Ditching the Welcome Mat: How Kentucky Harms Workers, Military Families, and Consumers with Occupational Licensing
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Executive Summary

The Commonwealth of Kentucky has one of the lowest rates of workers to working age adults in the country. These workers and would-be workers face many challenges. Government-mandated career paths erect barriers that slow the growth of employment and new businesses and also kill jobs.

These government-mandated barriers are known as occupational licenses. More Kentuckians than ever need this government permission slip to work. Today, 19.4% of Kentucky’s workforce needs a license. In the 1950s, only one in 20 workers nationally needed a license to work.

This report is the first of its kind focusing on how occupational licensing affects Kentucky. It reviews the effects on Kentucky’s economy, workers, military families, and consumers and finds:

• Occupational licensing harms Kentucky’s economy. It costs Kentucky nearly 20,000 jobs a year and misallocates around $1.7 billion.
• Licensing destroys opportunities for Kentucky workers. Government-mandated career paths make it costly for those on the lowest rungs of the economic ladder to start working. It forces workers to spend a lot of time and effort earning a license instead of earning a living.
• Licensing hurts Kentucky’s military families. When soldiers leave the military, they may need to duplicate their training to legally work a civilian job. Military spouses have a hard time acquiring licenses when their families move to Kentucky.
• Licensing costs Kentucky’s consumers. It increases costs for consumers—$1,000 annually per Kentucky household.

The costs of licensing often outweigh purported benefits. More often than not licensing laws don’t protect health and safety—they protect those who already have licenses from competition, keeping newcomers out and prices high. Kentucky’s neighbors often have different licensing requirements or no license requirements for occupations licensed in Kentucky. The differences further underscore that these barriers to entry are not providing benefits to consumers or workers.

Policymakers need to allow consumers to choose between licensed and unlicensed practitioners. Opening up the marketplace will put more people to work and give consumers more options.
Introduction

Workers and entrepreneurs in most occupations begin their careers by building skills through education and/or experience. Potential customers then choose whether to frequent a business and employers determine whether to hire a worker. This avenue provides flexibility and innovation in building a career or business. It allows consumers and employers to determine what knowledge and skills deliver the most value.

This consumer-driven career path focuses on the needs of consumers and employers, and it contrasts sharply with the government-mandated career path that currently controls many occupations. For a growing number of jobs, the government defines what education and/or experience a worker or entrepreneur needs in order to legally start working. Those who choose to work in those fields without the requisite government-issued permission slip can face fines and even jail time. To make it worse, the policing of the occupations with government-mandated career paths is regularly done by a select group of competitors.

The government-mandated career path is known as occupational licensing and it affects nearly one in five Kentucky workers. In the 1950s just one in 20 workers nationally needed an occupational license to do a job. Today, state-licensed occupations include sign language interpreter, athletic trainer, optician, shampooer, and massage therapist.

The Kentucky One Stop Business Portal lists 366 types of businesses or careers that require the permission of the state. The commonwealth has at least 60 boards or agencies responsible for approving occupational licenses, certifications, or registrations for many different occupations (see Appendix [X]). Most of the boards or agencies that wield this substantial power are comprised of members of the licensed occupation: the would-be worker’s competitors.

A broad consensus is emerging that something needs to be done to rein in occupational licensing. In 2015, the Obama Administration released a report by the U.S. Treasury Department, the Council of Economic Advisers, and the Labor Department on the growth of occupational licensing, its effects on American workers, and the need to reform these laws. The Trump Administration has followed suit. In July of 2017, U.S. Labor Secretary Alexander Acosta made a call for occupational licensing reform. Governors in Arizona, California, Illinois, Indiana, Iowa, Kentucky, and New Jersey have led the way for reform either through urging broad reform or vetoing new licensing.

This report reviews how occupational licensing affects Kentucky’s economy, workers, military families, and consumers. It also details how occupational licensing laws get on the books in the first place and who is benefited and harmed by them. Finally, this report provides recommendations for reform that expand consumer access to goods and services and increase the number of jobs in the Commonwealth.
The Kentucky Economy

State license requirements prevent people from entering the workforce and earning an honest living by blocking their entrance into licensed occupations. Research on hair braiders provides one example of what licensing does to an economy.

Licensing kills jobs.8 Louisiana requires hair braiders to obtain a license, but neighboring Mississippi only requires registration with the state. In 2012, Louisiana had just 32 licensed hair braiders, while Mississippi had over 1,200, despite Louisiana’s larger black population.9

Licensing also slows the growth of employment and new businesses by acting as a barrier to entry for newcomers.10 In 2012, Virginia threw out the welcome mat by exempting hair braiders from licensing. As a result, Virginia saw the development of 8% more small-owner operated beauty salons compared to its neighbors.11

Occupational licensing touches more Kentucky workers than minimum wage and union membership combined.12 The commonwealth’s occupational licensing requirements have a significant effect on the commonwealth’s economy as a whole, including workforce participation and access to jobs, geographic mobility, consumer prices, and innovation.

The Commonwealth of Kentucky burdens approximately 19.4% of the people in its workforce—400,000 people—with a required occupational license.13 These government mandates cost Kentucky around 20,000 jobs.14 These lost jobs may translate into lower workforce participation and worker shortages in licensed fields—including emergency medical services, nursing and construction.15 Kentucky has one of the lowest workforce participation rates in the country—60.4% of the working-age population were in the workforce in 2013 (see Figure 1). This was the tenth lowest rate among the 50 states.16
Licensing imposes costs on workers which reduces the number of people providing goods or services. Fewer people selling goods and services lifts the wages of licensees an average of 13.88% nationally. However, these increased wages lead to around $1.7 billion in misallocated resources annually in Kentucky—$184 billion nationally.

Licensing also stalls innovation. When new technologies or methods of providing a service enter the marketplace, licensing boards work to shut them down. Think Uber and Lyft versus taxis or a hair salon solely focused on hair braiding or blowouts. Entrepreneurs are constantly innovating with new business models or new ways of doing business. Occupational licensing regulations stunt that creativity.

