

AUGUST 2022



Occupational Licensing: Get Out of the Way of Work



**BADGER
INSTITUTE**

Free Markets ▪ Opportunity ▪ Prosperity

A P R E F A C E T O

Occupational Licensing: Get Out of the Way of Work

Wisconsin's politicians prohibit over 1 million citizens from working unless they have government permission.

This is the root of the scandalous backlogs plaguing Wisconsin's occupational licensing bureaucracy, which is forcing many people to sit on the sidelines after they move to our state or graduate from their training, unable to work in their chosen field.

The Badger Institute's scholars have documented this growing problem for years. This report offers a quick tour of their findings — and presents concrete reforms that have worked in other states.

While some licensing in certain occupations makes sense, unnecessary licensing requirements negatively affect the labor supply and add to consumer costs. Reform could prove critical for Wisconsin's future prosperity, especially given the current worker shortage.

But more than that, reform is a matter of justice. When people are qualified and willing to do a job, the state should not stand in the way.

— *Badger Institute*

Occupational Licensing: Get Out of the Way of Work

Introduction

The Wisconsin Department of Safety and Professional Services (DSPS), the agency authorized by state law to review, approve and regulate most occupational licenses, has experienced a significant backlog in recent years. It's not uncommon for Wisconsinites seeking a license to wait weeks, months or even longer for the certification they need to enter their profession. While they wait, they are precluded from working in their desired fields, serving others with their skills and earning paychecks commensurate with their education and training.

During legislative hearings, aspiring professionals in a range of vocations have shared their stories — sometimes tearfully — describing the confusing application process, endless hours spent on the phone, unanswered emails, DSPS requests for already submitted paperwork and other inexplicable delays. Many point out that DSPS is quick to cash their checks before assuming radio silence.

Some blame the delays on bureaucracy and inefficiency. Others say the department is underfunded and short-staffed.

There may be merit to both claims, but they ignore the root of the problem. The dramatic growth of professions requiring state licensure has resulted in the need for more than 1 million Wisconsin workers¹ to seek the state's permission before they can secure — or maintain — employment.

Wisconsin's politicians and bureaucrats have proven themselves incapable of approving, monitoring and renewing all of those licenses — but there is another, more essential problem that must be addressed.

The Problem

What is Occupational Licensing?

An occupational license is a government permission slip to work in a particular field.

The justification for state involvement is the protection of public health and safety. But what began as a way to ensure entry-level competence for workers primarily in healthcare fields has absorbed other occupations and grown increasingly complex and costly.

The number of fields requiring government certification has soared. Between 1996 and 2016, the number of licensed occupations in Wisconsin increased by 84%. The state's pop-

ulation grew just over 10% during that period.²

The state currently requires 1 million Wisconsinites to secure certification for 280 credential types.³ Government permission is now required in the Badger State for anyone seeking to become an auctioneer, animal trainer, dance therapist, landscape architect, butter maker, manicurist, bartender, elevator helper, barber, taxidermist and soil erosion inspector, to name a few.

Each applicant must jump over numerous government hurdles. To obtain a license, an aspiring worker may have to acquire a minimum level of education, experience and training, and pass state-sanctioned exams. DSPS often requires application and renewal fees.

The Downside

In recent years, academics and lawmakers have developed a better understanding of the economic impact of occupational licensing on workers and consumers. The work of Morris Kleiner at the University of Minnesota, Edward Timmons at West Virginia University, Dick Carpenter at the Institute for Justice and others has quantified the effects on employment, income, mobility, competition and innovation.

Kleiner, considered the nation's foremost expert on licensure, notes the practice is often more about reducing competition than safeguarding consumers.

"Economic studies have demonstrated far more cases where occupational licensing has reduced employment and increased prices and wages of licensed workers than where it has improved the quality and safety of services," wrote Kleiner, a professor of labor policy at the Humphrey School of Public Affairs at the University of Minnesota.⁴

"Because people need to get licenses for so many kinds of jobs, it's becoming harder for them to break into certain occupations," Kleiner observed in another report. "That's especially true for low-income workers."⁵

This research has contributed to a growing recognition that licensing often pits market participants against those seeking to enter the field. It's revealing that while public health and safety are given as the justification for new categories of licenses, injured or endangered consumers are rarely the ones seeking this remedy. Instead, it's most often practitioners of a particular vocation who lobby state lawmakers to establish a new license. When they succeed, it is those in the field who usually get grandfathered from the requirements that they set for those who follow.

