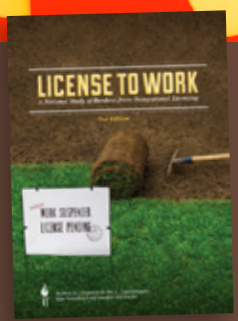
UNTANGLING OCCUPATIONAL LICENSING RED TAPE

A Quick Guide for Reform



read the full report

LICENSE TO WORK

www.IJ.org/ltw

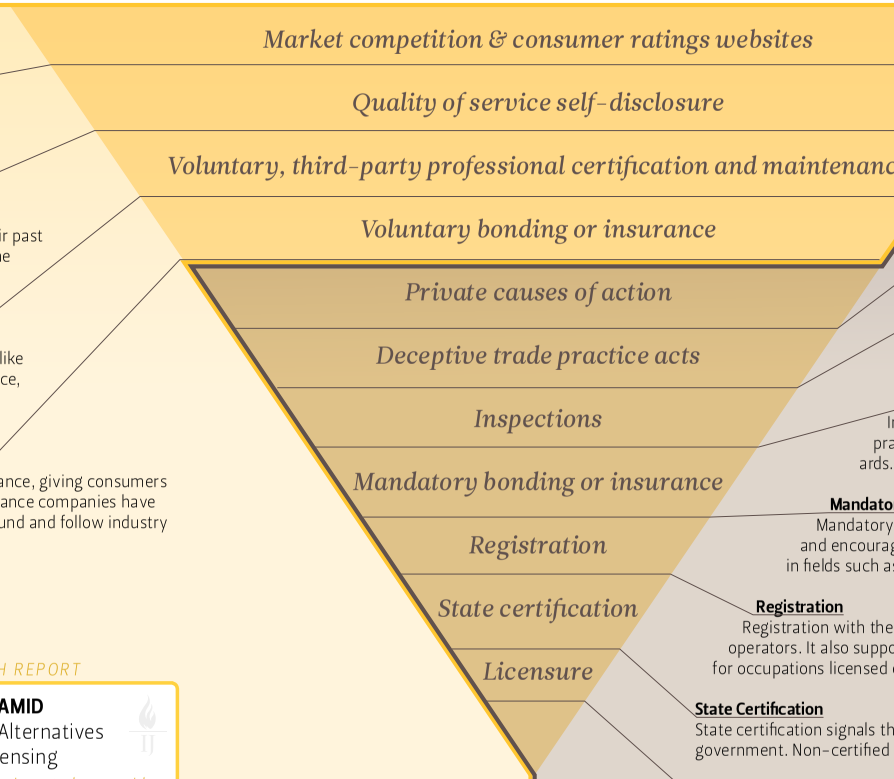
The Inverted Pyramid: A Hierarchy of Less Restrictive Alternatives to Licensing

Occupational licensing is the most burdensome way to regulate work. It creates barriers for aspiring workers, limits competition, raises consumer prices and inhibits mobility—with little evidence of improved quality or consumer protection. Licensing reform starts by recognizing that there are alternatives, both voluntary and regulatory, that protect consumers without putting up roadblocks to honest work.

Before licensing—or continuing to license—an occupation, lawmakers should demand more than insiders' anecdotes. Licensing should be based only on empirical evidence of widespread, significant and permanent harm to public health and safety that cannot be addressed by the less restrictive alternatives presented here.

Voluntary or Non-Regulatory Options

Government Interventions



Market Competition & Consumer Ratings Websites
Markets harness the power of reputation through word of mouth and online platforms like Yelp, Google and Angie's List. 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.

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 attorneys' 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 and beauty care, inspections 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.

READ THE IN-DEPTH REPORT

THE INVERTED PYRAMID
10 Less Restrictive Alternatives to Occupational Licensing
http://ij.org/report/the-inverted-pyramid

Strategies for Occupational Licensing Reform

Occupational licensing reform, championed by policymakers and scholars across the ideological spectrum, can expand economic opportunity without sacrificing public safety. The following strategies offer lawmakers concrete ways to rein in out-of-control licensing and mitigate its ill effects.