Workers

Licensing destroys opportunities for workers. Kine Gueye, a Louisville hair braider, had all the skills and reputation needed to operate a business through a consumer-driven career path. But state regulators stepped in and told her that her experience learning African-style hair braiding while growing up in Senegal and consumers willing to pay for her services was not enough for her to legally work.
Kine was told by the Kentucky Board of Hairdressers and Cosmetologists—made up of two salon owners, one cosmetology teacher, one cosmetology school owner, and one consumer—that she needed to get the government’s permission to legally braid hair. This would have required her to spend 420 days and up to $20,000 on cosmetology school and another six months as an apprentice learning all sorts of things that have nothing to do with braiding hair.

The commonwealth’s arbitrary and expensive mandates served as a very real threat to Kine’s financial security and to her customers receiving the services they wanted. Kine was ultimately able to keep her job, when in 2016 Governor Matt Bevin signed a bill exempting hair braiding from the commonwealth’s licensing regulations. Even with this small exemption for one consumer-driven career path, tens of thousands of other Kentucky jobs remain lost because of the commonwealth’s broad licensing regime. The benefits of these restrictions remain unclear.

Government-mandated career paths make it difficult for lower-income, minority and unemployed workers to enter an occupation. By making it difficult for those on the lowest rungs of the economic ladder to get a foothold, occupational licensing reduces entrepreneurship among low-income workers. In addition, licensing regulations make it difficult for workers to transition with the skills they already have when soldiers leave the military or civilians relocate to Kentucky, including military spouses.

Obtaining a license requires time and money. State requirements to become licensed often include paying fees, passing one or more tests, reaching a minimum age and/or grade level, and specific amounts and types of education, training, and/or apprenticeships. Additional costs include tuition and time out of the workforce for schooling, reduced wages during apprenticeships, and travel to take exams, which may only be offered hours away from where someone lives. After all the requirements are complete a potential licensee will then need to wait for the board to approve him, which may take months. The consequences of working without a license can range from fines to jail time.

For Kentuckians to work in low- to moderate-income licensed occupations, the commonwealth requires an average of 466 days of education and/or experience (in addition to the time to be approved by the licensing board)—compared to 323 days in Indiana or just 226 days in Tennessee. In addition to 466 days on education and experience, low- to moderate-income licensed workers need to pass an average of two exams and pay $240 in government fees. These requirements are steeper than all of Kentucky’s neighbors except Virginia (see Table 1).
In addition to the costs of obtaining a license, those who default on their student loans may not be able to practice the very occupation they went to school to legally practice. If a person defaults on their students loans, a Kentucky licensing board will not issue them a license or will suspend their license until they are no longer in default. It’s a policy that compounds difficulties for would-be workers to pay back their student loans and secure licensed employment. A New York Times story found that some 300 nurses in Kentucky are currently affected by this rule.

Licensing makes it difficult for works to cross state lines. Variations in licensing requirements and lack of reciprocity among states make it difficult for someone to move and quickly start working. For example, if John Smith wants to service and repair heating and air conditioning systems in Clarksville, Tennessee he’ll need to pay the state $360 and pass two exams. But if John crosses the border to work in Hopkinsville, Kentucky, the requirements include four years of experience, three exams, and $506 in licensing fees paid to the commonwealth (see Table 2).

### Table 1: Average Requirements for Low-income Licensed Occupations

<table>
<thead>
<tr>
<th>State</th>
<th>Days</th>
<th>Fees</th>
<th>Exams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>620</td>
<td>$291</td>
<td>1</td>
</tr>
<tr>
<td>Kentucky</td>
<td>466</td>
<td>$240</td>
<td>2</td>
</tr>
<tr>
<td>Ohio</td>
<td>350</td>
<td>$188</td>
<td>1</td>
</tr>
<tr>
<td>Missouri</td>
<td>348</td>
<td>$179</td>
<td>1</td>
</tr>
<tr>
<td>Indiana</td>
<td>323</td>
<td>$163</td>
<td>1</td>
</tr>
<tr>
<td>Illinois</td>
<td>249</td>
<td>$244</td>
<td>1</td>
</tr>
<tr>
<td>Tennessee</td>
<td>226</td>
<td>$327</td>
<td>1</td>
</tr>
<tr>
<td>West Virginia</td>
<td>210</td>
<td>$172</td>
<td>2</td>
</tr>
</tbody>
</table>

Occupational licensing does serve the interest of those who are licensed. Workers who follow the government-mandated career path will experience an increase in wages compared to their counterparts in states that do not require licenses. These increased wages come at the expense of workers who are shut out of the occupation and consumers who are forced to spend more money.\textsuperscript{30}

### Military Families

Occupational licensing not only makes it difficult for those on the lowest rungs of the economic ladder to get working. It also poses problems for military service members and their families. Kentucky has more than 45,000 active-duty military service members, National Guard, and reserve members.\textsuperscript{31} These soldiers and their families can be affected by licensing when they move (a typical occurrence in a military family) and when they retire from the military.

The variations across states are particularly difficult on working spouses. As families are moved and stationed at Fort Knox or Fort Campbell, military spouses whose occupations are licensed in Kentucky may face a problem. They can try to get a permanent Kentucky license at a cost of several months and thousands of dollars.\textsuperscript{32} If the time and expense aren’t worth it, they’ll have to find another job or simply go without work. Either way they may end up underemployed at a cost to their families.\textsuperscript{33}

<table>
<thead>
<tr>
<th>State</th>
<th>Time</th>
<th>Fees</th>
<th>Exams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Virginia</td>
<td>5 years</td>
<td>$720</td>
<td>2</td>
</tr>
<tr>
<td>Ohio</td>
<td>5 years</td>
<td>$140</td>
<td>1</td>
</tr>
<tr>
<td>Kentucky</td>
<td>4 years</td>
<td>$506</td>
<td>3</td>
</tr>
<tr>
<td>Tennessee</td>
<td>-</td>
<td>$360</td>
<td>2</td>
</tr>
<tr>
<td>West Virginia</td>
<td>-</td>
<td>$174</td>
<td>2</td>
</tr>
<tr>
<td>Illinois</td>
<td>No license required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Indiana</td>
<td>No license required</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Missouri</td>
<td>No license required</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