Licensing boards and advisory councils are empowered by the state to establish standards for existing license holders as well as those who aspire to a profession.

By restricting the labor supply, licensing allows license holders to raise the prices they charge for consumer goods and services from licensed professions. This creates an artificial wage premium in many occupations.

“For a professional association, obtaining licensing legislation requires raising funds from members of the occupation to lobby the state legislature, especially the chairs of appropriate committees,” Kleiner wrote in 2011. “In addition, the occupation association often solicits volunteers from its membership to work on legislative campaigns. With financial contributions, political action committees and volunteers, ... occupational associations ... have a significant ability to influence legislation, especially when opposition to regulatory legislation is absent or minimal.”⁶

Once market participants have control, there is an increased risk of self-dealing, even if unintentional. Those who already possess licenses in a profession are unlikely to lower the requirements for those who follow. More often than not, they impose higher educational requirements, hours of experience, fees or residency requirements, resulting in fewer individuals who are able to pursue a licensed occupation.⁷

In short, licensing requirements erect barriers to newcomers, especially the economically disadvantaged. This suppresses competition, harming consumers by offering the market fewer choices and artificially inflating prices.

Calls for Reform

A growing recognition of these realities has generated bipartisan support for licensure reform. Elected officials who rarely see eye to eye — including Presidents Barack Obama, Donald Trump and Joe Biden — have highlighted the ill effects of professional licensing and called for reforms.

In July 2015, Obama’s Council of Economic Advisers issued a landmark paper highlighting the costs and burdens of occupational licensing in the United States. The report cited the “substantial costs” that “raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across state lines.”⁸

The council concluded: “The practice of licensing can impose substantial costs on job seekers, consumers, and the economy more generally. This is particularly true when licensing regulations are poorly aligned toward consumer protection and when they are not updated to reflect a changing economy.”⁹

In December 2020, Trump issued an executive order that, among other things, encouraged states to eliminate unnecessary licenses, reduce burdensome requirements and recognize out-of-state licenses.¹⁰

In July 2021, Biden signed an executive order directing the Federal Trade Commission to issue rules to roll back professional licensing restrictions that “unfairly limit worker mobility.”¹¹

Government permission is now required in the Badger State for anyone seeking to become an auctioneer, animal trainer, dance therapist, landscape architect, butter maker, manicurist, bartender, elevator helper, barber, taxidermist and soil erosion inspector, to name a few.

In a growing number of states, governors and legislators from both parties have worked together to adopt alternatives to licensing and to pass meaningful reforms.

The courts also have taken steps to rein in licensing regulations that promote self-dealing. In a landmark case in 2015, the U.S. Supreme Court recognized the antitrust implications for occupational licensing boards that were captured by licensees. In that decision, Justice Anthony Kennedy warned of the “risks licensing boards dominated by market participants may pose to the free market.”¹²

By delegating power to active market participants, he wrote, “established ethical standards may blend with private anti-competitive motives in a way difficult even for market participants to discern.”

As these concerns have grown, efforts to limit the effects of occupational licensing on workers and consumers have gained momentum. Several states have adopted reforms, including the elimination of barriers to work and streamlining of the licensure process, placing parameters around the creation of new licenses and requiring the elimination of licenses when a public benefit cannot be established.

Wisconsin is lagging, although some reforms have been adopted in the past few years:

- In December 2021, Gov. Tony Evers signed a bipartisan bill designed to streamline approvals by allowing a credentialing board to delegate authority to DSPS to make an immediate determination regarding an application. At this point, it does not appear to have had a significant effect on the DSPS backlog.
- In July 2021, Evers signed legislation clarifying that natural hair braiders don’t need a state license.
- In March 2020, Evers signed another bipartisan measure that allows Wisconsin to accept occupational licenses from other states when held by current and former military members and their spouses.
- In 2018, Gov. Scott Walker signed a bill that brought onerous Wisconsin requirements for new chiropractors in line with other states.
- In 2017, bipartisan measures signed by Walker removed barriers for barbers, cosmetologists and other beauty-related professionals to obtain a license, run their own businesses and work outside a shop or salon.