Repeal needless licenses—and refuse to adopt new ones
Use the inverted pyramid to examine current licenses: Is there empirical evidence of significant, widespread and permanent harm in the field? Are there less restrictive alternatives to licensing? Repeal needless licenses and replace them, if necessary, with less restrictive regulations. Apply the same analysis when new licensing laws are proposed.

Scale back anticompetitive licensing laws and policies
Identify and eliminate "licensing creep"—anticompetitive licensing regulations, often imposed by licensing boards, that encroach on competing fields or outlaw innovative services.

Codify in statute the right to engage in a lawful occupation
Give aspiring workers and entrepreneurs the chance to take unnecessary, anticompetitive licensing restrictions to court—and win.

Implement meaningful sunrise and sunset reviews of licensing laws
Charge a non-partisan, independent agency with producing written reports evaluating the need for proposed and existing licenses. Give it a mandate to use the inverted pyramid to recommend less restrictive regulatory alternatives to licensing.

Rein in anticompetitive behavior by licensing boards
Establish an oversight body to actively supervise licensing boards. Give the oversight body a mandate to promote competition and favor less restrictive regulatory alternatives, curbing boards' tendency toward anticompetitive behavior and reducing the risk of federal antitrust liability.

Strengthen the rights of people with a criminal record to gain meaningful employment
Curtail license denials based on irrelevant or long-past criminal records. Require case-by-case decisions on license applicants, demand substantial proof of risk of harm to deny a license, and allow applicants to seek a decision before investing in costly education, training or testing.

Improve interstate mobility first by eliminating licensing barriers
Before establishing reciprocity agreements or standardizing licensing requirements, ask whether there is substantial proof that licensing addresses a real problem. If not, tearing down licensing barriers is a better way to improve geographic mobility and expand economic opportunity.

To learn more about occupational licensing and strategies for reform, visit
OccupationalLicensing.com
or contact IJ Senior Legislative Counsel Lee McGrath at lmcgrath@ij.org.

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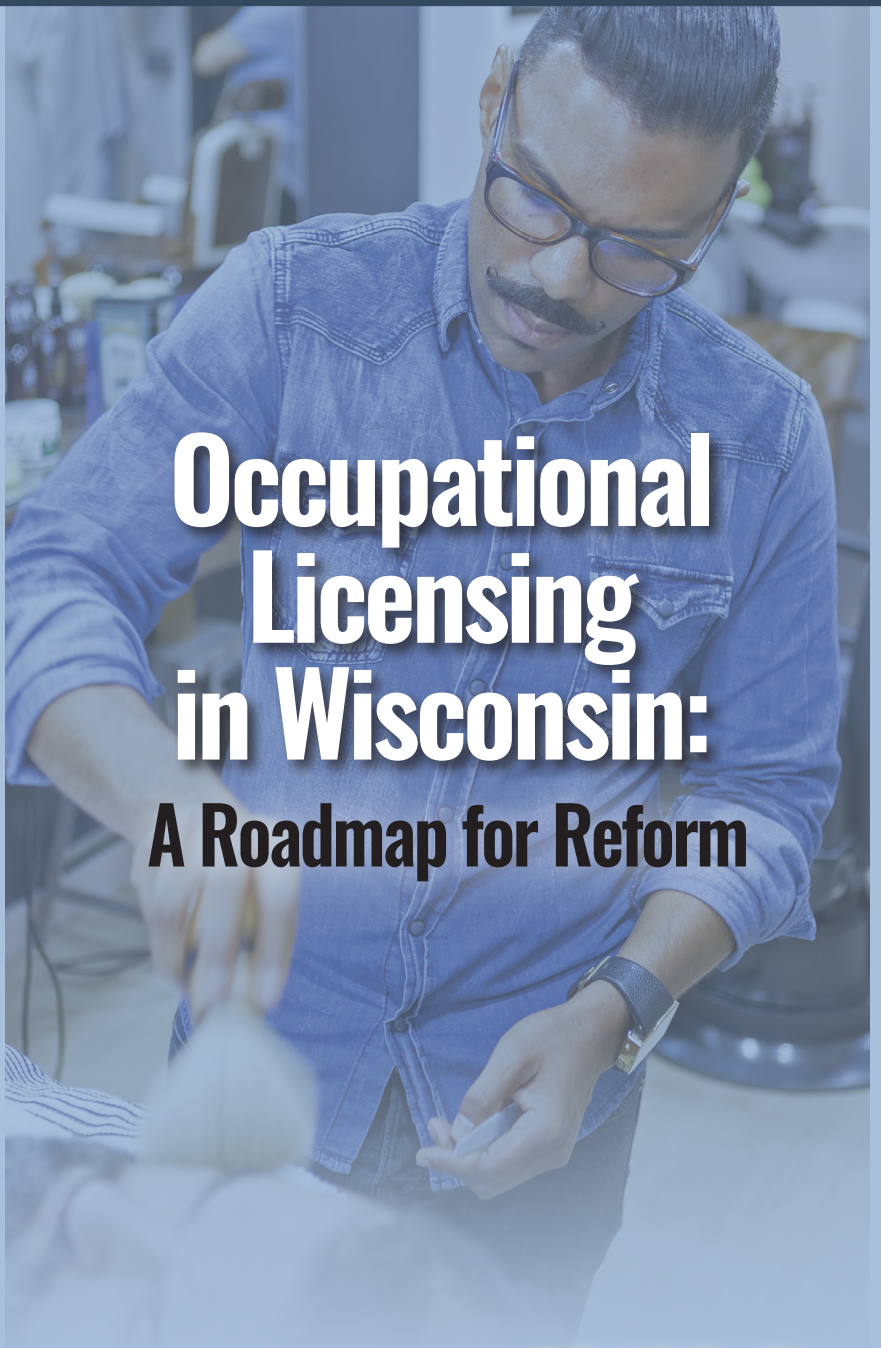