In addition, once veterans try to enter the civilian workforce they may learn that though they have been well trained to perform a job, this training doesn’t match the commonwealth’s requirements. Kentucky gives veterans (and active-duty spouses) a 6-month temporary license if they have a license in good standing or equivalent training. If they come from a state that does not license their occupation they may simply be out of luck. Veterans may be forced to duplicate their training in order to get a permanent state license to perform work they already know how to do.34

Consumers

Licensing not only burdens would-be workers, it also cost consumers who are left with fewer choices and higher prices.35 By making it difficult to work and compete with others in the commonwealth, Kentucky’s licensing requirements costs the average household an estimated $1,000 a year in higher prices—a total of $1.7 billion.36 And despite proponents’ claims, licensing does little to nothing to protect consumer health and safety or improve quality. Nor is licensing the best regulatory option for health, safety and quality concerns.

Licensing forces consumers to pay more for goods and services or find alternatives.37 Consumers may purchase fewer services or perform the work themselves. In addition, consumers may seek services from those operating in the gray market—like going to the home of an unlicensed hairstylist to get a hair cut.

Consumers in states with higher requirements to become a licensed cosmetologist purchase 14 percent fewer cosmetology services.38 This reduced consumption of services likely applies to Kentuckians. Kentucky has one of the toughest cosmetology licensing regimes in the country, second only to Massachusetts. A Kentucky hairstylist must have 1800 hours of education, six months of experience, pass three state exams, and pay $200 in government fees. That compares to Indiana’s 1500 hours of education, one exam, and $92 in fees (see Table 3).
Higher costs and fewer trained professionals in an area may encourage consumers to do the work themselves, which may increase the risk of health and safety issues. In the case of electricians, more burdensome licensing has been linked to fewer electricians in an area and an increase in deaths from electrocution.\textsuperscript{39}

### Are the Costs Justified?

States vary significantly in the share of their workforce required to obtain a license, which occupations require a license, and the requirements for a specific license.\textsuperscript{40} There’s no reason to believe that crossing a state border suddenly renders someone unqualified to do a job. This suggests that some states license occupations that do not need it or have more requirements to get a license than are necessary. The education and training requirements may even be unrelated to the skills needed to successfully work in an occupation.

For example, Kentucky licenses egg packers, but none of its neighbors do.\textsuperscript{41} Yet, there is nothing unique about packaging eggs in Kentucky compared to packaging eggs in Tennessee or Indiana. This demonstrates that there is no health and safety reason for licensing these packers.

Of course, proponents don’t rest their lobbying efforts on the notion that consumers should pay more. Instead, they claim that licensure will improve quality or that it will protect

<table>
<thead>
<tr>
<th>State</th>
<th>Hours</th>
<th>Fees</th>
<th>Exams</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kentucky</td>
<td>1800 + 6 months*</td>
<td>$200</td>
<td>3</td>
</tr>
<tr>
<td>West Virginia</td>
<td>1800</td>
<td>$134</td>
<td>3</td>
</tr>
<tr>
<td>Missouri</td>
<td>1500</td>
<td>$150</td>
<td>2</td>
</tr>
<tr>
<td>Ohio</td>
<td>1500</td>
<td>$51</td>
<td>3</td>
</tr>
<tr>
<td>Indiana</td>
<td>1500</td>
<td>$92</td>
<td>1</td>
</tr>
<tr>
<td>Tennessee</td>
<td>1500</td>
<td>$190</td>
<td>2</td>
</tr>
<tr>
<td>Virginia</td>
<td>1500</td>
<td>$280</td>
<td>2</td>
</tr>
<tr>
<td>Illinois</td>
<td>1500</td>
<td>$210</td>
<td>1</td>
</tr>
</tbody>
</table>


*On top of 1500 hours of education, Kentucky requires 6 months of experience before someone can become a cosmetologist.
consumers from potential health or safety risks and thus justify the costs. Unfortunately, little to no research has found any measurable benefits to consumers.

Proponents argue the costs of licensing to workers and consumers are necessary to weed out substandard service providers and assure quality providers. But there is little research to support the claim that licensing improves the quality of service providers. Much of the research on quality assurance through licensing regulations finds that those claims are overstated, and some research finds that regulations may even reduce quality.

For example, a person buying glasses is unlikely to see a difference in the quality of care they receive in Louisville, KY, or Jeffersonville, IN. But they are likely to see a difference in price. That’s because Kentucky requires the person who fits glasses, the optician, to first spend 2 years in school, pass 3 exams, and spend $500 in order to serve you. Indiana has no such requirement. These requirements reduce the number of opticians working in Kentucky and increase their annual wages (see Table 4) with no comparable improvement in the quality of care.
Proponents also argue that licensing protects the public health and safety from untrained practitioners. As with quality assurance arguments, there is little evidence that occupational licensing successfully protects public health and safety or the health and safety of licensees. Researchers have been unable to find any link between licensure and improved health and safety outcomes of consumers (with one exception).\textsuperscript{47} Even when there are clear health and safety risks in an occupation, there is little to no evidence that licensing even protects the workers.\textsuperscript{48}

Many Kentucky licensing requirements appear to have no basis in health and safety. For example, it requires less time and money to become an emergency medical technician, someone who provides emergency medical care and transportation to medical facilities, than it does to become a sign-language interpreter, an athletic trainer, a shampooer, a makeup artist, or an optician.