But as the ongoing DSPS backlog demonstrates, Wisconsin lawmakers have yet to advance reforms that address licensing on a broad scale.

Research on the Effects of Licensing

Limits Labor Supply

By its nature, occupational licensing erects barriers to entry. As a result, research shows, licensing restricts the labor supply in ways that have the heaviest impact on those with low skills and limited experience, disproportionately harming immigrants, low-income workers and the formerly incarcerated.

According to the Institute for Justice, Wisconsin licenses 42 of the 102 low- to moderate-income occupations studied.¹³

A 2018 Institute for Justice study found that licensing costs the nation's economy between 1.8 million and 1.9 million jobs annually — including as many as 37,000 jobs in Wisconsin.¹⁴

Licensing can make it particularly difficult for low-income workers to secure a foothold on the ladder of opportunity. Training requirements and costly licensing fees can limit attainability of a wide range of professions for those with limited means. The Institute for Justice found that of the 42 low- and moderate-income jobs licensed in Wisconsin, the average fee is \$259 and the average training period is 214 days.¹⁵ Many professions require thousands of hours of training before a license can be secured, potentially locking people out of their dream vocations.

Licensing requirements erect barriers to newcomers, especially the economically disadvantaged. This suppresses competition, harming consumers.

Hinders Worker Mobility

Licensing requirements can vary dramatically from state to state, producing a patchwork of regulations that often makes it difficult for licensed professionals to rejoin the workforce when they relocate.

Again, the hardest hit can be those with the fewest means. The Institute for Justice found that of 102 lower-income occupations with licensing regulations in at least one state, just 23 occupations are licensed in 40 or more states.¹⁶

This difference in licensing requirements among states can prove decisive in a worker's decision to move across state lines. It also can encourage Wisconsin residents to move to other states that approve licenses more swiftly. If Iowa approves in a few weeks a license that takes months to secure in Wisconsin, Badger State aspirants might prefer to move than forgo income for an unpredictable period.

Inflates Costs

By restricting the labor supply, licensing allows license holders to raise the prices they charge for consumer goods and services from licensed professions. Intended or not, the propensity of licensing to fence out competition creates an artificial wage premium in many occupations.

A 2011 study by Kleiner for the W.E. Upjohn Institute for Employment Research estimated that licensing increases costs for U.S. consumers by \$203 billion annually.¹⁷ A 2016 Wisconsin Institute for Law & Liberty study estimated that licensing costs Wisconsin nearly \$2 billion annually in higher consumer prices.¹⁸

Scant Evidence of Benefits to Public Health and Safety

For occupations that are widely and consistently licensed, such as physicians and dentists, licensing is easier to justify. For occupations that are licensed in some states and not others, or where regulations vary widely across states, the safety argument is less obvious.

For instance, the training requirements for a licensed cosmetologist range from 2,300 hours in Oregon to 1,000 hours in New York. Wisconsin is in between, requiring 1,550 hours of training. There is no evidence, however, that increased training hours produce better or safer services.

Academic research on the impact of licensing on quality or safety has been decidedly inconclusive.¹⁹

Recommendations

Universal Licensure Recognition

Millions of Americans every year relocate across state lines, but many encounter road-blocks as they attempt to practice their trade in a new state. If the individual's industry requires a license, he or she will have to apply for certification and may have to meet additional requirements or pay fees to secure it regardless of the applicant's years of experience or competency.

Some states have solved this problem by enacting universal licensure recognition. **Over the past five years, 18 states have passed licensing reform laws that make it easier for those who move across state lines to continue working in their licensed professions.**²⁰

Arizona has one of the most comprehensive. In most cases, the credentials of new residents are "recognized" by the respective licensing board or agency. The major requirements are that applicants be licensed in good standing in their originating states, that they have been licensed for at least a year, that they do not have any past or pending investigations or complaints and that they pay any required fees.²¹

Similar recognition bills have been adopted in both red and blue states, including Iowa (2020), Colorado (2020), Kansas (2021), Pennsylvania (2019), New Hampshire (2018), New Jersey (2018), Mississippi (2021), South Dakota (2021), Nevada (2017) and Missouri (2020).²²

Lawmakers in these states recognized that skills, experience and qualifications are not lost when workers move. For Wisconsin and other states looking to attract workers, simplifying the process for qualified licensed professionals can help.

