

## **Licensure or License\*: Reconsidering Occupational Regulation**

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### **I. Introduction**

The scope of occupational licensing in the U.S. has grown enormously in recent decades. For example, in the 1950s it was estimated that fewer than 5% of workers in the US needed a license to work at their jobs. But by 2008 this figure was close to 30%. In 2003 CLEAR estimated that more than 800 different occupations were licensed in at least one state, while today more than 1,100 occupations are said to be subject to licensing, certification, or registration requirements,<sup>1</sup> although both the occupations and their numbers vary greatly across the states. (Council of State Governments; Kleiner and Krueger 2013; CLEAR)

Until fairly recently, occupational licensing was a subject that was largely ignored—not just by labor economists, but by the general public as well. The pros and cons of requiring a license to practice certain occupations were not much talked about and certainly not subject to much criticism. After all, licensing could be said to protect consumers from incompetent or disreputable practitioners (think doctors here). It could also be said to ensure a high level of quality of service (dieticians and barbers, for example.) As of late, though, occupational licensing has begun to attract a growing and increasingly vocal stream of critics. The criticisms reflect a number of concerns. For example, it has been alleged that too many occupations now require a license to practice and that the requirements for attaining a license in terms of costs and

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\* “License” 3(a): Freedom that allows or is used with irresponsibility. (*Webster’s Ninth New Collegiate Dictionary*)

length of training are often excessive. Complaints have also been made that higher prices for the services provided by licensed practitioners are too often the result, and that the benefits to consumers in terms of higher quality are sometimes nonexistent. Finally, it has been charged that excessive licensing has resulted in adverse effects on employment opportunities and worker mobility, especially for those with lower levels of education.

In light of this new and growing criticism of excessive occupational licensing, what are the prospects for de-regulation – or what we shall refer to as “de-licensing”? This is the subject of our paper. In the next section we discuss in more detail the reasons for the growing concern and criticisms that occupational licensing is facing. We then analyze the efforts that nine states to date have taken in the past four years to deregulate (de-license) certain groups of occupations. These de-licensing proposals have generally not gone through the usual sunset review process. The sunset review process mandated in many states involves periodic assessments of licensed occupations and licensing boards as well as their possible termination, unless continued by the legislature. Finally, we examine whether there are any particular state characteristics – economic, demographic, or political – that seem to increase the likelihood of de-licensing activity or proposals. We know of no theories of de-licensing per se, but there is a small extant literature concerning the various factors that tend to be associated with the *passage* of licensing legislation. Could some of these same factors explain recent attempts to de-license occupations?

## **II. The Growing Outcry against Occupational Licensing**

Although the “case” against occupational licensing was first made popular by Milton Friedman (1962) more than 50 years ago, the hue and cry against it did not gather much popular support until the last decade.<sup>2</sup> The reasons for the turnaround are several. First, licensing has spread into occupations for which the protection of the public hardly seems necessary and, in some cases,

where requiring a license to practice seems ludicrous. For example, in a list of what he refers to as the nation's "most outrageous licensing laws," Adam Summers notes that fortune tellers require a license in Maryland, junkyard dealers in Ohio, rainmakers in Arizona, and manure applicators in Iowa. (Summers 2007, p. 43). Furthermore, yoga instructors are licensed in more than a dozen states, while eyebrow threaders and art therapists are among some newly licensed occupations.

The long-accepted argument that licensing raises the quality of services provided to the public has not in fact been strongly supported by the evidence. As Morris Kleiner has found, "Overall few studies have shown significant benefits of occupational regulation on the quality of service received by consumers...." (Kleiner 2015, p. 13.)

There is a growing realization that, by restricting entry into occupations through the requirement of a license to practice, the result can be fewer employment opportunities (especially for those with lower levels of education) as well as higher prices for goods and services. This has been the motivation for several recent state legislative proposals to deregulate certain occupations.

Finally, calls for licensing – as well as resistance to de-licensing – almost never originate from consumers, but rather from practitioners in the occupation itself, who often see licensing as a means to create economic rents by protecting themselves from competitors. Moreover, in virtually all cases when an occupation is newly licensed, existing practitioners are exempt from the licensing requirements by grandfather clauses.

