

# The Costs of Occupational Licensing in Tennessee & Avenues for Reform

Macy Scheck  
Research Analyst at the Political Economy Research Institute  
Middle Tennessee State University

Ron Shultis  
Director of Policy and Research  
Beacon Center of Tennessee

Daniel J. Smith  
Director of the Political Economy Research Institute  
Professor of Economics  
Middle Tennessee State University

Protik Nandy  
Political Economy Research Institute Ph.D. Dissertation Fellow

**March 2022**



The Beacon Center empowers Tennesseans to reclaim and protect their freedoms, so that they can pursue their version of the American Dream. The Center is an independent, nonprofit, and nonpartisan research organization dedicated to providing expert empirical research and timely free market solutions to public policy issues in Tennessee.



**Political Economy  
Research Institute**

---

MIDDLE TENNESSEE STATE UNIVERSITY

## **ABOUT THE POLITICAL ECONOMY RESEARCH INSTITUTE AT MIDDLE TENNESSEE STATE UNIVERSITY**

Established in 2016, the Political Economy Research Institute (PERI) is a joint venture between the Jennings A. Jones College of Business and the University Honors College, established with initial seed money from the Charles Koch Foundation.

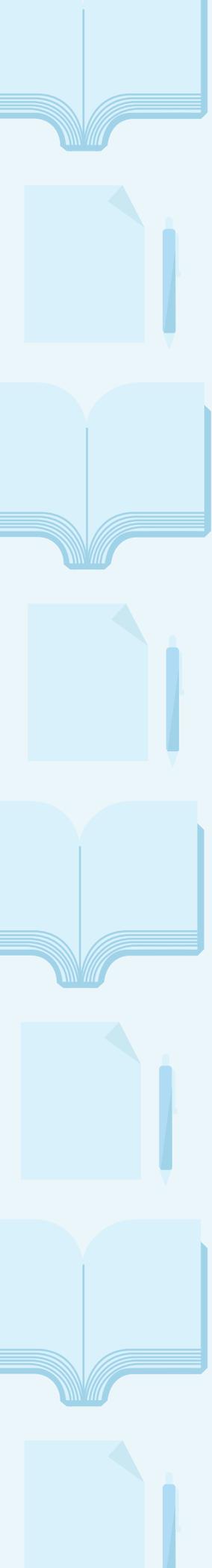
The mission of the institute is to engage undergraduate and graduate students with faculty in research that will further the understanding of business and economic principles, as well as their impact on regional, national, and international financial conditions and the well-being of society. To advance its mission, the PERI will engage in research and educational programs which uncover the institutions and policies that encourage and enhance human well-being. Learn more at [www.mtsu.edu/peri](http://www.mtsu.edu/peri)



## **Guarantees of Quality Scholarship**

The Political Economy Research Institute at Middle Tennessee State University guarantees the quality of its public policy studies. All policy studies go through a rigorous refereeing process. If a fact or reference is found to be incorrect, we will update the study with appropriate, and noted, corrections.

The Beacon Center of Tennessee is committed to delivering the highest quality and most reliable research on Tennessee policy issues. The Center guarantees that all original factual data are true and correct and that information attributed to other sources is accurately represented. The Center encourages rigorous critique of its research. If an error ever exists in the accuracy of any material fact or reference to an independent source, please bring the mistake to the Center's attention with supporting evidence. The Center will respond in writing and correct the mistake in an errata sheet accompanying all subsequent distribution of the publication, which constitutes the complete and final remedy under this guarantee.



# Key Takeaways:

- While Tennessee is generally considered a more free market oriented state, one area it regulates more heavily is in occupational licensing, essentially a government permission slip to do a job;
- Tennessee has over 263 different occupational licenses, registrations, and certifications, covering 30 percent of the Tennessee workforce;
- The economic cost of obtaining these onerous licensing regulations conservatively costs Tennessee workers over \$279 million just to enter an occupation of their choice; and
- Renewing their existing license costs these Tennessee workers nearly \$38 million per year.

# Executive Summary

Occupational licensing is the restriction of individual entry into an occupation through mandatory professional requirements. The idea being that in situations where the consumer is uncertain about the quality or safety of a good or service, licensure can help ensure acceptable standards of quality. Since its early origins applying to a few limited occupations, occupational licensing has spread to more and more professions. In fact, occupational licensing has been adopted so broadly that it is now commonly found in occupations that do not pose any credible threat to the safety of the consumer or to the quality of the service they provide.

Occupational licenses come with a varying range of requirements such as minimum education levels, testing, background checks, fingerprinting, and continuing education requirements. These requirements are stringent and typically entail hundreds of dollars in fees. In theory, by setting these legal barriers to practice in the profession, occupational licensing is thought to ensure consumer safety and quality by prohibiting anyone who does not meet all the requirements (or pay all the associated fees) from practicing.

By setting up often rigorous licensing schemes that serve as barriers to entry and the boards that administer them, however, industry groups can—even unintentionally—restrict competition, limit choices for consumers and thereby boost industry wages, all while raising prices for consumers. In effect, while done in the name of protecting consumers,

licensing can in the end harm them. When expanded to a wide enough segment of the workforce, occupational licensing can measurably reduce personal growth and economic opportunity. Most concerningly, these effects are felt chiefly by the most vulnerable groups in American society, including minorities, the poor, military spouses, and rehabilitated criminals.

To protect consumers, especially these vulnerable groups, current licensing boards should be actively monitored and, where possible, moderated or even eliminated. Certainly, further expansions of occupational licensing, especially to professions with no plausible threat to consumer safety, should be checked.<sup>1</sup>

In this study we examine the effect of Tennessee's occupational licensing policies and estimate its effect on the local economy, with the hope of further enhancing the state's reputation for fostering a friendly and open business environment, while still protecting consumers.

Currently, Tennessee ranks 13th in terms of most broad and onerous licensing requirements, according to the Institute for Justice.<sup>2</sup> This includes a total of 263 occupations, which comprises 30 percent of the state's workforce, or over one million Tennesseans. From these numbers, we conservatively estimate initial costs of occupational licensure to total over \$279 million. Additionally, we conservatively estimate that annual renewal costs for occupational licensing in Tennessee to be nearly \$38 million.

To reduce this drag on the state's economy, policymakers should pursue four objectives. First, occupational licensing should be substantially curtailed or eliminated on low-income professions to end unnecessary restrictions on occupational choice and economic mobility for low-income Tennesseans. Second, Tennessee should eliminate occupational licensing for professions with no measurable and realistic threat

to consumer safety. Next, policymakers should strictly control the extension of occupational licensing to new professions. Finally, by improving public access to data on licensed occupations, researchers can better measure the costs and burdens of licensure and how many Tennesseans are affected by it. Following these four steps will help ensure that the state of Tennessee is better situated to foster economic prosperity for all its citizens.