Throughout the COVID-19 pandemic, most states, including Wisconsin, adopted temporary measures allowing for licensure recognition in healthcare fields. From April 2020 through May 2021, more than 2,500²³ healthcare workers received temporary licenses to practice in Wisconsin, either in person or via telehealth.

In the first year that Arizona's law was in effect prior to the pandemic, 1,454 people already licensed in other states applied for licenses, and 1,186 received them.²⁴

**A Right to Earn
a Living Act shifts
the burden of proof
from job-seekers and
aspiring workers to
the regulators who
create and enforce
restrictions.**

The Badger State should adopt universal licensure recognition, and lawmakers should incorporate the best aspects of other states' laws. Missouri,²⁵ Colorado²⁶ and Utah,²⁷ for instance, do not require applicants to establish residency when applying for a license, a distinct advantage for those living in border communities.

Missouri's law also removes the condition that the originating state's license be "substantially similar" to the one Missouri issues. If an individual has been licensed for more than a year in another state, he or she can apply for its equivalent in Missouri.

Iowa's law²⁸ considers work experience when evaluating an applicant's qualifications, which means it won't necessarily require additional education or training if an applicant's previous state did not require a license and the individual has three or more years of related experience. This allows experienced professionals to forgo additional training for work they may have been doing for years.

Alternatives to Licensing

When a new license is proposed, legislative debates often focus on a binary choice: To license or not to license.

The Institute for Justice has compiled a list of alternatives that can address public safety concerns without harmful, unintended consequences. These options include voluntary, third-party professional certification; inspections; voluntary or mandatory bonding; or insurance and registration.²⁹

Figure 1 shows those alternatives, ranging from the least restrictive at the top to the most restrictive at the bottom.

The state should be predisposed to allowing individuals to earn a living with the fewest government-imposed burdens. Given that an occupational license is the most restrictive form of government regulation of work, it should be an option only when alternatives are inadequate.

The state should be predisposed to allowing individuals to earn a living with the fewest government-imposed burdens. Given that an occupational license is the most restrictive form of government regulation of work, it should be an option only when alternatives are inadequate.

Sunrise Review Laws

As a check on the rapid growth of occupational licensure, many states have adopted sunrise laws, which provide lawmakers with clear, less restrictive alternatives for addressing perceived public health or safety risks.

Under a sunrise review, when a professional licensing bill is introduced, an entity (ideally the state audit bureau) assesses:

- Evidence of significant harm to the public from the unregulated practice of the profession.
- Whether the public would benefit from the occupation being licensed.
- The least restrictive regulation that would address the real harm.
- An analysis of requirements for the occupation in other states.

- The economic impact of the proposed requirement on consumers and businesses.

At least 14 states have sunrise review laws.³⁰ Ideally, the review weeds out unsubstantiated claims of harm. It then recommends either no regulation, a less restrictive form of regulation or the enactment of a license.

The goal is to use empirical data to ensure that there is a need for regulation and then, if there is potential for significant and substantial harm, recommend a new regulation that actually protects the public and does so through the most appropriate, cost-effective and pro-opportunity approach.

Some sunrise review laws have been on the books for decades. They appear to be working. From 1985 to 2005, for example, Colorado's sunrise review agency examined 109 proposals and favored regulation only 12 times.³¹ The legislature created new regulation in only 19 instances.

Additionally, sunrise reviews recently have prevented the regulation of occupations such as paid tax preparers and sign language interpreters (Colorado), herbal therapists (Hawaii), behavior analysts and massage therapists (Vermont), perfusionists (Virginia) and lactation consultants (Washington).³²

The Wisconsin Legislature should adopt a sunrise review and task the nonpartisan, independent Legislative Audit Bureau (LAB) to conduct it. The LAB is best suited since it is free from political pressure and lobbying efforts.

