

The Game of Life:

*How Changing Licensing Requirements
Impacts Tennesseans' Career Choices*



Key Takeaways:

- The requirements for “white-collar” licensed professions, ones that require a bachelor’s degree, have rarely changed and the number of Tennesseans in these professions has remained relatively constant for decades.
- Meanwhile, “blue-collar” professions, ones that do not require a bachelor’s degree, typically have seen more changes. As a result, several fields have seen a decline in the number of licensed workers, including barbers, natural hair stylists, private investigators, and auctioneers.
- When up for sunset review, regulatory boards should be required to provide practitioner trends to the Government Operations Committee to better provide lawmakers with data on the impact of regulations over time and the need for reform.
- Since licensing changes have a significant impact on the number of Tennesseans entering certain professions, licensing boards should be required to state the public health and safety rationale for their actions and bear the burden to prove that the rule or regulation is necessary to protect public health and safety.

Introduction

Occupational Licensing: A Hidden Cost Coming to Light

Hasbro's old board game, *The Game of Life*, is famous for simulating life choices: whether to go to college, select a different career path, get married, and even have children. Throughout the game, players are punished or rewarded for these choices with the goal being to retire with the most money possible. While the different professions within the game feature different salaries and bonuses, sadly the game does not help players, especially children, understand the costs of entering these professions, especially whether the occupation requires a license.

Over the last 70 years, occupational licensing has become an increasingly scrutinized topic for researchers and policymakers alike, and it is easy to understand why. Occupational licensing—which is essentially a governmental permission slip allowing one to perform a job—has exploded in recent decades. According to a 2015 White House report, since 1950, the percentage of Americans who need a license to work has grown from five percent to nearly 29 percent.¹ Other studies have estimated the number to be closer to one in three.² Reasons for this explosion vary, from practitioners seeking to raise wages, protection from competition for existing practitioners, using licensure to replace the traditional role of a union, or some combination of all these reasons and others.³ Regardless, this explosion has caused researchers to call into question the costs of licensing. For example, in its landmark 2012 study, “License to Work,” the Institute for Justice calculated the monetary and time costs of obtaining roughly 100 occupational licenses in each state.⁴

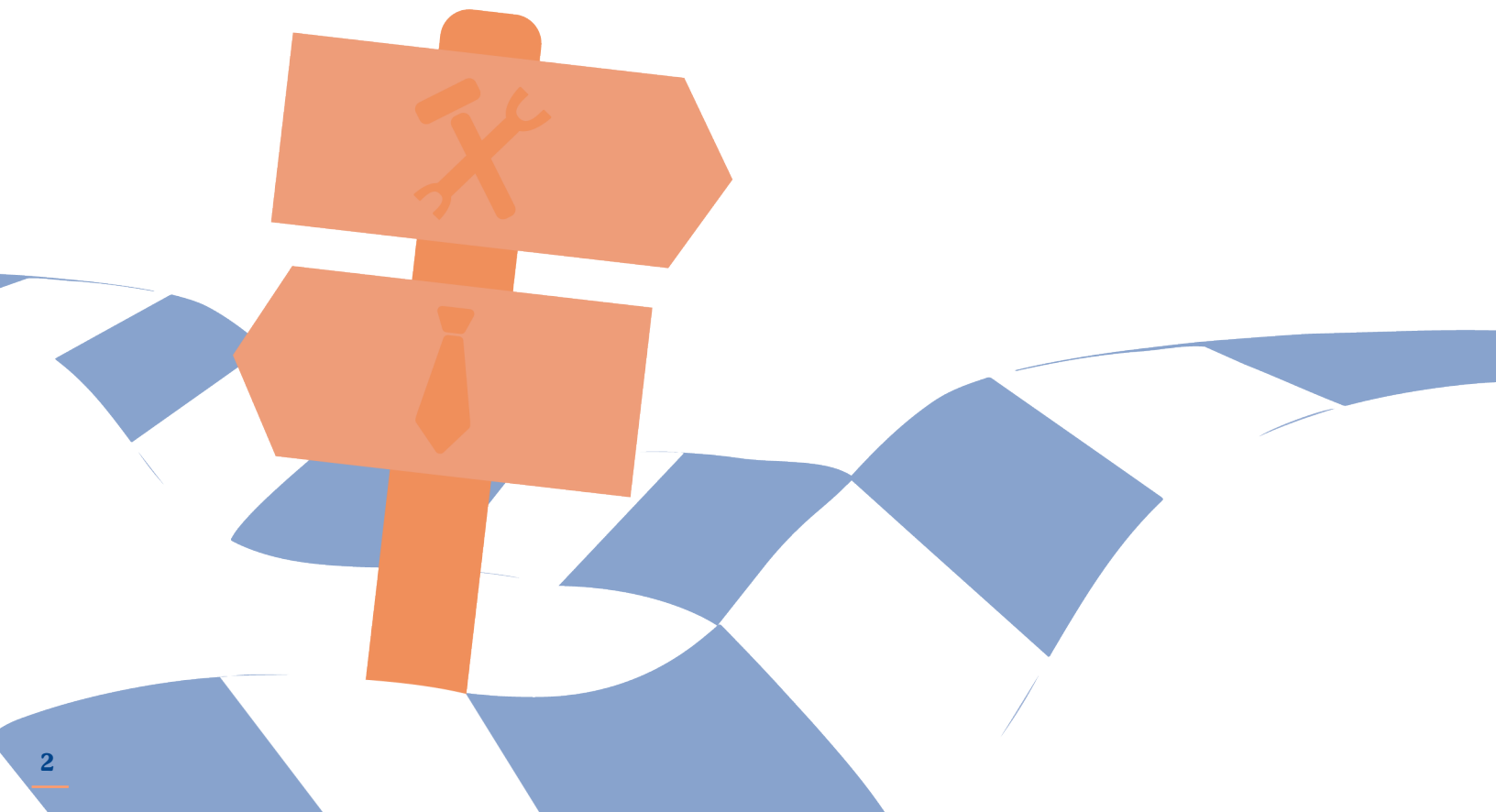
Even here in Tennessee, research is beginning to show the costs of licensing on the Volunteer State's economy and workforce. Besides being ranked the 13th most onerous state for licensing by the Institute for Justice in 2012 and again in 2017, a study also conducted in 2017 by the Wisconsin Institute for Law & Liberty examined the effects of licensing requirements for 10 common “blue-collar” professions and determined that Tennessee ranked most onerous among the 50 states. The Wisconsin Institute for Law & Liberty estimated the state could expect a nine percent increase in jobs by simply adopting the licensing requirements of the least onerous state, Hawaii.⁵

Not only does licensing inhibit job growth, but research shows it creates significant dead-weight economic costs. A recent study between Beacon and the Political Economy Research Institute at Middle Tennessee State University conservatively estimated licensing has cost Tennessee workers \$279 million to enter the occupation of their choice and \$38 million annually for renewals.⁶

Importantly, all these studies show the costs of licensing based on current requirements—which are far from static. In fact, the Tennessee General Assembly considers and enacts changes to various licensing requirements every year and these changes can have a significant impact on Tennesseans looking to get a job or start a business.

