

WPRI

SPECIAL  
REPORT

April 2017

# Government's love for licensure

(and the real-world stories  
of Wisconsinites cheated  
out of their livelihoods)

**Cassie Mrotek**,  
a beauty school grad  
from Milwaukee, just  
wants to work – but  
she's been thwarted  
for over a year trying  
to get licensed

• **Who are we  
really protecting?**

By Ike Brannon & Logan Albright

• **Need to reform  
teacher licensure**

By Scott Niederjohn & Mark Schug

• **Small businesses  
face hurdles**

By Jan Uebelherr

## President's Note

Cassie Mrotek just wants to work. Krissy Hudack is trying to do one of the toughest and most essential things in America: Start a small business in a small, rural, northern town where most folks don't make a lot of money.

Neither one of them, or countless thousands of other Wisconsinites who aspire to better jobs and lives, is asking for state government to do anything other than get out of the way. We publish "Government's love for licensure" today because we think it's a fair request.

All of us are probably thankful that the doctors who plunge scalpels into our bellies are licensed. But the state – which early in the 20th century licensed only 14 mostly medical-related professions – now demands licenses for over 200 other professions as well, including auctioneers, landscape architects, interior designers, geologists, manicurists and Christmas tree growers. Next thing you know, you'll need a license to grow a white beard and dress up like Santa.

Two of our authors, Ike Brannon and Logan Albright, say the ever-growing state requirements were originally meant to protect the public. Nowadays, unfortunately, the requirements are often just a way of fencing out potential competitors – although many of those already licensed aren't crazy about all the ongoing hoops they have to jump through, either.

Some of our elected officials in Madison see the problem. Two bills have been introduced this spring to scale back licensing in a number of professions. We encourage legislators pondering these bills to read the stories of Cassie and Krissy (and use a QR code-reader on their

smartphones to watch the WPRI videos about them) and keep in mind that occupational regulations often have a disproportionate impact on impoverished, minority communities as well.

Gov. Scott Walker, meanwhile, is proposing the creation of an Occupational Licensing Review Council and is also recommending reform of the teacher licensure system.

We agree that a mechanism needs to be set up to examine exactly which requirements should be abolished and which are truly necessary. Brannon and Albright – citing the difference between "search goods," "experience goods" and "credence goods" – present a rough framework for how this committee can distinguish between the licensing requirements that are necessary and the ones that are damaging.

As for teacher licensure, you'll also see in this special report that professors Scott Niederjohn and Mark Schug think it's time for fundamental change. So do we.

America is increasingly bifurcated. Stagnant wages and lack of upward mobility have eroded the fundamental aspirational belief in opportunity and self-betterment. A dispiriting and stultifying ennui seems to have infused and even embittered folks who see no way up, who think the system is rigged. People like Cassie Mrotek and Krissy Hudack are more optimistic. They clearly still believe in the fundamental promise of hard work and a better future.

It would be an injustice and a very sad one if the state remains in their way.

**Mike Nichols**  
WPRI President

## MISSION

*Founded in 1987, the Wisconsin Policy Research Institute is a nonprofit, nonpartisan 501(c)(3) guided by the belief that free markets, individual initiative, limited and efficient government and educational opportunity are keys to economic prosperity and human dignity.*

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Krissy Hudack, an Iron River salon owner, thinks Wisconsin's occupational licensing system is mired in bureaucracy and fees, making it hard for small shops like hers to survive.

CHAD JOHNSTONE PHOTO

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Cover photo by JEFFREY PHELPS



# A Long Ordeal

Aspiring hair stylist  
has been thwarted  
for over a year  
trying to get licensed  
in Wisconsin



*By Jan Uebelherr*

**H**ow does a young beauty school graduate move from one state and get a job styling hair in Wisconsin?

For Cassie Mrotek of Milwaukee, the answer is slowly. Very slowly.

At age 18, Mrotek felt pressure from her family to go to college. "I didn't know what I wanted to do, but I enjoyed doing my friends' and family's hair."

While beginning her studies at the Aveda Institute in downtown Milwaukee in 2004, a good friend said she was moving to Florida. Would Cassie like to go along?

JEFFREY PHELPS PHOTOS

She jumped at the chance and moved to St. Petersburg, signing on with an accredited beauty school there.

Florida wasn't the dreamland she imagined, so Mrotek moved back to Milwaukee right after graduation. She boarded a plane to Brewtown wearing her graduation dress. That was in 2007.

She came home with her beauty school certificate — which cost \$16,000 for a one-year program — her transcripts, 1,200 training hours under her belt and no idea what she wanted to do.

At that time, Wisconsin required 1,800 training hours for a cosmetologist. "I was too young to take anything seriously," she says. "I went to two salons to get applications and just wasn't motivated."

Years went by. She got married. She held a variety of jobs she didn't like.

A couple of years ago, she quit one of those jobs. She and her husband planned it so that she could take a few months off. She perused jobs and found a position on Craigslist for a receptionist at Salon Thor in Bay View, where she and her husband live. The idea of getting back into the salon field thrilled her. She applied and was hired.

At Salon Thor, she found a welcoming place. They were eager to see her move from the reception desk to a styling chair.

"I really lucked out," she says. "I thought, I've got to be doing this. Get it together." So she got to work.

### **The long process begins**

Mrotek, now 31, began to pursue her licensing in Wisconsin. That was in January 2016. By March 2017, she remained tangled in a web of elusive transcripts, a state licensing website that she found cumbersome and a system that sets up hurdles rather than pathways to jobs for people like her.

"I'd really love to get this whole process over with and just work!" she says.

According to Wisconsin's Department of Safety and Professional Services website, to obtain a cosmetologist license, an applicant must complete one of the following:

- Graduate from a course of instruction of at least 1,550 training hours in not less than 10 months in a school of cosmetology licensed by the department.
- Successfully complete an apprenticeship of at least 3,712 hours of practical training and at least 288 training hours of theoretical instruction in a school of cosmetology licensed by the department.



**"What makes it vary from state to state? And if I move to a different state, am I going to have to go through all this again? I'm doing hair, not saving lives."**

**— Cassie Mrotek**

*Milwaukee salon receptionist working toward a cosmetology license*

Then, the applicant must pass the state exam.

Mrotek planned to make up the 350 training hours she's lacking through coursework at Milwaukee Area Technical College and hours at the salon. But when she presented her transcripts to MATC, the grades didn't correlate with courses in the MATC curriculum.

It was just "a bunch of grades, but not linked to actual courses," she says. "The transcripts were a jumble." She's been working with the school in Florida to get more detailed transcripts.

She concedes that a big piece of the problem is those transcripts. The Florida school closed and reopened in the Tampa area. She's been playing a lot of phone tag to get the records.

But she's puzzled by the difference in training hours required from state to state. While Wisconsin requires 1,550 hours, Florida requires 1,200. And some states, such as Massachusetts and New York, require only 1,000 hours.

"It's just strange. What makes it vary from state to state? And if I move to a different state, am I going to have to go through all this again? I'm doing hair, not saving lives," she says. In Wisconsin, emergency medical technicians require only 180 hours of training.

Alicia Bork, public information officer for the state Department of Safety and Professional Services, points out that the number of hours required for licenses are dictated by state statute, not

determined by the department.

"Additionally, the fees are determined on a biennial basis in which the department analyzes actual cost data over a two-year period to calculate new license fees," Bork says. "Those proposed fees are then submitted to

**“I’d really love to get this whole process over with and just work!”**

— Cassie Mrotek

the Joint Finance Committee for approval.”

#### **‘It’s really complicated’**

Mrotek’s No. 1 gripe with Wisconsin’s licensing system is the lack of guidance people like her are offered. “There needs to be people available to walk you through the process. There needs to be someone who can calmly and clearly explain what you need to do, what your steps are,” she says.

She has called the state when the website didn’t provide the answers she sought. “Every time I’ve tried to do that, it’s been an obvious annoyance — constantly pushing you back to the website. It’s like you’re a real bother. But somebody needs to do that (guide people), because it’s really complicated.” She says she’s left voicemails with the state but has never received callbacks.

Bork says the department is in the process of redesigning its website, which is expected to launch this fall.

Mrotek says she checked with another cosmetology school in Milwaukee and found that it would accept what she describes as her jumbled transcripts, but it

#### **For video of Cassie Mrotek’s story:**

- Scan this code with your smartphone using a QR code reader app.
- Or go to [www.wpri.org/WPRI/Multimedia.htm](http://www.wpri.org/WPRI/Multimedia.htm)



would take a month and cost her around \$4,000. She figures she’s better off at the salon and is hoping the transcript issue is sorted out.