Sunset Review Laws

While sunrise reviews provide lawmakers with pertinent information at the beginning of a licensing discussion, sunset review laws require an examination of all existing licenses or licensing boards after a set number of years. If it cannot be demonstrated that the lack of an existing license or licensing board would pose a danger to the public, the license or board would be eliminated or re-examined to determine if a less restrictive form of regulation would suffice.

Thirty-six states have some form of sunset review process.³³

In Ohio, all licensing boards expire every six years unless the legislature actively decides to renew them.³⁴

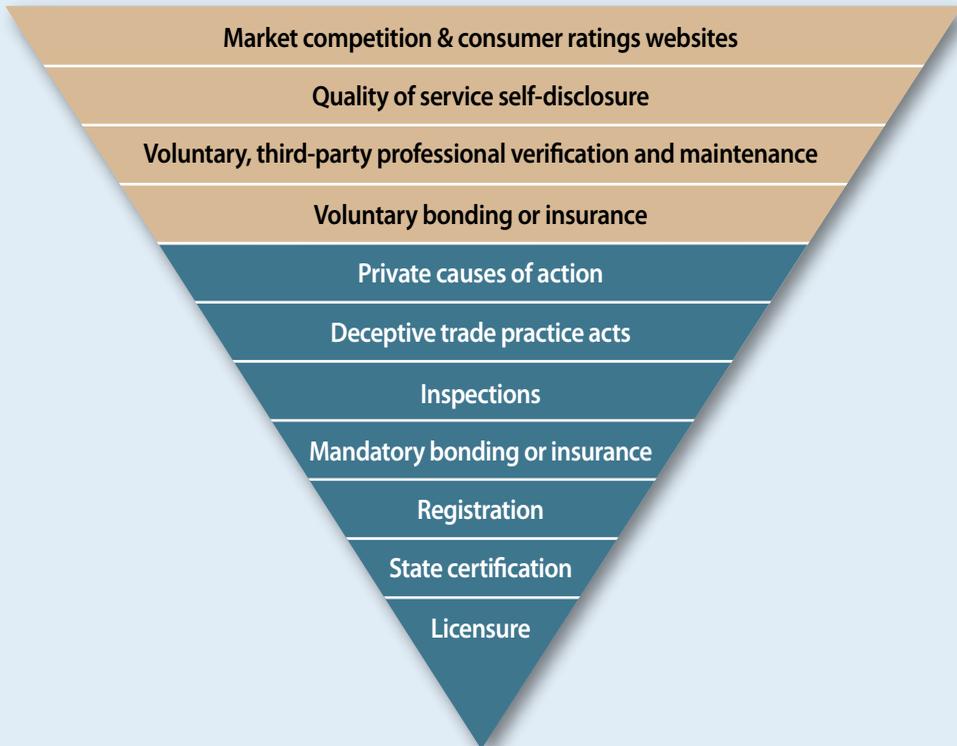
Nebraska's sunset review law, passed in 2018, requires a legislative review of one-fifth of all licensing regulations every year.³⁵ Lawmakers must determine whether there are "present, significant and substantiated harms" that justify the current license and, if so, determine whether a less restrictive option would address the need.

Colorado³⁶ was the first state to adopt a sunset review. Regardless of the party in charge, the Centennial State has made effective use of this tool. The Colorado Office of Policy, Research & Regulatory Reform (COPRRR) conducts a comprehensive review process that

Figure 1

The Inverted Pyramid: A hierarchy of less restrictive alternatives to licensing

The Institute for Justice offers options to occupational licensing, ranging from the least restrictive at the top to the most restrictive at the bottom.



Voluntary or non-regulatory options

Market competition & consumer ratings websites

Markets harness the power of reputation through word of mouth and online platforms like Yelp, Google and Angi. Market competition creates incentives to develop professional skills and deliver high quality at reasonable prices.

Quality of service self-disclosure

In many fields, providers share information about their past performance through references or by linking to online consumer reviews, signaling that they take customer satisfaction seriously.

Voluntary certification

Certification from a non-governmental organization, like the National Institute for Automotive Service Excellence, indicates that a provider has attained certain qualifications and adheres to industry standards.

Voluntary bonding or insurance

Providers often get bonded or purchase liability insurance, giving consumers recourse if something goes wrong. Bonding and insurance companies have strong incentives to insist providers are financially sound and follow industry standards.