In this report, Beacon sought to look at how licensing requirements for various professions in Tennessee have changed over time and how these changes have impacted whether people enter the profession or not. To observe this, Beacon tracked the changes of several non-medical related licensed professions over several decades—at least back to the mid-1990s when electronic records became available—and obtained historic data on the number of licenses issued per year. This number was then weighted per 100,000 residents to reflect changes in the state’s population over time. Overall, we observed that licensing requirements are rarely reviewed or changed for more “white collar” professions, or professions

that require a bachelor’s degree. In fact, in some cases, practitioners may be hostile to potential reforms. Meanwhile, “blue-collar” professions have seen more increases in requirements which, in many cases, has caused a decline of licensed workers in those professions including barbers, private investigators, and auctioneers. Additionally, the state has often created more specialized “sub-licenses” or exemptions as a form of deregulation, leading many Tennesseans to avoid more onerous general licenses like those required for cosmetologists, and exempted certain practitioners—usually those over a certain age—from licensing and renewal fees.





No Sweat for “White-Collar” Workers

While the increase in licensing amongst “blue-collar” workers has been the focus of research in recent years, as with the Institute for Justice’s “License to Work” project, licensing originally started with more “white-collar” professions that often require a bachelor’s degree or higher like doctors and lawyers. Generally, the data Beacon observed showed

that the requirements for these professions have not changed drastically over the decades. In fact, in some instances, the professions themselves have been hesitant to consider reforms to licensing requirements, as shown below. As a result, little change was observed in the prevalence of these professions amongst the workforce.

Accountants

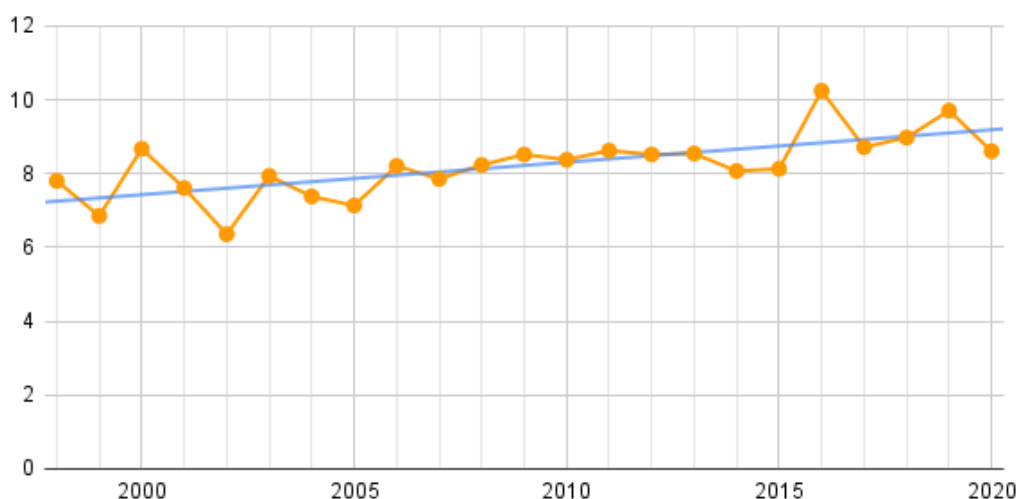
While accountants have been licensed since 1980 in Tennessee, the accounting profession received a complete rewrite of its licensure requirements in 1998.⁷ Since then, the only changes to the license have dealt with making it easier for students to sit for the accountancy examination. In 2000, the law was changed to allow students to sit for the exam if they were able to meet the required 150 hours of college credit for licensure within 120 days of the exam instead of completing the education first.⁸ That timeline was increased to 200 days in 2007, providing more flexibility for students finishing their education.⁹ Just two years later, the board was empowered to allow students to sit for the exam and finish their education requirements in more than 200 days on a case-by-case basis. Additionally, the board was granted the authority to report the results of an examination to applicants before the necessary education

requirements were complete; previously, it had been prohibited from doing so.¹⁰ This change likely removed unnecessary anxiety from students in their final months of school.

Most recently, in 2016 the General Assembly passed Public Chapter No. 595, which made it even easier for students to sit for the exam. That year, the law was changed to allow students who had received a bachelor’s degree or higher to sit for the exam, regardless of when they would be finishing the mandatory 150 hours of education.¹¹ While the bill addressed other issues, this part was changed because of fears Tennessee was losing soon-to-be graduates to other states that made it easier to sit for the examination.¹² Overall, these changes to help prospective students have had a slight impact on the number of accountants in Tennessee.

Accountant Licenses Issued Per Year in Tennessee

(Per 100,000 residents)



*Figure 1:
As the state has made it easier for students to sit for the licensing exam, accountants have slowly become more prevalent in Tennessee.*

While the time periods from 2000 to 2006, 2007 to 2016, and since 2016 are relatively small, evidence suggests that making it easier to sit for the licensing exam has made it easier to become an accountant in Tennessee, with the average amount of licenses issued from

2007 to 2016 increasing nine percent and then another 11 percent increase since 2016. While the real increase is small, it is a statistically significant difference ($p < 0.05$), meaning the increase in the number of accountant licenses issued is unlikely due to chance.

Years	Average Number of Accountant Licenses Issued Per Year (Per 100K)
2000-2006	7.62
2007-2016	8.31
2016-2020	9.25

Table 1: With each change to make it easier for students to sit for the accountant licensure exam, the number of licensed accountants has slightly increased.

With a t-test p-value of 0.0249 for 2000–2006 versus 2007–2016 and a p-value of 0.0194 for 2007–2016 versus since 2016, the data suggest that changing from graduating within 120 to 200 days of taking the licensure examination and then allowing any applicant with a bachelor's degree to sit for the exam has encouraged more people to enter the profession here in Tennessee.

However, as time progresses, we will have a larger sample size of years with which to be more certain. Even if policymakers are hesitant to reduce licensure requirements overall, the accounting profession can serve as an example of how merely granting more flexibility can encourage people to enter the profession.

Engineers

While lawmakers have been willing to at least make it easier for accounting students to sit for a licensure exam, they have been much more hesitant to make deregulatory changes to engineering license requirements—as have members of the industry itself. Historically, applicants have needed a bachelor's degree in engineering and years of experience to apply for a license. However, twice in recent years the issue of the lack of pathways for licensure for those who have a master's degree, but not a bachelor's degree, in engineering has been raised.