Occupational Licensing in Wisconsin:

A Roadmap for Reform

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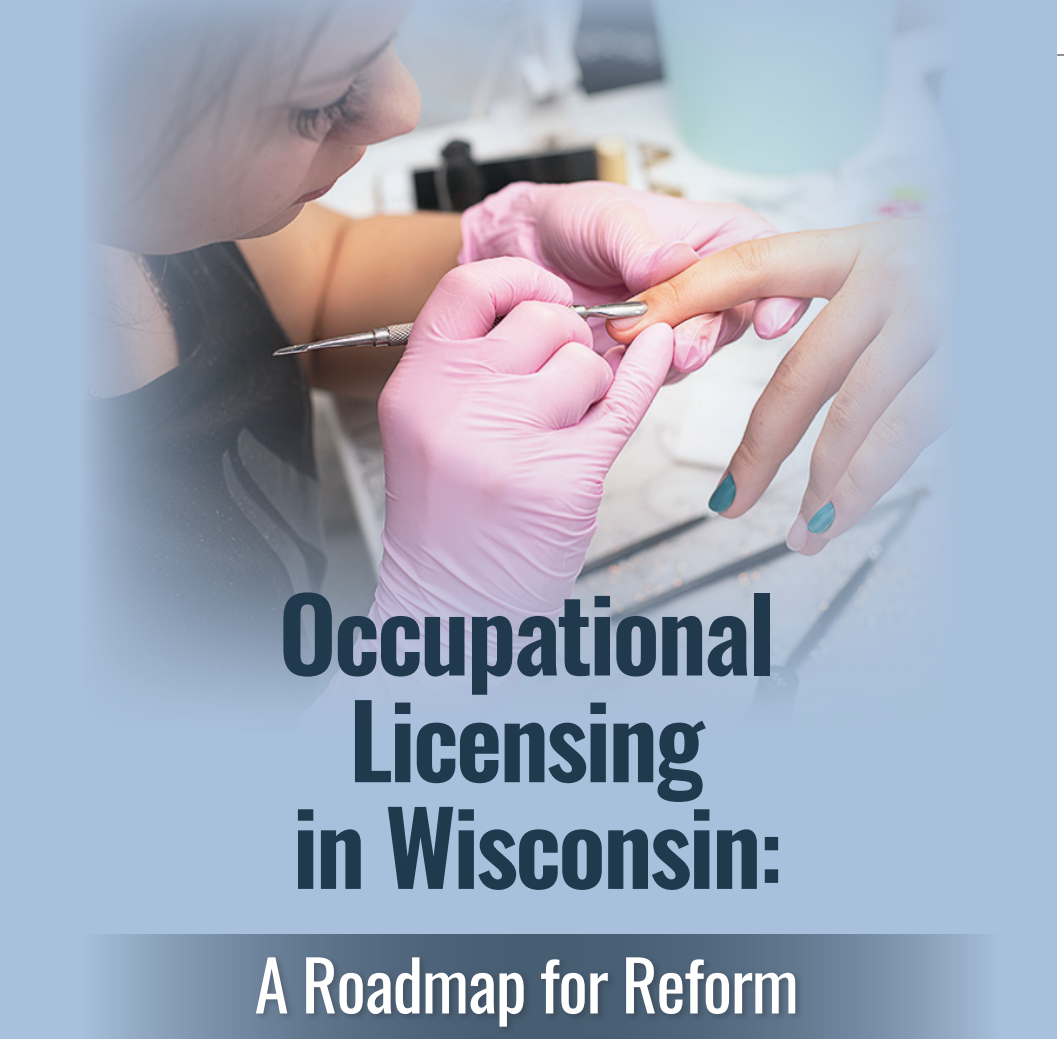


