail, fines, or loss of license (i.e., loss of profession) to punish negligence would also dissuade them. They would be weeded out by licensing exams and education requirements, which would ensure more skilled providers.

Nevertheless, those effects cut both ways. Research is mixed on whether public safety is actually improved by occupational licensure. Summers found the case for licensure improving public safety to be "dubious at best."²⁸ Kleiner found the effect ambiguous; as he wrote,

Because of the countervailing forces of price and restricting supply of lower skilled applicants,

the level of service quality as a consequence of regulation is uncertain. It is impossible on theoretical grounds to determine whether more intense regulation will increase or decrease the quality of the service provided.²⁹

By increasing the costs to entry and limiting the supply of service providers, licensure also increases the costs to consumers. In consequence, some consumers choose to forego necessary work or try to do it on their own. Summers found, for example, higher rates of blindness in states with stricter optometry licensing laws, higher incidence of poor dental hygiene in states with tougher dental licensing laws, and greater electrocution rates in states with stricter electrical licensing laws.³⁰ Worse, the heightened cost could lead to black markets, fly-by-night providers, and scams. The effect of licensing laws may be more competent service providers, but the net effect on safety of the work received from all providers (including black markets and do-it-yourselfers) is indeterminate and may very well be negative.

When a profession is first brought under state licensure, it is not unusual for the law to contain a grandfather clause protecting all current members in the profession. However “fair” the grandfather clause is, it lessens confidence that licensing keeps out unsafe providers³¹ if it keeps them all in place despite the perceived need for safer service having reached the level of legislation.

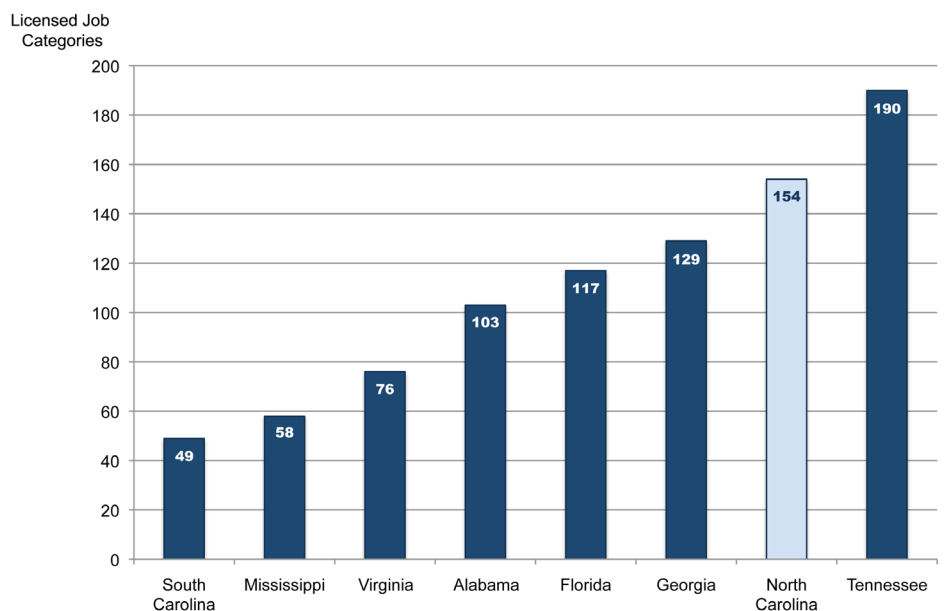
Other factors may work to the detriment of public safety. The higher costs to obtain a license could keep out new entrants with new, safer innovations. So could a board hewing to a strictly enforced standardization of practices. There is also the risk of a mismatch between licensing standards, training requirements, and the actual needs of the work, giving consumers an impression of competence that may not be warranted.³² Another risk is that of a club mentality developing among licensees and boards (especially those comprising fellow licensed practitioners), whereby they end up protecting rather than punishing wrongdoers.³³

Finally, states differ greatly over which occupations to license. That means that there is great disagreement over what kinds of work rise to the level of state scrutiny for public safety. For example, of the 102 lower-income occupations highlighted by Carpenter et al., the average occupation was licensed in only 22 states, and just 15 were licensed in 40 or more states.³⁴ In the Carolinas, just by crossing the border from North into South reduces licensed occupations by two-thirds (see chart).