In 2007, the legislature considered a bill allowing applicants with a master's degree in engineering and four years of experience to sit for the licensure exam. In committee, Rep. Ulysses Jones highlighted that the head of the engineering department at Vanderbilt University would not be able to get a license, as he had a master's degree but not a bachelor's in engineering, despite leading one of the premier programs in the state. While the Tennessee Society of Professional Engineers (TSPE) originally opposed the bill, its members became comfortable once an amendment was added that required applicants with a master's to take and pass the principles in engineering examination provided by the National Council of Examiners for Engineering and Surveying (NCEES) before being licensed.¹³ While the measure was ultimately passed, it included an automatic sunset provision, repealing the additional pathway to licensure in 2012.¹⁴

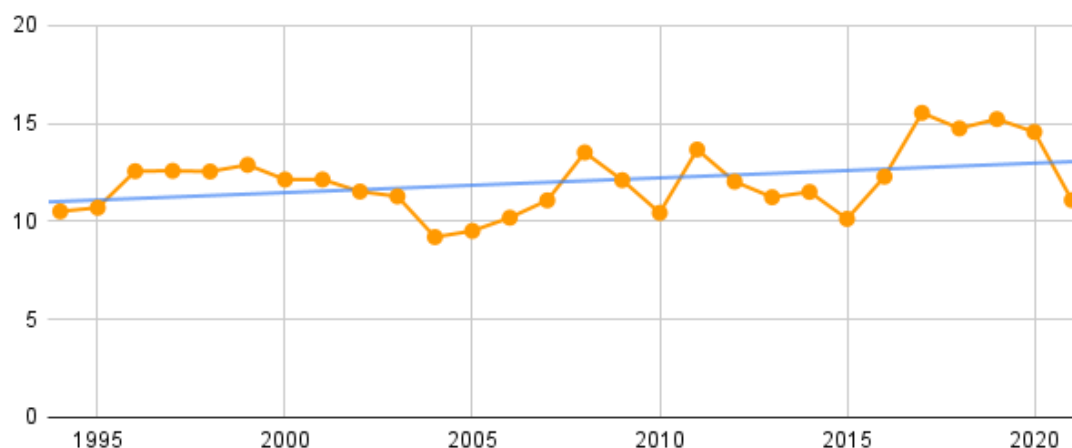
History often repeats itself. One decade later, in 2017, the same issue was discussed. That year, Sen. Brian Kelsey brought a bill that would allow

those with a master's, but not a bachelor's, in engineering to sit and take the licensing exam. However, this time the TSPE seemed less comfortable with the same concept, expressing concerns over the technical aspect of master's engineering programs and arguing that if by law Tennessee was not going to require a bachelor's in engineering, it should require 20 years of experience as a substitute. While the bill was later amended to require that 20 years of experience, it also included a sunset provision, automatically repealing the pathway in 2019. This raised questions in committee, with Chairman Jack Johnson asking, “Why wouldn’t it be good public policy if henceforth if you had 20 years of experience and a master’s degree in engineering, that you can sit for the exam in Tennessee?”

The executive director of the TSPE, admitted “that makes perfect sense,” but said the sunset was necessary to help members of both the profession and the TSPE board comfortable. While members of the board were familiar with Sen. Kelsey’s constituent who was the impetus for the legislation, they had concerns over who else could benefit from the provision.¹⁵ Sen. Bo Watson, who originally brought up concerns with the sunset, said he could “only imagine in 2020, somebody’s back here because somebody in their district got a master’s degree from an accredited engineering program and we’re kind of going through this again.”¹⁶ While the bill ultimately passed with the sunset provision, we will never know if Sen. Watson’s prediction will come true, as finally the law was changed on a third attempt to give those with a master’s degree in engineering a permanent path to licensure during the 2022 legislative session.¹⁷

Engineer Licenses Issued Per Year in Tennessee

(Per 100,000 residents)



Source: Practitioner data obtained from the Tennessee Board of Architectural & Engineering Examiners

Figure 2: The number of engineer licenses issued in the state has only slightly increased over the past two decades.¹⁸

For over a decade, the state and national governments have sought to promote the growth of STEM professions like engineering. For example, since 2010 the Tennessee Department of Education has worked with Battelle to create the Tennessee STEM Innovation Network (TSIN). TSIN works with schools to develop high-quality STEM programming and will give schools a “STEM Designation.” This is in addition to large investments from the federal government. In 2022 alone, the federal government budgeted \$4.28 billion across 170 programs to promote STEM education and professions, including engineering.¹⁹

Despite these state and national efforts, with few permanent reforms to reduce regulatory barriers or create additional pathways to licensure except for temporary changes intended for specific individuals, we should not be surprised to see the trend of the growth of engineers is less than accountants, where it solely made easier for students to sit for licensing exams. If Tennessee, policymakers really want to increase the number of engineers and other STEM professions, more deregulatory efforts to reduce barriers to entry are necessary and are likely to be as effective, if not more so, than large public investments and campaigns.

Architects

While there has at least been debate about reforming the requirements for engineers, even though permanent reforms have been difficult, the licensing requirements for architects have remained virtually unchanged

for nearly 40 years. In fact, since 1988, the only change has been to exempt architects born earlier than January 1, 1928, from continuing education requirements.²⁰

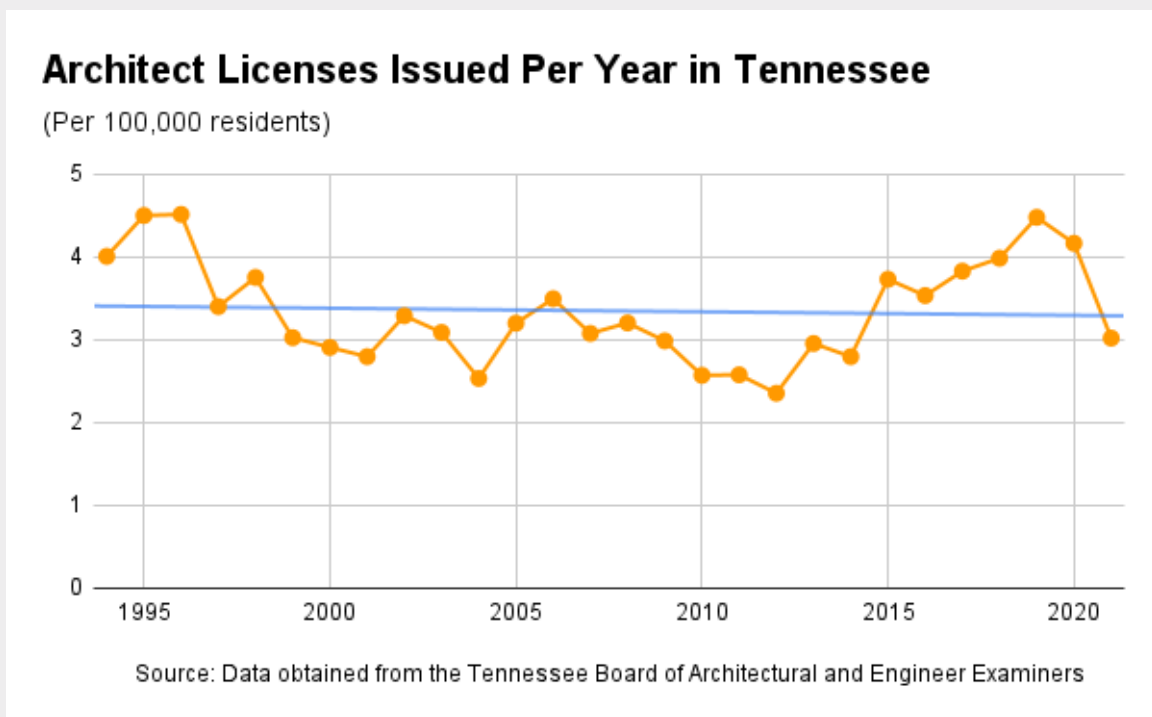


Figure 3: The number of architect licenses issued in the state has remained relatively unchanged.²¹

