

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

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### **Occupational Licensing in Michigan** **By Elizabeth Raczkowski, Fiscal Analyst**

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Several states, including Michigan, have taken steps to review and revise their occupational licensing requirements. These actions appear to have been inspired by recent critiques questioning the value and efficacy of licensing. Michigan was one of the first states to undertake a comprehensive review of its licensing system in 2011, when a report by the Michigan Office of Regulatory Reinvention recommended several changes. The report resulted in the enactment of eight bills that reduced or eliminated licensing requirements for certain occupations.

This paper highlights common points of debate regarding occupational licensing, and describes recent legislative activity and national trends. The goal of this paper is to provide a basis for understanding legislative attempts at occupational licensing reform. Both criticisms and support for various licensing standards and frameworks are discussed.

#### **Background**

It is well-established that states may impose regulations on businesses, including requiring those who wish to engage in a particular business or profession to apply for and obtain a license before doing so. For example, the 1889 United States Supreme Court case *Dent v. West Virginia* firmly established the right of states to regulate the practice of medicine. In the 1880s, West Virginia enacted a law requiring those practicing medicine to obtain a certificate from the state's board of health establishing that they had graduated from a medical school, had practiced medicine for at least ten years before a certain date, or had been found qualified to practice medicine. Violation of the law was a misdemeanor. Dent was charged with violating this law. He challenged the state of West Virginia, arguing that it could not restrict an individual's freedom to practice a profession. The Supreme Court ruled in the State's favor, citing the substantial risks involved in medical practice as an important justification for licensing requirements. The court found that states commit no violation of individuals' rights by imposing occupational regulations "for the protection of society" so long as those restrictions are relevant to the profession and are attainable through "reasonable study and application".<sup>1</sup>

Occupational licensing became more common in the first part of the 20<sup>th</sup> century but the range of professions subject to regulation remained limited.<sup>2</sup> Occupations requiring a license typically were those with the potential to cause substantial physical or financial damage to clients or the public, but for which there were few means of identifying poor service before to engagement. Physicians, attorneys, and other professions requiring specialized education frequently were regulated at the state level.

According to data reported by the National Conference of State Legislatures (NCSL), a little over 4.0% of workers held an occupational license in the 1950s. The number of individuals possessing a professional license rose substantially over the following decades.<sup>3</sup> By 2017, the Bureau of Labor Statistics reported that license holders made up 21.5% of the civilian labor force. This included 23.1% of full-time employed workers and 10.5% of unemployed individuals. Analyses show that the increase in the number of individuals holding licenses is



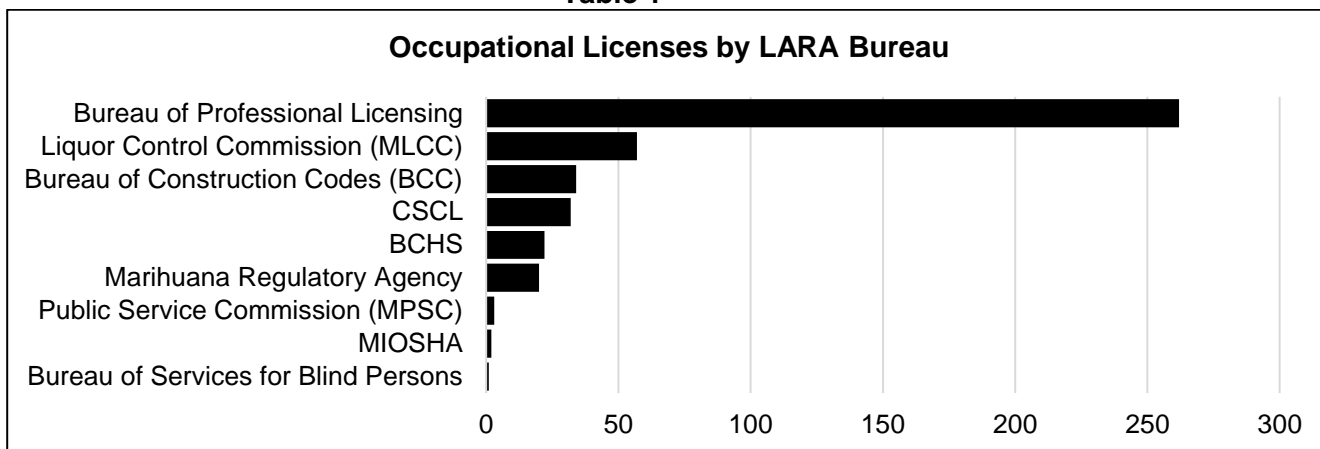
primarily due to increased regulation of previously unlicensed occupations, rather than growth within the licensed professions.