Government interventions

Private causes of action

Private causes of action give consumers the right to sue providers at fault for injury or loss, compelling practitioners to maintain high standards to avoid litigation. If needed, lawmakers can make litigation easier by allowing consumers to sue in small claims court and recover costs and attorney's fees.

Deceptive trade practice acts

Consumers can sue fraudulent businesses under deceptive trade practice acts. These laws also give attorneys general the power to investigate and bring civil or criminal suits against bad actors. If needed, lawmakers can strengthen these laws or direct the attorney general to enhance enforcement.

Inspections

In industries such as food service or beauty care, inspectors help ensure sanitary practices, and in fields like construction, they provide a practiced eye to spot potential hazards. Inspections closely target potential harms and could be applied to other occupations.

Mandatory bonding or insurance

Mandatory bonding or insurance can give consumers and third parties an avenue for redress and encourage the adoption of industry standards. Some states already employ this alternative in fields such as tree trimmers, HVAC contractors and auctioneers.

Registration

Registration with the secretary of state or department of consumer protection can deter fly-by-night operators. It also supports enforcement of other alternatives to licensure. Some states require registration for occupations licensed elsewhere, as with construction contractors.

State certification

State certification signals that providers have attained certain credentials, established and verified by the government. Non-certified providers remain free to practice, but they may not call themselves certified.

Licensure

When imposed, licensing requirements should be narrowly tailored to mitigating harm, and the scope of practice should be carefully drafted to prevent encroachment on competing fields.

Source: Adapted from an Institute for Justice infographic

includes a literature review, data collection, stakeholder engagement, statutes from other states and recommendations for the continued, modified or ceased regulation of a profession.³⁷ If the legislature approves the recommendations, the agency modifies the rulemaking process accordingly.

In Wisconsin, the review ideally would be conducted by a nonpartisan entity such as the LAB to prevent outside influence from licensing boards, interest groups or licensed professionals.

A thorough review should include an examination of whether the occupation is licensed

in other states. If there is not consistency in how states regulate the same profession, a less restrictive option would likely do the job. The LAB or similar analytical staff then would recommend to DSPS about changing its rules or to the Legislature about changing statutes.

For sunset reviews to effectively bring change, they should consider the following:

- Whether less restrictive forms of regulation would meet public safety requirements. If so, alternatives should be suggested. If the review determines that the license is justified, it must demonstrate why.
- Whether education requirements, testing requirements, rules that limit scope of practice and anti-competitive rules are necessary.

Since these reviews do not automatically eliminate or restructure licensing regulations, the Wisconsin Legislature must commit to acting on recommendations.

Right to Earn a Living Act

The Wisconsin Constitution's Declaration of Rights begins with this guarantee: "All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness."³⁸ Historically, economic liberties were protected under this clause, but over the decades, as licensure and the regulatory state have grown, these liberties have eroded.

Adopting a Right to Earn a Living Act would help restore them.

The first Right to Earn a Living Act³⁹ was adopted by Arizona in 2017.⁴⁰ Mississippi, Tennessee and Louisiana followed suit. The measure shifts the burden of proof from job-seekers and aspiring workers to the regulators who create and enforce restrictions.

The Act allows the judiciary to serve as a check on policymakers and regulators who create and maintain overly burdensome regulations. It requires that all regulations pertaining to a profession are legitimate, necessary and tailored. If an individual believes certain restrictions are infringing on her right to earn a living, she may challenge them in court.

There are two ways lawmakers could address this. A constitutional amendment could be passed that explicitly states that an individual's right to pursue a vocation should be free from arbitrary or excessive government interference. Or the Legislature could enshrine these protections in statute, passing a bill that specifically articulates the right to earn a living and offering a cause of action for affected workers who believe these rights have been infringed. The Legislature could further narrow the cause of action to administrative rules and not statutes.

Either way, the Legislature should adopt a Right to Earn a Living Act so Wisconsinites

Wisconsin has 15 licenses that do not require applicants to obtain any credentials or training prior to working. Bureaucrats could get many Wisconsinites off of backlogs if legislators repealed these 15 licenses.

may earn a living without unnecessary restrictions. Doing so would incentivize regulatory agencies to police their own rules and perhaps recommend to legislators the repeal or reduction of unnecessary statutes. This would go a long way toward creating a more reasonable and just regulatory environment.