Licensing rarely improves health, safety, or quality, which is perhaps why consumer advocacy and public interest groups do not lobby for licensing.\textsuperscript{49} And if the requirements are supposed to do those things, then why are current practitioners often “grandfathered” in under new licensing laws?\textsuperscript{50}

### Table 4: Optician Licensing Requirements, per capita and Mean Wages, 2017

<table>
<thead>
<tr>
<th>State</th>
<th>Education</th>
<th>Fees</th>
<th>Exams</th>
<th>Opticians/10,000 people</th>
<th>Mean Annual Wages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennessee</td>
<td>2 years</td>
<td>$758</td>
<td>3</td>
<td>2.6</td>
<td>$37,040</td>
</tr>
<tr>
<td>Kentucky</td>
<td>2 years</td>
<td>$500</td>
<td>3</td>
<td>2.3</td>
<td>$41,050</td>
</tr>
<tr>
<td>Virginia</td>
<td>2 years</td>
<td>$350</td>
<td>2</td>
<td>2.1</td>
<td>$44,940</td>
</tr>
<tr>
<td>Ohio</td>
<td>2 years*</td>
<td>$321</td>
<td>1</td>
<td>2.8</td>
<td>$37,600</td>
</tr>
<tr>
<td>Illinois</td>
<td>No license required</td>
<td></td>
<td></td>
<td>2.6</td>
<td>$36,770</td>
</tr>
<tr>
<td>Indiana</td>
<td>No license required</td>
<td></td>
<td></td>
<td>3.2</td>
<td>$31,300</td>
</tr>
<tr>
<td>Missouri</td>
<td>No license required</td>
<td></td>
<td></td>
<td>2.6</td>
<td>$38,220</td>
</tr>
<tr>
<td>West Virginia</td>
<td>No license required</td>
<td></td>
<td></td>
<td>1.7</td>
<td>$30,720</td>
</tr>
</tbody>
</table>


*Requires experience instead of education.
Political Influence

For decades workers in certain occupations have pushed their legislators to set requirements that block competitors out of their field on the auspices of quality, health, and safety. These proponents often seek to make their occupation appear more professional through licensure. By appearing more professional and blocking others from entering the occupation, licensees reap the benefits of charging more and increasing their earning potential.\(^{51}\)

It is no surprise then that the proponents of licensure are those who are or would become licensed and their professional associations.\(^{52}\) In addition, where education requirements are necessary, schools and school associations—like cosmetology schools—receive an increased flow of students and student workers.\(^{53}\) Lobbying for licensure or increased requirements to enter an occupation in order to compel future practitioners to use your training services is textbook rent seeking.

Unfortunately, rent seeking doesn’t stop once a license is created. The very people who benefit from occupational regulations are the ones who serve as license board members. These unelected bureaucrats are licensed incumbents who are free to implement regulations and sometimes impose disciplinary actions that harm their competitors. If changes cannot be established through administrative regulation, boards also have easy access legislators who typically defer to their “expertise” rather than thoroughly review the costs and benefits of any changes. Over time this leads to ratcheting up of requirements and sweeping in competitive services, or license creep.\(^{54}\)

License creep often occurs as new services or technology becomes popular in the marketplace and is a substitute for a service offered by a licensed practice. For example, dental boards across the U.S. tried to claim that people who sold over-the-counter FDA approved teeth whitening kits in mall kiosks and spas and allowed people to use those kits on themselves in those spaces had to be licensed dentists. The Kentucky Board of Dentistry outlawed these teeth whitening operations by simply adding a few words during a larger overhaul of their practice act. That expansion, effectively giving the board the power to close some businesses that sold over-the-counter products, went almost entirely unnoticed.\(^{55}\)

Similarly, the Kentucky State Board of Hairdressers and Cosmetologists required those who did African-style hair braiding like Kine Gueye to be cosmetologists. The problem is that schools often don’t teach African hair braiding and braiders don’t use any chemicals or heat. Fortunately, African hair braiders have been exempted from Kentucky’s cosmetology scheme, but it didn’t happen without a fight.\(^{56}\)

Boards of licensure are also responsible for bringing disciplinary actions against licensees and unlicensed practitioners. However, as long as Kentucky licensing boards are able to discipline licensees and unlicensed practitioners, they and individual board members leave themselves open to antitrust litigation. According to the U.S. Supreme Court in *North Carolina*
State Board of Dental Examiners v. FTC, boards with disciplinary authority that are also made up of licensed practitioners create a conflict of interest. The case was based on a dental board composed almost entirely of practicing dentists bringing disciplinary action against teeth whitening businesses.

There may be a role for government to play in regulating occupations. But there are better mechanisms to protect health and safety or improve quality with lower costs than licensing. In fact, all consumer-driven career paths are touched by at least one of the alternatives.

Recommendations

Kentucky is positioned to lead occupational licensing reform. Kentucky is one of 11 states working with the Council for State Governments, the National Governor’s Association and the National Conference of State Legislatures on the Occupational Licensing Policy Learning Consortium. The consortium is tasked with finding best practices for occupational licensure.

Kentucky’s neighbors, Indiana and Illinois, are also part of the Occupational Licensing Policy Learning Consortium. Indiana is looking into removing licensing and instead using a titling law that would allow people to call themselves “State Certified” if they choose the government-defined career path leaving open the consumer-driven career path. Illinois is working on a sunrise provision that would conduct a thorough cost-benefit analysis to determine whether a new license would provide more benefits than costs to the Illinois economy. Kentucky received two federal grants worth $1.95 million to review and streamline licensing requirements for veterans.

Veterans are just one group affected by licensing. By looking at recommendations to reform licensing broadly, Kentucky can help veterans and the broader economy.

The Occupational Licensing Consumer Choice Act

The most effective way the General Assembly could broadly reform licensing and support the economy is by restoring the consumer-driven career path to work for more occupations. To ensure better access to goods and services for consumers, lawmakers should adopt the Occupational Licensing Consumer Choice Act (see Appendix A for the model bill).

The act would allow consumers the right to choose freely between licensed and unlicensed providers of goods and services. Workers would be able to operate without an occupational license as long as they clearly disclose that fact to prospective customers. The Act would not take away any licenses from current licensees and would allow newcomers to seek a license if they find it valuable. Therefore, any signaling benefit that licensees receive by virtue of having a state license will remain intact.

This act would not only help veterans immediately get to work after they are discharged it would also help military spouses and others who move to Kentucky. In addition, it would help
those on the lowest rungs of the economic ladder build valuable skills without being locked out of the marketplace by licensing burdens. This would help address immediate worker shortages and get more people into the workforce.