The recent stream of criticism alluded to earlier has emanated from many channels: economists, the news media, and various state governments. In the case of economists, for example, as Morris Kleiner noted as late as 2000:

[E]ven though occupational licensing has historically been among the most examined institutions in labor economics [see, for example, Adam Smith] this institution has received relatively little *recent* [present authors' italics] attention, either from academics or the public policy press. An examination of the *American Economic Review*, *Journal of Political Economy* and the *Quarterly Journal of Economics* found no articles published in these journals on occupational licensing during the past five years (p. 190).

However, over the fifteen years since Kleiner's observation, our search of EconLit has uncovered at least 32 economics articles or books published since then with "occupational licensing" in the title and more than 3,100 text mentions of the term. A search of Google Scholar, which casts a much wider net than EconLit since it searches scholarly literature across all disciplines, reveals 112 published works with "occupational licensing" in the title, and more than 65,000 text mentions of the term since 2000.

The news media have also not been reluctant to unleash criticism of certain licensed occupations and the excessive costs and restrictions that licensing often requires for one to become licensed. For example:

- A 2014 article in the *New Republic* asks "Does a 'Shampooer' Really Need 70 Days of Training?" (Vinik, 2014)
- In "Practicing Unlicensed Geology" (*The Ledger*, December 20, 2007), it was reported that a man at a public hearing in Florida who spoke out against a proposed sand-mining operation was slapped with a "cease and desist" court order for practicing geology without the required license.

- The news article “Court Says State Law Has Teeth” (Barron, 2007) related the situation of a *manufacturer* of dentures who was forced to quit his practice because the Wyoming high court ruled he was practicing dentistry without a license.
- “It’s Illegal for Monks to Sell Caskets in Louisiana,” reported *Bloomberg Business Week* (June 1, 2012). Until recently, only licensed funeral establishments could sell caskets in Louisiana.
- In “Louisiana Prunes Thorny Licensing Law,” Tresa Baldas (2010) explains how Louisiana abolished a law that had required aspiring florists to pass a 4-hour-long floral arranging demonstration (exam) before they could be given a mandatory florist license. The demonstration was given before a panel consisting of (guess who) licensed florists, who were obviously potential competitors.
- “So You Think You Can Be a Hair Braider?” asks a *New York Times* article (Goldstein 2012) that points out that an African hair braider could not practice her profession in Utah without a cosmetology license. The license would have required \$16,000 in tuition for about two years of cosmetology school training, training which did not even include African hair-braiding.

In light of the growing criticism of excessive occupational licensing, what are the prospects for “de-licensing”? And through what channels could effective de-licensing take place? If history alone is any indication, the prospects for widespread de-licensing would not seem to be very promising. To explain further, our recent research (Thornton and Timmons 2015) on occupational deregulation attempts over the past forty years has uncovered only eight cases of an occupation licensed at the state level being de-licensed by legislative action (none all that recent). They are:

- Barbers in Alabama (1983)
- Morticians in Colorado (1971)
- Naturopaths in Virginia (1972)
- Private investigators in Colorado (1977)
- Egg candlers in Colorado (1994)
- Interior designers in Alabama (2004)
- Watchmakers in Minnesota (1983) and in Wisconsin (1979).

What is interesting is that in half of these cases attempts to re-license the occupations followed soon afterward (perhaps reminding one of the popular “Whack-a-mole” arcade game?) And in one case, the attempt was successful, with the practice of barbering once again (as of 2014) requiring a license in Alabama.<sup>3</sup>

Furthermore, as noted earlier, most states have a sunset review process that involves periodic reviews (usually called “legislative audits” or “performance audits”) of licensing and licensing boards and their possible termination unless continued by the legislature. In theory, the legislature’s decision to terminate or continue is based on the sunset review panel’s recommendation. But in fact these audits nearly always recommend the continuation of licensure. And even when recommendations are made to remove licensing, the legislature generally ignores the recommendation. Strong special interests are often very effective in resisting calls to de-regulate a particular licensed occupation. After all, practitioners potentially have much more to lose should their profession be de-licensed than consumers (on an individual basis) have to gain. A good example is the case of cosmetologists, whose professional association (the PBA, Professional Beauty Association) has fought hard against deregulation of their profession. For example, in 2012 a bill was introduced in the Indiana General Assembly

that would have eliminated mandatory licensing for cosmetologists, as well as for a number of other occupations. However, only a week after the bill was introduced, it was withdrawn by its sponsor. The reason given was the loud public outcry opposing the bill, coming mainly from cosmetologists. More than many other professional associations, the cosmetologists have been very aggressive in their attempts to ward off de-licensing. On the PBA website, the PBA Director of Government Affairs warns members to “Beware the ‘D’ word: occupational licensing under attack.” The warning further states that if the deregulation of cosmetology were to come about, anyone with no formal training would be able to practice cosmetology, thus putting consumers at risk of injuries, burns, infections, and the spread of diseases, such as hepatitis and methicillin-resistant staphylococcus, due to unsanitary practices. The PBA director also advises members to “Stand up for your profession! You have the knowledge and power to speak out against licensing proponents [sic: we presume that she means *opponents*] and educate legislators in your state about the importance of education and the true risks consumers face without oversight of this hands-on industry....”<sup>4</sup>