She has signed a contract with the Wisconsin Department of Workforce Development for the full amount of apprenticeship hours — 3,712 — as if she were starting over since her transfer hours from the Florida school have yet to be verified. If those transfer hours are verified, the contract will be amended.

The best-case scenario, Mrotek says, is MATC accepts all of her transfer hours and places her in a class to prepare for the state exam. While taking that class, she’d complete 300 hours of training at the salon.

“But with the issues I am having with my transcripts, I don’t know how many hours (MATC) will accept. It’s totally possible I will have to do the whole thing all over again.”

Mrotek loves her trade, says she’s a fighter and will keep trying to get that license so she finally can have her own chair at Salon Thor. But she sees why other people might not keep battling if they were in her shoes.

“A lot of people might just say, ‘You know what? That was my pipe dream, but just forget about it. I’ll have my friends come to my house and I’ll do their hair — do it illegally.’ I could see that happening.”

*Jan Uebelherr is a freelance editor and writer in Milwaukee. She was a Milwaukee Journal Sentinel reporter for more than 30 years.*

# Occupational Licensing in Wisconsin: Who Are We Really Protecting?

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Licensure is often more about  
reducing competition  
than safeguarding consumers

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**By Ike Brannon and Logan Albright**

## Introduction

**W**hen the government creates a skill test or some sort of minimum qualification for occupations, it is ostensibly for two reasons: either to protect the public from a potential health hazard or to help the public navigate a marketplace that is unavoidably tilted against the consumer.

However, we suggest that the steady increase in professional licensing in most states is being driven by a third motivation: to protect incumbents from competition.

Wisconsin has experienced just such an increase: Over the past few decades more and more workers in the state toil in a job that requires a license of some sort. A portion of this increase has to do with an economy that's moving away from manufacturing and toward services, of course. But a key driver of this change has been that the breadth of licensing itself has expanded.

These days, a greater proportion of all occupations requires its practitioners to have a license issued by the state, and they include numerous jobs where the need

for government licensing is not readily apparent.

We believe that the state's regulation of various professions has gone too far and that it would behoove us to examine the myriad occupations that require some sort of license from the state and ask whether the current constraints to enter the profession still make sense today. A state that imposes unnecessary barriers to people wishing to enter a multitude of occupations runs the risk of imposing an inadvertent cost on the economy, by boosting the cost of these services — and the prices paid by Wisconsin consumers — as well as limiting the ability of otherwise qualified people to obtain the necessary licenses to move up the economic ladder.

We look at occupational licensing writ large and then examine some of the potential issues it creates. We discuss some of the literature already written on occupational licensing, as well as some previous work done on the situation in Wisconsin, along with a description of the occupational licensing regime in place here.

## The State of Licensing in America

**I**n order to practice certain occupations, state or local governments commonly require some form of license or certification. At one time, the number of occupations requiring a license was comparatively small. In 1950, licensed professions made up only 5 percent of the workforce,<sup>1</sup> but from these minimalist beginnings, the range of occupations covered by professional licensure has expanded at a remarkable rate.

Today, it is estimated that around 30 percent of Americans require some sort of license in order to legally do their jobs,<sup>2</sup> and the range of occupations covered has expanded to include such unlikely candidates as florist, interior designer, hypnotist, landscaper, barber and funeral director.<sup>3</sup>

Most people today would expect government to hold doctors or

architects to some sort of uniform standard. These professions in the hands of untrained and unskilled practitioners could wreak great, sometimes irreparable, harm on their customers. Allowing a surgeon to plunge a scalpel without first obtaining some guarantee of professional training would be insanity.

But what is the risk that befalls someone who hires an unlicensed interior designer, or florist, who has not received state-specified training?

The practice of government licensing has changed radically in the past 65 years, and it bears examining. Have we made vast advances in consumer protection, or is there something else at work? To find out, we first must understand what goes into the decision to license a profession in the first place.

## Why Do States License Occupations?

Consumers generally lack perfect *a priori* knowledge of the quality of any service and know less about the market than the professionals they entrust. That means the professionals potentially can use this informational imbalance to take advantage of customers. A license is, in effect, an effort to correct the knowledge asymmetry in favor of the consumer, as to not be duped by an unscrupulous or simply incompetent practitioner.

Economist Phillip Nelson deals with this issue in detail in his seminal paper, “Information and Consumer Behavior.”<sup>4</sup> For some services, it is possible to get a modicum of information on the quality of an offer before money changes hands. Nelson uses the example of a used car, where the consumer can take a test drive and review the vehicle history in order to make some determination of quality (albeit imperfect) before making a purchase. Nelson calls these goods “search goods,” since the consumer can search out high-quality goods and services before buying them.

Other services are difficult to assess until they have actually been purchased. The skill of a barber is not easily determined

until the appointed task has been performed. Nelson calls these “experience goods” — those that must be experienced to discern quality, at least in times predating the Internet.

Most problematic are services that defy analysis even after they have been rendered. Consider the experience of taking a car to a mechanic, only to be told that some mysterious problem has been discovered and must be repaired before the car can be driven again. The layperson is generally helpless in this situation and has little way of knowing whether the problem actually exists or if this is merely extortion. Having paid for repair of an alleged problem, the driver will never know if the car runs well because of the mechanic’s expertise or would have run just fine without intervention. Nelson calls these “credence goods,” since the consumer must take their quality largely on faith. These latter cases are the ones in which Nelson urges licensure.

Of course, it is also easy to identify a different reason for licensure altogether: the desire of current practitioners to use the power of the state to limit competitors.

## The Unintended Consequences of Licensure

While occupational licensing may appear to be an unmitigated benefit for consumers, it invariably results in a number of unintended and undesirable consequences that may not protect consumers at all, contrarily worsening their position and imposing unnecessary costs to the American economy.

### Barriers to entry

The most obvious effect of licensing requirements is the difficulty for a newcomer to enter a profession. Most occupational licenses are not only costly but time-consuming to acquire, often requiring months or years of education of questionable value. For example, in order to cut hair in Wisconsin, the government requires 1,550 hours of training for a cosmetologist, with associated costs approaching \$20,000.<sup>5</sup> A cosmetologist who is ambitious and would like to be a manager needs either 2,000 hours of practical training at a salon and 150 hours of coursework, or 4,000 hours of practice as a licensed cosmetologist under the supervision of a licensed cosmetology manager.<sup>6</sup> On top of that, he or she also must pass the state’s cosmetology manager exam.

While the intended purpose of these requirements might be to screen out the incapable and unskilled, the lack of competition that occurs when it is needlessly difficult and costly to enter an occupation is bad for consumers, as well as for aspiring professionals who possess the skill and desire but lack the means to acquire the license.

A licensed profession predominantly has fewer practitioners than an unlicensed one, meaning that those who seek the service have fewer options. This inevitably translates into higher prices. Furthermore, the lack of competitive pressure can engender complacency in incumbents, who will invest less effort into innovation and customer satisfaction than they otherwise would, in the knowledge that customers have fewer alternatives even if they are dissatisfied.

The economic costs of monopoly and oligopoly are well-understood, and restricted entry into a profession creates these same costs, albeit on a smaller scale.

# Cutting to the Chase



Krissy Hudack owns Sky's the Limit salon in Iron River.

CHAD JOHNSTONE PHOTO

By Jan Uebelherr

**K**rissy Hudack was working as manager of her hair salon without the proper license. She admits that.

But there's more to the story from her side of the stylist's chair.

It's the tale of a small shop owner trying to get established — facing hurdles and fees from a state agency.

About two years ago, Hudack was working as a hair stylist at Beauty Stuga ("house of beauty"), a salon on Main Street in tiny Iron River in northern Wisconsin, population 1,123. She'd gone to school to become a hair stylist in the 1990s and worked at a salon in nearby Ashland for a few years. After she became pregnant, she says, she became "grossed out by hair, so I let my license go."

In April 2008, her son Skyler died. He was 11. Hudack

Licensing hurdles make it tough for northern Wisconsin salon owner

didn't leave her house for about three years. She got counseling, and it kept telling her one thing, she says: "If people looked better, they would probably feel better — and that was my big push to go back to school."

While going to school, she moved to Iron River, where she has family.

The owner of Beauty Stuga decided to sell, and Hudack decided to buy it. She named the salon Sky's the Limit, in honor of her son.