By allowing consumers to have the final word on the value of licensing, the Consumer Choice Act would help eliminate a portion of the $1.7 billion in misallocated resources caused by licensing in the state. Kentucky should free its consumers to make the choices best for them. Consumers rarely rely on licenses to ensure quality. Consumers use reputation word-of-mouth or website reviews from Yelp, Angie’s List, and TripAdvisor.63

The Consumer Choice Act also eliminates antitrust problems inherent in the design of licensing boards by ending anti-competitive barriers, solving the key problem highlighted in North Carolina State Board of Dental Examiners v. FTC.

**Review of Current Occupational Licenses**

The commonwealth can help people get to work and reduce costs to current workers by reviewing current license requirements and reducing burdens. A thorough review would help us know exactly how many people are licensed in Kentucky. It would also tell us how long it takes the average licensee to get their license and provide ways to streamline the process.

The Kentucky Governor should direct all the departments overseeing licensing boards and the Department of State for all independent licensing boards to review the commonwealth’s current occupational licenses.

The departments would work with each board and commission to undergo a comprehensive review of each occupational license type by looking at the following information:

- Any evidence of present, significant, and substantiated harms to consumers in the state from people in that occupation
- The effects of the license scope of practice, on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects
- Whether and how other states regulate the occupation
- The requirements and processes for licensure
- The number of active licensees for each type of license
- The average timeframe for approval for each type of license (past 5 years)
- The number of disciplinary actions by violation and type of disciplinary action (fines, penalties, license suspension, etc.) (past 5 years)
- Any disciplinary actions against unlicensed individuals or businesses (past 5 years)
- A compilation of all complaints received by the board (past 5 years)
The departments may recommend the legislature enact new legislation based on the guidelines for legislative recommendations in the Occupational Licensing Sunrise Act (see Appendix B) that:

- repeals the occupational licenses,
- converts the occupational licenses to less restrictive regulations (see Figure 2),
- instructs the relevant licensing board or agency to promulgate revised regulations reflecting the legislature’s decision to use a less restrictive alternatives to occupational licenses;
- changes the requisite personal qualifications of an occupational license;
- redefines the scope of practice in an occupational license; or
- reflects other recommendations to the legislature.

**Occupational Licensing Sunrise Act**

Instead of blindly signing off on new licenses, the commonwealth can thoroughly review the need for new regulations when they are proposed through a sunrise bill passed by the legislature. The cost-benefit analysis ensures that the costs of any regulation to protect health and safety is outweighed by the benefits to the public. When considering a new regulation, the Institute for Justice’s legislative counsel, Lee McGrath, established a hierarchy of regulatory options (see Figure 2).64

The Occupational Licensing Sunrise Act takes regulators through a series of questions that will lead them to an appropriate regulatory option given the risks.

Figure 2: Hierarchy of Occupational Regulation Options
Other Reforms

Last year Kentucky lifted the mandatory denial for felons applying for occupational licenses. This change was an important step for providing job opportunities and preventing recidivism.65 Repealing a similar ban for those who have defaulted on their student loans will ensure that those in default can continue to try to pay their loans while working in the job they took their loans out for. Specifically, Kentucky needs to repeal Ky. Rev. Stat. Ann. § 164.772 and § 314.091(l)(i) line “, including action by another jurisdiction for failure to repay a student loan.”

Conclusion

Nearly one in five Kentucky workers needs an occupational license. These licensing requirements protect licensees from competition with no demonstrated benefits and at great cost
to the Kentucky economy. Annually, these requirements cost 20,000 jobs and $1.7 billion in misallocated resources in the commonwealth.

Policymakers can boost Kentucky’s economy by recognizing the right of consumers to choose freely between licensed and unlicensed providers of goods and services. Short of a broad overhaul of occupational licensing, policymakers can start by reviewing current licenses and the evidence of harm that those occupations pose to the public. Once those harms are documented, policymakers can look at what type of regulation is the right fit to solve those problems and pullback on unnecessarily burdensome regulations.

Reforming Kentucky’s occupational licensing laws will create opportunities for workers, support military families, and save households money. Further, Kentucky would establish itself as an example for states wishing to boost job growth and enliven the voluntary sector of the economy without harming taxpayers in the process.
Appendix A: The Occupational Licensing Consumer Choice Act*

Summary: The Occupational Licensing Consumer Choice Act (“the Act”) provides consumers with the right to choose a worker who best serves their needs irrespective of whether that person holds an occupational license from the commonwealth of Kentucky. It provides that business owners, entrepreneurs, and workers in professions otherwise licensed by the commonwealth of Kentucky may operate without an occupational license if they disclose that fact to prospective consumers. Workers and entrepreneurs may assert such disclosure as a defense to enforcement of occupational licensing laws and regulations.

Section 1. Purpose

The Purpose of the Act is to:

(A) Protect workers from unnecessary and burdensome occupational licensing regulations

(B) Expand opportunities, promote innovation and increase competition by allowing consumers to make informed decisions in hiring and contracting with workers they choose;

(C) Empower industry groups, trade organizations, and similar private associations to self-regulate without the involvement and participation of government; and

(D) Make regulators more efficient by shifting resources away from enforcing occupational licensure to better focus on regulating for the purposes of protecting health and safety through different types of regulation.

Section 2. Definitions

The following definitions apply in this Act:

(A) “Lawful occupation” means a service, profession, or line of work in the sale of goods or services that is not otherwise illegal irrespective of whether the occupation requires an occupational license in order to operate.

(B) “Occupational license” means any requirement under a state authority to obtain a license, permit, registration, certificate, or other evidence of state authority in order to work in a lawful occupation.

(C) “State authority” means any state agency, department, board, commission, or other governing body with state authority, and includes executive and administrative officers of such bodies.

(D) “Licensing regulation” means any statute, rule, ordinance, policy, enforcement practice or action, or any other requirement by a state authority to require a license in order to work in a lawful occupation.