Service quality

Licensure’s case for increased quality starts with its points for public safety and adds that, since licensed service providers are certified by the state, consumers are able to expect a certain base level of competence. Furthermore, licensing boards, whose membership includes industry experts and practicing members of the profession, would exert oversight on industry members to enforce quality standards. Kleiner and Krueger found that licensed professionals considered themselves to be more competent.³⁶

Chart: States Vary Widely in Licensed Occupations: Number of Licensed Job Categories, North Carolina and Surrounding States³⁵



Nevertheless, licensure's actual effect on quality, like its effect on public safety, is uncertain. Friedman found it "by no means clear" that licensing actually raises the standards of professional competence, noting that the existence of barriers to entry into a field increases incentives to find new ways around them, which could very well result in lower quality.³⁷ Carpenter et al. surveyed research on licensing's effects on various occupations and found little evidence of improved safety or quality.³⁸ Kleiner said it was difficult to find empirical evidence of increased quality. Though licensing's greater costs and hurdles block some unfit providers, they may also keep out some qualified individuals.³⁹ Fewer practitioners lead to higher-priced service, which as discussed above drives some consumers to choose lesser quality alternatives (doing it themselves, choosing illegal or sham providers, choosing to neglect the problem, etc.).

The licensing boards tend to grow in scope and become more restrictive, further raising prices and harming competition and quality.⁴⁰ As discussed above, boards with mismatched standards or that have developed club mentalities would also detract from rather than add to service quality. Sometimes they will even prevent free service (a dieting blog, for example) or worse, charitable donations of service. For the latter, consider the struggles of Remote Area Medical (RAM) in trying to bring freely offered medical, dental, and vision services to the poorest areas across the nation.⁴¹

A nonprofit medical service founded by Stan Brock, known primarily for his longtime role on the popular TV wildlife series, Mutual of Omaha's "Wild Kingdom," RAM brings in medical professionals who volunteer their service to indigent areas.⁴² The problem isn't getting volunteers; it's getting past the medical licensing boards, which balk at the idea of medical services provided in their states, even for charity, by professionals licensed in other states.⁴³

In 2011 the General Assembly passed SB 743, Encourage Volunteer Healthcare Providers, partially addressing this issue in North Carolina. The bill allowed the Medical Board to grant limited volunteer licenses to physicians and physician assistants to provide charitable medical care to the indigent. The bill did not, however, make allowances for medical professionals volunteering dental or vision care.⁴⁴

Higher wages

One decided benefit of occupational licensing is the earnings premium for members in the licensed profession. Kleiner and Krueger found the lifetime earnings premium under licensing to be an average 15 percent higher than without it, and Kleiner furthermore found the positive impact on earnings to be higher for high-wage occupations than it is for low-wage occupations.⁴⁵

Again, those higher wages are offset by higher costs to consumers. Consumers, especially the poor, are harmed by the higher prices as well as the lack of choices among providers and service levels. The wage premium is a benefit only to those who pass all the hurdles to obtaining the license. The higher cost in money and time to qualify for and obtain a license limits the supply of service providers, and they may be more harmful against the poor and minorities interested in the industry.⁴⁶ In the lower-income professions, Carpenter et al. found, licensing is particularly harmful to job opportunities for "minorities, those with less education and older workers who may want to switch careers."⁴⁷

Case in point: in 2010 lawmakers decreed that African hair-braiding — something that uses no chemicals and that is typically learned in immigrants' girlhoods — would require a license, including 300 hours' worth of costly cosmetology training. The law placed a significant hardship on practitioners, many of whom are poor immigrants from West Africa with little grasp of English.⁴⁸

A similar licensing scheme was recently thrown out of court in Utah. The federal judge rapped state officials in his ruling, a portion of which merits quoting here:

The State does not know which schools, if any, teach African hair braiding; how many hours, if any, of African hair braiding instruction are available at those unknown schools; or whether

the unknown number of hours of instruction at those unknown schools are mandatory or elective. ...