Hudack opened the salon with the required licensed cosmetology manager on staff, but the manager left. The salon already had opened, and Hudack needed to keep it that way.

"I had a manager, but she up-and-bailed on me," Hudack says. "I wasn't going to just walk away because she did."

Hudack looked for someone to replace the manager but couldn't find anyone licensed. So she did it herself.

## Disproportionate impact

Few people consider the disproportionate impact on vulnerable and minority populations when designing occupational regulations, even though it's usually mandatory for analysis of other regulations. Education requirements and exams are frequently biased toward native English speakers and westerners in general.

A well-publicized example tells of young, black women making a living braiding customers' hair in traditional African styles. Although cosmetology schools do not teach this kind of braiding,

She knew she needed that manager's license — which requires, in addition to holding a current cosmetologist license, 2,000 hours of practical training at a salon and 150 hours of coursework, or 4,000 hours of practice as a licensed cosmetologist under the supervision of a licensed cosmetology manager. On top of that, she had to pass the cosmetology manager exam.

So Hudack got to work.

### Complaints filed with state

In May 2016, she was working on the practical training — traveling to her niece's salon a half-hour away in Ashland to rack up the thousands of practical hours — when someone complained to the state (she's pretty sure who it was) that she was operating the salon without a manager's license.

That encounter with the Wisconsin Department of Safety and Professional Services was good, she says. They were "very, very nice," they were understanding and, she felt, both agreed that the situation was being resolved. She kept working on racking up enough hours — at her niece's salon and with coursework — to take the exam and get that manager's license.

Then one day, an investigator from the state agency showed up at the salon. He said he was responding to a complaint. Hudack believes another complaint was lodged by the same party who complained the first time. Records show a complaint was filed with the department in August 2016.

The inspector found two violations at the salon — pedi-

the State of New York nevertheless required 900 hours of irrelevant training, which could end up costing the practitioners tens of thousands of dollars.<sup>7</sup> Other states have similar requirements. Many of the affected workers are immigrants, with few marketable skills and a limited grasp of English. Imposing prohibitive licensing requirements on them accomplishes nothing, apart from driving them out of the workforce.

Hollywood actress Tippi Hedren devoted much of her post-acting life to helping Vietnamese refugees learn how to be manicurists and nail technicians, a crusader in helping

cure instruments were not fully submerged in disinfecting liquid (Hudack notes that pedicures weren't being done at the salon that day), and hair clippers weren't properly contained in a steel case.

Each violation came with a \$500 fine. That seemed high to her. (As a point of contrast, a fine for first-offense operating while intoxicated in Wisconsin tops out at \$300.)

At any rate, Hudack paid the \$1,000 in fines. She paid another \$221.50 for the manager's license fee and had to drive 300 miles round trip to Eau Claire

for the exam. So her go-round with the state cost nearly \$1,500 — if you figure in time traveling to Ashland for practical hours and to Eau Claire for the test.

Racking up those practical hours was a hassle for Hudack, says her niece, Lynn Chingo, who runs the Ashland salon, One on One.

Hudack was working at her own salon and traveling 55 miles round trip to Ashland at least once a week to clock those hours. Chingo understands the need for practical training, especially for someone fresh out of beauty school. But thousands of hours for someone who has worked in salons before?

"I think they require way too many hours," Chingo says. "They make it very difficult to try to get hours in. You've just got to basically keep plugging along. I'd say it was pretty difficult for her."

Alicia Bork, public information officer for the Department

**"It's like they just try to suck every penny out of you when you hold a state license."**

**— Krissy Hudack**  
*Iron River salon owner*



them learn a marketable trade in this country. Her persistence and charitable endeavors ultimately led to the creation of numerous manicurist schools that offer instruction in Vietnamese, and in most states (including Wisconsin) at least a portion of the licensing exam can be administered in Vietnamese as well as English.<sup>8</sup>

It is also common for licensing rules to disqualify anyone with a criminal record. While this might make sense for certain occupations, such as those dealing with children or firearms, it is unclear why a criminal history should inhibit anyone from

selling flowers or cutting hair. Moreover, it's unclear how society can expect former inmates to reform when they are legally prevented from using their skills to earn a living.

### Professionals are rent-seekers

For centuries, workers in various guilds have been keen on limiting competition by lobbying the government for stricter requirements, even when they are not in the public interest. Established professionals, of course, see an advantage in making things as difficult as possible for new entrants, who might abscond with customers or force prices downward.

of Safety and Professional Services, says the number of hours required for licenses are dictated by state statute, not determined by the department.

### System frustrates another stylist

Then there's Shelly Geuze, the stylist whose clippers were found to be improperly stored, resulting in a \$500 fine for Sky's the Limit. She had her own go-round with licensing.

Geuze was already licensed in Georgia and sought a license so that she could work in Wisconsin. She says she called Wisconsin's Cosmetology Examining Board, which regulates cosmetologists, aestheticians, electrologists and manicurists.

"I called the board to find out how to transfer my Georgia aesthetician license to Wisconsin. I was told I'd have to take the Wisconsin aesthetician boards — written and practical," Geuze says.

"The cost would be \$325 by the time it was all done. I could take my written portion online, but I'd have to travel three hours away to Eau Claire, Wisconsin, to take the practical exam. I was beside myself.

"That's a chunk of change to come up with just so I can get my Wisconsin license," she adds.

Geuze says she later discovered that the information she was given was incorrect. Instead, because she was licensed in Georgia, she only needed to apply by endorsement, which costs \$82 plus a \$25 fee to have her license verified by the Georgia Board of Cosmetology.

"Which is also ridiculous because anyone can look on any board's website to verify a license to see if it's active

and to also see if there are any legal problems with the license. So not only do I have to pay the board fee, I also have to pay \$25 for a verification that can be done for free," she says.

"But what can I do? I have no choice but to do it their way, or they won't license me. It's just robbery. You spend thousands to go to school and then get nicked and dimed trying to get ahead."

### Bureaucracy and fees

Hudack understands the need for licensing for the sake of public health and safety. But she sees a system mired in bureaucracy and fees, making it hard for a small shop like hers to survive.

And some aspects of the system just don't make sense to her. For instance, she wonders why some medical professionals, such as emergency medical technicians, require far fewer hours of training. In Wisconsin, EMTs require 180 hours of training, while a cosmetologist needs 1,550 hours. EMTs are licensed by the state Department of Health Services.

"We're not playing with people's lives," Hudack says. "We're playing with people's hair."

She wonders why she had to travel to Eau Claire to take the licensing exam, but her daughter, a registered nurse, could do it online.

Overall, Hudack would like to see the state make it easier for people to run a business.

"It's like they just try to suck every penny out of you when you hold a state license," Hudack says.

"It's hard to keep a small business operating," she adds, and the licensing merry-go-round doesn't help. She says she's worked for two years without a paycheck.

"I work to keep the doors open," Hudack says. "You bust your ass seven days a week — just to keep the doors open."

*Jan Uebelherr is a freelance editor and writer in Milwaukee.*

### For video of Krissy Hudack's story:

- Scan this code with your smartphone using a QR code reader app.
- Or go to [www.wpri.org/WPRI/Multimedia.htm](http://www.wpri.org/WPRI/Multimedia.htm)



## Auctioneers are often the subject of licensing complaints

Several auctioneers operating in Wisconsin have been the target of complaints about licensing — sometimes by other auctioneers.

In one case, two complaints were filed in 2015 with the Wisconsin Department of Safety and Professional Services against a Sparta man over running an online auction site without a license.

One complaint apparently was filed by a licensed auctioneer, who claimed that the Sparta man violated statutes by auctioning property held for less than one year.

“This practice undermines the properly licensed auctioneers of this region and impacts our ability to compete and earn a living,” the complainant wrote, adding that the man in question “is not licensed and those of us who are should seek action from the state to protect our investment in business and our profession.”

The second complaint, filed anonymously,

claimed that the man “is illegally acting as an auctioneer ... Please investigate.”

And in a second case, two complaints were filed in as many years against a Green Lake County auction house. In both cases, in 2015 and 2016, the complainants alleged that the operators were not properly licensed.

One complaint accused the auction operation of outright fraud — “bidding on their own item to artificially increase the price, and then retracting their bids at the last minute to ensure that the item sells at the highest price possible.”

In a third case, a complaint was filed in May 2015 against a man in Lafayette County for apparently conducting an auction without an auctioneer license.