**Occupational Licensing in Michigan**

Michigan issues many licenses for professions or businesses, but these are not universally considered *occupational* licenses.<sup>4</sup> For example, an individual may be a licensed cosmetologist and also possess a cosmetology shop license for his or her business. Both are considered occupational licenses by the Department of Licensing and Regulatory Affairs (LARA). However, most literature and debate on occupational licensing is concerned with licenses granted to individuals in order for those individuals to practice their professions legally, rather than licenses assigned to businesses, schools, or other facilities. Currently, there are more than 675,000 licensees and over 400 licenses, certifications, and registrations issued by the Department of Licensing and Regulatory Affairs. These figures include licenses issued to business entities as well as individuals. Other departments, such as the Department of Agriculture and Rural Development, also issue occupational licenses. Failure to obtain an occupational license can result in fines or even imprisonment.

Table 1 below shows the number of state license categories within LARA's bureaus.

**Table 1**



BCHS: Bureau of Community and Health Systems  
 CSCL: Corporations, Securities, and Commercial Licensing  
 MIOSHA: Michigan Occupational Safety and Health Administration

**Criticisms of Professional Licensing**

This section describes the most common arguments for and against occupational licensing that have received attention by legislators, think tanks, and popular media. These issues form the basis for many debates over legislative actions on licensing. Several of these arguments remain controversial due to conflicting evidence and ideological factors, while others have achieved greater acceptance among both licensing's critics and organizations that support licensing as a whole.

### *Public Safety and Professionalism*

Proponents argue that occupational licensing benefits the public by maintaining the integrity and accountability of the licensed professions. Licenses serve as an indicator to consumers that the practitioner has completed vital training and adheres to some standard of professionalism. This allows consumers to make more informed choices while benefiting from licensing board oversight. In this way, licensing is a means of addressing the problem of asymmetric information, (i.e., when one party in a transaction has greater material knowledge than another).<sup>5</sup>

In addition, licenses allow the state (through its licensing boards) to directly sanction those who act unprofessionally or illegally while performing their work. For example, efforts to combat the rise in opioid-related overdoses and deaths in Michigan include sanctions against licensees who unlawfully overprescribe or over-dispense these substances. Fear of losing one's license and thus credibility and earnings, is presumed to act as a disincentive for such misbehavior.

However, those who take a more critical view of occupational licensing point to research that indicates it does little to protect consumer interests or ensure quality of service, even for professions with clearly measurable outcomes, such as dentistry.<sup>6</sup> A 2015 White House report on occupational licensing reviewed twelve studies and found that only two linked licensing with quality improvements.

An additional criticism is that the development of an increased aura of professionalism due to licensing also could allow practitioners to gain greater influence over the creation of laws governing their occupation.<sup>7</sup> According to this view, professions that require greater education and training for licensure are more prestigious; therefore, practitioners are more likely to gain the attention of lawmakers. These individuals are incentivized to limit entry into their professions and promote their occupational interests through professional associations, which lobby state and local governments.

Critics also point to disparities between the requirements for various professions. The Institute for Justice, for example, cites the far greater training hours required for cosmetologists compared to emergency medical technicians (EMT) as an example of irrational licensing. In Michigan, for example, cosmetologists are required to complete 1,500 hours versus while EMTs must complete 194; both requirements exceed the national average for each occupation.<sup>8</sup> Opponents of licensing claim that the seeming mismatch between standards. Reveals that licensing requirements are the result of professional lobbying efforts or lawmakers who do not have much expose to the industries in question.<sup>9</sup> These critics contend that it follows that licensing needs reform if it is to justify its economic and social costs.