(E) “Agreement for service” means a verbal or written contract to provide the services of a lawful occupation for consideration.
“Non-license disclosure” means a disclosure that a person is working in a lawful occupation without a license. A non-license disclosure must include the following elements:

1. A conspicuous statement that the person is not licensed by a state authority;
2. The physical address and phone number where the person may be contacted;
3. The dated signature of the person engaged in the lawful occupation; and
4. The dated signature of the consumer entering the agreement for service.

A non-license disclosure may include the name of any industry group, trade organization, or association to which the individual belongs, along with a statement that the person is certified, recognized, or otherwise issued a qualification by such a group, trade organization, or association.

Section 3. The freedom to work without a state-issued occupational license

A person otherwise subject to occupational licensure by a state authority has a right to operate in the commonwealth of Kentucky without an occupational license if it provides a non-license disclosure to its customers before entering an agreement for service.

Workers engaged in a lawful occupation have the right to operate in the commonwealth of Kentucky without an occupational license from a state authority if they provide a non-license disclosure to their customers before entering an agreement for service.

A person otherwise subject to an occupational license requirement may not be denied, and is entitled to, any benefit provided to a person who holds an occupational license so long as the person makes a non-license disclosure to a consumer before entering an agreement for service.

A state authority must disclose on its internet website and all written or digital and online application forms for occupational licenses that a person has a right to operate in the commonwealth of Kentucky without an occupational license otherwise required if a non-license disclosure is made to that person’s customers before entering an agreement for service.

This Act shall not be construed to impose any requirement on workers engaged in a lawful occupation that is not the subject of licensing regulation by a state authority.

This Act shall not be construed (1) to impose any requirement on employers or consumers to employ or contract with an unlicensed workers or (2) to preempt federal regulations.

Section 4. Defense and relief

It is a defense to any licensing regulation, civil or criminal, by a state authority for the purpose of enforcing an occupational license requirement on a lawful business if the person properly made a non-license disclosure in the agreement for service that is the subject of such enforcement.

Production of a non-license disclosure signed by both parties shall require immediate dismissal with prejudice of any licensing regulation, civil or criminal, by a state authority for the
purpose of enforcing an occupational license requirement on a person engaged in a lawful occupation.

(C) A person that prevails in asserting a defense under Section 4(A) shall be entitled to reasonable costs and attorney’s fees incurred in asserting such a defense.

Section 5. Exceptions:

Section 6. Limitation. Nothing in the chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

Section 7. Supremacy clause. The provisions of this Act supersede all other statutory provisions of the commonwealth of Kentucky.

Section 8. Effective date.

*Source: Model legislation by the Texas Conservative Coalition Research Institute and Institute for Justice.*
Appendix B: Occupational Licensing Sunrise Act*

A bill for an act relating to the establishing of occupational regulations; establishing the state policy for the regulation of occupations, specifying criteria for government regulation to increase opportunities, promote competition, encourage innovation, protect consumers, comply with federal and state antitrust laws; establishing canons of statutory interpretation; and proposing coding for new law as ____________, chapter ____.

BE IT ENACTED BY THE LEGISLATURE OF THE COMMONWEALTH OF KENTUCKY:

100.01 Policy. For occupational regulations and their boards, it is the policy of the state that:

1. The right of an individual to pursue a lawful occupation is a fundamental right.

2. Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety.

3. Legislative leaders will assign the responsibility to review legislation related to occupational regulations.

100.02 Definitions.

Subdivision 1. Scope. For the purposes of this chapter, the words defined in this section have the meaning given.

Subd. 2. Government certification. “Government certification” is a voluntary program in which the state grants nontransferable recognition to an individual who meets personal qualifications established by the legislature. Upon receiving initial and continuing approval from the government, the individual may use “government certified” or “state certified” as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title “government certified” or “state certified.” In this chapter, “government certification” is not intended to be synonymous with “occupational license” or to reflect credentials, such as those used for medical board certification or held by a certified public accountant, which are prerequisites to working lawfully in an occupation.

Subd. 3. Government registration. “Government registration” means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. “Government registration” does not include personal qualifications and is not transferable but it may require a bond or insurance. Upon the government’s receipt of notice, the individual may use “government registered” as a designated title. A non-registered individual may not perform the occupation for compensation or use
“government registered” as a designated title. In this chapter, “government registration” is not intended to be synonymous with “occupational license” or to reflect credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.

Subd. 4. **Lawful occupation.** “Lawful occupation” means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Subd. 5. **Least restrictive regulation.** “Least restrictive regulation” means, from least to most restrictive,

1. market competition,
2. third-party or consumer-created ratings and reviews,
3. private certification,
4. voluntary bonding or insurance,
5. specific private civil cause of action to remedy consumer harm,
6. deceptive trade practice act,
7. mandatory disclosure of attributes of the specific good or service,
8. regulation of the process of providing the specific good or service,
9. regulation of the facility where the specific good or service is sold,
10. inspection,
11. bonding,
12. insurance,
13. government registration,
14. government certification,
15. specialty occupational license for medical reimbursement, and
16. occupational license.

Subd. 6. **Occupational license.** “Occupational license” is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

Subd. 7. **Occupational regulation.** “Occupational regulation” means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes government registration, government certification, and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual’s personal qualifications to perform a lawful occupation.

Subd. 8. **Personal qualifications.** “Personal qualifications” are criteria related to an individual’s personal background and characteristics including completion of an approved educational
program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral character, criminal history, and completion of continuing education.

Subd. 9. **Private certification.** “Private certification” is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications established by the private organization. The individual may use a designated title of “certified” in conjunction with the private organization’s name, as permitted by the private organization.

Subd. 10. **Specialty occupational license for medical reimbursement.** “Specialty occupational license for medical reimbursement” means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of medical services based on meeting personal qualifications established by the legislature. A private company may recognize this credential. Notwithstanding this specialty license, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty license to provide the identified medical services for compensation, but the non-licensed individual will not qualify for payment or reimbursement from a government agency.