Utah's cosmetology/barbering licensing scheme is so disconnected from the practice of African hairbraiding, much less from whatever minimal threats to public health and safety are connected to braiding, that to premise [petitioner] Jestina [Clayton]'s right to earn a living by braiding hair on that scheme is wholly irrational and a violation of her constitutionally protected rights.⁴⁹

Furthermore, differences in state licensing standards and state reciprocity agreements restrict individual providers' geographic labor mobility; i.e., their ability to move to another state and set up shop. This restriction contributes to keeping the supply of competitors limited in licensing states.⁵⁰

Alternatives to State Licensure: Business Reputation, Private Certification, and the Courts

If the state weren't involved in licensing an occupation, then who would ensure safety and quality? Private providers will offer reviews and even certification for consumers who seek that information. Competition and market forces will expose and winnow out shoddy providers; competitors, of course, won't be silent if their rivals field an inferior product. Also, the government will still be there to enforce safety and quality — through the court system. Consumers who think they were wronged may bring tort lawsuits, and providers know it. Lawmakers don't face a Hobson's Choice of either licensure or nothing. Their choice is either to allow the market forces to provide this enforcement in its many ways buttressed by court protection of property rights or to arrogate market-based regulating with licensure, imposing higher costs on consumers and the economy for theoretical but indeterminate effects on safety and quality and real risks of growing cronyism and regulatory burdens.

A good business reputation, especially for a small firm or self-employed entrepreneur, is vital. Consumers want to know who they can trust. This clear demand for information is an invitation for entrepreneurs to fill that void, and they will do so provided they aren't blocked by the government. Good Housekeeping, Underwriters Laboratories, and the Better Business Bureau are all privately offered sources of certification of product or service quality (or lack of quality: the Better Business Bureau recently released its "Dirty Dozen" list⁵¹ of 12 Charlotte-area businesses with the most unanswered customer complaints in 2012). The strength of their endorsement lies in the strength of their own reputations; because they have established themselves as reputable, trustworthy sources, their recommendations transfer their good reputations on to the endorsed services. Likewise, Consumer Reports, CNET, etc. offer product comparisons and reviews backed by their own reliable reputations. Also, the Internet has made it far easier to provide and acquire such information, thanks to such sites as Angie's List, Amazon.com, Yelp!, and many, many more that allow consumers to log their experiences with vendors for the educational benefit of future consumers. Social media sites such as Facebook and Twitter have given that reliable tool, word-of-mouth, even greater amplification backed by consumers who are your friends and family.

Freeing up a profession from licensure would have a few costs. Licensed members of the profession would expect to see a decline in wages as competition returned. Where there has been any actual improvement in quality and safety owing directly to licensure, it would be at least temporarily lost.

Consumers would benefit from lower costs, more competition, a wider range of service levels, and provisions of private reviews and certification. Aspiring members of the profession would be able to enter it easily, potentially bringing new ideas that would transform the industry or helping contribute to a more stratified menu of service choices for consumers. Society would benefit from more human and entrepreneurial liberty, as well as from greater employment access for the poor, the less educated, and older career changers.

Conclusion and Recommendations

As with toppling medieval guilds in Europe, removing occupational licensure is an essential step lawmakers can take toward restoring freedom in North Carolina. Though the costs of licensing are diffuse, they are nonetheless real and particularly burdensome on the poor, both in terms of lost employment and startup entrepreneurial opportunities and in terms of higher costs for needed services.

How can lawmakers de-guild the economy?

1. Reduce the number of licensing boards and licensed job categories

North Carolina has taken a more “guild-friendly” approach to licensing professions than many other states; conversely, that fact should show how few licensing boards and licensed job categories are arguably necessary. Along with comparing other states’ approaches to licensing different job categories with North Carolina’s and questioning those that are specific to this state, legislators could adopt a “last in, first out” rule of thumb for licensing boards. If a practice only just recently came to be viewed as needing state oversight, it is likely that need wasn’t that obvious.

2. Reform and merge licensing boards

Some boards appear to cover similar territory as others. To give just a few examples, there are separate boards for landscape architects and landscape contractors; for professional counselors, occupational therapists, and pastoral counselors; and for physical therapists, recreational therapists, and athletic trainers. The distinctions could be important, but for job categories that continue to be licensed in North Carolina, the legislature could review — through the Program Evaluation Division, for example — boards and licenses to find and eliminate inefficiencies and overlap.