Occupational Licensing in Wisconsin:

A Roadmap for Reform

By Julie Grace and Kyle Koenen

For decades, the trends in occupational licensing were upward: more professions licensed, regulatory burdens imposed, educational requirements established and costs forced on aspiring workers.

But over the past few years, there has been a subtle sea change. The administrations of Presidents Barack Obama, Donald Trump and Joe Biden raised concerns about and highlighted the negative consequences of licensing on individual opportunity and the overall economy.

Governors and legislators from both sides of the aisle are working together to adopt alternatives to licensing and to pass reforms that make it easier for workers to enter their desired fields. University researchers and think tank scholars have quantified the impact of

Licensed California social worker Meggan Thompson moved to Wisconsin for a better quality of life. Despite her California license and 12 years of experience, Thompson waited more than a year to secure a Wisconsin license.

licensing on employment, income, mobility, competition and innovation. Courts cast a jaundiced eye at licensing regimes that promote self-dealing or antitrust practices.

This stems from a growing recognition that licensing often pits those with a license — market participants — against those who need to attain them. When a profession successfully lobbies state policymakers to create a new license, it is those in the field who usually set the requirements for others to follow. Licensing boards and advisory councils are empowered to establish standards for both license holders and those who aspire to the profession.

These requirements can be used to fence out competition and artificially inflate prices for consumers. They often erect significant barriers to newcomers, especially those who are economically disadvantaged. This, in turn, suppresses competition, ultimately harming consumers and stifling innovation.

The justification for state licensing regimes is that they protect public health and safety. It's revealing, however, that concerned or injured consumers are rarely the ones advocating for professions to be regulated. It's almost always practitioners who lobby lawmakers for state licensure.

> The state requires 1 million Wisconsinites to secure these government permission slips for 280 credential types.

The good news is that efforts to roll back occupational licensing or limit its effects on workers and consumers are gaining momentum nationwide. In just the past two years, numerous states have adopted significant reforms that streamline the licensing process, establish clear and narrow requirements for the creation of new licenses and/or require licenses to be eliminated if a benefit to public well-being cannot be established.

The bad news is that Wisconsin is lagging in this effort. The state currently requires 1 million[1] Wisconsinites to secure these government

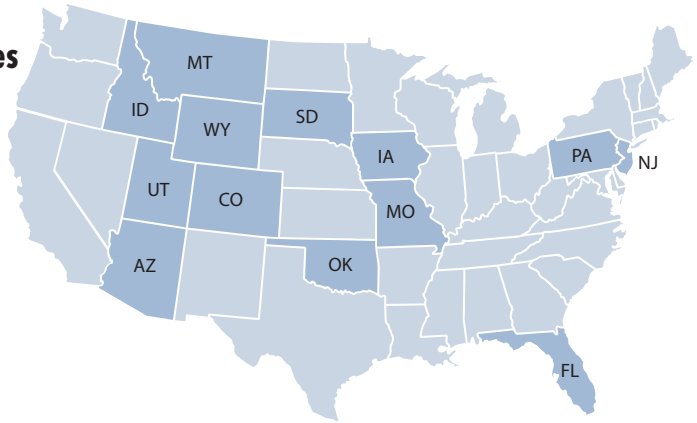
permission slips for 280 credential types. Licensed practitioners who move to Wisconsin from other states sometimes wait months or longer to attain a license. Entrepreneurs, especially those with limited resources, are effectively shut out of entire fields.