The complaint included a copy of a newspaper ad promoting a real estate and property sale in Green County. The target of the complaint held an auctioneer license that expired in 2004, according to the state’s licensing database.

It’s unclear what became of these complaints, though the state has closed the cases. A search of the licensing database shows none of the individuals or their companies as being currently licensed as auctioneers. Efforts to reach all of them for comment were unsuccessful.

– Jan Uebelherr

Licensing can be an efficient way for the members of various professions to limit competition. Typically, licensing benefits incumbents. Once a professional obtains a license to cut hair or do interior design, they may not be required by their state to update skills to account for new technology or expansion of human knowledge, and current licensees are typically exempt if new entrants face more burdensome requirements. Doing so makes the marginal cost of imposing stricter requirements on new entrants effectively zero for the incumbents, while their potential benefits in terms of reduced competition can be enormous.

In most states, it is the professional body itself that oversees the regulation of the trade, and it is easy to see how such an outcome came to pass: Agents of the government lack both the time and inclination to gain legitimate expertise in the various occupations of their constituents, so they tend to defer most licensing issues to the advice of presumably highly regarded professionals in the community.

In Wisconsin, most of the licensing boards consist of people in the field being licensed, and the employees of the State of Wisconsin involved in licensing typically do not come from the professions being regulated for a perfectly good reason: Someone who has acquired the skills of a trade can make more money conducting the trade than by regulating it. It is not difficult to see how professional regulations can pile up easily as incumbents entreat their elected representatives — or various regulatory bodies — to restrict entry into their fields “for the good of the public.”

### The curse of consumer complacency

A final, inadvertent, consequence of occupational licensure relates to the willingness of the community to self-police bad actors. When it becomes generally understood that the government is responsible for guaranteeing a minimum level of quality for professional services, the incentive for individuals to exercise their own judgment, even their common sense, is diminished — a phenomenon that economists call “moral hazard.”

In this way, reckless, unprofessional and even fraudulent behaviors that may have readily been discerned by wary consumers looking to safeguard their own interests are allowed to continue unchallenged, since consumers assume that the license from the government must mean that such behavior is permitted and acceptable. While costs associated with consumer complacency that result from the perceived quality guarantees from licensing are unquantifiable, there can be little doubt that the pretense of guaranteed quality can be harmful if actual performance does not live up to consumers’ expectations.

## Case study: Licensing in the septage service business in Wisconsin

By Jeff Bruss

Wisconsin maintains comprehensive statutes under the Wisconsin Administrative Code, Department of Natural Resources Chapters 113 and 114, establishing regulations for septage service operators — the people who empty porta-potties and septic tanks. Licensing and certification regulations for septic operators as well as the parent septage companies require extensive education, training and fees within the profession.

NR 113 outlines the business requirements for pumping, hauling and disposing of septage. Regular truck inspections, registration fees and reporting are required for the profession as a whole. However, the larger burden lies in the personal qualifications. In order to become a licensed septage business, an operator in charge (OIC) must be designated.

The criteria for becoming an OIC is governed under NR 114, subchapter II. Two certification grades of septage service operators have been defined: grade T, an operator certified to conduct all aspects of septage service except land application; and grade L, an operator certified to conduct all aspects including land application.

To enter the septic service field with aspirations of a future OIC designation, an application and \$25 fee is first required to be an operator in training (OIT). This allows a person to work under the supervision of a certified OIC for up to 12 months and is non-renewable. The application and \$25 fee to become an OIT can be viewed as nothing more than extraneous paperwork and fees, completely unnecessary to being an apprentice in the septic profession.

Prior to expiration of an OIT certification, a septage professional must become a certified operator (CO), which consists of passing the appropriate grade L or T examination, paying a \$100 exam fee and submitting a training history report. CO certifications are good for three years, after which a \$65 renewal fee and three hours of continuing education credits must be submitted.

The CO certification would be an ongoing requirement

of anyone working in the septage industry long term, even without carrying any ownership or management responsibilities.

The next step in the process toward OIC is to become a master operator (MO). The master operator certification requires 1,600 hours of documented experience working in the designated grade certification (T or L) under a certified OIC. Additionally, applicants must attend mandatory training classes (\$100 class fee) and pass a written master operator examination (\$100 exam fee). Certified MO designations are good for three years from the date of issue.

To maintain certification, master operators must pay a \$100 renewal fee and participate in a minimum of 18 hours of continuing education courses over the three-year certification period. Once the qualification of master operator has been achieved, a person may be designated as an OIC by the owner of the business to be the person directly in charge of septage servicing. The criteria for maintaining an OIC designation are the same as an MO certification, including fees and education.

The certifications imposed upon the septic profession act as a significant barrier to entry, unnecessary business expense and obstacle when trying to find qualified labor. The costs of running a septic business are substantial and have been growing — fuel, vehicles, labor, disposal fees, insurance and the like — while the price of the septic service as well as wages within the industry have remained low compared to similar service professions, such as plumbers and electricians.

While state and local governments have been aggressive in regulating regular septic service and inspections to protect the environment, they have made the actual profession more difficult to enter and sustain. A relaxed or absent set of certifications for professionals in the septic industry would allow for a more profitable and competitive business sector, with little or no impact on human or environmental safety.

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*Jeff Bruss is president of COLE Publishing Inc. in Three Lakes, Wis.*

The problem of licensing has only recently begun to receive mainstream attention outside of academic circles. Last year, the White House issued a report on occupational licensure that identified several of these problems, calling for reform at both the state and federal levels.<sup>9</sup> The report is part of an increasing focus on problems with licensure that have emerged in the past few years as the public becomes more aware of the practice and its effects. With an increased spotlight on professional licensing,

the opportunities for meaningful reform have never been greater.

The efforts of the Obama White House, along with other forces, spurred several states — most notably Georgia, Michigan, Illinois, Alabama, Vermont, Kansas, Delaware and Minnesota — to attempt reforms that would rein in licensing restrictions, improve competition and reduce prices in several sectors of the economy.

## Licensing in Wisconsin

Of course, each state is unique in its treatment of occupational licensure, from the professions requiring credentials to the difficulty of obtaining said credentials. While it is fair to say that the licensing situation in Wisconsin is not as bad as in some other states, the need to adopt common-sense licensing reforms is readily apparent. The fact that several states have begun contemplating licensing reform places Wisconsin in danger of falling behind these states, and others, if it does not consider undertaking its own reforms.

Wisconsin's licensing requirements are set down statutorily in Chapter 440 of the state's legal code.<sup>10</sup> It grants authority to the Department of Safety and Professional Services to enforce licensing requirements throughout the state and gives the agency the ability to unilaterally determine whether a worker is in violation of the law, without the involvement of any civil or criminal court.

People found to be practicing without a license are subject to a \$10,000 fine *per day* and can potentially face jail time. The latitude provided to the Department of Safety and Professional Services over the state's labor market is broad, and the penalties for disobedience are severe.

### The extent of occupational licensing in Wisconsin

A study by the Wisconsin Institute for Law and Liberty estimates that approximately 440,000 Wisconsin workers hold some sort of professional certification required by statute,<sup>11</sup> making up roughly 14 percent of Wisconsin's total labor force of 3.1 million.<sup>12</sup> This number may actually understate the prevalence of licensing: The 2015 White House report found that Wisconsin licenses 18.4 percent of its workers — over a half-million people — and even this may understate the impact of licensing on the state's labor market.<sup>13</sup>

The number of occupations requiring licensing varies depending upon the methodology used, since some studies that look at all 50 states lump together similar professions to conform to a common standard. For instance, the White House study found 244 different credential types, but a thorough reading of the Department of Safety and Professional Services' database yields 207 different licensed occupations, divided up into the categories of Business Professions, Health Professions and Trades Professions.<sup>14</sup> In addition, the Wisconsin Department of Agriculture, Trade and Consumer Protec-

tion lists an additional 140 categories for licensed professional activities.<sup>15</sup>

An exhaustive look at every licensed profession is not necessary here, but some examples that stand out include auctioneers, landscape architects, interior designers, geologists, manicurists, juvenile martial arts instructors, Christmas tree growers, firewood sellers and the particularly bizarre peddler's license — a permit available only to partially disabled military veterans who have lived in the state for five years or more, which allows them to sell goods on a "transient" basis. The state does not provide a rationale for such a circumscribed occupation.

For nearly all licenses, the Department of Safety and Professional Services requires hundreds of hours of training, hundreds of dollars in application fees, at least one exam and a waiting period that could range anywhere from several days to many months before the issuance of a license.