# Index

<b>Introduction .....</b>	<b>1</b>
<b>Occupational Licensing in Theory and Practice.....</b>	<b>3</b>
<b>The Cost of Occupational Licensing in Tennessee.....</b>	<b>6</b>
<b>Recent Reforms in Tennessee.....</b>	<b>10</b>
<b>Reforming Occupational Licensing.....</b>	<b>11</b>
<b>Conclusion .....</b>	<b>13</b>

# Introduction

Since its founding, Tennessee has been a land for those looking for economic opportunity. From the first settlers who crossed the Appalachian Mountains to those looking now to escape the high taxes of Illinois, New York, and other states, economic freedom lies at the heart of the Tennessee experience. In fact, Tennessee currently ranks 5th among the states in economic freedom according to the Fraser Institute's Economic Freedom of North America index.<sup>3</sup> It is no accident, then, that the state's motto is "Agriculture and Commerce." The Tennessee Supreme Court has even stated that, as a matter of state constitutional law, the right to earn a living is exactly that: a fundamental constitutional right.<sup>4</sup> Unfortunately, the right to earn a living, combined with this spirit of economic freedom and opportunity, is not always and everywhere being treated and protected as a fundamental right.

Occupational licensing represents one of the most concerning curtailments of economic liberty in Tennessee. An occupational license, by setting educational testing, and continuing education requirements, is essentially a mandated permission slip to obtain a job, and professions often seek licensure to set unnecessarily high entry requirements to in order to restrict competition and raise prices for consumers.<sup>5</sup> Problematically, the growth of occupational licensing has been predominantly borne by lower-income workers who can ill afford the costs of time, tuition, and lost wages required to comply with overly burdensome entry regulations.<sup>6</sup>

According to a 2015 White House report, the percentage of Americans who need a license to work has grown from five percent to closer to 29 percent since 1950.<sup>7</sup> Despite its reputation as an economically free state, Tennessee has also followed this nationwide trend, succumbing to pressure from professional groups seeking occupational

licensure, and thereby imposing barriers on the right to earn a living here in Tennessee. The growth of occupational licensing, and the accompanying decline in economic opportunity and occupational choice, has raised serious concern on both the political right and left.<sup>8</sup>

There is strong consensus among academic scholars examining the effects of occupational licensing.<sup>9</sup> In its landmark 2012 study *License to Work*, the Institute for Justice found Tennessee to be the 13th most broadly and onerously licensed state, a ranking which was reaffirmed in its updated 2017 study.<sup>10</sup> That same year, the Wisconsin Institute for Law & Liberty studied the effects of licensing requirements for ten common blue-collar professions and determined Tennessee ranked dead last amongst the 50 states.<sup>11</sup> According to the study, Tennessee could expect a nine percent increase in job growth simply by adopting the licensing requirements of the least onerous state, Hawaii.

Encouragingly, Tennessee has, in recent years, begun to respond to the growing problem presented by occupational licensure. Tennessee was the first state in the nation to enact a Right to Earn a Living Act, the purpose of which was to examine unnecessary obstacles to a person's ability to enter a career and to recommend reforms.<sup>12</sup> The resulting report and built-in review process created by this groundbreaking law has spurred a flurry of reforms in the past several years. For instance, in 2017, Tennessee repealed its license to shampoo hair.<sup>13</sup> In 2018 came what was referred to as the Fresh Start Act, which outside of a few exemptions prevented a licensing authority from denying a license to an applicant with a prior criminal record unless the criminal record was directly linked to the job sought.<sup>14</sup> The year 2018 also brought about the elimination of perhaps Tennessee's strangest license: that required



of beauty pageant operators.<sup>15</sup> Additional reforms included exempting those practicing animal massage therapy from having to obtain a veterinarian license and removing the license to braid hair in 2018 and 2019, respectively.<sup>16</sup> The licenses for these two occupations were so onerous compared to their health and safety justification that they were included in a previous Beacon Center report, *The Dirty Dozen: Eliminating Red Tape for Blue Collar Workers*, which highlighted the occupational licenses in most need of reform.<sup>17</sup> These reforms were recognized and reaffirmed when the Mercatus Center showed how Tennessee has led the nation in reducing occupational licensing burdens.<sup>18</sup> More importantly, they have led to greater opportunity for Tennesseans. During the two decades that a license was required to braid hair, there were just over 100 Tennesseans licensed in the practice. As of July 2021, just two years after the repeal of the license, nearly 2,000 Tennesseans were engaged in the practice.

The creation of a review process through the Right to Earn a Living Act, eliminating and reforming multiple individual licenses, and giving those with criminal records a better chance of earning a job and becoming productive members of society certainly are important and commendable steps for Tennessee.

Numerous opportunities for reform, however, remain to restore Tennesseans' right to earn a living. The COVID-19 pandemic, for instance, has highlighted the impact of burdensome licensing requirements more than ever. Early on in the pandemic, Governor Bill Lee allowed out-of-state medical providers to practice within the state if their work was related to coronavirus, and waived many continuing education and renewal requirements for both medical and non-medical licenses

in order to increase the state's supply of practitioners.<sup>19</sup> This perhaps would not have been necessary if Tennessee had followed the lead of states like Arizona, Montana, New Jersey, and Pennsylvania, which have taken this approach even further by granting universal recognition to out-of-state licenses. Without such measures, licensing has been shown to lead to a 36 percent decline in interstate migration.<sup>20</sup> Such a step in Tennessee would proactively help the Volunteer State prepare for future pandemics or disasters when medical professionals need to cross state borders quickly.

One strong reason to universally recognize out-of-state licenses is that Tennessee, for the first time ever, is the top destination for residents fleeing high taxes and burdensome regulations in other states.<sup>21</sup> There is strong evidence that strict occupational licensing requirements reduce in-migration to states, suggesting that Tennessee could be an even more popular destination for productive workers if universal recognition were adopted.<sup>22</sup>

Yet the biggest need for reform remains relaxing or eliminating occupational licensing for those seeking to change careers, enter the workforce for the first time, or embark on the American dream of opening their own business. Given the proven economic and personal harm of occupational licensing, it is imperative to find less onerous ways of ensuring and protecting consumer health and safety. These can include private credentialing, reviews, consumer guarantees, inspections, bonding and insurance, or registrations.<sup>23</sup> When there is no realistic threat to consumer safety, or that private assurance of quality mechanisms can protect consumers, occupational licensing should be eliminated.

# Occupational Licensing in Theory and Practice

Occupational licensing is the required certification and registration of practitioners in designated industries. Set by state legislators and usually carried out by industry boards, occupational licensing restricts entry to specific occupations. These restrictions often include education or training requirements, work experience, tests, background checks, membership in professional organizations, and proper registration and renewal with the relevant industry board. Many of these requirements also include fees or implicit monetary costs. In many cases, these fees can be substantial. To enter a licensed profession, prospective

practitioners must demonstrate that they satisfactorily meet these requirements. Anyone who cannot pay these upfront licensing costs or otherwise fails to meet these requirements is deemed unfit by the state to practice within that licensed industry. They are explicitly forbidden by law from practicing within that industry until they have received a license to practice under the threat of fines, cease-and-desist orders, or even jail time. One recent example of this is the story of Elias Zarate, who faced potential jail time for not having the high school diploma necessary for a barber license.<sup>24</sup>

## Elias Zarate's Story

After having to drop out of high school to care for his younger siblings, Elias Zarate opened a barbershop in Memphis. Shortly thereafter, he was forced to shut down and faced fines in addition to other civil punishment. Zarate was restricted from being a barber because he did not have a high school diploma—a requirement that has nothing to do with the skill or safety of cutting hair. This requirement is ironic in that the state policymakers who enacted the law were not required to have a high school diploma, either. Also, despite their service being closely related to that of barbers, cosmetologists were not required to meet the same standard. Luckily for Zarate, the requirement for a diploma to be a barber was struck down as unconstitutional for having no rational basis.