### *Employment and Economic Mobility*

The training and education required to obtain licenses, even for low-income professions, can be costly.<sup>10</sup> Critics of occupational licensing argue that the fees and cost of obtaining the necessary training requirements may prevent or deter individuals from entering into a profession they could perform quite effectively. In this way, licensing boards can serve to



increase the incomes and profits of existing professionals at the expense of consumers and would-be licensees.

Research shows that licensed professionals are less likely to be unemployed than unlicensed workers in the same fields.<sup>11</sup> Licensing also appears to slow employment growth for licensed occupations when comparisons are made between those states that require licenses and those that do not.<sup>12</sup> While a definite negative effect on overall employment has not been proven, licensing has been associated with fewer individuals being employed in particular occupations. For example, the NCSL notes a study that found licensure to be negatively correlated with barber shops per capita.<sup>13</sup> The same paper cites the findings of a 2016 study that reported that licensing restricted female entrepreneurs and reduced overall employment in Missouri. This decreased competition is viewed by reformers as one of the clearest economic and social costs of current practices.

#### *Effect on Wages*

Critics of occupational licensing also contend that the practice increases income inequality.<sup>14</sup> However, the degree to which licensing lowers wages appears to be relatively small. Recent estimates put the estimated wage differential between licensed and unlicensed workers at 4%.<sup>15</sup> Research using survey data has found somewhat larger effects, attributing an average earnings increase of 10% to licensing. However, the majority of states included in that study experienced no statistically significant difference due to licensing.<sup>16</sup>

It is difficult to estimate these effects precisely because of the overlap between wage gains purely due to licensing and wage gains due to the additional education and training required to obtain those licenses, as well as factors including gender, race, and work experience.<sup>17</sup> Some studies indicate that the positive effect of licensing on earnings may be concentrated among the higher-income occupations.<sup>18</sup>

#### Licensing and Recidivism

Many states restrict individuals with criminal histories from obtaining certain occupational licenses.<sup>19</sup> In Michigan, licensing provisions of this type vary, from directly prohibiting those with particular, related felonies from obtaining certain licenses, to advising that licensing boards merely consider criminal histories and moral character when evaluating applicants. These "good moral character" requirements typically apply regardless of whether a conviction is related to the activities the person would be doing if he or she were engaged in that occupation.

A recent study linked occupational licensing with criminal recidivism.<sup>20</sup> At a time when many states are seeking to facilitate the reintegration of those with criminal histories into the workforce, revisions to penal codes or "good moral character" requirements, may have more widespread political support than other licensing reforms.



### *Geographic Mobility*

Differences in licensing requirements between states pose a challenge for workers seeking to relocate. The burden is heaviest for military families and other frequent migrants and could disproportionately affect younger workers.<sup>21</sup> Individuals who are licensed in one state may find that they are unable to obtain a license in their new home without costly additional education or training.

Michigan has enacted special considerations for military personnel, veterans, and military spouses because of these concerns. A licensee on active duty with the U.S. military may apply for a temporary exemption from renewal license fee and continuing education requirements as well as other, similar criteria under the Occupational Code. The exemption can be used for up to 36 months. Similarly, spouses of active duty military personnel may obtain a temporary license for six months, which may be renewed for an additional six months with the approval of the Department.

However, these exceptions apply only to individuals licensed under the Occupational Code and not through other laws. These individuals are responsible for informing LARA of their intention to use this exemption. Some fee waivers are available for military veterans.

### *Effect on Prices*

Licensing may increase the price of goods and services through several mechanisms.<sup>22</sup> Most commonly, decreased competition allows licensed practitioners to charge more for their products and services. Proponents argue that these higher prices are an accurate reflection of the expertise and improved consumer knowledge provided by stringent occupational standards.

While these higher prices generally are beneficial to practitioners, opponents contend they may cause consumers to forgo needed purchases, including health care. This could result in economic losses and be potentially hazardous to public well-being.

### *Local Licensure*

In Michigan, counties, cities, townships, and villages may administer their own occupational licenses for individuals operating within their jurisdiction. Individuals who wish to practice a locally licensed profession in these jurisdictions must meet and maintain these standards in addition to any State requirements. This allows local units to control activity within their boundaries while fees serve as a revenue source.

Legislation restricting municipalities' abilities to create, define, and issue local occupational licenses was signed into law in December 2018. The Local Government Occupational Licensing Act is discussed in the next section.