In other cases, an application fee is all that is required. For instance, a Christmas tree grower's license, issued by the Department of Agriculture, Trade and Consumer Protection, costs between \$20 and \$900 per annum, depending on the volume of sales. If licensing requirements are, ostensibly, put in place to protect public safety and welfare, why is it that the requirement for selling Christmas trees contains no real demonstration of competence, only periodic payments to the government and what seems an unnecessary amount of paperwork? If the goal of such a license is merely to collect revenue, or to discourage potential sellers from entering the market, this would make perfect sense, but there is no such obvious justification if we are to believe that public welfare is indeed the primary concern.

Revenue collection from small business owners is particularly evident in the license renewal fees the state requires for nearly every type of professional license. Typically collected biennially, license renewals generally cost between \$80 to \$200, more if they are subject to a late fee. While this may not seem like a huge financial burden, when applied to all licensed workers in Wisconsin, it amounts to tens of millions of dollars a year in revenue for the state. License renewals have no bearing on consumer welfare and can serve no other purpose than to extract revenue from small business owners.

## Stay-at-home mom just wanted to do nails for extra cash

In February 2016, a complaint was lodged against a young mom in Cumberland working out of her northwestern Wisconsin home doing nails, hoping to bring in a little extra cash to the household.

She'd posted her pitch, along with photos showing her handiwork, on an "online rummage sale" page offering her services – noting that she was not licensed or formally trained.

Her enthusiastic, handwritten pitch:

"Ladies! You deserve a manicure!

"Want to get your nails all done up but don't have the

money for a salon? Let me help. I'm a stay-at-home mom looking for something to do and people to talk to. I'm skilled, but non professional, nail tech. I can do anything from a basic manicure to full acrylics, including fun paint and/or designs. I do this out of my home for fun and hopefully a little extra cash for the household. Donations vary depending on what you would like done. Let me know if you're interested, I'll be waiting to hear from you."

She did hear from someone.

A complaint was filed by email with the Wisconsin Depart-

ment of Safety and Professional Services: "I think you need to inform this young lady that she needs to be licensed."

According to the agency website, to obtain a manicurist license, an applicant must complete one of the following education requirements:

- *Graduate from high school.*
- *Attain high school graduation equivalency.*
- *Participate in a program approved by the department.*

In addition, the applicant must complete one of the following training requirements:

- *A course of instruction in manicuring of at least 300 training hours in not less than seven weeks and not more than 20 weeks in a school of cosmetology or a school of manicuring licensed by the department.*
- *At least 300 training hours in not less than seven weeks and not more than 20 weeks under the supervision of a cosmetology instructor or manicuring instructor licensed by the department.*

Then, the applicant must pass the state exam.

The state's licensing database does not show how the matter was resolved, and no manicurist license could be found in March 2017 for the young mom.

– Jan Uebelherr

### The growth in licensing over time

The number of occupations requiring a license in Wisconsin has been far from static. While it might be logical to expect new professions emerging as a result of technological or scientific progress that result in the need for new licenses, in the vast majority of cases, the professions to which certification is extended have not changed significantly with time. Careers that were formerly considered to pose little risk to public safety are now regulated as though such risk has suddenly been discovered. The rapidity of this expansion of regulatory authority in Wisconsin has been remarkable.

From 1996 to 2016, the number of licensed professionals increased by 34 percent in the state, and the number of licensed professions increased by 84 percent.<sup>16</sup> This is a far cry from the early days of Wisconsin's statehood, when at the beginning of the 20th century only 14 professions required a license, most of them medical in nature.

The growth in both the number of licensed professionals and

professions requiring a license has far exceeded the rate of general population growth in the state. Total population grew at only 10.4 percent during this 20-year period, the labor force grew at 7.3 percent and the number of employed grew by just 6.46 percent.

The growth in licensing is partly attributable to the inherent tendency of statutory law to expand rather than contract. It is far easier to add a new requirement to the legal code than to remove an existing one, due to the influence of interest groups that advocate for special protections and are willing to spend money or effort to maintain those protections once they are in place. For this reason, once a profession becomes licensed, it is likely to remain so regardless of any external justification for the law.

### Criminal records and licensing

One aspect of professional licensing most in need of reform is the treatment of those who have been convicted of felonies or misdemeanors. Very often, people who have paid their debt to

# There's the rub

## Massage therapist finds continuing education requirements onerous

By Jan Uebelherr

**W**hat do you need to know to be a massage therapist? That, it seems, is a never-ending question.

For Sara Cerwin, it's a 24-month chase for training hours that begins all over again once she's met her state requirements for continuing education.

Cerwin, who has happily worked as a massage therapist since 2006, has never had a problem with her licens-

ing. It's the continuing education that's been a speed bump in her career.

Cerwin works at the Knick Salon and Spa in Milwaukee, and she got into the field because she was sure of a few things. She didn't think a conventional college degree was for her — the grind of academics that would lead to the grind of life in an office. At least that's how she saw it.

"I didn't want to be stuck in a cubicle for the rest of my life," she says.

"I wanted to have a skilled trade that I could do pretty much for the rest of my life. It wasn't for the money. It was more to help people. I like making people feel better."

Besides, she says, "I figured I've got to do something with my life."

Then a friend went to massage school. Cerwin liked that idea a lot, so she did, too.

She enrolled at Lakeside School of Massage Therapy in Brookfield, graduating in 2004 after nine months

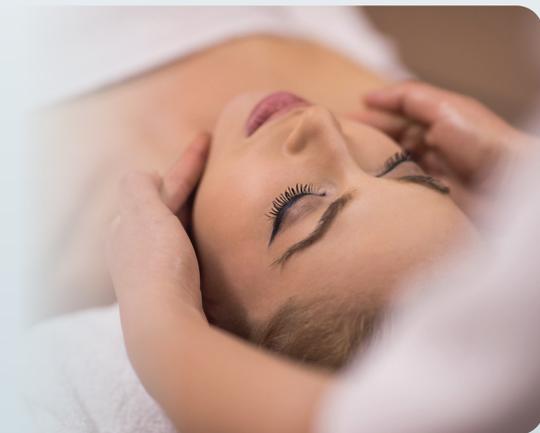
of study with a certificate as a massage therapist and a \$7,000 student loan.

Though she'd work in a spa, she bought a massage table — just in case. That cost \$800. She had to take a national test through the National Certification Board for Therapeutic Massage and Bodywork before being able to take the state test. That was \$400. The state test cost \$110.

When she learned that Lakeside was offering an associate's degree, she went back and got it, for another \$8,000. "I wanted to be one of the first people in Wisconsin to have an associate's degree in massage therapy, and besides, I like Lakeside a lot," she says. "I thought, 'Yeah. I want to be a better massage therapist — just to better myself.'"

### Costly in dollars and time

In the years since, Cerwin has never had a problem with her license. She's always had it, and there have been no complaints against her.



society from the perspective of the criminal justice system are nevertheless barred from obtaining gainful employment due to the restrictions imposed by professional licensing requirements.

Wisconsin is no exception when it comes to this practice. Section 440.12 of the state legal code specifies that professional credentials shall be denied to anyone delinquent on tax payments or unemployment insurance contributions; persons convicted of a misdemeanor are barred from becoming security guards; and no person who has patronized a prostitute is permitted to be obtain a license as a behavioral therapist or a midwife. One study sagely observed that "an ex-offender has a better chance of becoming an attorney than a security guard in Wisconsin."<sup>17</sup> The negative impact a minor criminal conviction has on the career prospects of an African-American appears

much greater than for their white counterparts, exacerbating a racial disparity that perpetuates the cycle of crime and unemployment.

Another study demonstrates how such blanket bans can harm honest citizens, citing the case of a child-care worker, Sonja Blake, convicted of a crime due to a \$294 error in her public assistance receipts. She had neglected to report the value of gifts given to her by her boyfriend. The error was quickly corrected, but the criminal conviction stood. Because of the conviction, Wisconsin law prohibited Blake from obtaining a license to work in child care, a prohibition potentially lasting her entire life, despite the fact that the conviction was extremely minor and in no way related to her competency to care for children.<sup>18</sup>

In a ranking of state efforts to remove occupational licensing

It's the continuing education requirements that bug her. They're costly in both dollars and time, an ever-present deadline.

The state requires massage therapists to put in 24 hours of continuing education every two years in order to renew their license, which carries a fee of \$82.