Occupational licensing is implemented with the stated purpose of protecting consumers. The logic is that in the presence of information asymmetries—a situation where the provider of a service has more information than the purchaser of the good or service—a provider can exploit the ignorance of consumers to engage in fraud and malpractice.<sup>25</sup> Thus, occupational licensing is justified on the grounds that it protects purchasers from unqualified providers, poor service, unnecessary upcharges, or inflated prices. For instance, medical care is a complex service; the purchaser typically knows relatively little about the prescribed medicine or procedure compared to the practitioner. This opens up the possibility for the consumer to be duped by an unqualified practitioner, receive lower-quality medical care without realizing it, be sold unnecessary procedures, or be charged prices well above the typical cost of care. When it comes to medical professions particularly, unqualified practitioners, lower quality, or unnecessary operations can pose a substantial health threat to consumers.

The boards entrusted with enforcing and in some cases setting the criteria for the standards for acceptable practice and to help safeguard consumers are typically comprised primarily of industry representatives, often only with a single nominal consumer or public representative. By increasing the cost of entering the profession, licensing can increase prices for consumers and restrict access to the profession, decreasing the number of people employed in licensed professions.<sup>26</sup> In fact, the job loss due to occupational licensing, according to one estimate, may reach as high as 20 percent.<sup>27</sup> In Tennessee, that would mean occupational licensing has prevented 182,500 jobs.

Particularly concerning is the fact that the job loss created by occupational licensing often falls hardest on low-income residents and may be concentrated among minority workers.<sup>28</sup> A recent study, for instance, documents how occupational licensing laws were used to engage in medical racism to marginal African-American midwives.<sup>29</sup>



### **There are four reasons occupational licensing restrictions tend to harm low-income residents:<sup>30</sup>**

- 1.** By raising the entry cost to the profession, it places what otherwise would have been a low-cost entry profession out of the reach of low-income individuals.
- 2.** The costs of occupational licensing can often be passed on to consumers as higher prices. Increased prices for plumbers, electricians, and hairdressers will relatively harm low-income individuals.
- 3.** Occupational licensing restricts low-income residents' ability to trade off quality for a lower price. Under occupational licensing, even low-income individuals are often forced to choose between paying top dollar for high-quality service or, more dangerously, hire someone on the black market or even engage in home-production. Careful research has found that occupational licensing in a wide variety of professions, including dentistry, electrical work, medicine, plumbing, optometry, pharmacy, real estate, and veterinary medicine, has actually reduced service quality for low-income residents and put them at heightened risk of harm because higher prices force them to go without the service or do it themselves.<sup>31</sup>
- 4.** Occupational licensing boards disproportionately inhibit employment opportunities for veterans transitioning into civilian work and the spouses of moving military members.<sup>32</sup>

The barriers to entry for the profession, however, can result in substantial wage increases for practitioners in the licensed profession.<sup>33</sup> On average, across licensed occupations, this wage premium is 11 percent.<sup>34</sup> Some studies have found even higher wage premiums. For instance, massage therapists in Alabama saw a 16.2 increase in wages with licensing.<sup>35</sup> Here in Tennessee, the estimated premium for occupational licensing is estimated to be 15.95 percent on average.<sup>36</sup>

While occupational licensing can improve the quality and safety of a service to consumers, the detrimental consumer

safety and quality effects of increased use of home production, black-market provision, or going without the service, combined with the increase in price due to reduced competition, means that it often does not meet a standard cost-benefit analysis.<sup>37</sup> In other words, whatever benefits may stem from occupational licensing are more than offset by the costs they impose. This is because industry practitioners, in pursuit of a higher wage premium, have the incentive to impose unreasonably strict entry requirements and elevated costs in order to reduce competition in the profession.



# The Cost of Occupational Licensing in Tennessee

The Institute for Justice’s *License to Work* report, in its second edition, ranks Tennessee 39th in terms of having the most burdensome licensing laws and 13th in terms of most broad and onerous licensing.<sup>38</sup> The Institute for Justice found that existing licensing regulations in Tennessee inflict burdens on workers, businesses, and consumers, and are often inconsistent, inefficient, and arbitrary. Furthermore, the 2017 study finds that damage from licensure

often falls hardest on low-income residents. In total, it finds that Tennessee licenses 71 of the 102 low-income occupations studied. Despite recent reforms, our data show the burden occupational licensing creates in Tennessee is still relatively high compared to surrounding states. In its *Freedom in the 50 States Report*, the Cato Institute ranks Tennessee 39th in occupational freedom (Figure A).<sup>39</sup>

	Estimated Percentage of Labor Force Licensed	Number of Broad Occupations Licensed	Estimated Initial Cost of Licensure	Estimated Annual Cost of Licensure	Most Broadly and Onerously Licensed Ranking (Institute for Justice)	Most Burdensome Licensing Laws Ranks (Institute for Justice)	Most Restrictive on Occupational Freedom (Cato)
Alabama	21%	151	\$122 Million	\$33 Million	25th	47th	11th
Georgia	15.7%	NA	NA	NA	34th	14th	18th
Kentucky	27.8%	NA	NA	NA	40th	12th	24th
Mississippi	20%	118	\$48 Million	\$13.5 Million	19th	46th	32nd
Tennessee	29.85%	264	\$279 Million	\$38 Million	13th	39th	12th

Sources: Percentage of Labor force Licensed for Georgia and Kentucky is from Kleiner and Vorotnikov (2017). For Alabama it comes from Smith et al. (2018). For Mississippi it comes from Smith (2018). Tennessee estimate is derived from this current study. Number of occupations licensed and estimated costs of licensure from Smith et al. (2018) for Alabama, Smith (2018) for Alabama (see also Smith 2017). Tennessee estimate comes from this current study. Note, however, that it excludes education, notary, background check, and photo costs to enable comparison. Most broadly and onerously licensed and most burdensome licensing laws ranking come from Carpenter et al. (2017). Occupational Freedom ranking comes from Ruger and Sorens (2018).

Figure A: Cost of Occupational Licensing of Tennessee and Comparative States

In this study, we develop a more complete estimate of the costs of occupational licensing in Tennessee by collecting data on the number of occupations the state licenses and the total initial licensure and renewal fees. This list of licensed occupations in Tennessee was collected from state and national licensing boards. To estimate the number of workers in these licensed industries, we used state and

federal licensing boards and the Bureau of Labor Statistics.<sup>40</sup> The estimate we derive is conservative for three reasons.