3. Encourage reciprocity

For job categories that continue to be licensed in North Carolina, the boards should encourage reciprocity with similar licensing boards in other states in order to encourage greater competition here through in-migration.

4. Apply a principle of ‘least-cost state’

For job categories that continue to be licensed in North Carolina, the boards should examine what other states require of licensees in those jobs and, where another state’s standards are less burdensome on prospective workers (in hours of training, for example, or in licensing fees or in ongoing license renewal), adopt the less burdensome standard. By extension, this approach would entail getting North Carolina out of licensing anything that leaders in other states have left up to the free market.

5. Enact sunset provisions with periodic review for current licensing boards

The idea of *once licensed, always licensed* would be poor public policy; periodically reviewing the add-ons of state government is good public policy to ensure that things thought necessary years ago are still a going concern. The legislature should have all licensing boards slated to sunset (a set number per year) in order to ensure that their ongoing existence can be justified. A review would, first of all, see whether the licensing board effectively addresses the problems it was designed to address, such as: Do consumers’ experiences differ before and after licensing? Are there significantly fewer complaints to the attorney general or the Better Business Bureau? And are those differences worth the state apparatus? The review could also ask, among other things, how many other states have similar boards, how many licensees in that field there are, how much or little enforcement activity the board engages in, and how necessary are those enforcement activities.⁵²

6. Enact sunrise provisions for any future licensing board

Placing more job categories under state licensure is an aggressive act that should be done circumspectly and with proper deliberation to demonstrate it is absolutely necessary. A principle of *If it ain't broke, don't fix it* should apply. Creating a new licensing board should happen only after it has been demonstrated that there is a decided health, safety, or quality issue in the market that warrants licensure to solve. So those who favor the creation of a new board should be statutorily required to prove, rather than merely allege, that the board would indeed “safeguard the public health, safety and welfare and to protect the public from being harmed by unqualified persons” before the formation of the board could be complete. This proof should describe what the alternatives to licensing were and why they were discarded and should include an objective economic analysis by a disinterested third party.⁵³