Despite these obstacles, new avenues leading to potential deregulation have recently emerged. President Obama has spoken out against excessive licensing as a “job-killer” and in his FY 2016 budget included \$15 million in funding at the Department of Labor to “identify, explore, and address areas where licensing requirements create barriers to labor market entry or labor mobility.” (“Occupational Licensing: A Framework for Policymakers,” p. 41). The problem, however, is that the licensing of occupations in the vast majority of cases is done at the *state* level. The federal government has little control. Nonetheless, in a recent joint report of the Department of the Treasury, the Department of Labor, and the Council of Economic Advisers (“Occupational Licensing: A Framework for Policymakers”) the substantial costs that

occupational licensing imposes on workers and consumers were laid out, along with best practice recommendations to help ensure that occupational regulation might continue to protect consumers without “placing unnecessary restrictions on employment, innovation, or access to important goods and services.” (p. 3)

Moreover, despite the fact that many professional associations (of which the PBA is only one example)<sup>5</sup> have taken up the hue and cry against occupational de-licensing, there is one institution in particular that has taken aggressive steps to push for occupational de-regulation. The Institute for Justice (IJ), which describes itself as a national law firm for liberty, has served as a pro bono advocate in numerous lawsuits filed by individuals restricted from practicing their trade or profession because of what it deems as overly strict licensing laws (e.g., hair braiders.) The IJ has also published several research reports analyzing (and decrying) what it calls excessive occupational regulation, as well as “license creep.” The latter refers to the expansion of definitional boundaries of some occupations, as in the case of eyebrow threaders being required to secure cosmetology licenses and horse-teeth filers being required to have veterinary licenses, for example. (Carpenter et al., p. 32.) The IJ’s work has also received much favorable publicity. (Bergal 2015).

Finally, and again very recently, attempts have arisen in a number of states to de-license *groups* of occupations rather than rely on the sunset process, which has turned out to be slow, costly, and largely ineffective. This is the subject to which we turn next. Where have such attempts arisen? Have they been successful? Where are such attempts likely to arise?

### **III. Recent State Proposals to Collectively De-license Certain Occupations**

Since the year 2011, nine states have formulated legislative or administrative proposals dealing with occupational deregulation, including de-licensing. Table 1 contains summary information concerning the states, dates of the proposals, descriptions, and current status. (See Thornton and

Timmons 2015 for more discussion of these nine proposals.) As can be seen from the table, the proposals generally share several common features.

Most of the state proposals (those of Florida, Indiana, Michigan, Missouri, New Hampshire, and Texas) would eliminate the licensing of a number (usually one or two dozen) occupations. The occupations suggested for de-licensing (arguably) do not concern public health or safety, and several (e.g., barbering and cosmetology) are proposed for deregulation in all of the state proposals. Many of the proposals have been predicated on the argument that unnecessary licensing restricts job creation and/ or opportunities for the disadvantaged. In a few cases (e.g., Missouri, Indiana, and Texas) proposals have been offered for stiffening requirements for future licensing.

The most striking observation from Table 1, however, is that the deregulation proposals to date have largely been unsuccessful. In most cases the bills have either not been acted upon, have died in committee, or have been withdrawn because of political pressure. In most of the nine states (except for Connecticut), follow-up versions of the unsuccessful bills have later been advanced, only to meet similar fates.