First, despite our months of efforts, we lack complete data on the costs of licensure and the number of practitioners in each licensed occupation necessary to include all licensed occupations. Due to incomplete data, the costs of licensure in 58 occupations in Tennessee are excluded. This includes

some occupations with a high number of practitioners but undisclosed licensing fees, such as nurse aides. In other occupations, such as gas dealers, we had the licensing fees, but lacked practitioner totals. Even the number of licensed occupations itself is conservative in this regard, as there is no centralized database of occupations licensed in Tennessee.

The second reason our estimate is conservative is that some professions have increased fees for licensees, depending on their number of qualifications, but we often only had data on the number of practitioners licensed overall, not their number of qualifications. For example, there are 12 different subcategories of contractors. Of those 12, we only have practitioner counts for seven of them. In these cases, we conservatively included only the fees associated with the minimum qualification, understating the cost of licensure.

Additionally, when collecting fee information, we erred on the side of providing a conservative estimate. For example, non-nurse midwives can pay an exam fee up to \$1,200, but for our estimate we used an exam fee of \$1,100. This was also the case for radiologists, who may face a higher exam fee than the figure used in our estimate.

We found 263 licensed occupations in Tennessee. The state licenses several occupations that are rarely licensed elsewhere. Alabama is the only neighbor of Tennessee that also licenses bartenders. Tennessee is also one of the few states that imposes licensing requirements on auctioneers, and it imposes more demanding requirements than average, mandating licensees obtain six months experience, pay \$425 in fees, and pass an exam. Presumably, the states that do not license auctioneers

suffer no serious and plausible threat to consumers.

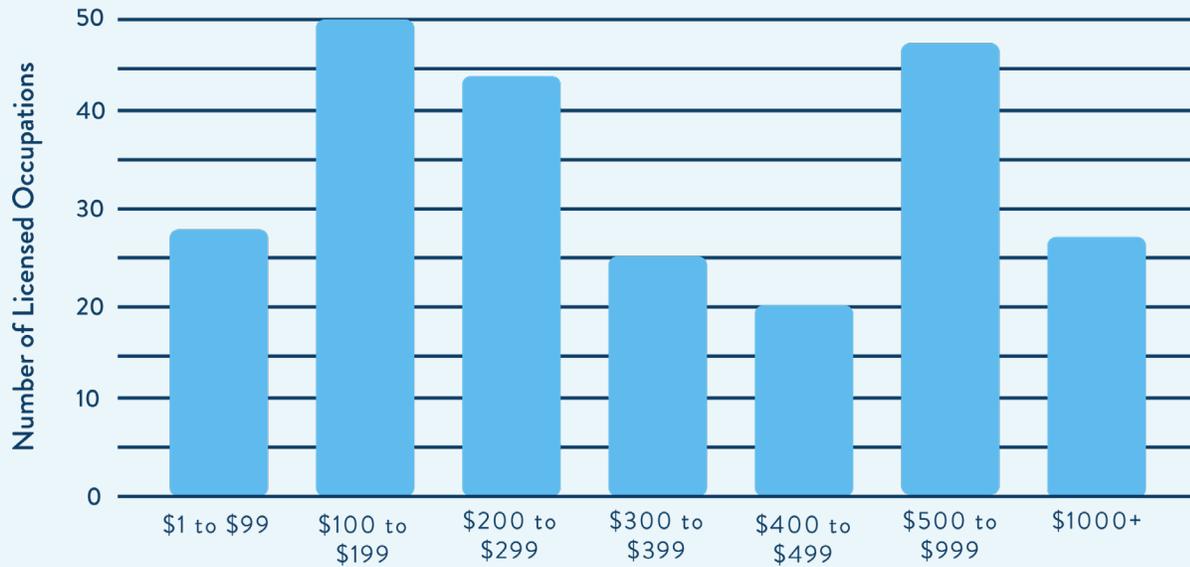
In total, for the licensed occupations where we had reliable data on the number of practitioners, we found that just over one million Tennesseans hold an occupational license. With a labor force of 3.4 million workers,<sup>41</sup> that means that, at the minimum, 30 percent of Tennessee's workforce requires a license to work.

Initial licensing fees in Tennessee included exam fees, exam registration, application fees, verification fees, certification fees, licensure fees, recovery funds fees, fingerprinting and background check fees, roster fees, and an annual state regulatory fee.

Our data show that initial licensing fees ranged from \$20 for auto insurance agents to \$4,688 for X-ray operators. Some of the professions with the highest initial licensing fees were chiropractors at \$4,655, podiatrists at \$3,215, and optometrists at \$2,600. Some of these initial licensing costs are particularly high in comparison to national averages. Figure B provides a breakdown of initial licensing fee costs in Tennessee.

By combining the fees with practitioner counts, we estimate that the initial licensing costs are over \$279 million in Tennessee alone. With just over one million practitioners, this comes to around \$271 per every licensed practitioner in Tennessee, on average. In comparison, the total costs of initial licensure totaled \$48 million and \$122 million in Mississippi and Alabama, respectively, but these studies are not exactly comparable given the availability of data in each state and the calculation methodology.<sup>42</sup> Still, the costs of occupational licensing, relatively, appear quite high in Tennessee.

## Explicit Initial Licensing Fees



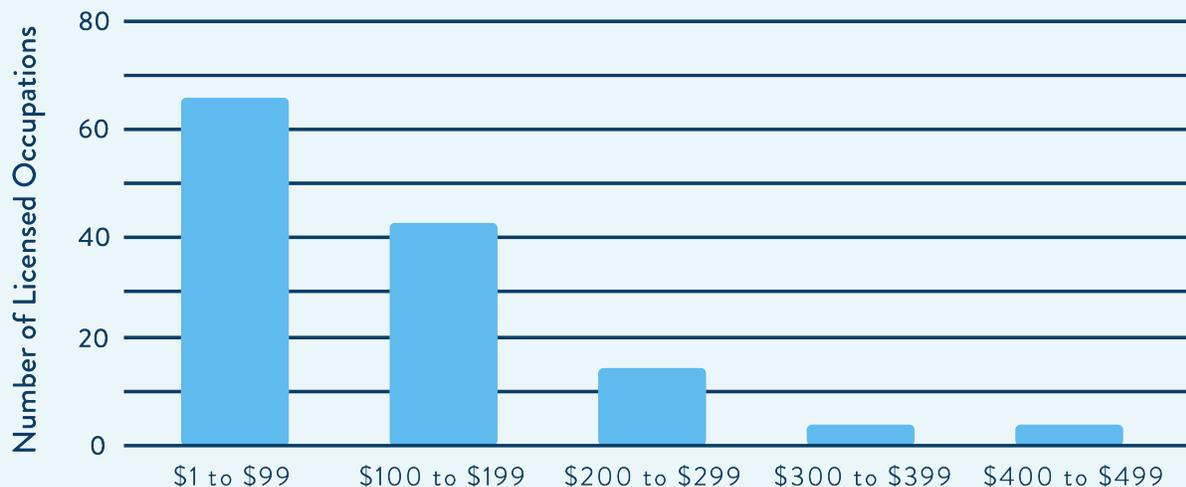
*Figure B: Number of Occupations with Various Licensing Fee Range*