## **“How often do ethics change in massage therapy?”**

— **Sara Cerwin**

*referring to required continuing education*

Finding those classes means taking time off of work — that's often a weekend, the busiest time for Cerwin — and it means paying for the classes.

“Most classes are one day, all day — so six to eight hours. And that's three or four classes over the course of two years. Sometimes they're over the weekend,” she says. “Usually they're in Chicago.

“And even if it's online, you still have

to find the time. And then, are you really paying attention, if you're just trying to put in the hours?”

Cerwin likes learning new things. She went back to school to get that associate's degree, even though she didn't have to. Last year, she took a class on cranial sacral therapy, a type of massage that regulates the pulse of spinal fluid. That one was in Brookfield, and she paid \$300 for it — and lost time (and money) at work.

“It's a lot of pressure to find something that you want to educate yourself on (for the continuing education requirement),” she says. “It's like waiting for a comet to come around.”

She also has to keep up the national license with continuing education credit, but she usually can apply the state hours to the national.

As part of those 24 hours of continuing education, she's required to take two hours of ethics training.

“It's not once a month there's an ethics class. Those classes only pop up maybe once a quarter,” she says.

“It's difficult finding the ethics class you're supposed to take.”

And she has to wonder, “How often do ethics change in massage therapy?”



CPR refresher training also is required, and it's separate from those 24 hours of continuing education.

“That's \$100 every two years,” she says. The costs and the hours of the continuing education requirements add up.

Cerwin would like to see the state ease up on the hours required for renewing the license.

“I'm not saying we don't need to get some sort of continuing education, but it's like, man. It's a lot of pressure.”

*Jan Uebelherr is a freelance editor and writer in Milwaukee.*

barriers for felons, Wisconsin placed in the second-lowest of five tiers of progress, signifying “minimal” legal protection for ex-offenders who wish to work in legitimate professions.

If the goal of the justice system is to reintroduce ex-inmates into society in hope that they will become productive workers and make positive contributions to their communities, rather than merely to punish, then it is clear that statutorily barring those with convictions from professional work of any sort is an unfortunate and counterproductive mistake.

### **How does Wisconsin compare to other states?**

In assessing the state of professional licensing in one state, it is instructive to place its laws and regulations in the context of its neighbors. While an assessment of one state's laws as *relatively*

lenient does not preclude the possibility that they are *absolutely* onerous, determining the severity of the problem *vis à vis* the country at large can provide the political impetus for reform.

How, then, does Wisconsin stack up against other states?

Interestingly, the White House report on occupational licensure found that differences in the number of workers licensed across states has very little to do with the demographics of the states' professions and everything to do with the legal framework for licensing.<sup>19</sup> In other words, a state that licenses a large share of its workers appears to do so not because more of them work in medical or legal professions but because its laws governing licensing are stricter. This means that simple legal reforms have the potential to substantially open up a state's labor market.

The Reason Foundation ranked states by number of licensed professions and found that Wisconsin ranked ninth out of 50 states and the District of Columbia for most professions requiring licenses, totaling the number of professions at 111.<sup>20</sup> As previously mentioned, pinning down a precise number of licensed professions is difficult due to differences in methodology.

By Reason's count, the number of distinct licenses listed by the Department of Safety and Professional Services is 207, which would put Wisconsin well into first place, surpassing California's 177 licensed occupations. For comparison, the Wisconsin Institute for Law and Liberty lists 166 license types, which would place Wisconsin second among states. It is worth noting that neither of these estimate the licenses and permits under the Department of Agriculture nor Department of Natural Resources. In any case, Wisconsin remains squarely in the top quintile of most heavily regulated with respect to professional credentials.

A more recent study from the Institute for Justice casts Wisconsin in a somewhat more favorable light compared to other states.<sup>21</sup> It ranked Wisconsin 19th out of 51 for the most low-income occupations requiring a license, making up fully

48 percent of all such occupations, and 28th in terms of the overall burden of license requirements. This places Wisconsin roughly in the middle of the pack.

However, there is some reason to believe that the authors' numbers are more generous than the Badger State deserves. This could be because the study, which was released in 2012, is out of date or simply that its methodology differed from our own. We submit that a careful review of current license requirements in the state tells a different story.

For example, the Institute for Justice study lists a cosmetologist license as requiring 420 hours of training, but the Wisconsin licensing agency actually requires 1,550 hours of training. Likewise, a barber's license currently requires at least 1,000 hours, and here the authors again have the number listed at 420 hours. There appears to be a systematic underrepresentation of costs throughout the study, and correcting these numbers would result in Wisconsin being placed significantly higher in the rankings.

As a rule, Wisconsin does not recognize licenses obtained in neighboring states, forcing workers who move here to reapply for their professional credentials and resubmit any

## Complaints often come from competitors rather than consumers

Often, complaints are lodged by licensed professionals who don't take kindly to those who don't play by the rules. That was the case with a Green Bay barbershop.

It was the target of a complaint filed with the Wisconsin Department of Safety and Professional Services in April 2015, apparently by someone who was licensed.

"I feel that everyone should have to go to school like all other professionals as myself and others," the complainant wrote.

He noted, "I have spoken with them concerning not having license. They responded by saying, 'They don't have to get licensed.'"

According to the agency website, to obtain a barber license, an applicant must complete one of the following education requirements:



- Graduate from high school.
- Attain high school graduation equivalency.
- Participate in a program approved by the department.

In addition, the applicant must complete one of the following training requirements:

- Graduate from a prescribed barbering course of at least 1,000 hours in a school of barbering or school of cosmetology licensed by the department.
- Successfully complete an apprenticeship of at least 1,712 hours of practical training and at least 288 training hours of instruction in a school of barbering or school of cosmetology licensed by the department. Training must be at least 32 hours per week and be completed in not more than four years.

Then, the applicant must pass the state exam.

Efforts to reach the Green Bay barbershop were unsuccessful. It appears the shop has gone out of business.

— Jan Uebelherr

required training, testing or fees. There are occasional exceptions to this rule, such as the reciprocity program for teachers and school administrators that allows experienced teachers in other states to waive some of the requirements, but even this is not costless.

## Conclusion

The modern world and the immediate access to information through the Internet, as well as traditional and social media, have diminished the need for government involvement.

Reviews of manicurists or massage therapists are available and easily accessible online. A simple Facebook search of a company often will provide more relevant information than the possession of a license from the state. Illegal or unethical activity is only a social media post or smartphone photo or video away from 10,000 views and a windfall of poor publicity, negative public feedback and a probable loss of business. The market will invariably react more quickly than a government agency.

Meanwhile, the State of Wisconsin's licensing laws cannot be regarded in any way as practical. Whether the goal is to promote jobs and economic growth, to promote justice and combat racial disparities, or merely to remove barriers that prevent residents from being productive members of society, the licensing regulations are often counterproductive.

Occupational licensing provides benefits to society — peace of mind, a modicum of safety and an assurance of competence, for instance — but this comes at a cost. The urgent need for reform is clear, and this is true whether we evaluate the state's system on its own merits or whether we compare it to others.

We believe it is time to ask whether licensing regimes are the most expedient way to assist consumers seeking the services of occupations where there is no valid threat to health and safety.

## About the authors

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## Beauty school went to great lengths to report unlicensed nail tech

How much does a beauty college care when someone may be practicing without a license?

For a Marathon County woman, they cared a lot.

The young woman, whose parents own a nail salon, came close to getting her manicurist license. She'd interviewed and done all the preliminaries for entering the nail program at the beauty college. But she didn't follow through, and the school didn't let go of her case.

A woman connected with the college complained to the state about the young woman working without a license.

The complainant said she'd repeatedly tried to get the woman enrolled at the college or another nail technology program. The woman was set to begin classes at the college but failed to show up to sign the contract. Despite repeated efforts by the complainant, the young woman did not respond to text or phone messages.



The woman associated with the beauty college did some investigating on her own before filing a lengthy complaint with the Wisconsin Department of Safety and Professional Services in January 2016:

"During the holiday season I was near the nail salon (that her parents own) and looked in to see if they were busy. To my surprise, (the young woman) was doing a nail service. On Jan. 7, 2016, I sent my daughters in to get pedicures and (the young woman) did my daughter's pedicure and her mother did my other daughter's pedicure."

A search of the state licensing database in March 2017 did not show the young woman as having a manicurist license.

The salon was contacted by phone by the Wisconsin Policy Research Institute and first said the young woman was not in. When it was explained that a story on professional licensing was the reason for the call, the salon said no one by that name worked there.