As of the time of this writing, in only three states –Indiana, Texas, and Michigan – has there occurred what could be judged to be limited success in occupational deregulation. In Indiana and Texas, several occupations have been deregulated (hypnotists and environmental health specialists in Indiana and opticians in Texas) but none of these occupations had previously been licensed. Rather they had been subject to less restrictive forms of regulation -- registration or certification. Michigan has enjoyed somewhat more success. In all, seven occupations have been deregulated in Michigan in the last two years—auctioneers, community planners, dieticians/nutritionists, immigration clerical assistants, interior designers, oculists,

**Table 1**

**Recent Legislative or Administrative De-Licensing Proposals**

<u>State</u>	<u>Date(s)</u>	<u>Proposal</u>	<u>Description</u>	<u>Status</u>
Connecticut	2013	SB324: An act requiring the Commissioner of Consumer Protection to undertake a study of occupational licenses.	Purpose is to recommend elimination of licenses for occupations where public health or safety is not an issue, as well as to eliminate unnecessary regulatory burdens on individuals and small businesses.	Has not been voted upon.
Florida	2011	A 2011 bill was passed by the Florida House that would deregulate 14 licensed occupations.	The occupations proposed for deregulation included auctioneers, athlete agents, hair braiders, interior designers, and fundraising consultants and solicitors. The bill encountered substantial industry opposition.	The bill was not passed by the Florida Senate despite the support of the Governor.
	2013	In 2013 bills similar to the 2011 bill (titled Deregulation of Professions and Occupations) were introduced in the Florida House and Senate (HB1189 and SB 720).		Both bills died in committee.
Indiana	2012	HB1006	Would eliminate mandatory licensing of barbers, cosmetologists, dieticians, hearing aid dealers, private investigators, and security guards.	Withdrawn after one week due to loud public outcry.
	2013	SB520	Would create a committee to “eliminate, reduce, and streamline employee regulation” [aka the “Eraser Committee”] and would eliminate mandatory licensing of 14 occupations over a 5-year period.	Bill failed to receive a hearing in the House.

Indiana (cont.)	2014	SEA421	Act effectively encouraged occupations seeking new regulations to consider certification rather than licensing.	Act signed into law in March 2014.
	2014	Report issued by Jobs Creation Committee	Indiana General Assembly established the Jobs Creation Committee to assess licensing effectiveness. Report issued on 7/1/15 recommended de-licensing of several occupations.	No legislative action to date based upon report recommendations.
Michigan	2012	Several bills (including HB4688 Public Act 267 of 2014) that de-licensed dietitians	Michigan Office of Regulatory Reinvention (ORR) recommended the deregulation of 18 occupations (including dietician, forester, oculist, and polygraph examiner). Not all of the 18 occupations are licensed.	Several bills were passed in 2013 and 2014 deregulating occupations. Dietitians were de-licensed effective July 2014.
Minnesota	2012	HF2002, SF1629, "Licensing Relief and Job Creation Act"	Bill would allow a person practicing without a license in an occupation requiring a license to challenge the licensing requirement in court.	Bill was referred to committee and never voted on.
	2015	A nearly identical bill (SF784) to the 2012 bill was introduced		Referred to committee: no action taken.
Missouri	2013	HB590	Bill would allow persons to practice the professions of interior design, barbering, and cosmetology without having to secure a license.	Referred to committee.
	2014	HB1891	Bill similar to HB590 expanded the number of professions mentioned in HB590 to 12, including massage therapists, embalmers, and athletic agents.	Died in committee.
	2014	HB1824	Bill would restrict the imposition of licensing requirements on occupations that were not regulated as of January 1, 2015. Principles were formulated to guarantee that individuals may engage in occupations of their choice "free from unreasonable government regulation" and that the least restrictive type of regulation should be implemented when there is a compelling interest in regulating.	Bill failed to receive votes to advance to floor.

New Hampshire	2011	HB446 (Repealing the Authority for Regulation of Certain Professional Occupations)	Bill would repeal the licensing of more than a dozen licensed occupations, including barbers, cosmetologists, massage therapists, hunting and fishing guides, and court reporters.	Bill was defeated in 2012.
	2012	HB1265 (Relative to Criteria for the Government Regulation of Occupations and Professions)	Bill would establish criteria for regulation of occupations and professionals by boards and commissions. Bill would also support certification (“volunteering licensing”) rather than mandatory licensing.	In 2012 a legislative study committee recommended against advancing the bill to the legislature.
North Carolina	2011	HB587 (An Act to Promote N.C. Job Growth through Regulatory Reform)	Bill would create a study commission on occupational licensing to identify outdated and unnecessary occupational licensing laws that should be repealed as well as to study effective alternatives to occupational licensing laws.	Portions of the bill were incorporated into a senate bill that was passed, but the provisions related to occupational licensing were dropped.
Texas	2013	HB86 (Relating to the Criteria for Review by the Sunset Advisory Commission of an Agency that Licenses an Occupation)	Bill was not designed to de-license specific occupations, but rather to provide the Texas Sunset Advisory Commission with a broader set of criteria to be considered in continuing to license an occupation.	Bill was signed into law in September 2013.
	2014	Staff report from Sunset Advisory Commission	Staff report recommended the de-licensing of 6 medical professions (e.g., dieticians, radiologic technologists, and perfusionists).	Final report to Texas state legislature removed the de-licensing recommendations.