Repeal Unnecessary Licenses

One sure way of reducing DSPS' workload is to repeal licenses. A good starting point would be those that have no personal requirements related to education or experience. Specifically, legislators might focus on licenses that are only registrations. To get such a license, the applicant merely needs to sign the form and pay the fee. The license demands nothing more.

Wisconsin has 15 such licenses that do not require applicants to obtain any credentials or training prior to working. DSPS could get many Wisconsinites off its rolls if legislators repealed these 15 licenses or replaced the licenses with *private* certifications:

- Bill collection agency (not licensed in 19 states)
- Security guard, unarmed (not licensed in 16 states)
- Animal breeder (not licensed in 32 states)
- Bartender (not licensed in 37 states)
- Animal trainer (not licensed in 41 states)
- Milk sampler (not licensed in eight states)
- HVAC contractor, commercial (not licensed in 13 states)
- HVAC contractor, residential (not licensed in 15 states)
- Sheet metal contractor, HVAC, commercial (not licensed in 13 states)
- Sheet metal contractor, HVAC, residential (not licensed in 14 states)
- Farm labor contractor (not licensed in 40 states)
- Taxidermist (not licensed in 32 states)
- Landscape contractor, commercial (not licensed in three states)
- Landscape contractor, residential (not licensed in two states)
- Fisher, commercial (not licensed in seven states)

Additionally, the following licenses require negligible personal qualifications and are not licensed in many states:

- Pipelayer contractor, required to take one test (not licensed in 23 states)
- Auctioneer, required to take one test (not licensed in 20 states)
- Mobile home installer, required to take 12 hours of training and one test (not licensed in 11 states)

Since the first 15 licenses have no requirements, consumer protections would not change by repealing them.

This list is just the low-hanging fruit. The Legislature should actively seek opportunities to repeal or find less restrictive options for many more existing licenses.

Streamlining Recommendations

Provisional Licensing

Until universal licensure recognition becomes law in Wisconsin, the Legislature should adopt measures that make it easier for people who apply for a license to get one. A bill introduced in the last legislative session would have allowed for provisional licenses for qualified applicants while they waited for their permanent license.⁴¹

This would allow DSPS to grant a temporary license to applicants so they can begin to practice — and earn a living. Applicants would have to follow the same laws and procedures as their peers.

If an individual's application is approved by DSPS, the temporary status is removed. If DSPS for some reason rejects the application, the temporary license immediately expires.

Lookback Practices

The Legislature should clarify in statute that when DSPS reviews an application, it only requests information pertinent to the license being sought. In most cases, individuals with criminal backgrounds can receive a license in Wisconsin as long as their underlying offense is not “substantially related” to the profession.

Engaging in lookback practices that force applicants to track down police and court documents associated with a previous crime even when it's not substantially related to the occupation contributes to the licensing backlog. DSPS should not waste time reviewing past minor offenses if they would not disqualify an applicant from receiving a license.

Licensing Board Transparency

As the Badger Institute found in its 2020 report “Absence and Violation,”⁴² much of licensing boards' activities occur in private sessions with little transparency. The public is often underrepresented or not represented at all on several boards, in violation of state law. The Legislature should require that board meetings are as open as possible, board minutes and recordings of meetings are posted publicly and that the public positions on licensing boards and advisory councils are filled.



Badger Institute takeaways

Wisconsin should:

- Adopt a form of universal license recognition, accepting valid licenses from other states. Consider elements such as recognizing licenses from states with “substantially similar” requirements or recognizing work experience in states that do not license an occupation.
- Require a sunrise review of proposed licensing by a designated auditor, such as the Legislative Audit Bureau, instituting licensure only on an affirmative recommendation.
- Require periodic sunset review by a designated auditor of all existing licensure requirements. Such review should have to show that less restrictive forms of regulation would not suffice. It should have to show that training, testing and scope-of-practice rules are necessary.
- Enact a Right to Earn a Living Act, granting individuals a cause of action against unnecessary occupational licensing rules.
- Repeal licensing requirements for the 15 occupations with no personal requirements related to education or experience, and for other occupations with minimal such requirements.
- Enact provisional licensing for qualified applicants.
- Repeal lookback provisions for offenses unrelated to an occupation.
- Require public transparency of licensing boards’ activities, and enforce laws requiring public membership on boards.