Licensing requirements can be used to fence out competition.

The requirements also can be arbitrary. Wisconsin cosmetologists, for example, are required to have 1,550 hours of training, while emergency medical technicians are only required to have 180 hours. Wisconsinites need a license if they want to be an auctioneer, manicurist or landscape architect, but not if they want to be governor, a state legislator or attorney general.

For the sake of workers, consumers, economic growth and basic fairness, it's time for Wisconsin policymakers to adopt reforms that have been sweeping across other states.

Thirteen states have enacted some form of universal licensure recognition.



Our organizations have researched[2] and reported on occupational licensing for years. In this report, we present policy solutions that can reduce the regulatory burden on license holders and aspiring workers while maintaining health and safety for Wisconsin residents.

Universal licensure recognition

Until recently, universal licensure recognition was just an innovative policy idea. It first began with targeted universal reciprocity for military spouses, who often face unique challenges with licensing due to the transient nature of military service. In 2011, Wisconsin passed legislation allowing for reciprocal credentials for military spouses and in 2020 expanded this to service members and former service members.

In 2019, Arizona became the first state to adopt universal licensure recognition, making it easier for

licensed professionals who move there to get a state license and start working. While the Arizona law does not provide automatic reciprocity with other states, in most cases the credentials of new residents are "recognized" by the respective licensing board or agency if the applicants are in good standing in their home state, have been licensed for at least a year and pay the required fees.

Universal license recognition subsequently has gained support across the nation in both red and blue states and is now law in some form in 13 states,[3] adopted most recently in Iowa,[4] Missouri and Oklahoma. Making it easier for qualified licensed professionals to work in a state can help attract workers and families. Since requirements for a license can vary dramatically from state to state, simplifying the process can draw more talent to Wisconsin.

Skills and qualifications are not lost when people move across state lines. In fact, throughout the pandemic, most states adopted temporary measures allowing for licensure recognition for workers in health-related fields. From April

2020 through May 2021, more than 2,500[5] health care workers received temporary licenses to practice in Wisconsin, either in person or via telehealth. This policy was implemented and renewed by at least three executive orders[6] during 2020 and 2021.

In the first year that Arizona's law was in effect prior to the COVID-19 pandemic, 1,454 people already licensed in other states applied for licenses and 1,186 were granted licenses in Arizona.

At least 14 states have adopted sunrise review processes.

Legislators should adopt the best aspects of these various laws when drafting Wisconsin's version. Missouri,[8] Colorado[9] and Utah,[10] for instance, do not require applicants to establish residency to apply for a license. This is especially appealing for those living in border communities. Missouri's law, which passed with bipartisan support, also removes the condition that the originating state's license be "substantially similar." As long as individuals have been licensed for more than a year in another state, they can apply for that license in Missouri.

Iowa's law[11] considers work experience when evaluating applicants' qualifications for licensure, which means the state won't necessarily require additional education or training if the applicants' previous state did not require an occupational license but they have three or more years of related experience. This saves experienced professionals from undergoing additional training for a field they have already worked in for years.

We recommend that Wisconsin join the growing list of states that have adopted universal license recognition. The Badger State already allows for licensing recognition for military members and spouses, and the success of the temporary COVID-19 measures indicates that these policies should be made permanent.

Sunrise review

Often when an industry or occupation lobbies for state credentialing, it seeks the most restrictive form of regulation — an occupational license. This approach not only ignores the fact that licenses are burdensome and often unnecessary but overlooks a range of less restrictive options. When legislation is introduced to create a new license, sunrise reviews provide lawmakers with clear alternatives and the least restrictive form of regulation needed to address the perceived public health or safety risk.