and proprietary school solicitors. However, only dietitians/nutritionists had previously been licensed. The other six occupations had been subject to registration or certification requirements. Furthermore, another nine occupations (and/or their regulatory boards) have been recommended for deregulation (e.g., acupuncturist, polygraph examiners, occupational therapist, landscape architect), but no legislative action has yet been taken.

#### **IV. Explaining the Emergence of Deregulation Proposals<sup>6</sup>**

Do these nine recent statewide attempts at collective de-licensing discussed above share any common characteristics? Other than the fact that most de-licensing attempts have taken place in the eastern United States (see Figure 1), are there any other particular state characteristics – economic, demographic, or political – that seem to increase the likelihood of de-licensing activity? To answer this question, it would be useful to have a theory of deregulation or de-licensing. We know of no such theories, but there is a small extant literature that we briefly summarize below concerning the various factors that tend to be associated with the *passage* – the production-- of licensing legislation. Could some of these same factors (or their absence) also explain attempts to de-license occupations?

In his classic article “The Theory of Economic Regulation,” George Stigler (1971) used occupational licensing as an example of the use of the political process by practitioners of an occupation to benefit the group. He considered several characteristics of an occupation which he argued should affect the ability of the group to gain the necessary political power, including the size of the occupation (the larger the group, the more votes it has) and an urbanization measure. His regressions for a small sample of select occupations show only modest support for his theory, however.

**Figure 1: States with Recent De-Licensing Proposals**



Smith (1982) empirically examined the extent to which changes in state occupational licensing laws reflected various political factors and the structure of state legislatures. Her explanatory variables include party concentration (the percentage of the state legislature belonging to the majority party), the number of constituents per legislator (the more constituents represented, the less costly for a legislator to support special interest legislation), and state per capita income. She finds that these and other factors are important for explaining the emergence of licensing laws over the period studied (1952-68).

Graddy (1991) analyzed changes in the number of states regulating five occupations (geologist, landscape architect, librarian, physician assistant, and psychologist) over the period 1968-1980. Her explanatory variables include various legislative variables (e.g., the proportion of the state legislature held by the majority party), various interest group variables (e.g., the number

of professionals who are members of the major professional association), and various public interest variables. Graddy's logit regression results show that all three types of variables may be important in determining whether or not these occupations are regulated in the various states.

Could the same or similar political and economic variables that have been found to partially explain the passage of licensing legislation be also associated with the emergence of legislative proposals (albeit so far mostly unsuccessful) for de-licensing occupations? To analyze this question, we have estimated several regression equations, with the emergence of a bill to de-license over the years 2011-14 as the dependent variable (1=yes, as for the nine states discussed in the previous section, with some states having multiple attempts at de-licensing in that period). The state-characteristic independent variables that we have utilized are the following:

1. State per capita income;
2. The number of low-income occupations that are currently licensed by the state;
3. The state unemployment rate;
4. The percentage of the state population that is minority;
5. The percentage of the state population with a bachelor's degree or higher;
6. Union density in the state;
7. Whether the state is a right-to-work state;
8. The number of constituents per legislator;
9. A dummy variable indicating whether there was a Republican majority in the state senate;
10. A dummy variable indicating whether there was a Republican majority in the state house;
11. The percentage of state legislators who are Republican.