**100.03 Sunrise Review of Occupational Regulations.**

Subdivision 1. **Sunrise analysis of legislation involving occupational regulations.** The Speaker of the House of Representatives, the President of the Senate and the chair each relevant standing committee of the Legislature will assign to the _______ staff (hereafter “staff”) the responsibility to analyze proposals and legislation (1) to create new occupational regulations or (2) modify existing occupational regulations.

*(See footnote 77 for a discussion of the legislature giving the responsibility to analyze occupational licenses to a staff in the legislative or executive branch. This responsibility may also be assigned to an ad hoc commission or interim study committee.)*

Subd. 2. **Sunrise reviews.** (a) The staff is responsible for reviewing legislation to enact or modify an occupational regulation to ensure compliance with the policies in section 100.01.

(b) The staff will require proponents to submit evidence of present, significant, and substantiated harms to consumers in the state. The staff also may request information from state agencies that contract with individuals in regulated occupational and others knowledgeable of the occupation, labor-market economics, or other factors.

(c) The staff will determine if the proposed regulation meets the state’s policy in section 100.01(2) of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms.
(d) The staff’s analysis in (c) will employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in Section 100.02 subdivision 5 (1)-(4).

(e) The staff may rebut the presumption in (d) if it finds credible empirical evidence of present, significant and substantiated harm to consumers that warrants enacting a regulation to protect consumers. If evidence of such harm is found, the staff will recommend the least restrictive government regulation to address the harm, as listed in Section 100.02 subdivision 5 (5)-(16).

(f) The staff will use the following guidelines to form its recommendation in (e). If the harm arises from:

1. contractual disputes, including pricing disputes, staff may recommend enacting a specific civil cause of action in small-claims court or district court to remedy consumer harm. This cause of action may provide for reimbursement of the attorney’s fees or court costs, if a consumer’s claim is successful;

2. fraud, staff may recommend strengthening powers under the state’s deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service;

3. general health and safety risks, staff may recommend enacting a regulation on the related process or requiring a facility license;

4. unclean facilities, staff may recommend requiring periodic facility inspections;

5. a provider’s failure to complete a contract fully or to standards, staff may recommend requiring the provider to be bonded;

6. a lack of protection for a person who is not a party to a contract between providers and consumers, staff may recommend requiring the provider have insurance;

7. transactions with transient, out-of-state, or fly-by-night providers, staff may recommend requiring the provider register its business with the secretary of state;

8. a shortfall or imbalance of knowledge about the good or service relative to the seller’s knowledge (asymmetrical information), staff may recommend enacting government certification;

9. an inability to qualify providers of new or highly-specialized medical services for reimbursement by the state, staff may recommend enacting a specialty license for
medical reimbursement;

10. a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license; and

11. the need to address multiple types of harm, staff may recommend a combination of regulations.

(g) The staff’s analysis of the need for regulation in (e) will include the effects of legislation, including the legislation’s scope of practice, on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The staff’s analysis of the need for regulation in (e) also will compare the legislation to whether and how other states regulate the occupation.

(i) The staff will report its findings and recommendations to the initial and subsequent committees that will hear the legislation. The report will include recommendations addressing:

1. the type of regulation, if any;

2. the requisite personal qualifications, if any; and

3. the scope of practice, if applicable.

Subd. 3. Rule. The House of Representatives and the Senate will each adopt a rule requiring a committee considering legislation to enact or modify an occupational regulation to receive the staff’s analysis and recommendations in subdivision 2 prior to voting on the legislation.

100.04 Interpretation of Statutes and Rules. In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy or practice, the following canons of interpretation are to govern, unless the regulation is unambiguous:

1. Occupational regulations will be construed and applied to increase economic opportunities, promote competition, and encourage innovation;

2. Any ambiguities in occupational regulations will be construed in favor of workers and aspiring workers to work; and

3. The scope of practice in occupational regulations is to be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.
100.05 Construction. Nothing in section 100.03 shall be construed (1) to require an employer or consumer to employ or contract with a worker who is not licensed or state certified or (2) to preempt federal regulations.

100.06 Effective date. This chapter is effective on _____________.

*Source: Much of this model legislation was taken from the Institute for Justice’s Occupational Licensing Review Act.
## Appendix C: Kentucky Agencies or Boards Responsible for Occupational Licensing, Certification, or Registration

<table>
<thead>
<tr>
<th>Board</th>
<th>Department</th>
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<tr>
<td>Division of Building Codes Enforcement</td>
<td>Department of Housing, Buildings and Construction</td>
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<td>Division of Fire Prevention</td>
<td>Department of Housing, Buildings and Construction</td>
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<td>Division of Heating, Ventilation and Air Conditioning</td>
<td>Department of Housing, Buildings and Construction</td>
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<td>Division of Plumbing</td>
<td>Department of Housing, Buildings and Construction</td>
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<td>Electrical Division</td>
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<td>Department of Insurance</td>
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<td>Department of Motor Vehicles</td>
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<td>Alcoholic Beverage Control</td>
<td>Department of Professional Licensing</td>
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<td>Board of Occupational Therapy</td>
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<td>Board of Registration for Professional Geologists</td>
<td>Department of Professional Licensing</td>
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<td>Board of Speech-Language Pathology and Audiology</td>
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<td>Department of Charitable Gaming</td>
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<td>Directory of Registered Athlete Agents</td>
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<td>Kentucky Applied Behavior Analysis Licensing Board</td>
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<td>Kentucky Board of Alcohol and Drug Counselors</td>
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<td>Kentucky Board of Durable Medical Equipment Suppliers</td>
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<td>Kentucky Board of Home Inspectors</td>
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<td>Kentucky Board of Licensed Diabetes Educators</td>
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<td>Kentucky Board of Licensed Professional Counselors</td>
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<td>Kentucky Board of Licensure and Certification for Dietitians and Nutritionists</td>
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<td>Kentucky Board of Licensure for Long-Term Care Administrators</td>
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<td>Kentucky Board of Licensure for Massage Therapy</td>
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<td>Kentucky Board of Licensure for Pastoral Counselors</td>
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<td>Kentucky Board of Licensure for Private Investigators</td>
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<td>Kentucky Board of Licensure for Professional Art Therapists</td>
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<td>Kentucky Board of Licensure of Marriage and Family Therapists</td>
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<td>Kentucky Board of Ophthalmic Dispensers</td>
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<td>Kentucky Board of Prosthetics, Orthotics, and Pedorthics</td>
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<td>Kentucky Board of Veterinary Examiners</td>
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<td>Kentucky Licensing Board for Specialists in Hearing Instruments</td>
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<td>Kentucky Real Estate Commission</td>
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<td>Registry for Secondary Metals Recyclers</td>
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<td>State Board of Podiatry</td>
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<td>Kentucky Bar Associations</td>
<td>Kentucky Supreme Court*</td>
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<td>Board of Auctioneers</td>
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<td>Board of Embalmers and Funeral Home Directors</td>
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<td>Board of Emergency Medical Services</td>
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<td>Board of Physical Therapy</td>
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<td>Board of Respiratory Care</td>
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<td>Boxing and Wrestling Commission</td>
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<td>Division of Regulated Child Care</td>
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<td>Education Professional Standards Board</td>
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<td>Kentucky Board for Medical Imaging and Radiation Therapy</td>
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<td>Kentucky Board of Hairdressing and Cosmetologists</td>
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<td>Kentucky Board of Landscape Architects</td>
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<td>Kentucky Board of Nursing</td>
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<td>Kentucky Board of Optometric Examiners</td>
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<td>Kentucky Board of Social Work</td>
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<td>Kentucky State Board of Chiropractic Examiners</td>
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<td>Real Estate Appraisers Board</td>
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<td>State Board of Accountancy</td>
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<td>State Board of Licensure for Professional Engineers and Land Surveyors</td>
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<td>State Board of Medical Licensure</td>
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*The executive branch has no authority over the Kentucky Supreme Court*
Possible sidebar: Licensing Stops Free Speech