The process works like this: When a professional licensing bill is introduced, an entity (ideally the state audit bureau) assesses the potential 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 problem,

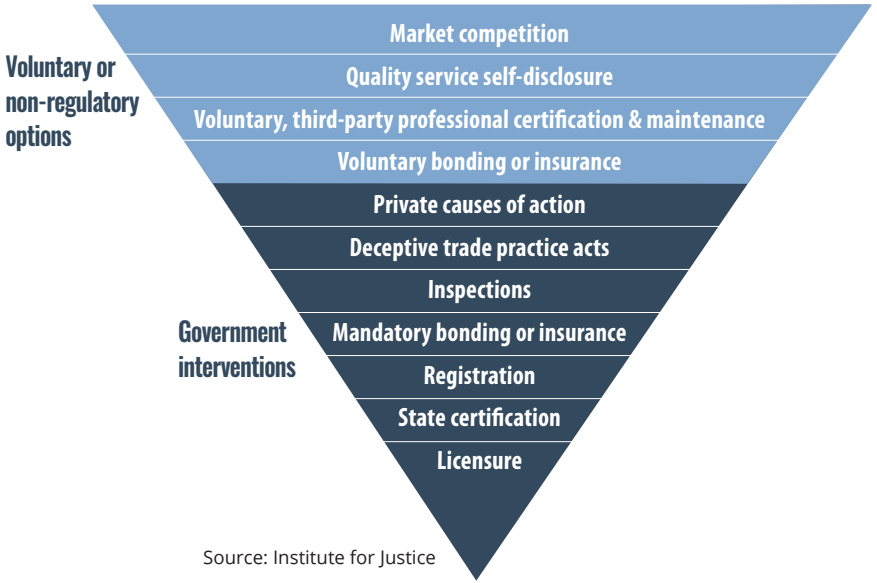
Sunrise review process

Step 1	Step 2	Step 3	Step 4
A bill is introduced to license a new profession.	The Legislative Audit Bureau (LAB) prepares a sunrise review report.	The LAB makes recommendations and submits the report to the Legislature.	The Legislature takes action on the recommendations.

an analysis of requirements for the occupation in other states and the economic impact of the proposed requirement on individuals and businesses.

An important aspect of the review is the analysis of the least restrictive form of regulation needed to protect the public. The options are often presented as a binary choice: A profession is either licensed or it's not. But the Institute for Justice has compiled a range of options[12] — some voluntary, some involving government — that are less restrictive than a license. Examples include certification, registration, insurance, inspections, voluntary insurance, voluntary certification or market competition. Figure 1 shows the Institute for Justice's model for alternatives to licensing, ranging from the least restrictive at the top to the most restrictive at the bottom.

Figure 1 **The inverted pyramid:** A hierarchy of alternatives to licensing



Source: Institute for Justice

Table 1

States with sunrise review laws for occupational licensure

State	Governor's party	Party that controls legislature
Arizona	Republican	Republican
Colorado	Democrat	Democrat
Florida	Republican	Republican
Georgia	Republican	Republican
Hawaii	Democrat	Democrat
Idaho	Republican	Republican
Maine	Democrat	Democrat
Minnesota	Democrat	Split
Nebraska	Republican	Nonpartisan
Ohio	Republican	Republican
Vermont	Democrat	Democrat
Virginia	Democrat	Democrat
Washington	Democrat	Democrat
West Virginia	Republican	Republican

In the last legislative session, for instance, a bill[13] was introduced to license public insurance adjusters (there were fewer than 10 practicing in the state) due to concerns about possible out-of-state, fly-by-night providers. The bill eventually was amended to require registration for out-of-state providers but make registration optional for those from Wisconsin — a far more reasonable, less onerous solution.

Whenever new licensing legislation is introduced, sunrise reviews can provide legislators with valuable information about whether state regulation is needed and, if so, if less restrictive forms of regulation would address the issue. At least 14 states,[14] both red and blue, have adopted sunrise review processes. Table 1 shows which states have adopted sunrise review laws and the party control in those states.

We recommend the Legislature adopt a sunrise review for Wisconsin, completed by the nonpartisan, independent Legislative Audit Bureau (LAB), to assess the impact of a proposed occupational license and determine the best form of regulation for identified public safety risks. The LAB is best suited to conduct the reviews since it is free from political pressure or lobbying efforts.

Sunset review

Sunset reviews evaluate the effectiveness and necessity of existing occupational licenses. Sunset review

Sunset review process

Step 1	Step 2	Step 3	Step 4
The Legislature determines an annual license review schedule.	The Legislative Audit Bureau (LAB) conducts a sunset review of existing licenses according to the schedule set by the Legislature.	The LAB makes legislative recommendations based on established review criteria.	The Legislature acts on the LAB's recommendations.

legislation sets a schedule — typically every five years — for a group of licenses to be examined by a nonpartisan agency like the Legislative Audit Bureau. The agency would determine whether a recognized and present harm to the public would occur if the profession were not licensed.