**Recent Legislative and Executive Actions**

*Licensing Requirements and Fee Changes*

Bills proposing changes to which professions are regulated or increasing or decreasing licensing fees are introduced during most sessions of the Michigan Legislature. Bills increasing initial or renewal fees for various occupational licenses often are proposed to update older fee schedules for inflation or to adjust revenue collection to the costs of administering the licensing programs. Sunsets—dates contained in authorizing legislation after which a fee will be rolled back, reduced, or eliminated—frequently are employed to encourage legislative review of licenses and fees.

*"Good Moral Character" Requirements*

As discussed in the previous section, "good moral character" requirements have been a point of controversy, particularly as states, including Michigan, focus increased attention on criminal justice reform and associated issues.

The types of occupational licenses subject to these standards varies both within and among states. Table 2 compares Michigan to four nearby states—Ohio, Wisconsin, Illinois, and Indiana—with respect to good moral character requirements for seven diverse licensed occupations. As shown in the table, an occupation that may involve a significant financial investment by the professional's client is not necessarily subject to these requirements, while one with some minor physical risk, such as that of a barber, is.

**Table 2**

<b>"Good Moral Character" Requirements</b>					
	IL	IN	MI	OH	WI
Barber			Yes	Yes	
Dental Hygienist	Yes			Yes	
Electrician					
EMT			Yes		
LPN			Yes		
Private Detective	Yes			Yes	
Real Estate Agent					

Table 3 shows five bills from the 2017-2018 Michigan legislative session that sought to ease the barriers for those who may be affected by criminal history or "good moral character" clauses.



**Table 3**

<b>Criminal Background and "Good Moral Character" Restrictions: Recent Legislation</b>	
<b>Bill</b>	<b>Description</b>
HB 6110 (2018); HB 4488 (2019)	Limited the circumstances in which a licensing board could use a prior criminal conviction to assist in determining whether an applicant is of good moral character
HB 6381 (2018); HB 4493 (2019)	Required an annual report of the number of license applications denied due to a determination of "lack of good moral character" as well as the specific criminal activities that led to that judgment
HB 4489 (2019)	Would give the Board of Law Examiners the power to determine "good moral character" for the purpose of evaluating State Bar applicants rather than using the definition provided by current law

Public Acts 453, 454, and 455 of 2018 require LARA to establish a procedure to allow individuals to obtain a preliminary judgment of whether a court judgment against them could result in the denial of a license for various license types.

*Interdepartmental Partnership*

In June 2019, LARA formed a partnership with the Department of Corrections (DOC) to provide licensing guidance and assistance to incarcerated individuals. Under the agreement, LARA will help DOC ensure that its Career Technical Education (CTE) programs for former offenders provide those individuals with training that would fulfill Michigan's requirements for various occupational licenses. This is intended to improve their chances for approval should they apply for a license. A memorandum of understanding between the departments also emphasizes LARA's commitment to considering testaments of a former offenders' good character and improving the ability of these individuals to obtain licensure.<sup>23</sup> Leaders emphasized the role of licenses in securing jobs for those returning to the workforce following time in the corrections system.<sup>24</sup>

*Local Government Occupational Licensing Act*

The Local Government Occupational Licensing Act (Public Act 499 of 2018) prevents local government units from licensing occupations they do not already license as of the Act's effective date. It also bars these units from imposing requirements stricter than those of the State. In the case of occupations licensed solely by a local unit, any future State regulations will take the place of local standards.

**Proposed Alternatives to Licensing**

Those calling for a reduction in licensing have at times proposed a number of alternative means of securing consumer confidence or allowing for state identification of malpractitioners:

*Certification*

A popular means of reducing licensing while maintaining important regulations is to make greater use of certifications. An occupation regulated by State certification can be performed



by anyone, but an individual who wishes to be certified must take an exam in order to prove his or her knowledge and expertise. Specific education, such as completion of an accounting program, is sometimes required.<sup>25</sup> Certification avoids some drawbacks of licensing by not posing a barrier to employment while allowing those who have completed special training a particular advantage (that is, they may receive more public trust and business by claiming the "certified" title). The Michigan Department of Licensing and Regulatory Affairs issues 30 occupational certificates.

