

Presented to the Senate Committee on the Judiciary
Subcommittee on Antitrust, Competition Policy and Consumer Rights

“License to Compete: Occupational Licensing and the State Action Doctrine”

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Occupational Regulations

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Chair and members of the Senate Committee on the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights

My name is Morris Kleiner. I testify before you today on my own behalf and not as a representative of the University of Minnesota or any other organization with which I am affiliated.

I have a Ph.D. in economics from the University of Illinois. I am a professor at the Humphrey School of Public Affairs at the University of Minnesota. I also teach at the University's Center for Human Resources and Labor Studies. I am a visiting scholar at the Federal Reserve Bank of Minneapolis, a Research Associate at the National Bureau of Economic Research headquartered in Cambridge, Massachusetts, and a Visiting Scholar at the Upjohn Institute for Employment Research in Kalamazoo, Michigan. I have worked in government and consulted for many public and private sector organizations. My research specialty includes the analysis of institutions, such as occupational licensing in the labor market. I have published in the top academic journals in labor economics and industrial relations, and I am the author, co-author, or coeditor of eight books. Three of these books focus on occupational regulation and were published in 2006, 2013, and 2015 by the Upjohn Press. These books are the leading volumes on occupational regulations based on sales and citations to the work in Google Scholar.

Let me start with my conclusions because it establishes a general preference for certification over licensure of occupations¹. Certification usually is better than occupational licensing for three reasons.

1. First, certification has benefits over licensing for workers. Certification does not directly fence out workers by law or cause the type of problems in labor

¹ See Kleiner, Morris M. 2006. *Licensing Occupations: Enhancing Quality or Restricting Competition?* Kalamazoo, Mich.: Upjohn Institute for Employment Research and Kleiner, Morris M. 2013. *Stages of Occupational Regulation: Analysis of Case Studies*. Kalamazoo, Mich.: Upjohn Institute for Employment Research

markets that licensing does. Licensing may cause workers to lose the opportunity to move into the middle class because of the high barriers to entry². A reduction in licensing requirements could reduce unemployment in the U.S³. Licensing further reduces the ability of workers to move across state lines, and engage in work that is the most beneficial to them and could contribute to economic growth⁴. Certification of practitioners does not have these negative features.

Estimates developed by me with Professor Alan Krueger of Princeton University, the former Head of President Obama's Council of Economic Advisers and former chief economist in both the Department of the Treasury, and the Department of Labor, and Professor Alexandre Mas, also at Princeton and former Chief Economist at the Department of Labor and Chief Economist at Office of Management and Budget under President Obama, showed the cost of licensing nationally in the form of lost jobs to be 0.5% -1.0% in 2010.⁵

2. Second, certification is better for consumers than occupational licensing. Similar to licensing, certification sends a signal to consumers about who has met the government's requirements to work in an occupation. However, it does not reduce competition, and it does not cause wages to increase in the same way licensing does. It gives consumers more choices for the kinds of services they need. It gives consumers the right to choose the level of quality they think is appropriate for them rather than having members of an

² See Kleiner, Morris. 2015. *Reforming Occupational Licensing Policies*. Washington, DC: Brookings Institution for a detailed explanation of these issues.

³ See Kleiner, Morris M., Alan B. Krueger, and Alex Mas. 2011. "A Proposal to Encourage States to Rationalize Occupational Licensing Practices." Princeton, NJ: Princeton University.

⁴ U.S. Executive Office of the President. 2015. "Occupational Licensing: A Framework for Policymakers." Washington, DC: The White House, p. 76.

⁵ See Kleiner, Morris M., Alan B. Krueger, and Alex Mas. 2011. "A Proposal to Encourage States to Rationalize Occupational Licensing Practices." Princeton, NJ: Princeton University and Kleiner, Morris. 2015. *Reforming Occupational Licensing Policies*. Washington, DC: Brookings Institution to see how these estimates were derived.

occupation through a licensing board decide what level of skill is necessary for consumers. Also, all consumers do not demand the same level of quality. If licensure “improves quality” simply by restricting entry into the profession, then some consumers will be forced to pay for more “quality” than they want or need.

3. Third, certification is better for government than occupational licensing. It reduces the unnecessary and often excessive lobbying by trade associations to try to convince legislators to enact and governors to implement licensing regimes under the assumption of protecting the public. Often lobbyists claim that licensing is needed to screen out frauds and incompetents. There is little evidence to support this claim⁶. But licensing laws do offer lobbyists and their trade associations a way to deliver less competition and higher earnings for their members or clients⁷.

An alternative perspective of occupational licensing by government argues that administrative procedures regulate the appropriate supply of labor in the market. Regulators screen entrants to the profession and bar those whose skills or character traits suggest a tendency toward low-quality outputs. The regulators further monitor incumbents and discipline those whose performance is below standards, with punishments that may include revocation of the license needed to practice. The process can thereby raise the overall quality of services to consumers. Unfortunately there is little evidence to support this view⁸.