Endnotes

¹ https://dsps.wi.gov/Documents/DSPS%20OLS%20Report_Dec2018.pdf

² Collin Roth and Elena Ramlow, “Fencing Out Opportunity,” Wisconsin Institute for Law & Liberty, November 2016.

³ https://dsps.wi.gov/Documents/DSPS%20OLS%20Report_Dec2018.pdf

⁴ 2013. “Stages of Occupational Regulation: Analysis of Case Studies.” W.E. Upjohn Institute for Employment Research, Kalamazoo, Michigan.

⁵ <https://www.hhh.umn.edu/news/professor-morris-kleiner-licensing-moreoccupations-hurts-economy>

⁶ <https://ir.stthomas.edu/cgi/viewcontent.cgi?article=1060&context=ustjlpp>

⁷ https://research.upjohn.org/up_press/18/

⁸ https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

⁹ Ibid.

¹⁰ <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-increasing-economic-geographic-mobility/>

¹¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

Occupational Licensing: Get Out of the Way of Work

- ¹² https://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf
- ¹³ <https://ij.org/report/license-to-work-2/tw-state-profiles/tw2-wisconsin/>
- ¹⁴ <https://ij.org/report/at-what-cost/costs-of-occupational-licensing/>
- ¹⁵ <https://ij.org/report/license-work-2/>
- ¹⁶ *Ibid.*
- ¹⁷ https://research.upjohn.org/cgi/viewcontent.cgi?article=1008&context=up_policypapers
- ¹⁸ <https://www.will-law.org/wp-content/uploads/2016/11/Licensure-FINAL.pdf>
- ¹⁹ <https://ij.org/report/license-to-work-2/report/the-irrationalities-of-occupational-licensure/>
- ²⁰ <https://ij.org/legislative-advocacy/states-reforms-for-universal-recognition-of-occupational-licensing/>
- ²¹ <https://btr.az.gov/blog-entry/hb2569-occupational-licensing-reciprocity>
- ²² <https://ij.org/legislative-advocacy/states-reforms-for-universal-recognition-of-occupational-licensing/>
- ²³ Number from an open records request to the Wisconsin Department of Safety and Professional Services.
- ²⁴ <https://www.goldwaterinstitute.org/freetoworksuccess/>
- ²⁵ <https://house.mo.gov/Bill.aspx?bill=HB2046&year=2020&code=R>
- ²⁶ <https://leg.colorado.gov/bills/hb20-1326>
- ²⁷ <https://le.utah.gov/~2020/bills/sbillenr/SB0023.pdf>
- ²⁸ <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=HF2627>
- ²⁹ <https://ij.org/report/license-to-work-2/report/to-license-or-not-to-license-a-false-choice/>
- ³⁰ <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx>
- ³¹ <https://www.cato.org/sites/cato.org/files/serials/files/regulation/2006/12/v29n4-record.pdf>
- ³² <https://ij.org/report/license-work-2/report/recommendations-for-reform/>
- ³³ <https://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx#:~:text=Thirty%2Dsix%20states%20have%20some,for%20existing%20occupational%20licensing%20laws.>
- ³⁴ <https://www.legislature.ohio.gov/legislation/legislation-documents?id=- GA132-SB-255>
- ³⁵ <https://ij.org/press-release/nebraska-governor-signs-landmark-reform-occupational-licensing/>
- ³⁶ <https://coprrr.colorado.gov/how-reviews-work/sunset-reviews>
- ³⁷ <https://coprrr.colorado.gov/>
- ³⁸ https://docs.legis.wisconsin.gov/constitution/wi_unannotated#page=2
- ³⁹ <https://goldwaterinstitute.org/article/right-to-earn-a-living-act/>
- ⁴⁰ <https://goldwaterinstitute.org/article/arizona-becomes-first-state-in-country-to-protect-right-earn-living/>
- ⁴¹ <https://docs.legis.wisconsin.gov/2021/proposals/sb232>
- ⁴² <https://www.badgerinstitute.org/BI-Files/Reports/LicensingReportPDF.pdf>