Importantly, this estimate does not include explicit or implicit education costs, which often make up the bulk of the expenses. On low-skilled occupations, educational requirements are often unnecessary or, at the least, exceed any reasonable requirement truly necessary to practice in a given industry. For instance, emergency medical technicians can earn a license with just about 26 days of training. This is far less training than that required of barbers, mobile home installers, cosmetologists, makeup artists, skincare specialists, manicurists, and massage therapists. In fact, a licensed barber has over 10 times the hours in education than an emergency medical technician.<sup>43</sup> Experience standards also seem

counterintuitive. For example, in Tennessee licensed auctioneers require six months of experience whereas veterinary technicians require no experience whatsoever.<sup>44</sup> But for many professional occupations, the education would be incurred whether licensed or not (such as the medical field), which is why we excluded the education costs from our analysis. It is interesting to note, however, that a medical degree from Vanderbilt is a more recognizable and important display of the practitioner's quality than a license; therefore, the license is often just unnecessarily duplicative of other more important assurances of quality for high-skilled professions.

In addition to the initial fees, many

## Explicit Renewal Costs For Licensed Occupations in Tennessee



*Figure C: Renewal Costs of Various Occupational Licenses in Tennessee*

license holders in Tennessee must also pay for licensure renewal. Using the same practitioner counts as before, the total estimated annual renewal costs of occupational licensing are nearly \$38 million. Figure C provides a breakdown of licensing renewal costs in Tennessee. Over a 30-year period, reflecting a career length serving in a licensed occupation, the total renewal costs are \$1.14 billion. The occupations with the highest renewal fees are gas dealers (\$470), soil classifiers (\$400), and auto factory representatives (also \$400). This number excludes the costs of continuing education requirements and the time it takes to complete them.

When levied on low-income occupations,

expensive educational requirements impede economic mobility and create substantial barriers to entry. Many times, these excessive educational costs seem largely unnecessary. For example, preschool teachers' annual mean wage is only \$32,600, yet they face seven years in education and experience as well as five exams. Similarly, manicurists earn \$26,420 and face \$60 in initial fees, six hundred hours of education, and two exams. It is estimated that manicurists lose 140 calendar days to licensing requirements alone.<sup>45</sup> Such a burden levied on a low-income occupation makes it even more difficult to get ahead.



# Recent Reforms in Tennessee

Tennessee has been a national leader in reform efforts in recent years. Passed in 2018, the Fresh Start Act makes it harder to deny a license to those with criminal records who do not pose a threat to public safety.<sup>46</sup> There are around 27,000 people incarcerated in Tennessee.<sup>47</sup> Previously, licensing boards could deny licenses to applicants with criminal records, even misdemeanors. The Fresh Start Act stops boards from using obscure criteria such as “moral turpitude” (a lack of “good character”) to reject applicants with prior criminal records. Now applicants can only be denied licenses for occupations directly related to the crimes they committed. The law also allows applicants to petition the licensing board before undergoing costly and timely training requirements to determine if they deem the applicant’s criminal history to be related. Eliminating barriers to jobs for those with

criminal records substantially lowers their likelihood of reoffending.

A second recent major reform allows people to use apprenticeship programs as an alternative route to satisfy licensing requirements.<sup>48</sup> Now, any individual who completes a government-registered or recognized apprenticeship and passes all required exams will receive a license from the respective licensing board.

And finally, the state of Tennessee has successfully been able to reduce the costs of licensing requirements. Now those who receive state or federal public assistance, like Medicaid, SNAP, or TANF, may receive a fee waiver, eliminating any kind of barrier that stands between an employee and his or her job. This is a significant step that removes a huge obstacle for those looking to improve their economic situation.<sup>49</sup>



# Reforming Occupational Licensing in Tennessee

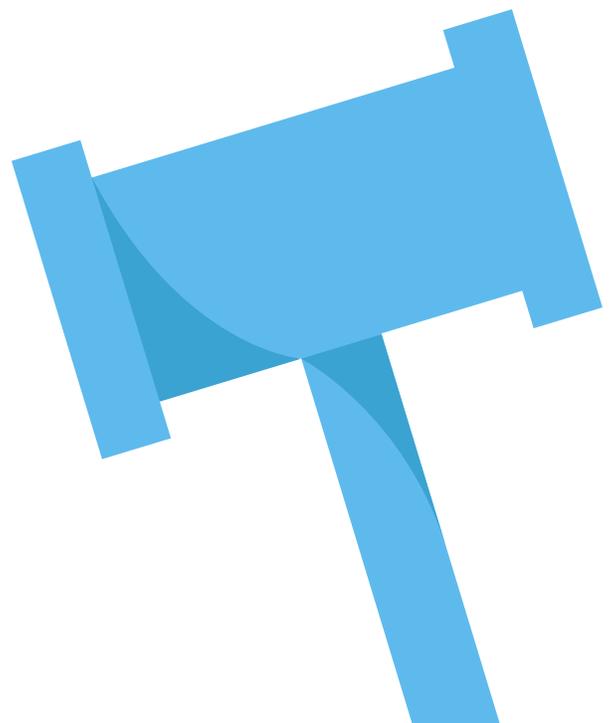
Tennessee could expand job opportunity and economic mobility by repealing many of the current policies that create licensing burdens. Due to the political clout of organized special-interest groups, occupational licensing reform is often a challenge. This is especially true given that consumers are often not so effectively organized or even informed about the issue and its consequences. This means that sadly, the interests of organized groups of professionals often are put before the uninformed, disorganized, poor, or disenfranchised. Such reforms can improve an individual's life by allowing them to choose occupations for which they feel they are qualified. In 2018, former U.S. Labor Secretary Alexander Acosta mentioned how licensing creates an economic barrier for Americans seeking jobs, especially veterans and military spouses.<sup>50</sup> The inconsistency in licensing across state lines needlessly prevents individuals from earning a fulfilling living. As mentioned, Tennessee ranks as the 13th “most broadly and onerously licensed state.” Removing additional barriers would be especially beneficial for those of lower socioeconomic status, those with criminal records, and military service members and their spouses.

Recently, states have begun to reform their overall occupational regulatory approach. Tennessee can continue to learn from their experience and better reform our regulatory environment by removing barriers to employment and to improve mobility across state lines. Tennessee, which is seen as a pro-business state by many, can create an even more friendly business environment by reducing both the extent and burden of occupational licensing. The Beacon Center's 2017 “How-To Guide” was created to help legislators implement the state's Right to Earn a Living Act, including specific questions to ask in hearings, guidance on

sunset hearings, and ways to eliminate superfluous mandates.<sup>51</sup> These can serve as a guide to continued reform on occupational licensing.

Where can Tennessee continue to reform? We should focus on reforming or even eliminating occupational licensing in four primary ways.