John Rosemond has the longest-running newspaper advice column—published in more than 200 papers nationwide. With a master’s degree in psychology and a North Carolina psychologist license, John has written more than a dozen books on parenting.

In 2013, John was told by the Kentucky attorney general that he had to stop publishing his column in the *Lexington Herald-Leader* or face fines and jail. According to the Kentucky Board of Examiners of Psychology, publishing a “Dear Abby” style newspaper column constituted the “unlicensed practice of psychology” when it was published in a Kentucky newspaper. In order to continue publishing his article in Kentucky he would have needed to obtain a Kentucky occupational license in psychology.78

John Rosemond with the help of the Institute for Justice sued Kentucky. A federal court agreed with John that merely sharing opinions and advice about common life issues is a clear expression of the freedom of speech and therefore does not require a license.79 John’s story is representative of the expanded influence of licensing boards and licensees to be able to stop their competition.

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Calculation: Number of licensees (400,000) * conservative wage premium (10%) * Labor demand elasticity (0.5)


The $1.7 billion in misallocated costs is based on an estimate using data from Kleiner & Vorotnikov, 2018. Additional estimates using Kleiner & Vorotnikov, 2017, put the misallocated costs between $2.7 and $3.8 billion. To calculate these numbers, I used endnote 3 from Kleiner, 2015. The wage premium results for Kentucky found in Kleiner & Vorotnikov, 2018, were not statistically significant. The national wage premium was 13.88% in Kleiner & Vorotnikov, 2018. I used the conservative estimate of 10% from Kleiner & Krueger, 2013.

Data sources:

19.43% - Percent of licensees in the Kentucky workforce in 2013, Kleiner & Vorotnikov, 2018.
10% - Wage premium, Kleiner & Krueger, 2013.

Calculations:

$47,462 - Kentucky Average annual earnings of licensees: (($39,520*178,820)/((178,820*19.43%*10%)+(178,820-(178,820*19.43%)))
$4,315 - Average economic rent of KY licensee: ($47,462)-($47,462/(1+10%))
$1,723,177,300 - Total misallocated resources


32 Kentucky requires its licensing agencies to provide a temporary license to spouses of active-duty military and veterans if they have an active license from another state. The temporary license is good for 6 months after which they will need to meet the qualifications for the Kentucky license. However, if they state they are moving from does not license their occupation they would not be able to get a license. Ky. Rev. Stat. Ann. § 12.245; Ky. Rev. Stat. Ann. § 12.357.


36 See endnote [18].


62 The Occupational Licensing Consumer Choice Act model legislation was written by the Texas Conservative Coalition Research Institute and the Institute for Justice.


Deceptive trade practices acts are an effective means to protect consumers from fraud.

Mandatory disclosures may reduce misleading or confusing attributes. Disclosures that favor certain goods or services, such as a country-of-origin label, should not be used.

A housing/building code is an example of a regulation of a process; it may be more effective than enacting occupational licensing of tradesmen.

A facility requirement may ensure that equipment, such as an eyewash station, is available to address accidents or emergencies.

Periodic inspections protect consumers from unsanitary facilities.

Requiring bonding protects against a provider’s failure to fulfill contractual obligations.

Requiring insurance protects against a provider’s damaging a consumer or third party.

Registering with the secretary of state or other agency protects against fly-by-night providers.

Government certification is a voluntary signal that addresses the concern of asymmetrical information.

Specialty licenses allows for medical reimbursement without disputes over scope of practice.

Only occupational licensing exposes board members to antitrust litigation. The 15 alternatives to licensing do not include that risk.

There are many places in state government for legislative leaders to place the responsibility to perform the analysis needed for Sunrise and Sunset reviews. It could be given to a subcommittee of the legislature or the legislature’s non-partisan staff. Another possibility is to give the responsibility to an agency or department in the executive branch. For example, Colorado is recognized for doing these reviews well. The state puts the responsibility to perform both reviews in the executive branch. Specifically, the responsibility is with the Colorado Office of Policy, Research & Regulatory Reform (COPRRR) in the Department of Regulatory Agencies (DORA). The key features are (1) the analysts doing the analysis are insulated to the greatest extent possible from lobbying and political pressure by industry advocates and (2) the agency or staff must issue its recommendations prior to the initial committee in the legislature voting on the proposed legislation.