— Jan Uebelherr

# A Common-Sense Approach to Teacher Licensure in Wisconsin

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As the labor market for teachers evolves,  
we need more competition  
and less regulation

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**By Scott Niederjohn and Mark Schug**

## Executive Summary

The market for K-12 teachers is suddenly back in the news with Gov. Scott Walker and the Wisconsin Department of Public Instruction weighing in with proposals designed to address reports about teacher shortages and licensure.

There can be little doubt that the labor market for teachers in Wisconsin is much freer than it was in the pre-Act 10 era. This was one conclusion made in reports published in the *Milwaukee Journal Sentinel* and was reinforced by educators with whom we visited. Teachers today operate more like free agents, moving from district to district, seeking higher pay and even bonuses to teachers who are licensed in areas with high demand and limited supply.

However, not all has changed. On the demand side, many school districts are still hiring teachers based on something that looks a lot like the traditional salary schedule, where teacher compensation is based on years of experience, number of college courses and degrees.

The fundamental problem with traditional teacher compensation is that it produces *simultaneous* shortages and surpluses of teachers. The salary schedule sets one salary for a generic teacher — as if all teachers had the same marketable skills and therefore the same forgone opportunities.

A salary schedule is essentially a set of too-high or too-low price controls guaranteed to be insensitive to actual market conditions. Everyone wants to talk about teacher shortages, but no one

wants to talk about the damage done to individual lives and the inefficient use of higher education resources that result from the production of teachers who can't find teaching jobs.

Things are not much changed on the supply side. To become a teacher in Wisconsin, one has to comply with the provisions of a set of DPI licensure rules called PI 34. School leaders often complain that PI 34 imposes an overwhelming regulatory system. Many smart college students and highly trained professionals contemplating career changes are deterred from entering the teaching profession due to these requirements. The DPI, by establishing the Leadership Group on School Staffing Challenges, seems for the first time to be hinting that reforms are necessary.

We address two key issues: the demand for K-12 teachers by Wisconsin school districts, and the supply of K-12 teachers as governed by the state's licensure process and administered by schools of education at Wisconsin colleges and universities.

Our recommendations: On the demand side, we propose fine-tuning salary scales so they reflect the reality of multiple teacher labor markets. On the supply side, we propose that the Legislature repeal and replace PI 34; allow teachers certified in other states to be granted a Wisconsin teaching license with a minimum of hassle; allow districts to develop their own teacher licensure programs; and authorize existing charter schools to make hiring decisions based solely on judgments about candidates' background and ability to teach.

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### Teacher labor markets are back in the news

It's budget season in Wisconsin, and once again the governor's proposed policies are in the news. One aspect of these policies involves the teaching profession. The Walker administration appears to be concerned about the slump in the number of young people seeking to become teachers. The governor has proposed a lifetime teaching license, which would save teachers money and reduce the number of positions at the DPI that administer licensure.

The governor also has proposed a new Teacher Development Program for the University of Wisconsin and its Flexible Options program. The idea is to find ways to help classroom aides — more commonly known as paraprofessionals — obtain teaching licenses. This could include allowing paraprofessionals to obtain workforce development funds from Wisconsin Fast Forward, the state's worker training grant program.

*The Milwaukee Journal Sentinel* in 2016 reported extensively on how the market for teachers has changed five years after the passage of Act 10. Journalists Dave Umhoefer and Sarah Hauer, pointed out, on the supply side, the decline in the number of college students entering teacher training programs around the state. On the demand side, they noted how the labor market for teachers has changed.

### Teacher market changes

There can be little doubt that the labor market for teachers is much freer than it was in the pre-Act 10 era. This was an important conclusion from the reporting by the *Journal Sentinel* and was reinforced by educators with whom we visited. Teachers operate more like free agents, moving from district to district, seeking higher pay and even bonuses. Signing bonuses often are offered to teachers who are certified in areas with

high demand and limited supply, such as advanced mathematics, science and special education.

This more fluid labor market has been unleashed due to the diminished value placed upon seniority as teachers unions have lost power. These changes have challenged rural and less affluent districts, which are finding it difficult to retain their best teachers in this more competitive environment.

The use of the old step and lane salary schedule has diminished. Most districts have eliminated seniority as the primary driver when reducing staff. School districts have much more freedom to implement merit pay and performance-based compensation systems.

### **But much of the old system remains**

It would be hard to imagine that all of Wisconsin's 424 school districts would make identical changes in how teachers are compensated in the wake of Act 10. We reviewed employee handbooks prepared by Wisconsin's top 20 school districts by enrollment after the changes that Act 10 brought to the market. Several have retained what appears to us as traditional salary schedules.

Racine Unified School District, for example, is the fifth-largest district in Wisconsin. Its 2016-'17 Teacher Salary Schedule has 12 steps and eight lanes. The lanes are based on earning university or college credits beyond the bachelor's degree. Lane VIIA includes a raise for teachers who earn a National Board Teacher Certification (NBTC). Otherwise, it looks like a standard teacher salary schedule.

There have been changes in the way teachers are compensated after Act 10, according to our review. Some districts now offer bonuses based on performance (Milwaukee Public Schools, for example) or to recruit teachers in high-demand certification areas (Racine Unified, for example). Others make it clear that newly hired teachers may be placed within the salary schedule at a compensation level that exceeds what their years of service would have specified (Beloit, for example).

None of these market-oriented strategies occurred before Act 10, when unions played a much stronger role. Nonetheless, it is interesting to note that nearly every district from which we could obtain an employee handbook still uses something that looks like the well-known salary schedule to compensate their teachers.

### **Damage from traditional pay schedules**

For decades, K-12 teaching has most often been regarded as one labor market — a market for a generic teacher. In fact, the teacher labor market, if allowed to fully flourish, would involve school districts competing in a dozen or more labor markets. A person trained as a physics teacher, for example, has more job options in the private or nonprofit sectors than a person trained as an

elementary school teacher.

Similarly, teachers of Spanish, physics, mathematics and chemistry are often in short supply as are technology teachers, science teachers and speech pathology teachers. Teachers of English, social studies, elementary education and early childhood education, however, are much more abundant.

The traditional teacher salary produces *simultaneous* shortages and surpluses of teachers — a remarkable feat. The salary schedule sets one salary for a generic teacher — as if all teachers had the same marketable skills and therefore the same forgone opportunities. A salary schedule is essentially a set of too-high or too-low price controls guaranteed to be insensitive to actual market conditions.

Here is an example: For early childhood teachers, the specified salary acts as a price floor. In other words, the salary specified in the schedule for early childhood teachers is actually set above what the market price would be for a person offering these skills. At this level, the specified salary serves as an incentive to attract more people into the field than there are positions available. The result, of course, is a surplus of early childhood teachers.

The specified salary for teachers is, simultaneously, a cause of the teacher shortages. Here is an example: For technology teachers, the specified salary acts as a price ceiling. In other words, the salary for technology teachers is actually set below the market price for a person with these skills. This specified salary serves as a disincentive to technology teachers. It discourages people from entering the field — or for those in the field to seek alternative employment opportunities outside of K-12 education — because they have better options in other labor markets. The result, of course, is a shortage of technology teachers.

The most recent report the DPI published on supply and demand was in 2008, before Act 10. Teacher surpluses were reported in such areas as early childhood/kindergarten, elementary, social studies and physical education. But, apparently no one wants to talk about the damage that surpluses do to the teacher labor markets and to prospective teachers who are misled by misinformation provided by a malfunctioning market and wind up wasting time and money seeking jobs where few exist. And then there are the wasted higher education resources devoted to training teachers in surplus fields who will never be able to find a teaching job.

### **Wisconsin's failing licensure process**

Now, let's shift gears and turn to the supply side of the teacher labor market. To become a teacher in Wisconsin, one has to comply with the provisions of a set of DPI licensure rules called PI 34.

Seventeen years after its implementation, PI 34 has yet to earn national respect. According to the National Council on Teacher Quality (NCTQ), Wisconsin is going backwards. In its 2015 *State Teacher Policy Yearbook*, Wisconsin received an overall grade of D:

- C-minus in turning out well-prepared teachers
- D-minus in expanding the teacher pool
- D-minus in identifying effective teachers
- D-plus in retaining effective teachers
- D-minus in exiting ineffective teachers

Wisconsin earned a D-plus in 2013 and a D in 2011 and 2009.