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End notes

1. For background, see, e.g., Sara Burrows, “State Threatens to Shut Down Nutrition Blogger,” *Carolina Journal Online*, April 23, 2012, carolinajournal.com/articles/display_story.html?id=8992; Sara Burrows, “Paleo Diet Blogger Sues State for Violating Free Speech,” *Carolina Journal Online*, May 31, 2012, carolinajournal.com/articles/display_story.html?id=9127; “Caveman Blogger Fights for Free Speech and Internet Freedom,” Institute for Justice Litigation Backgrounder, ij.org/north-carolina-speech-backgrounder; Sara Burrows, “Paleo Diet Blogger Loses Round One of Free Speech Case,” *Carolina Journal Online*, October 11, 2012, carolinajournal.com/exclusives/display_exclusive.html?id=9575.
2. North Carolina State Constitution, Article I, Section 1, ncga.state.nc.us/Legislation/constitution/article1.html.
3. SL 1991-668 (H564), ncga.state.nc.us/Sessions/1991/Bills/House/HTML/H564v4.html.
4. Morris M. Kleiner, “Occupational Licensing,” *The Journal of Economic Perspectives*, Vol. 14, No. 4 (Autumn 2000), pp. 189–202, web.missouri.edu/~podgurskym/Econ_4345/syl_articles/kleiner.pdf.
5. Kleiner, “Occupational Licensing.” Kleiner quotes from Friedman and Kuznets, *Income from Independent Professional Practice*, National Bureau of Economic Research, New York, 1945, nber.org/chapters/c2324.pdf, p. 12: “In all professions, there has developed in the last few years an aristocratic, or at least a restrictive movement which, in a sense, is reminiscent of the medieval guilds.”
6. Milton Friedman, “Chapter IX: Occupational Licensure,” *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962, p. 137.
7. Friedman, *Capitalism and Freedom*.
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9. Walter Gellhorn, “The Right to Make a Living,” *Individual Freedom and Governmental Restraints*, Baton Rouge: Louisiana State University Press, 1956, p. 106, as cited in Friedman, *Capitalism and Freedom*, p. 139.
10. North Carolina Administrative Code, Title 21: Occupational Licensing Boards and Commissions, ncrules.state.nc.us/ncac.asp.
11. Byron Schломach, “Six Reforms to Occupational Licensing Laws to Increase Jobs and Lower Costs,” Goldwater Institute *Policy Report* No. 247, July 10, 2012, goldwaterinstitute.org/article/six-reforms-occupational-licensing-laws-increase-jobs-and-lower-costs.
12. Adam B. Summers, “Occupational Licensing: Ranking the States and Exploring the Alternatives,” Reason Foundation *Policy Study* No. 361, August 2007, reason.org/news/show/1002854.html. A note on the differing counts: Schломach and Summers’ counts are both based on data from CareerOneStop, acinet.org/licensedoccupations, a web site sponsored by the U.S. Department of Labor, Employment and Training Administration. Counting discrete licensed occupations can be subjective, however, owing to differences in how states define and list occupations. Summers noted, for example, that “one state may require licenses for ‘contractors’ (of all kinds), while others may require licenses for several specializations of contractors.” Several occupations are listed by subcategories (e.g., apprentice plumber, journeyman plumber, and master plumber — apropos of Kleiner, “Occupational Licensing” supra, notice the use of guild terminology in those subcategories). Both Schломach and Summers attempted to make the licensed categories across the states as similar as possible for comparison’s sake; in his “Disclaimers” on pp. 7–8, Summers discussed this issue and stated that the number of job categories presented in his report “understates the number of licensed occupations” (emphasis in original).
13. 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, ij.org/licensetowork.
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19. SL 2001-369 (H942), ncga.state.nc.us/Sessions/2001/Bills/House/HTML/H942v8.html.
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21. SL 2006-82 (H688), ncga.state.nc.us/Sessions/2005/Bills/House/HTML/H688v6.html.
22. SL 2008-177 (H2353), ncga.state.nc.us/Sessions/2007/Bills/House/HTML/H2353v6.html.
23. Sara Burrows, "Proposed Occupational Licensing Laws Target Entrepreneurs," *Carolina Journal Online*, June 22, 2011, carolinajournal.com/articles/display_story.html?id=7927.
24. SL 2012-183 (S738), ncga.state.nc.us/Sessions/2011/Bills/Senate/HTML/S738v6.html.
25. Dan Way, "Lawmakers Wrangle Over Training for Bail Agents," *Carolina Journal Online*, January 7, 2013, carolinajournal.com/exclusives/display_exclusive.html?id=9786.
26. Way, "Lawmakers Wrangle Over Training for Bail Agents."
27. Friedman, *Capitalism and Freedom*, p. 142.
28. Summers, "Occupational Licensing."
29. Kleiner, "Occupational Licensing."
30. Summers, "Occupational Licensing."
31. Schlomach, "Six Reforms to Occupational Licensing Laws."
32. Summers, "Occupational Licensing."
33. Summers, "Occupational Licensing."
34. Carpenter, Knepper, Erickson, and Ross, "License to Work."
35. Schlomach, "Six Reforms to Occupational Licensing Laws."
36. Kleiner and Krueger, "Prevalence and Effects of Occupational Licensing."
37. Friedman, *Capitalism and Freedom*, p. 157.
38. Carpenter, Knepper, Erickson, and Ross, "License to Work."
39. Kleiner, "Occupational Licensing."
40. Summers, "Occupational Licensing."
41. Karen Duquette, "Government Getting in the Way of Healthcare for the Poor," Citivas Review Online blog, May 24, 2012, civitasreview.com/healthcare/government-getting-in-the-way-of-healthcare-for-the-poor.
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43. Carolyne Krupa, "Medical licensure: State lines pose daunting barriers," *American Medical News*, American Medical Association, September 17, 2012, ama-assn.org/amednews/2012/09/17/prl20917.htm.
44. SL 2011-355 (SB 743), ncleg.net/Sessions/2011/Bills/Senate/HTML/S743v5.html.
45. Kleiner and Krueger, "Prevalence and Effects of Occupational Licensing"; Kleiner, "Occupational Licensing."
46. Kleiner, "Occupational Licensing."
47. Carpenter, Knepper, Erickson, and Ross, "License to Work."
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