As with engineers, with no real changes to the requirements to become a licensed architect, we unsurprisingly see the prevalence of architect licenses issued fall within a consistent band of 2.5–4.5 licenses issued per year, per 100,000 residents.

Overall, the requirements for these higher-income professions have seen little change. However, the evidence suggests that reforms, even if made simply to provide flexibility for students, can make a difference and open the profession to growth.

“Blue Collars” and Red Tape

While the observed “white-collar” professions requiring a bachelor’s degree experienced little change in requirements over the past several decades, the same cannot be said for more “blue-collar” or trade professions. Generally, we have seen more changes, particularly the

creation of new sublicenses or more specialized licenses, and a decline of licensed workers in several professions including barbers, private investigators, and auctioneers as restrictions have increased.

Beauty Industry

(Cosmetologists, Estheticians, Natural Hair Stylists, and Barbers)

Perhaps no better example illustrates the pattern of first creating an initial license, then creating sub- or specialty licenses or exemptions than the “beauty” industry. Cosmetology has been licensed since 1986, and its practitioners are required to obtain 1,500 hours of education to sit for the examination but can then provide a wide array of cosmetology services. However, for years, policymakers have been creating specialty licenses for people to provide different aspects of cosmetology without having to go through the onerous 1,500-hours of education. For example, in 1996, licenses to shampoo hair and to style natural hair were created, requiring 300 hours of education apiece.²² These licenses were in addition to the esthetician and manicurist licenses that were also created in 1986. A few years later, in 2002, lawmakers would exempt those simply performing “hair

wrapping” from the natural hair stylist license and allow those licensed as natural hair stylists to perform services without the supervision of a licensed cosmetologist.²³

Roughly a decade later, lawmakers would embark on a flurry of reforms concentrating on who could be licensed, how and where students could learn, or where practitioners can provide services. For example, in 2015, lawmakers prevented the board from denying a license for those convicted of a felony within the previous three years.²⁴ The next year, lawmakers voted to allow licensed providers to create mobile shops (which would be further deregulated in 2018) and allow students to remain in class longer each day in order to reduce the time it would take to achieve the necessary hours required for licensure.²⁵ In 2017, the General Assembly

showed a true turning of the tide when it came to licensure by repealing the shampoo technician license completely.²⁶ Finally in 2019, lawmakers further deregulated the industry by exempting hair braiding from the natural

hairstylist license. Those seeking to simply braid hair now only require 16 hours of health and sanitation training and registration with the Department of Commerce and Insurance compared to 300 hours originally.²⁷

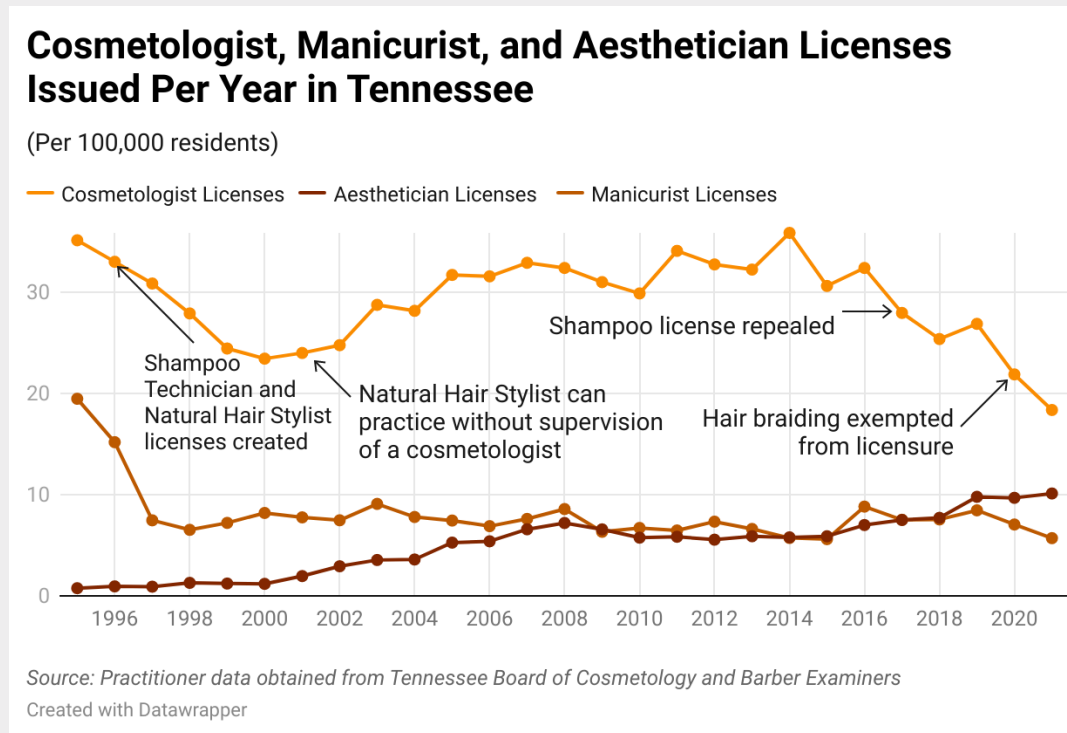


Figure 4: In recent years, the number of cosmetology licenses issued has fallen dramatically in Tennessee.²⁸

It is clear in recent years that relatively fewer and fewer people are entering the cosmetology profession. This could be due to several reasons, like the increasing costs of schooling to obtain the large number of necessary hours. Additionally, others may be looking at licensed professions with a lower barrier to entry to obtain a job. For example, the number of estheticians, who only need half the number of hours of education (750) as compared to a fully licensed cosmetologist, has been steadily and consistently rising for years.

The natural hair stylist license provides an additional example of the impacts of deregulation. Since its creation there has been little demand for the license, never more than one license issued per 100,000 Tennessee residents per year. Meanwhile, the number of registered hair braiders has skyrocketed since being exempted from the full natural hair stylist license requirements.