However, there was some good news in the 2016 report. The NCTQ noted that Wisconsin has four top-ranked elementary education teacher preparation programs. These programs clocked in above the 90th percentile in a national ranking of 2,500 programs. They are:

- Carroll University
- UW-Eau Claire
- UW-Madison
- UW-Platteville

How does Wisconsin license teachers? In one way or another, anyone who wishes to become a licensed teacher in Wisconsin has to take steps to comply with PI 34. At the top of its webpage on teacher licensure, the DPI proudly proclaims:

*Pursuant to Wis. Stat. 118.19, "any person seeking to teach in a public school, including a charter school, or in a school or institution operated by a county or the state shall first procure a license or permit" from the Wisconsin Department of Public Instruction.*

That means surviving a system that includes 26 pages of rules and 13 subchapters with a total of 884 separate code points and sub-points. When PI 34 was approved in 2000, the education establishment buzz was that this grand new scheme would elevate Wisconsin's teaching profession. We seriously doubt that anyone in the industry believes that today.

In 2011, we wrote an extensive report on PI 34 for the Wisconsin Policy Research Institute, "Teacher Licensure in Wisconsin: Who is Protected? Parents or the Education Establishment?" Our criticisms at the time included the following:

- PI 34 imposes an overwhelming regulatory system — dwarfing, for example, the regulatory system governing licensure for medical doctors.
- PI 34 sets up high barriers (a single, proprietary avenue) for entrance into teaching. It makes licensure conditional on completion of approved training programs requiring, normally, at least two years of full-time enrollment in education coursework. Many smart college students and highly trained professionals contem-

plating career changes are deterred by these requirements.

- PI 34 has no built-in measures for linking teacher licensure to teacher competence. Wisconsin has no evidence that any incompetent teacher has ever been denied licensure renewal.

While PI 34 itself has changed little, there have been changes in the teacher licensure process. The testing process has been expanded and made more rigorous, including the addition of the Wisconsin Foundation of Reading Test for elementary, reading and special education teachers. Also, there are nearly 10 alternative licensure programs in the state, including three that involve programs done in cooperation with CESA 1, 6 and 7. But remember, all such programs must find a way to comply with PI 34.

Some school districts are complaining about the difficulty of attracting good teachers. A report by the Public Policy Forum shows the state lost 2.4 percent of its teachers between 2010 and 2014. The same report found that while more teachers were leaving the profession, the state's teacher training programs produced 7 percent fewer graduates in 2014 compared to 2010. The report also found a nearly 28 percent drop in students entering those programs over the same period.

But it is wise to be cautious when reporting on teacher shortages. As already pointed out, Wisconsin for years has had a bipolar market for teachers, where schools of education routinely produced too many teachers in some fields, such as elementary education, and not nearly enough in others, such as mathematics and science.

In response to concerns about teacher shortages, the DPI established the Leadership Group on School Staffing Challenges. The group is recommending modifications of PI 34 including the following:

- Consolidating the licensure grade spans from the current five to two: PK-9 and PK-12.
- Adding a Permit Holder level of certification for individuals without education training who have a temporary, limited permit — say, as a substitute teacher — without having to enroll in a state licensure program.
- Adding a License with Stipulations level that would be intended for interns, residents, emergency license holders, Teach For America candidates and others who are eligible to serve as teachers of record in a school on a temporary basis.
- Allowing for new or enhanced residency and internship experiences and residents for students who are not yet fully licensed.
- Granting automatic license reciprocity for candidates prepared out of state who successfully pass the edTPA and considering license reciprocity of military spouses. (The edTPA is a test developed by Stanford University faculty and staff at the Stanford Center for Assessment, Learning and Equity.)

Altogether, several of the recommendations of the Leadership Group, especially those involving expanding internships, adding permit holder and license with stipulation level, and expanding reciprocity may provide marginal improvement with the supply problem.

Gov. Walker also has weighed in. He has recommended providing lifetime licenses as a way to address teacher shortages. This strikes us as an insufficient incentive. Providing a subsidy for teacher aides to become teachers is a not strong idea, either. We need a system that will attract the best and the brightest to teaching. At best, these are Band-Aid solutions. While the governor may be thinking boldly these days in addressing issues such as welfare reform, he is far less engaged in new ideas to reform the labor market for teachers.

### What would a free teacher labor market look like?

Higher education faces many challenges. However, nearly all of Wisconsin's four-year colleges and universities compete in a free market for instructors. The market for history professors specifies lower compensation than the market for professors who train medical doctors or engineers.

The opportunity cost (the next best choice) of a history professor might be working as a researcher or a manager of a collection in a history museum. The opportunity cost of a professor of medicine is a lucrative private medical practice, while an engineering professor has many employment opportunities outside of the academy. Clearly, if these two markets were treated the same, as they would be with a traditional salary schedule, we would have a surplus of history professors and a severe shortage of professors of medicine and engineering.

We suggest that the market for K-12 teachers is little different. At the middle and high school levels, for example, there should be separate salary scales for teachers of art, business, English, English as a second language, foreign language, mathematics, music, physical education, science, special education, social studies and technology. In fact, at the high school level, even this is too broad. The market for a chemistry teacher is different than the market for a biology teacher. The market for a history teacher is different than the market for an economics teacher.

A similar picture emerges at the lower grades. At the elementary level, there should be separate salary schedules to distinguish between preschool, primary grade and intermediate grade teachers. There also should be different pay for specialists, such as foreign language, music and art teachers. School districts need to pay market rates for teachers in each or some combination of these categories.

We acknowledge that it will take some time for Wisconsin's teacher labor market to adjust to a more fully flexible system. It is difficult — and perhaps unfair — to quickly adjust some long-term teachers' salaries down, in accordance with the marketability of their skills. Further, school district budgets cannot support higher pay for high-demand areas before these salary decreases come into effect.

Will more competition destroy teacher morale? Not once many of the teachers accustomed to the pre-Act 10 environment have retired or left the profession. Teachers who successfully compete in this market will know their success is due to their own efforts and skill. Overall, as competition increases, local communities will return to respecting the teaching corps, knowing each individual has earned his or her success. Moreover, why is teacher morale a primary public policy concern? The job of a school district is to find the best and the brightest to teach Wisconsin's young people.

Will there be an "arms race" to find the best teachers? Some we spoke with believe there already is. Economic theory and experience suggest that competition brings out the best in people. If this means that districts will need to be more competitive to recruit good talent, then let the arms race begin.

However, we do live in the real world. On the one hand, for districts with tight budgets and declining enrollments, competition for the best teachers comes at high costs. On the other hand, fine-tuning and adding multiple salary scales to better match the market may lead to some savings. For example, in 2015, Milwaukee Public Schools was paying a generic beginning teacher \$41,200. Now, let's imagine that a nearby suburb is offering a generic beginning teacher \$51,000. Almost certainly, the suburban district is overpaying some of its beginning teachers and underpaying others.

## Recommendations

### Demand side: More, not less, competition

- We recognize that many school budgets are tight, but school districts need to do a better job of competing for the best and the brightest teachers. At the least, this means fine-tuning salary scales so they reflect the reality of multiple teacher labor markets.

### Supply side: Deregulation of teacher licensure

- We propose that the Legislature repeal and replace PI 34. The current teacher licensure rules offer no assurance that licensed teachers could motivate, teach or relate to students. PI 34 presents a high barrier for entrance that deters talented college

students and highly trained professionals who might otherwise be interested in becoming teachers.

- The Legislature should allow teachers who have been certified in other states to be granted an appropriate Wisconsin teaching license with a minimum of hassle.
- The Legislature should take action to allow districts to develop their own teacher licensure programs. When it comes to preparing teachers, districts and CESAs could act in the same way that charter schools act in K-12 education. The DPI has 10 Teacher Standards. These include things such as teachers should know the subjects they are teaching and should know how to manage a classroom. Districts and CESAs could demonstrate to the DPI how they meet these broad standards. The DPI, in turn, would absolve the authorized districts and CESAs from following all of the specified PI 34 rules. For example, PI 34 specifies who can be a supervisor (cooperating teacher) of student teachers and the minimum times a student teacher should be observed. Maybe the local districts and CESAs could be trusted to figure such things out on their own.

- The Legislature should authorize existing charter schools to make hiring decisions based solely on judgments about candidates' background and present ability to teach effectively. Charter school educators then could consider licensure as one indication of candidates' qualifications, if they chose to do so, but they would not be required to hire only licensed teachers. After all, this approach seems to work just fine for many of Wisconsin's best private schools.

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## Endnotes – Who Are We Really Protecting? (Page 8)

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