First, Tennessee should consider building on existing law that requires ongoing legislative review of licensing laws and regulations by requiring licensing boards to explain upfront why their rules and regulations are necessary to protect public health and safety. Additionally, if someone challenges a licensing law in court, the burden should shift to the government to prove that the law in question is necessary to protect consumers' health and safety. People can already challenge licensing boards' actions in court, but when they do, they must disprove any conceivable reason that the board had to pass such a rule or regulation. If a licensing board is keeping someone out of a job, it should bear the burden of proving the necessity of its actions.



The second is to eliminate licensure requirements for occupations that pose no measurable, realistic, and consequential threats to consumer health and safety. This is especially true of low-income occupations, whose burdens should take careful consideration and monitoring. Fearmongering or vivid worst-case scenarios do not meet the evidentiary burden. Systematic evidence of harm to consumers must be demonstrated, taking into consideration private mitigation measures such as contracts, warranties and guarantees, private credentials, liability clauses, consumer and expert reviews (such as the Institute for Highway Safety of Consumer Laboratories), investigative reporting, consumer protection acts, and bonding and insurance. All those measures offer consumers assurance of quality.<sup>52</sup> One way to do that is to utilize less restrictive means of regulation. For example, while many nearby states license elevator mechanics, Tennessee does not. Instead, the state uses an elevator unit to ensure the safety of consumers. The department conducts initial and semiannual inspections of devices such as passenger elevators and escalators in various public buildings.<sup>53</sup> By doing so, elevator mechanics are free to provide services while the elevator unit ensures ongoing public safety. This means that aspiring elevator mechanics do not face the same barriers to entry that other occupations do, such as unnecessary fees or excessive education and experience requirements, while consumers are still protected.

If other states show no demonstrable harm to consumer health or safety without licensing a certain occupation, Tennessee should not license it either. For example, until a recent bill repealing the law passed, Tennessee required locksmiths to be licensed. Not surprisingly, the requirements to be a locksmith vary widely across states, but most states did not require licensure at all. Now Tennessee is one of the 37 states that do not require locksmiths to be licensed.<sup>54</sup>

Next, Tennessee lawmakers should exercise extreme caution when considering licensing additional professions. Often these professions are pursuing licensure specifically to benefit current practitioners at the expense of consumers and future competitors. And as mentioned previously, when erected on low-income occupations these burdens are particularly detrimental to occupational choice and economic mobility for low-income Tennesseans.

Finally, Tennessee should require more transparent reporting of the burden of occupational licensing. Every licensed profession in the state should be required to annually report, in a consistent format, its full range of fees and entry requirements that can be put into a single, digitally accessible database. Furthermore, the database should include the entry, median, and experienced wage averages for the state of Tennessee. The Alabama Licensed Occupation Guide is a good example for Tennessee to follow in this regard.<sup>55</sup>



# Conclusion

The effects of occupational licensing can be felt through reduced worker mobility, higher unemployment, and higher consumer prices. Unfortunately, these costs have a tendency to fall on the most vulnerable groups in our society. Licensure severely affects all Tennesseans, but particularly on rehabilitated prisoners, minorities, and military families. In some part, the current licensing burdens may be responsible for a portion of the unemployment rate in Tennessee, tarnishing its reputation as an otherwise safe haven for business.

With a comprehensive estimate of the costs of occupational licensing in Tennessee in the hundreds of millions of dollars, this study attempts to offer a way to reduce this cost and allow the vulnerable groups affected to live a fulfilling life. According to our data, the State of Tennessee licenses 264 different occupations, covering a total of over one million workers. Initial licensure costs for all currently licensed practitioners in Tennessee are over \$279 million. Renewal costs are estimated to be nearly \$38 million per year. Over the course of an average 30-year career, these workers will pay an estimated \$1.14 billion in annual licensure costs. The study

also examines the cost of licensure on 27 low-income occupations, which employ more than 80,000 Tennesseans. While only earning an average of \$16.83 per hour, these workers pay \$212 in initial fees and \$70 in renewal costs, on average.

This report discussed several ways for policymakers to reduce the burden of licensure. First, closely examine and curtail occupational licensing on low-income occupations. Second, eliminate licensure for occupations with no measurable threat to consumer safety and health. Third, restrict the growth of occupational licensing in Tennessee. And fourth, improve the transparency and reporting of licensed occupations in Tennessee. These four reforms will help foster economic growth and opportunity for all Tennesseans.



# References

1 There is an important distinction between possible and plausible that is highly relevant to occupational licensing. The possibility to envision a scenario where a consumer could be harmed is an insufficient ground for licensure. Given the anti-competitive effects of licensure, the criterion for licensure should be a plausible threat to consumers, meaning one that is realistically expected and consequential.

2 Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erikson, and John K. Ross, “License to Work: A National Study of Burdens from Occupational Licensing.” Institute for Justice. May 2012. <https://ij.org/report/license-to-work/>; Dick M. Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, “License to Work: A National Study of Burdens from Occupational Licensing, 2nd Edition.” Institute for Justice. November 3, 2017. [https://ij.org/wp-content/themes/ijorg/images/ltw2/License\\_to\\_Work\\_2nd\\_Edition.pdf](https://ij.org/wp-content/themes/ijorg/images/ltw2/License_to_Work_2nd_Edition.pdf).

3 Dean Stansel, Jose Torra, and Fred McMahon, “Economic Freedom of North America.” Fraser Institute. November 17, 2020. <https://www.fraserinstitute.org/sites/default/files/economic-freedom-of-north-america-2020.pdf>.

4 See *Livesay v. Tennessee Bd. of Exam’rs in Watchmaking*, 322 S.W.2d 209, 213 (Tenn. 1959) (calling it a “fundamental” right); *Harbison v. Knoxville Iron Co.*, 53 S.W. 955, 957 (Tenn. 1899) (the liberty protects “the right to use one’s faculties in all lawful ways, to live and work where he chooses, to pursue any lawful calling, vocation, trade, or profession.”).

5 Paul J. Larkin Jr., “Public Choice Theory and Occupational Licensing.” *Harvard Journal of Law and Public Policy*. January 2016. [https://www.researchgate.net/publication/298695873\\_Public\\_Choice\\_Theory\\_and\\_Occupational\\_Licensing](https://www.researchgate.net/publication/298695873_Public_Choice_Theory_and_Occupational_Licensing).

6 Stuart Dorsey, “Occupational Licensing & Minorities.” *Law and Human Behavior*. September 1983. <https://link.springer.com/article/10.1007/BF01044521>.

7 “Occupational Licensing: A Framework for Policymakers.” White House Policy Report. July 2015. [https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

8 On the left, see The White House (2015) and *Joebiden.com* (2020). On the right, see Williams (2011).

9 Robert J. Thornton and Edward Timmons, “Licensing One of the World’s Oldest Professions: Massage.” *The Journal of Law and Economics*. May 2013. [https://www.researchgate.net/publication/259712135\\_Licensing\\_One\\_of\\_the\\_World%27s\\_Oldest\\_Professions\\_Massage](https://www.researchgate.net/publication/259712135_Licensing_One_of_the_World%27s_Oldest_Professions_Massage); Morris M. Kleiner, “Occupational Licensing.” *Journal of Economic Perspectives*. Fall 2000. <https://www.aeaweb.org/articles?id=10.1257/jep.14.4.189>.