Table 2 presents summary statistics for each of these variables in the states for 2011-2014. The intuition behind most of the variables above is fairly straightforward: that both political and economic factors may also play a role in attempts to de-license occupations, just as the literature dealing with the determinants of the passage of licensing summarized above shows. For example, we have seen that the rationale offered for several of the state bills has been that excessive licensing laws have inhibited job growth (especially among minorities). Because practitioners of occupations that are licensed by the states are often members of professional associations or even unions (e.g., cosmetologists, nurses, plumbers) we would expect a negative

**Table 2: Summary Statistics**

<b>Variable</b>	<b>Obs</b>	<b>Mean</b>	<b>Std. Dev.</b>	<b>Min</b>	<b>Max</b>
Proposed Legislation	200	0.07	0.26	0	1
Right-to-Work State	200	0.47	0.50	0	1
Unemployment Rate	200	6.99	1.83	2.80	13.10
Per Capita Income (\$000's)	200	43.48	6.55	32.11	62.47
Pct. Minority Population	200	19.91	12.20	4.53	74.13
Pct. College Degree	200	28.65	4.88	18.50	40.92
Union Density	200	10.46	5.34	1.90	24.60
Pct. Low Income Occupations Licensed	200	42.63	10.44	23.53	69.61
Constituents per Legislator (000's)	200	43.26	49.31	3.11	323.35
Republican Senate Majority	200	0.57	0.50	0	1
Republican House Majority	200	0.59	0.49	0	1
Overall Pct. Republican	200	52.02	18.78	0	86.67

Data sources: Bureau of Economic Analysis; Institute for Justice; Bureau of Labor Statistics; Bureau of the Census; American Community Survey; Current Population Survey; American Community Survey; National Conference of State Legislatures; Council of State Governments.

association between de-licensing efforts and union density (with the reverse relationship expected in right-to-work states.) For the variable specified as the percentage of low-income occupations that are currently licensed by the state, we have used a measure formulated by Carpenter et al. (2012) to gauge the “burden of licensure” for lower-income workers. Specifically, the variable looks at 102 occupations that are licensed in at least one state and that are recognized by the US Bureau of Labor Statistics as ones in which practitioners’ earnings are lower than the national average. The more such occupations that are licensed in a state, arguably the stronger the case that might be made for de-licensing.

To explore further the characteristics of these states, we estimate a probit model using the variables described above, along with time fixed effects and geographic fixed effects (in some cases). The effects of these variables on the likelihood of the proposal of a legislative de-licensing bill (hereafter *Proposal*) are displayed in Table 3. The model results in column 1 include only time fixed effects, column 2 includes time fixed effects and controls for census regions, and column 3 includes time fixed effects and controls for census divisions. Due to the small number of states proposing legislation, using either set of geographic controls causes the loss of some observations when there is no variation in the dependent variables within a given region or division.

In the regression results in columns 1, 2, and 3 respectively, there are statistically significant associations between the *Proposal* variable and the state’s unemployment rate (positive), per capita income (positive), percent minority population (negative), and (excluding column 3) percent college degree (positive). The Republican Senate majority and Republican house majority variables are positive and statistically significant across all three versions of the model also. Our results seem to suggest that the composition of the House is more important in

**Table 3: Determinants of State De-Licensing Proposals: Probit Model Estimates**

VARIABLES	(1) Proposed Legislation	(2) Proposed Legislation	(3) Proposed Legislation
Right-to-Work State	0.220 (0.617) [0.0202]	0.333 (0.714) [0.0299]	0.349 (0.681) [0.0366]
Unemployment Rate	0.842*** (0.261) [0.0770]	2.188*** (0.467) [0.195]	2.139*** (0.524) [0.224]
Per Capita Income	0.0982* (0.0509) [0.0090]	0.439*** (0.120) [0.0390]	0.453*** (0.124) [0.0474]
Pct. Minority Population	-0.0786*** (0.0234) [-0.0072]	-0.273*** (0.0657) [-0.0243]	-0.270*** (0.0995) [-0.0282]
Pct. College Degree	0.168** (0.0687) [0.0153]	0.232** (0.104) [0.0206]	0.130 (0.112) [0.0136]
Union Density	-0.0344 (0.0593) [-0.0031]	-0.0148 (0.125) [-0.0013]	0.0755 (0.137) [0.0079]
Pct. Low Income Occupations Licensed	-4.703** (1.861) [-0.0043]	-15.89*** (4.643) [-0.0141]	-15.79*** (5.553) [-0.0165]
Constituents per Legislator	0.0039 (0.0038) [0.0004]	-0.0133 (0.0083) [-0.0018]	-0.0143 (0.0113) [-0.0015]
Republican Senate Majority	2.281*** (0.822) [0.1331]	1.722** (0.807) [0.109]	2.034** (0.885) [0.147]
Republican House Majority	1.522** (0.634) [0.0983]	5.075*** (1.585) [0.249]	4.678*** (1.738) [0.226]
Overall Pct. Republican	0.274 (2.454) [0.0003]	2.422 (3.861) [0.0022]	2.927 (3.867) [0.0031]
Constant	-15.99*** (4.906)	-34.31*** (7.777)	-32.62*** (7.922)
Census Region Controls	N	Y	N
Census Division Controls	N	N	Y
Observations	200	148	120

Robust standard errors in parentheses.