Natural Hair Stylists vs. Hair Braiders Licenses Issued Per Year in Tennessee

(Per 100,000 residents)

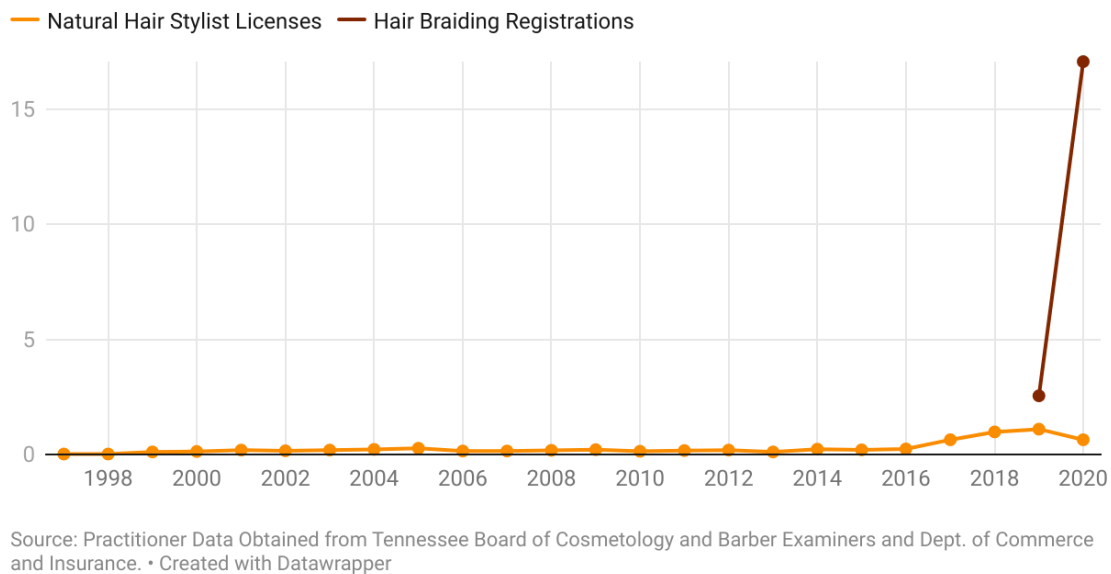


Figure 5: Removing the requirement for hair braiders to obtain a natural hair stylist license has led to a historic growth in the profession.

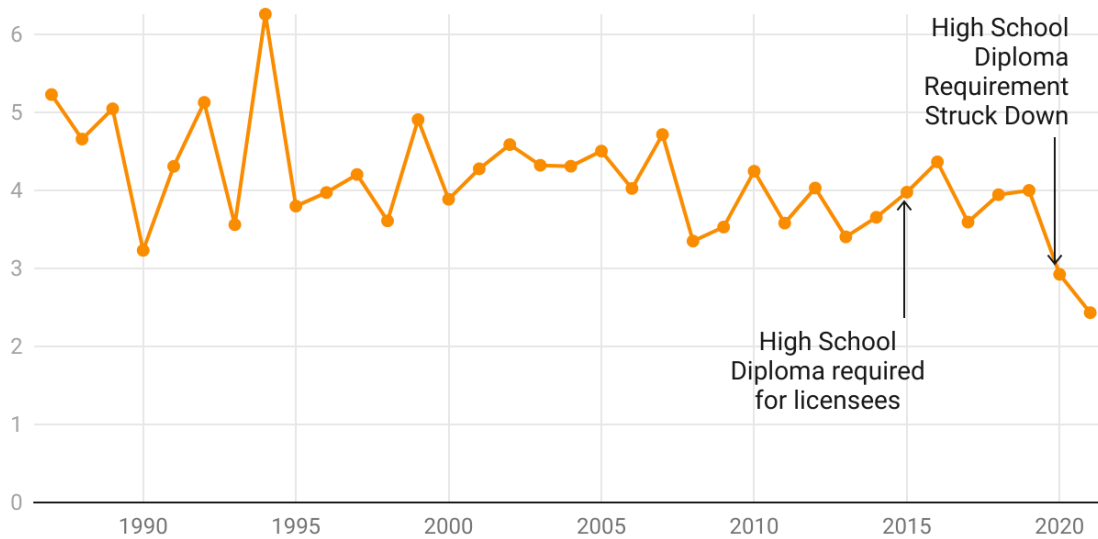
The above graph clearly shows that deregulating hair braiding and reducing the requirement from the 300 hours required for a licensed natural hairstylist to the 16 for a registered hair braider has allowed a great number of people to enter the profession and obtain jobs that were previously out of reach for a variety of reasons such as education costs, or time out of the workforce.

While not as dramatic as the case of hair braiding and natural hair stylists, barbers provide another example of the impact of new regulations on those looking to enter a profession. Unlike cosmetology, the scope and

requirements for a barber license have remained relatively unchanged for decades. In fact, due to their similar nature, lawmakers for years tried to harmonize the laws and regulations between barbering and cosmetology—even going so far as to merge the two boards in 2014.²⁹ However, one year later, a new difference between the two licenses was created. In what was described as a “clean-up” of the board-merger bill, one provision created a new requirement for a barber’s license: mandating that applicants have a high school diploma or GED.³⁰ Previously, neither barbers nor cosmetologists required a high school diploma.

Master Barber Licenses Issued Per Year in Tennessee

(Per 100,000 residents)



Source: Practitioner Data Obtained from Tennessee Board of Cosmetology and Barber Examiners • Created with Datawrapper

Figure 6: Unlike cosmetology, the barbering profession has faced few regulatory changes, whether increases or decreases.

While the sample size is small, the data seem to indicate that requiring a high school diploma did make a statistically significant difference in the number of barbers in Tennessee since 2016, with a t-test p-value of 0.0395 (one-tailed). While additional years of data would strengthen the confidence of the results, more importantly for those looking to become a barber, the high school diploma requirement was eventually struck down

as unconstitutional in 2020.³¹ While the number of licenses issued continued to decrease the following year, it is possible that is because obtaining the necessary 1,500 hours can often take more than a year, so those without a high school diploma were not able to begin and complete the necessary hours for licensure by the end of 2021. One would expect that in the following years the number of licenses will begin to rebound.

Auctioneers

There are other examples of new onerous requirements impacting Tennesseans looking to join a profession. Auctioneering is one of the oldest licensed professions in the state.³² But it also serves as a prime example of how licensing is used not just to theoretically part the health and safety of consumers but elevate the prestige of a profession. While debating the bill to create the license in 1967, Sen. Aaron Clifton Brown, Sr. offered an amendment seeking to reduce the license requirements. “Ladies and gentleman of the Senate,” he said, “I sometimes wonder if we are not going a little too far when we go after these auctioneers... Generally about the only thing required was a big white hat and to learn how to talk out of your lower intestines, but it seems now that they are trying to make it a profession.”³³ Even with his testimony, the amendment was tabled by Sen. Clayton Paul Elam, the sponsor of the licensure bill, and it passed on a 27-3 vote.