⁶ For example, in 2013 only 11 of the more than 23,700 attorneys in Minnesota, or approximately 0.05 percent, were disbarred (Minnesota State Bar Association [2013](http://mnbenchbar.com/2014/02/summary-of-public-discipline-2/)). See <http://mnbenchbar.com/2014/02/summary-of-public-discipline-2/>.

⁷ For evidence of the influence of licensing on wages see Kleiner, Morris and Alan Krueger. 2013. “Analyzing the extent and influence of occupational licensing on the labor market”. *Journal of Labor Economics* 31(Suppl. 1: S173–202.

⁸ See Kleiner, Morris 2015. “Guild-Ridden Labor Markets: The Curious Case of Occupational Licensing,” Kalamazoo, Mich.: Upjohn Institute for Employment Research for empirical evidence on this perspective.

There is an important difference between occupational licensing and certification. Licensing restricts the practice of an occupation. Certification restricts the use of the title such as “certified financial analyst.” or “certified interior designer.” Anyone can do financial analysis or interior design but only those who meet the government’s requirements can call themselves a “certified financial analyst” or “certified interior designer.” Unlike licensing, certification provides consumers more options by allowing individuals greater choice, with lesser influence of guild-like protectors of the occupation.⁹

First, occupational licensing reduces employment growth thereby contributing to reduced economic growth. These barriers fence out people who may be qualified but have not gained the credentials through the exact means identified in a licensing law such as a written test, internship, or undergraduate or graduate degree. These requirements reduce the ability of low income individuals or those with a criminal background to earn a living.

Second, occupational licensing causes consumers to pay higher prices. By shrinking the available supply of labor or increasing perceived demand, licensing increases prices by 7 percent or more¹⁰. Less competition means that consumers pay more and have less variety to choose for the services they need. A number of years ago, students at the Humphrey School analyzed the cost of licensing to consumers in Minnesota. They found that the extensive use of licensing caused consumers in Minnesota to pay an incremental \$3 billion a years in higher prices that are redistributed to those with licenses with no clear benefits¹¹.

Third, occupational licensing alleges that it will increase consumer protection by screening out incompetents and frauds. Unfortunately, and although we may want this to

⁹ For further evidence see Kleiner, Morris, 2015. *Our Guild-Ridden Economy: Issues and Possible Solutions*, Economic Policy Paper 15-9. Federal Reserve Bank of Minneapolis. December, pp. 1-5.

¹⁰ See U.S. Executive Office of the President.2015. “Occupational Licensing: A Framework for Policymakers.” Washington, DC: The White House, p. 76.

¹¹ See Kleiner, Morris M. 2006. *Licensing Occupations: Enhancing Quality or Restricting Competition?* Kalamazoo, Mich.: Upjohn Institute for Employment Research.

be true, there is little to no evidence for it. Additionally, some legislators tend to grandfather in everyone working when licensing is enacted thus eliminating screening altogether and when they ratchet up the requirements, current members are excluded from the new requirements¹². Also, licensing boards are often captured by licensees and rarely revoke licenses. Most telling about their priorities, most boards depend on the licensees to fund their operating budgets through the payment of licensing fees.

Among the many professions that I have studied are mortgage bankers. What my research at the Federal Reserve Bank of Minneapolis with Vice-President Richard Todd showed is that those states that licensed mortgage bankers had similar default rates as those states that did not license brokers. A major difference is that in states with licensed brokers, the fees that consumers had to pay for loans were higher¹³. I have generally found those same findings in the other occupations that I have researched or seen in the research of others.

The reality is that occupational licensing is likely to reduce employment growth, contributes to unemployment, and increases costs to consumers. The main groups that win under licensing are those who are licensed through higher wages and greater job opportunities and benefits for those fortunate enough to become licensed. Certification has not shown to have any of the problems of licensing such as raising prices or restricting overall employment. It provides consumers more choice at a lower price than occupational licensing. I am, of course, delighted to answer questions about occupational regulation and its consequences.

¹² Han, Suyoun, and Morris M. Kleiner. 2015. "Analyzing the Duration of Occupational Licensing on the Labor Market." Paper presented at the Labor and Employment Relations Association Meetings, held in Pittsburgh, PA, May 30.

¹³ See Kleiner, Morris M., and Richard M. Todd. 2009. "Mortgage Broker Regulations That Matter: Analyzing Earnings, Employment, and Outcomes for Consumers." In *Studies of Labor Market Intermediation*, David Autor, ed. Chicago: University of Chicago Press, pp. 183–231 for a fuller explanation of the approach and analysis of the issue.

Addendum

Hierarchy of occupational regulations from least to most restrictive:

“Registration” means a requirement established by a legislative body in which an individual gives 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. “Registration” does not include personal qualifications but may require a bond or insurance. Upon approval, the individual may use “registered” as a designated title. A non-registered individual may not perform the occupation for compensation or use “registered” as a designated title. “Registration” is not transferable and is not synonymous with an “occupational license.”

“Certification” is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body or private certification organization. Upon approval, the individual may use “certified” as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title “certified.” “Certification” is not synonymous with an “occupational license.”

“Occupational license” is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.