Ideally, the review would be conducted by a nonpartisan entity and free from the outside influence of licensing boards, interest groups or licensed professionals. A thorough review should include criteria similar to those outlined in the sunrise review process, such as an examination of whether the profession is licensed in other states. If there is not consistency in how states regulate the same profession, a license is most likely unnecessary and overly restrictive.

In the 1970s, Colorado[15] became

the first state to adopt a sunset review. Regardless of the party in charge, Colorado has long made effective use of this tool. The Colorado Office of Policy, Research & Regulatory Reform (COPRRR)[16] conducts a comprehensive and lengthy review process that includes a literature review, data collection, stakeholder engagement, statutes from other states and recommendations for the continued, modified or ceased regulation of a profession. After the reports are published, legislation is introduced that reflects the recommendations from the report, and, assuming the Legislature approves the recommendations, the agency begins the rulemaking process to reflect the change.

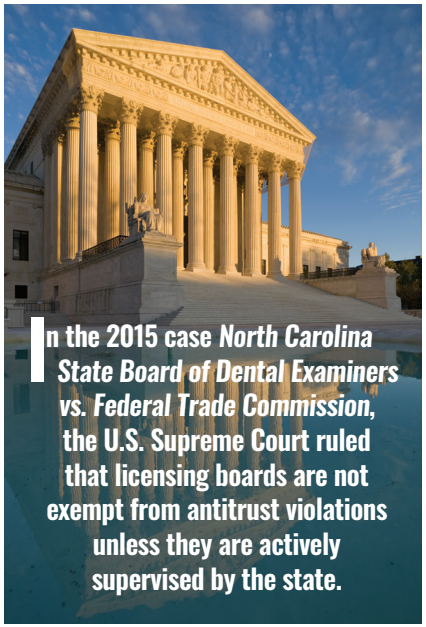
More recently, Nebraska,[17] Ohio,[18] Texas[19] and Utah[20] passed sunset review legislation.

While sunset reviews can be a useful tool for determining which licenses are no longer necessary, they don't always lead to substantive regulatory change. Wisconsin legislators, therefore, should include measures that would make its sunset law more effective.

The sunset review should consider whether less restrictive forms of regulation (similar to those considered in the sunrise review process) would meet the public safety requirements. If so, less restrictive alternatives should be suggested. If the review determines that the license is justified, it must clearly and demonstratively articulate why.

Sunset reviews also can be utilized to review and make reform recommendations on more detailed aspects of occupational licensure, such as education and continuing education requirements, testing requirements, rules that limit scope of practice, and anti-competitive rules and actions by boards. These secondary recommendations can still have a sizable impact on the ability of individuals to practice their profession.

For example, both the Wisconsin Institute for Law & Liberty and the Badger Institute successfully advocated for a package of bills that reformed the state's cosmetology laws. At the time, state law limited the ability of barbers and cosmetologists to practice outside of a licensed establishment, putting hundreds of practitioners around the state out of compliance. Fortunately, this law was changed. In this instance, a thorough sunset review of Wisconsin's cosmetology laws could have netted a similar recommendation.



For a sunset bill to have any impact, the Legislature must commit to acting on the report's recommendations. The reports do not automatically eliminate or restructure regulations, but the Legislature can make this legislation more worthwhile by introducing bills to implement the 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." Historically, economic liberties were protected under this clause. However, over the decades as occupational licensure and the regulatory state have grown, this liberty has gradually eroded. One way to strengthen it is by passing a Right to Earn a Living Act.

The Right to Earn a Living Act[21] was first passed by Arizona[22] in 2017, with Tennessee and Mississippi following suit shortly after. It is based on the belief that government

— not individuals — should have to prove and justify that restrictions and regulations are necessary to protect public health and safety. It shifts the burden of proof from job-seekers and aspiring workers to the regulators who create and enforce the restrictions.