10 *Ibid.*

11 Will Flanders, Ph.D. and Collin Roth, “Land of the Free? 50 State Study on How Professional Licensing Laws Lead to Fewer Jobs.” The Wisconsin Institute for Law & Liberty. October 2017. <https://will-law.org/wp-content/uploads/2021/01/land-of-the-free-final.pdf>.

12 Tenn. Code Ann. § 4-5-502.

13 Tennessee 110th General Assembly. Public Chapter No. 227. <https://publications.tnsosfiles.com/acts/110/pub/pc0227.pdf>.

14 Tenn. Code Ann. § 62-76-104.

15 Tennessee 110th General Assembly. Public Chapter No. 834. <https://publications.tnsosfiles.com/acts/110/pub/pc0834.pdf>.

16 Tennessee 110th General Assembly. Public Chapter No. 679. <https://publications.tnsosfiles.com/acts/110/pub/pc0679.pdf>; Tennessee 111th General Assembly. Public Chapter No. 207. <https://publications.tnsosfiles.com/acts/111/pub/pc0207.pdf>.

17 “The Dirty Dozen: Eliminating Red Tape for Blue-Collar Workers.” Beacon Center of Tennessee. December 2017. [http://www.beacontn.org/wp-content/uploads/2017/12/BCN\\_DirtyDozenv5.pdf](http://www.beacontn.org/wp-content/uploads/2017/12/BCN_DirtyDozenv5.pdf).

18 Matthew D. Mitchell and Anne Philpot, “Changes in Occupational Licensing Burdens Across States.” Mercatus Center. April 10 2018. <https://www.mercatus.org/publications/corporate-welfare/changes-occupational-licensing-burdens-across-states>.

19 Executive Order by the Governor No. 15. State of Tennessee. March 19, 2020. <https://publications.tnsosfiles.com/pub/execorders/exec-orders-lee15.pdf>.

20 Tatiana Follett, Zach Herman, and Iris Hentze, “Universal Licensure Recognition.” National Conference of State Legislatures. March 2, 2021. <https://www.ncsl.org/research/labor-and-employment/universal-licensure-recognition.aspx>; Morris M. Kleiner and Janna E. Johnson, “Is Occupational Licensing a Barrier to Interstate Migration?” American Economic Journal: Economic Policy. August 2020. <https://ideas.repec.org/a/aea/aejpol/v12y2020i3p347-73.html>.

21 Jade Scipioni, “The State Americans Headed to the Most in 2020, According to U-Haul.” CNBC.com. January 18, 2021. <https://www.cnbc.com/2021/01/18/heres-where-all-the-u-haul.html>.

22 Ibid.

23 John Ross, “The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing.” Institute for Justice. November 2017. <https://ij.org/report/the-inverted-pyramid/>.

24 “Elias Zarate vs Tennessee Board of Cosmetology and Barber Examiners.” Beacon Center of Tennessee. June 11, 2018. <https://www.beacontn.org/eliaszarate/>.

25 George A. Akerlof, “The Market for ‘Lemons’: Quality Uncertainty and the Market Mechanism.” The Quarterly Journal of Economics. August 1970. <https://www.jstor.org/stable/1879431?seq=1>.

26 Morris M. Kleiner, “Licensing Occupations: Ensuring Quality or Restricting Competition?” W.E. Upjohn Institute for Employment Research. February 10, 2006. [https://research.upjohn.org/up\\_press/18/](https://research.upjohn.org/up_press/18/).

27 Ibid.

28 Stuart Dorsey, “Occupational Licensing and Minorities.” Law and Human Behavior. March 1983. <https://psycnet.apa.org/record/1983-33452-001>; Richard B. Freeman, “The Effect of Occupational Licensure on Black Occupational Attainment,” cited in, Simon Rottenberg (Ed.), Occupational Licensure and Regulation (American Enterprise Institute. 1980). <https://ideas.repec.org/b/aei/rpbook/968900.html>; Daniel B. Klein, Benjamin Powell, and Evgeny Vorotnikov, “Was Occupational Licensing Good for Minorities? A Critique of Marc Law and Mindy Marks.” Econ Journal Watch. September 2012. <https://econjwatch.org/articles/was-occupational-licensing-good-for-minorities-a-critique-of-marc-law-and-mindy-marks>; Marc T. Law and Mindy Marks, “Effects of Occupational Licensing Laws on Minorities: Evidence from the Progressive Era.” The Journal of Law and Economics. May 2009. <https://www.journals.uchicago.edu/doi/abs/10.1086/596714?journalCode=jle>; Darren Wheelock, “Collateral Consequences and Racial Inequality.” Journal of Contemporary Criminal Justice. February 1, 2005. <https://>

journals.sagepub.com/doi/abs/10.1177/1043986204271702?journalCode=ccja; Walter E. Williams, *The State Against Blacks* (McGraw-Hill 1982); Walter E. Williams, *Race & Economics*, (Hoover Institute Press. 2011); David Young, "Licensing and Minorities: A Question of Fairness." *Business and Professional Ethics Journal*. Spring/Summer 1985. [https://www.pdcnet.org/bpej/content/bpej\\_1985\\_0004\\_0003\\_0185\\_0193](https://www.pdcnet.org/bpej/content/bpej_1985_0004_0003_0185_0193).

29 Alicia Suarez, "Black Midwifery in the United States: Past, Present, and Future." *Sociology Compass*. August 17, 2020. <https://onlinelibrary.wiley.com/doi/abs/10.1111/soc4.12829>.

30 Daniel J. Smith, "Occupational Licensing in Mississippi." Mississippi State University Institute for Market Studies. February 19, 2018. [https://www.ims.msstate.edu/sites/www.ims.msstate.edu/files/PPiM\\_Feb19\\_2018\\_Chapter9\\_O.pdf](https://www.ims.msstate.edu/sites/www.ims.msstate.edu/files/PPiM_Feb19_2018_Chapter9_O.pdf).

31 Ronald S. Bond, John E. Kwoka Jr., John J. Phelan, and Ira Taylor Whitten, "Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry." Federal Trade Commission Economic Report. September 1980. <https://www.ftc.gov/sites/default/files/documents/reports/effects-restrictions-advertising-and-commercial-practice-professions-case-optometry/198009optometry.pdf>.

32 "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines." U.S. Department of Treasury and U.S. Department of Defense. February 2012. <https://download.militaryonesource.mil/12038/MOS/Reports/Occupational-Licensing-and-Military-Spouses-Report.pdf>.

33 Frank Adams III, Robert B. Ekelund Jr., and John D. Jackson, "Occupational Licensing of a Credence Good: The Regulation of Midwifery." *Southern Economic Journal*, January 2003. <https://digitalcommons.kennesaw.edu/facpubs/850/>; Sidney L. Carroll and Robert J. Gatson, "Occupational Licensing and the Quality of Service." *Law and Human Behavior*. September 1983. <https://link.springer.com/article/10.1007/BF01044518>; Daniel B. Hogan, "The Effectiveness of Licensing: History, Evidence, and Recommendations." *Law and Human Behavior*. September 1983. <https://link.springer.com/article/10.1007/BF01044517>; Stanley J. Gross, "Professional Licensure and Quality: The Evidence." Cato Institute. December 9, 1986. <https://www.cato.org/policy-analysis/professional-licensure-quality-evidence>; *ibid*; *ibid*.