### *Informal Consumer Feedback*

Advances in technology, including widespread access to the internet have resulted in informal means of consumer vetting of professional services. Websites and applications that allow consumers to rate and supply comments on their experiences with businesses and service providers give more direct and specific feedback to potential clients than licensing. Rather than ensuring that the practitioner has the requisite educational or training background, these means allow a consumer to judge, based on the opinions of other consumers, the actual quality of service and likelihood of securing a positive outcome.

However, this approach risks allowing practitioners to pay for positive reviews, perpetuation of false claims due to misunderstandings or malice, and other forms of dishonesty and miscommunication that would undermine trust. This method could be undermined further by the tendency to report negative experiences at a greater rate than positive ones.

### **Conclusion**

In early 2018, the National Council of State Legislatures (NCSL) reported that several states are taking steps to examine or reform their occupational licensing practices.<sup>26</sup> Michigan's licensing regime appears to be about average when compared to other states in terms of the number of professions licensed. A 2016 study estimated that Michigan ranks 34<sup>th</sup> out of the other states and the District of Columbia in percentage of workforce licensed, at about 20.6%, one percentage point less than the overall average of 21.6%. Recent legislative action suggests continued efforts to establish additional occupational licenses, but to ameliorate potential negative effects of the licensing regime on employment. How closely Michigan's licensing requirements will mimic or be mimicked by other states appears uncertain, but overall the state has not distinguished itself in requiring an unusual number of licenses or requiring particularly strict standards for its licensed professions.





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<sup>1</sup> *Dent v. West Virginia*, 129 US 114 (1889).

<sup>2</sup> Kleiner, Morris M., "Reforming Occupational Licensing Policies", Brookings Institution, March 2015.

<sup>3</sup> "The State of Occupational Licensing: Research, State Policies, and Trends", National Conference of State Legislatures.

<sup>4</sup> It should be noted that this count is restricted to occupational/professional licenses. An individual may require a license to operate a particular type of business or piece of equipment, engage in certain work-related activities, or perform work on behalf of another person, but these types of licenses and permits are not counted among occupational licenses. For example, a Certified Public Accountant who wishes to perform accounting work and operate an accounting firm must have his or her own personal professional license and also acquire a license to operate the firm.

<sup>5</sup> Nunn, Ryan. "Occupational licensing and American workers," Brookings Institution, June 2016.

<sup>6</sup> Note 2, p.12.

<sup>7</sup>The White House. "Occupational Licensing: A Framework for policymakers." July 2015.WH, 11.

<sup>8</sup> Carpenter II, Dick M. et al. "License to Work: A National Study of Burdens from Occupational Licensing, Institute for Justice", May 2012.

<sup>9</sup> Note 2, p.11.

<sup>10</sup> Skorup, Jarrett, "This Isn't Working: How Michigan's Licensing Laws Hurt Workers and Consumers", Mackinac Center for Public Policy, 2017.

<sup>11</sup> Note 5.

<sup>12</sup> Note 2, p.13.

<sup>13</sup> Note 3.

<sup>14</sup> Note 10.

<sup>15</sup> Note 5.

<sup>16</sup> Note 2.

<sup>17</sup> Note 5.

<sup>18</sup> Note 2, p. 13.

<sup>19</sup> Slivinski, Stephen, "Turning Shackles Into Bootstraps: Why Occupational Licensing Reform Is the Missing Piece of Criminal Justice Reform." Center for Economic Liberty, Arizona State University, 7 November 2016.

<sup>20</sup> *Id.*

<sup>21</sup> Note 7, p. 15-16, 39.

<sup>22</sup> Note 7, p. 14.

<sup>23</sup> "Memorandum of Understanding between the Michigan Department of Licensing and Regulatory Affairs and the Michigan Department of Corrections", 5-22-2019

<sup>24</sup> Michigan Department of Licensing and Regulatory Affairs, "Governor Takes Steps to Help Returning Citizens Join the Workforce in Well-Paying Professions", June 5, 2019.

<sup>25</sup> Note 2, p.8.

<sup>26</sup> The NCSL is one of several organizations assisting state governments with these efforts through the Occupational Licensing Learning Consortium. The Consortium is partly funded by a grant from the U.S. Department of Labor.