The auctioneer license underwent similar “prestige enhancements” in 1997 with a new requirement mandating that auctioneers receive continuing education in order to renew their license. The bill also required that the applicant have proof of a high school degree.³⁴ This matter was heavily contested on the Senate floor, particularly by Sen. Steve Cohen, who asked the bill’s sponsor, Sen. Ron Ramsey, to consider his amendment. “This amendment shall be known as the Tom Hensley amendment,” he said, referencing an auctioneer who “never had a high school degree. And as all of you know, Mr. Hensley is one hell of an auctioneer, and no degree should hinder his ability to practice.” Sen. Ramsey fought, and ultimately killed the amendment on the floor, saying it was beneficial for the profession. “I understand your concern for Mr. Hensley,”

he said, “but for the good of the profession, we believe a high school degree should be a requirement.”³⁵

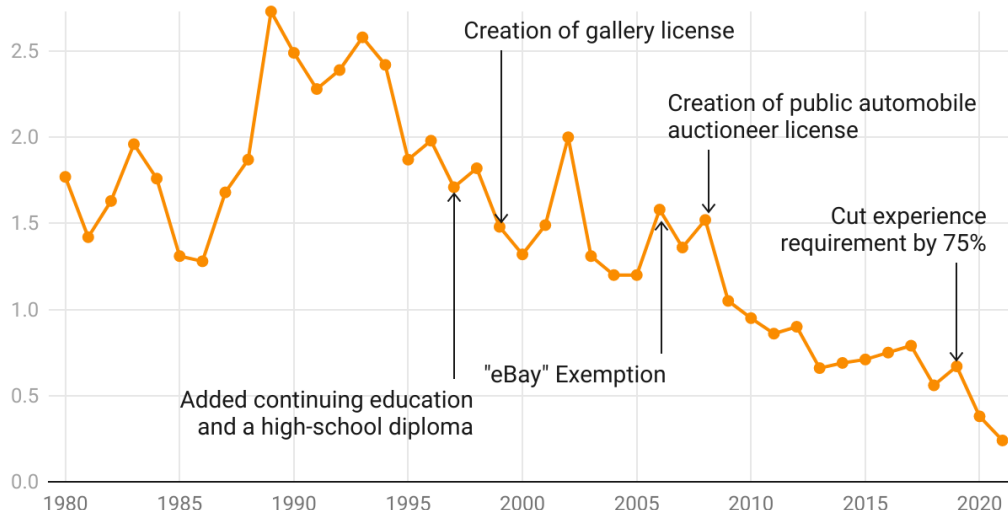
When any kind of new requirement is imposed on a license, existing practitioners often fight to be exempted, essentially saying it’s “good for thee, but not for me.” Just two years after creating continuing education requirements for auctioneers, those over 60 years old and those with 10 years of experience were exempted.³⁶ This grandfathering was later expanded to all auctioneers who were licensed in 1999 when the original exemption law passed.³⁷ Examples like this show how licenses can be used to raise costs on new competition entering the marketplace, even if the protectionism was done so inadvertently.

Additional sub- or specialty licenses have also been created in the auctioneering profession. The same 1999 law that exempted seniors from continuing education requirements created a new gallery license for auction houses. Now businesses that performed certain auctions had to be licensed, not just the auctioneers themselves.³⁸ In 2008, another license was created, this time for public automobile licenses.³⁹

These additional regulations to the field can create new barriers in their own right. However, when the base regulations for the profession already serve as a high barrier to entry, it can compound problems as historically, Tennessee’s auctioneer license required two years of experience as an apprentice. This requirement was so high that the Institute for Justice ranked Tennessee number one for the most onerous auctioneer license in the country.⁴⁰

Auctioneer Licenses Issued Per Year in Tennessee

(per 100,000 residents)



Source: Practitioner Data Obtained by Tennessee Auctioneer Commission • Created with Datawrapper

Figure 7: The number of auctioneers has steadily decreased for three decades.

These onerous requirements clearly made it difficult for new Tennesseans to enter the market, with the number of licenses issued falling roughly 80 percent over the past three decades. In response, a task force was created during the summer of 2018 to modernize the license.⁴¹ The resulting recommendations and bill cut the requirement from two years' experience to six months, a 75 percent decrease.⁴² However, in the effort to "modernize" the license, it sought to greatly expand its scope by including online auctions.

While certainly the additional requirements like requiring auctioneers to obtain continuing education and have a high school diploma dissuaded some from being auctioneers, there could be other reasons, like the creative destruction of new technologies like the Internet. Certainly, all industries and professions have been changed by the Internet and other innovations in the Information Age. However, some, like auctioneers, have arguably become nearly obsolete due to it. Take eBay, for example, which has allowed millions of Americans to directly sell their items online

in an auction. Luckily, Tennessee realized the consequences of trying to regulate such activity early on, exempting "fixed or timed listings that allow bidding on an Internet website" as long as it did not simulate a live-streamed auction using a platform like Zoom.⁴³ However, the 2019 law reversed this precedent, seeking to differentiate between "fixed" time auctions like eBay and "extended" time auctions—those that seek to get the best bid for the seller.⁴⁴ This would have dramatically increased the scope of who is subject to the license, arguably to bring innovative companies and competition under regulation. However, in 2019 a federal district court enjoined and restrained that portion of the law, and ultimately found it unconstitutional, leaving solely the deregulatory aspects in place.⁴⁵

Overall, auctioneering is a profession in which increasing regulations has been used as a way not to better public health and safety but to increase the prestige of a profession. Additionally, efforts to expand the scope of the license were done to increase the number of practitioners of a dying licensing scheme (at

best) and to regulate innovative competitors (at worst). With a continual decrease in the number of licensed auctioneers, it may be time for policymakers to follow the example of 20 other states by completely deregulating the profession and eliminating the license.⁴⁶ While the number of licenses issued per year continued to decrease over the past two years even after cutting the necessary requirements,

that is too soon for any statistical inference. While we would expect the number to rebound due to the lower requirements, if the downward trend does not reverse, or at least slowdown, it could be time for the state to stop wasting resources regulating the ever becoming smaller profession as it has likely been made obsolete by technological advancements.

Private Investigators

Auctioneering is not the only profession in which licensing changes have led to a decrease in people entering the industry, especially in the light of technology changes. The private investigators license shows us how adding one new requirement can prove disastrous for the growth of a profession.