34 Morris M. Kleiner and Evgeny Vorotnikov, "Analyzing Occupational Licensing Among the States." *Journal of Regulatory Economics*. October 1, 2017. <https://experts.umn.edu/en/publications/analyzing-occupational-licensing-among-the-states>.

35 *Ibid*.

36 *Ibid*.

37 James D. Shilling and C.F. Sirmann, "The Effects of Occupational Licensing on Complaints Against Real Estate Agents." *The Journal of Real Estate Research*. Summer 1988. <https://www.jstor.org/stable/44095229?seq=1>; S. David Young, "Accounting Licensure, Quality, and the 'Cadillac Effect,'" *Journal of Accounting and Public Policy*. Spring 1986. <https://www.sciencedirect.com/science/article/abs/pii/0278425486900037>.

38 *Ibid*.

39 William P. Ruger and Jason Sorens, "Freedom in the 50 States, Fifth Edition." Cato Institute. 2018. <https://cdn.freedominthe50states.org/download/2018/print-edition-2018.pdf>.

40 May 2016 State Occupational Employment and Wage Estimates: Tennessee. Bureau of Labor Statistics. 2016. [https://www.bls.gov/oes/2016/may/oes\\_tn.htm](https://www.bls.gov/oes/2016/may/oes_tn.htm).

41 "Labor Force Estimates." Tennessee Department of Labor and Workforce Development. 2021. <https://www.tn.gov/workforce/general-resources/major-publications0/major-publications-redirect/public-reports-redirect/labor-force-estimates.html>.

42 Daniel J. Smith, "Occupational Licensing in Alabama." *Labor & Industry*. July 2017. [https://www.researchgate.net/publication/318198763\\_Occupational\\_licensing\\_in\\_Alabama](https://www.researchgate.net/publication/318198763_Occupational_licensing_in_Alabama); *Ibid*.

43 *Ibid*.

44 *Ibid*.

45 *Ibid*.

46 Tenn. Code Ann. § 62-76-104.

47 E. Ann Carson, Ph.D., "Prisoners in 2019." Bureau of Justice Statistics. October 2020. <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

48 Tenn. Code Ann. § 62-76-202.

49 Tenn. Code Ann. § 62-76-105.

50 "U.S. Department of Labor's Veterans' Employment and Training Services Unveils Resource for Military Spouses." U.S. Department of Labor. June 28, 2018. <https://www.dol.gov/newsroom/releases/vets/vets20180628>.

51 "How-To Guide: Right to Earn a Living Act." Beacon Center of Tennessee and National Federation of Independent Business. December 14, 2016. [http://www.beacontn.org/wp-content/uploads/2016/12/Beacon\\_HowToGuide\\_RightToEarnLiving\\_WEB.pdf](http://www.beacontn.org/wp-content/uploads/2016/12/Beacon_HowToGuide_RightToEarnLiving_WEB.pdf).

52 *Ibid*; Oliver Bonray, Stephanie Lemarie, and Jean-Phillipe Tropeano, "Credence Goods, Experts, and Risk Aversion." *Economic Letters*. September 2013. <https://www.sciencedirect.com/science/article/abs/pii/S016517651300270X>; Uwe Dulleck, Rudolph Kerschbamer, and Matthias Sutter, "The Economics of Credence Goods: An Experiment on the Role of Liability, Verifiability, Reputation, and Competition." *American Economic Review*. April 2011. <https://www.aeaweb.org/articles?id=10.1257/aer.101.2.526>; Winand Emons, "Credence Goods and Fraudulent Experts." *The RAND Journal of Economics*. Spring 1997. <https://www.jstor.org/stable/2555942?seq=1>; Sunku Hahn, "The Advertising of Credence Goods as a Signal of Product Quality." *The Manchester School*. January 2004. [https://www.researchgate.net/publication/4994261\\_The\\_Advertising\\_of\\_Credence\\_Goods\\_as\\_a\\_Signal\\_of\\_Product\\_Quality](https://www.researchgate.net/publication/4994261_The_Advertising_of_Credence_Goods_as_a_Signal_of_Product_Quality); John D. Hey and Chris J. McKenna, "Consumer Search with Uncertain Product Quality." *Journal of Political Economy*. February 1981. <https://www.journals.uchicago.edu/doi/abs/10.1086/260949>; Randall G. Holcombe and Lora P. Holcombe, "The Market for Regulation." *Journal of Institutional and Theoretical Economics*. December 1986. <https://www.jstor.org/stable/40750924?seq=1>; Richard E. Kihlstrom and Michael H. Riordan, "Advertising as a Signal." *Journal of Political Economy*. June 1984. <https://www.journals.uchicago.edu/doi/abs/10.1086/261235?mobileUi=0&>; Benjamin Klein and Keith B. Leffler, "The Role of Market Forces in Assuring Contractual Performance." *Journal of Political Economy*. August 1981. <https://www.jstor.org/stable/1833028?seq=1>; Daniel B. Klein, "Quality-and-Safety Assurance: How Voluntary Social Processes Remedy Their Own Shortcomings." *The Independent Review*. Spring 1998. <https://www.independent.org/publications/tir/article.asp?id=371>; Daniel B. Klein, "The Demand for and Supply for Assurance." *Institute of Economic Affairs*. March 2001. <https://iea.org.uk/wp-content/uploads/2016/07/upldeconomicAffairs40pdf.pdf>; W. Bentley MacLeod, "Reputations, Relationships, and Contract Enforcement." *Journal of Economic Literature*. September 2007. <https://www.aeaweb.org/articles?id=10.1257/jel.45.3.595>; Paul Milgrom and John Roberts, "Price and Advertising Signals of Product Quality." *Journal of Political Economy*. August 1986. <https://www.jstor.org/stable/1833203?seq=1>; Jeremy Sanford, "Competition and Endogenous Impatience in Credence-Good Markets." *Journal of Institutional and Theoretical Economics*. September 2013. <https://www.jstor.org/stable/24549000?seq=1>; Richard Schmalensee, "A Model of Advertising and Product Quality." *Journal of Political Economy*. June 1978. <https://www.jstor.org/stable/1833164?seq=1>; Arif Sultan, "Lemons and Certified Pre-owned Cars in the Used Car Market." *Applied Economics Letters*. June 22, 2009. <https://www.tandfonline.com/doi/abs/10.1080/13504850701719678>.

53 “Elevator Unit.” Tennessee Department of Labor and Workforce Development. <https://www.tn.gov/workforce/employers/safety---health/regulations-compliance/regulations--compliance-redirect/elevator-unit.html>.

54 Ibid.

55 “Licensed Occupations Guide.” Alabama Department of Labor. 2020. <http://www2.labor.alabama.gov/WorkforceDev/LOG/LOG.pdf>.