Marginal effects in brackets.

\*\*\* p&lt;0.01, \*\* p&lt;0.05, \* p&lt;0.1

predicting the likelihood of a de-licensing proposal. A Republican majority in a state's House is associated with a 25 percentage point increase in the likelihood of a de-licensing proposal with a Republican majority in the Senate increasing the likelihood by as much as 15 percentage points. These results are not surprising, however, in light of the fact that it has been Republican legislators who have proposed most of the de-licensing bills in the nine states analyzed.

We must emphasize that our analysis is simply a heuristic first look at some possible common characteristics shared by states that have seen legislative de-licensing proposals advanced within the last several years. Our results do not necessarily imply causal relationships between the composition of a State's House and Senate and its likelihood of a *Proposal*, or causal relationships between *Proposal* and other independent variables for that matter.

## **V. Conclusion**

Where does this leave us? As we have seen, occupational licensing in the US has grown rapidly in the past several decades. Over most of this period, there has been little concern over, and not much attention devoted to, this phenomenon. Most recently, however, concerns have arisen about the extent, the costs, and the job-killing nature associated with the licensing of many occupations. Despite this recent attention, though, the prospects for widespread de-licensing in the immediate future appear to be slim. First of all, past examples of successful de-licensing have been few—a total of nine (counting Michigan's recent de-licensing of dieticians) in the span of forty years! If any widespread de-licensing is to take place, it will not likely occur through the sunset review process that operates in most states, which has proved to be slow, costly, and ineffective. Instead, such de-licensing is more likely to occur through state initiatives to de-*license groups* of occupations. Such initiatives, as we have seen, are more likely to arise in states

with Republican majorities in the state House or Senate, as well as in states with higher unemployment rates, higher per capita incomes, and a higher proportion of college graduates. Still, these attempts have not so far resulted in a large number of occupations being deregulated, much less de-licensed.

Perhaps a recent comment from the executive director of CLEAR (Adam Parfitt) best summarizes the issue. According to Parfitt, "I think the atmosphere [concerning licensing] has changed in tone. Whether that's translating yet into widespread deregulation, I'd say probably not." (CLEAR, November 12, 2015)

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## Endnotes

<sup>1</sup> Licensing laws restrict the practice of an occupation to those who hold a license while certification laws restrict the use of the title, but not the practice, to those who are certified. Registration requirements merely stipulate that individuals practicing a certain occupation must list their names on some official register.

<sup>2</sup> In the 1980s and early '90s, the Federal Trade Commission examined the issue of occupational licensing (e.g., Cox and Foster 1990), and the American Enterprise Institute (Rottenberg 1980) organized a conference on the topic. None of these activities resulted in significant legislative attempts to scale back occupational regulation, however.

<sup>3</sup> The Whack-A-Mole arcade game consists of a flat surface with several round holes. Each hole contains a single plastic mole and the machinery to move it up and down. Once the game starts, the moles keep popping up from their holes at random. The object of the game is to force the individual moles back into their holes by hitting them directly on their heads with a large soft mallet. The analogy to repeated re-licensing attempts is, we think, both apt and humorous.

<sup>4</sup> Myra Irizarry, "Beware the 'D' Word," Professional Beauty Association. The PBA also claims to have conducted a poll of 1,200 American voters in 2012, with the results showing that "more than nine in ten (94%) voters say that they support requiring their stylist, barber, nail technician or esthetician to be licensed.

<sup>5</sup> Respiratory therapist associations in Texas are also advocating against de-licensing of the profession <http://rtfocus.com/signpetition/>

<sup>6</sup> These recent statewide collective attempts are not the first to have been tried. In 1977 the Georgia legislature passed a bill ("An Act Providing for the Review, Continuation, Reestablishment, or Termination of Regulatory Agencies") that set termination dates for a number of licensing boards. But what ultimately happened was that, as the termination dates drew near, the legislature passed bills to halt the termination. For example, in 1989 Georgia scheduled the elimination of the licensing board for dieticians to take place in 1995, but the Georgia legislature then halted the elimination the year before it was to occur.