The initial licensure for private investigators was created in 1990. The original reasoning for the license dealt with the lack of definition of what constitutes a private investigation and how some were using private investigators to bypass service laws. The legislation was brought in the form of an amendment to another bill from the regulatory boards. The amendment's sponsor, Sen. Jim Kyle, explained to the Commerce, Labor, and Agriculture Committee on March 13, 1990, that:

[W]e have had situations where people have hired themselves as private investigators...[to get around] the rules of service that we passed 30 years ago. It's allowed people to serve papers without going through the courts. That's why we've had people going through the private service process for this...We need to have some definition of what a private investigator is if they're going to hold themselves out as doing that.⁴⁷

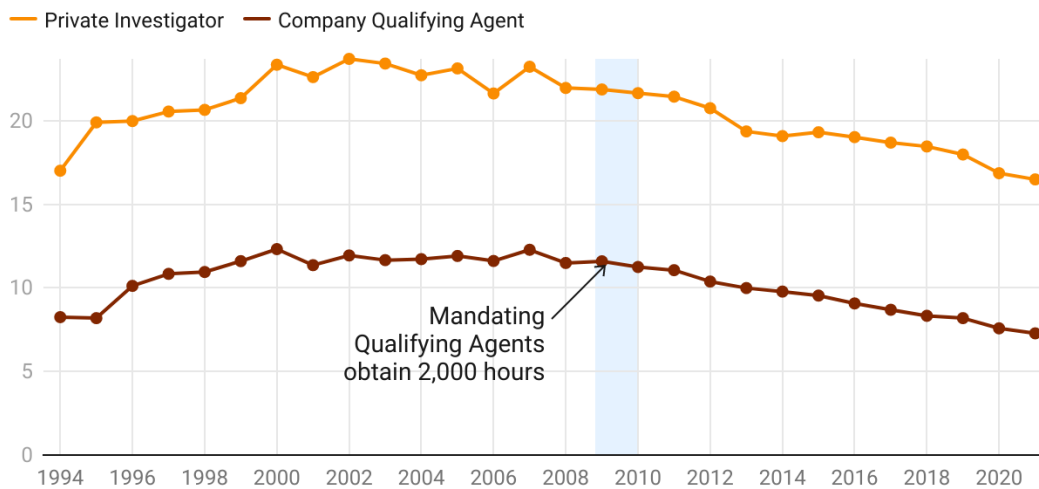
After its creation in 1990, the requirements for a private investigator's license remained the same for nearly 20 years until 2009. That year the law was changed to require the licensed qualifying agent for a private investigation company to have at least 2,000 hours of verified experience or one year of study approved by the licensing board, and to pass an examination. In what should not come as a surprise, current license holders were exempt from the requirement.⁴⁸ Sen. Kyle raised concerns with the sponsor, Sen. Doug Overbey, about the bill's apparent protectionist aspect:

That's almost two years before you can apply to be in this business. We're telling everybody who's in the business now you don't have to do this. I mean, we do that a lot...one could argue that we're building a barrier protecting those already in the business and thereby discouraging those who might want to be in the business. Because they have to do 4,000 hours [the original requirement in the bill] or they got to do a lot of stuff you don't have to do now. And that concerns me.⁴⁹

Others in the committee tried to ease Sen. Kyle's concerns by pointing out the requirement was for the qualifying agent license for a company—not an individual simply seeking to work. However, the evidence shows Sen. Kyle's fears were not unfounded.

Private Investigator and Qualifying Agent Licenses Issued Per Year in Tennessee

(Per 100,000 residents)



Source: Practitioner Data Obtained from the Dept. of Commerce and Insurance • Created with Datawrapper

Figure 8: The decrease in private investigation companies due to additional regulations seems to correlate with a similar decrease in license holders.

While the increased regulations were targeted at investigation companies, there is a strong correlation between companies and practitioners with a consistent ratio of 2:1. This means that the increased requirements on companies placed a burden on roughly 50 percent of private investigators.

Due to the larger sample size of years and the fact that only one change to the licensure requirements has been made, private

investigation offers arguably the best test case on the impact of additional barriers to entry on license holders and is clearly statistically significant. In a profession whose practices and methods have been made easier and more accessible than ever due to the Internet and even social media, lawmakers should consider repealing the clear paradigm-shifting requirements of 2009 and even repealing the license requirement entirely.⁵⁰

Category	Average Number of Licenses Issued 1994–2009	Average Number of Licenses Issued 2010–2021	P-Value
Private Investigator	21.69	18.86	0.00021
PI Company Qualifying Agents	11.12	9.26	0.00045

Table 2: The additional barrier to entry passed in 2009 clearly had an impact on making it more difficult for Tennesseans seeking to enter the profession.

Pest Control Applicators

An important note for legislators and policymakers looking to make reforms and reduce barriers to entry in occupational licensing is to identify less restrictive means of regulation. Licensure should be used as a last resort because it is the most restrictive form of regulation. Less-restrictive forms include certification (as with interior designers discussed below), registration, bonding and insurance, private certifications, consumer protection acts, or even consumer rating platforms.⁵¹ An example of using a less-restrictive means of regulating is the fact that restaurant cooks directly influence the public’s health and safety every day, but they are not licensed; instead, a government agency inspects their kitchens. This is less restrictive than licensure yet is more effective and directly related to protecting health and safety.

The licensure of pest control applicators serves as another example of how less restrictive means of regulating can better protect health and safety without significant new barriers to entry. Since 1978, pest control service company owners have had to be licensed (called chartered), bonded, and have insurance, with individual certifications for workers and salespeople of licensed companies. In 2000, the government doubled the bonding and insurance requirements for licensed owners and operators.⁵² Where additional licensure requirements had a statistically significant impact on the number of licensed private investigators, the additional bonding and insurance requirements did not have a similar effect on the pest-control industry.

Average Number of Licenses Issued Per Year 1980–1999 (Per 100,000 residents)	Average Number of Licenses Issued Per Year 2000–2020 (Per 100,000 residents)	P-Value
3.94	3.68	0.220

Table 3: Unlike most changes in licensing requirements, the change in bonding and insurance for pest-control applicators did not have a statistically significant impact.

While this should not give lawmakers justification for increasing less-restrictive forms of regulation unnecessarily, it does show that if better protections for the public are needed,

there are ways of providing them without creating barriers to entry and making it harder for Tennesseans to find or create jobs.



Blips on the Radar

A Quick Note on Tiny Licenses

In addition to the large and well-known professions that the state regulates—like barbers, architects, accountants, etc.—there are some licensing