The Act essentially allows the judiciary to serve as a check on the policymakers and regulators who create and uphold overly burdensome regulations. It requires that all regulations pertaining to a profession are legitimate, necessary and tailored. If individuals believe certain restrictions are infringing on their right to earn a living, they may challenge them in court with a specific cause of action. There, the claim would be examined, and the court would determine whether the regulation has placed an undue burden on the aspiring worker.

Lawmakers could choose one of two ways to tackle this issue. First, a constitutional amendment could be passed that more explicitly states that an individual's right to pursue a trade should be free from arbitrary or excessive government interference. This amendment could be enacted solely by the Legislature by passing a resolution over two consecutive sessions before ultimately being put to the voters. For this reason, the language should be tailored in a manner that is short and easy to understand. In lieu of a constitutional amendment, a bill that specifically ingrains this right and offers a cause of action for an affected individual would suffice.

> Concerned or injured consumers are rarely the ones advocating for professions to be regulated. It's almost always practitioners who lobby lawmakers for state licensure.

The Legislature should adopt the Right to Earn a Living Act so that individuals may live, work and earn a living without unnecessary and overly burdensome restrictions. Passing this law also would incentivize regulatory agencies to review their regulations and determine whether they are legitimate, necessary and tailored — a positive step that would go a long way toward creating a better and fairer regulatory environment centered on real public safety risk.

Other recommendations

In addition to the above policy reforms, we urge the Legislature to adopt the following measures to reform and streamline Wisconsin's licensing processes and standards.

Extend other temporary COVID-19 measures: In response to the COVID-19 crisis, the Legislature temporarily deregulated certain professions and industries — mostly related to health care — to ensure that patients would receive quality care and that health care providers could operate to their full capacity. Wisconsin should also make permanent the policies that expanded the use of and access to telehealth and the expanded scope of practice extended to physician assistants and nurse practitioners.

Streamline the licensing process: Too often, qualified applicants must wait months or even years to receive their license to work in Wisconsin. Until universal licensure recognition is passed, the Legislature should adopt measures that make it easier for people who apply for a license to get one. State Sen. Dale Kooyenga (R-Brookfield) has introduced two bills that would 1) establish a passive review process for the Department of Safety and Professional Services (DSPS) to recommend approving or denying a license to a board[23] and 2) allow for provisional licenses for qualified applicants as their permanent license is processed and approved.[24]

Lookback periods: The Legislature should ensure that when DSPS reviews an application, it only requests information that is pertinent and related 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. Therefore, DSPS should not waste time reviewing past minor offenses that would not disqualify an applicant from receiving an occupational license.

Licensing board transparency: As the Badger Institute found in its 2020 report, *Absence and Violation,*[25] much of licensing boards' activities occur in private sessions and 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.

About the authors

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***Kyle Koenen** is the policy director for the Wisconsin Institute for Law & Liberty.*

Endnotes

[1]https://dsps.wi.gov/Documents/DSPS%20OLS%20Report_Dec2018.pdf
[2]https://www.badgerinstitute.org/Reports/PrimeronOccupationalLicensing.pdf
[3]https://www.ncsl.org/research/labor-and-employment/universal-licensure-recognition.aspx#:~:text=in%20another%20state.-,What%20Is%20Universal%20Licensure%20Recognition%3F,This%20process%20is%20not%20automatic
[4]In June 2020, Iowa Gov. Kim Reynolds signed into law a bill that creates universal licensure recognition. https://www.iowastatedaily.com/news/iowa-governor-kim-reynolds-hf-2627-associated-builers-and-contractors-of-iowa-work-license/article_79251728-b706-11ea-bd85-bb476c1bb25c.html
[5]Number from an open records request to the Wisconsin Department of Safety and Professional Services.
[6]https://dsps.wi.gov/Documents/EO2AidHealthcareFacilitiestoProvideTreatment.pdf
[7]https://goldwaterinstitute.org/freetoworksuccess/#:~:text=The%20state's%20new%20universal%20recognition,getting%20a%20license%20to%20work.&text=Doug%20Ducey%20signed%20the%20law,it%20took%20effect%20last%20August
[8]https://house.mo.gov/Bill.aspx?bill=HB2046&year=2020&code=R
[9]https://leg.colorado.gov/bills/hb20-1326
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[25]https://www.badgerinstitute.org/BI-Files/Reports/LicensingReportPDF.pdf

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