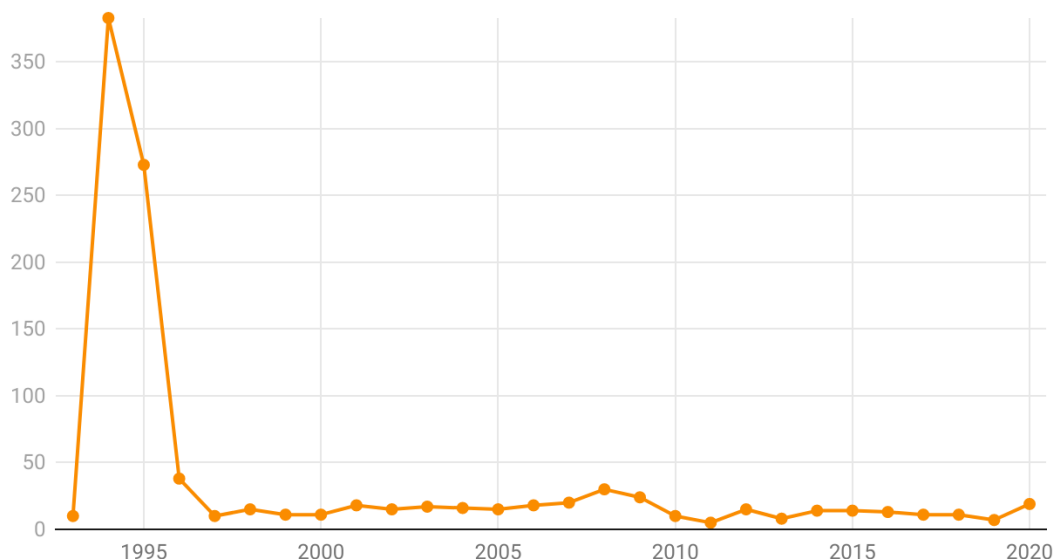
schemes that are so small, it brings into question why the state of Tennessee is regulating them in the first place.

Registered Interior Designers

Since 1991, the state has regulated interior designers. While the regulatory framework is referred to as a “registered interior designer,” the framework functions more as a certification because it is a completely voluntary designation. Tennesseans may still hold themselves out to be an interior designer but must meet the necessary requirements

and obtain the optional certification if they want to use the title of “registered interior designer.”⁵³ The requirements, which include experience, minimum education, and fees, have not changed since 1995. However, the data indicates Tennesseans have not found value in the label and have not bothered to obtain the certification.

Interior Designer Registrations Per Year in Tennessee



Source: Practitioner Data Obtained from State Board of Architectural and Engineering Examiners • Created with Datawrapper

*Figure 9:
Tennesseans
have not found
the optional
interior designer
certification
worthwhile, with
few renewing
after the
creation of the
registration.*

An important note is that while all other graphs in this report have shown the number licensed per 100,000 to weigh the growth or decline of a profession relative to the population, Figure 9 above illustrates the total number of interior designers becoming registered each year. Essentially, after the implementation of the regulatory framework and initial registrations, the overwhelming majority have chosen not to renew, indicating that early on, practitioners thought registration was mandatory (a characteristic of most registrations) or found little value in it and decided not to renew.

Regardless of their reason, industry practitioners clearly have found little value in the program, indicating the state should not waste manpower or other resources in continuing

it. For example, since 1996, only 15 interior designers have registered per year on average. Since registrations are renewed every two years, that means there are roughly 30 registered interior designers in the state in any given year. Yet, a registered interior designer must be a member of the state Board of Architectural and Engineering Examiners.⁵⁴ This means that roughly three percent of all registered interior designers in the state sit on the board. To put that into perspective, that would require roughly 84 cosmetologists to be appointed to the Board of Cosmetology and Barber Examiners, compared to the current makeup of three cosmetologists out of the total 14 members of the board.

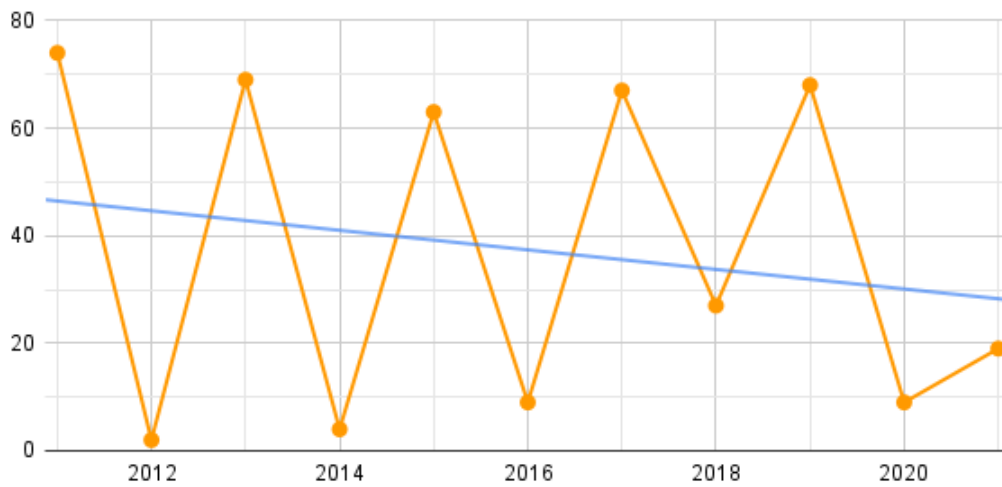
Soil Scientists

The licensure of soil scientists is another example of lawmakers implementing requirements to boost the appeal and prestige of a profession and having little impact. Before 2010, soil scientists were required only to register with the Department of Environment and Conservation (TDEC) and maintain a performance bond. However, starting in 2010, soil scientists were told they needed either a bachelor's degree in soils, agronomy, or a closely related field and three years of qualifying experience; a master's degree in soils, agronomy, or a closely related field and two years of professional experience; or a doctoral degree in the field and one year of professional experience.

Rep. John Tidwell, who sponsored the bill creating the license in 2010, was asked why the new license was necessary, given the

already existing registration requirement. Rep. Tidwell responded, "TDEC only kept up with the names of the people that had the bonding and everything. This makes certain that they are tested, qualified, and have a licensure which is far more than TDEC was doing and the ability to make sure that you're getting a qualified soil scientist to do your work."⁵⁵ Rep. Susan Lynn continued questioning Rep. Tidwell about whether consumers had been filing complaints, highlighting the need for licensure and stated that based on her experience on the Government Operations Committee, the fewer licensed soil scientists there were, the higher the cost of their services for consumers. Rep. Tidwell referred to one complaint that had been filed in 2002, but "other than [that], I don't know of any complaints." He hoped that requiring licensure would encourage more people to join the industry.⁵⁶

Soil Scientist Licenses Issued Per Year in Tennessee



Source: Practitioner Data Obtained from Dept. of Commerce and Insurance

Figure 10:
Despite the intent,
licensure has not
led to a growth
in the number of
soil scientists.

As with registered interior designers, Figure 10 illustrates the total number of licenses issued to soil scientists each year in Tennessee. Like virtually all other state licenses, soil scientist licenses are valid for two years.⁵⁷ The data seems to indicate that there are roughly 60 to 70 soil scientists statewide, the majority of whom were licensed within the first year of the regulatory framework with a small remainder the following year. Since then, these same practitioners have renewed every two years, with a slight downtrend in the number of practitioners, likely as some have retired or left the state.

When part of the original rationale for a license is to help encourage Tennesseans to enter a profession and it has clearly failed to do so, lawmakers should consider eliminating the license and return to the previous framework of requiring only a performance bond and registration—especially since there was no clear evidence at the time of consumer complaints about service quality, especially when the initial application and license costs practitioners \$400 apiece, a rather hefty amount.⁵⁸



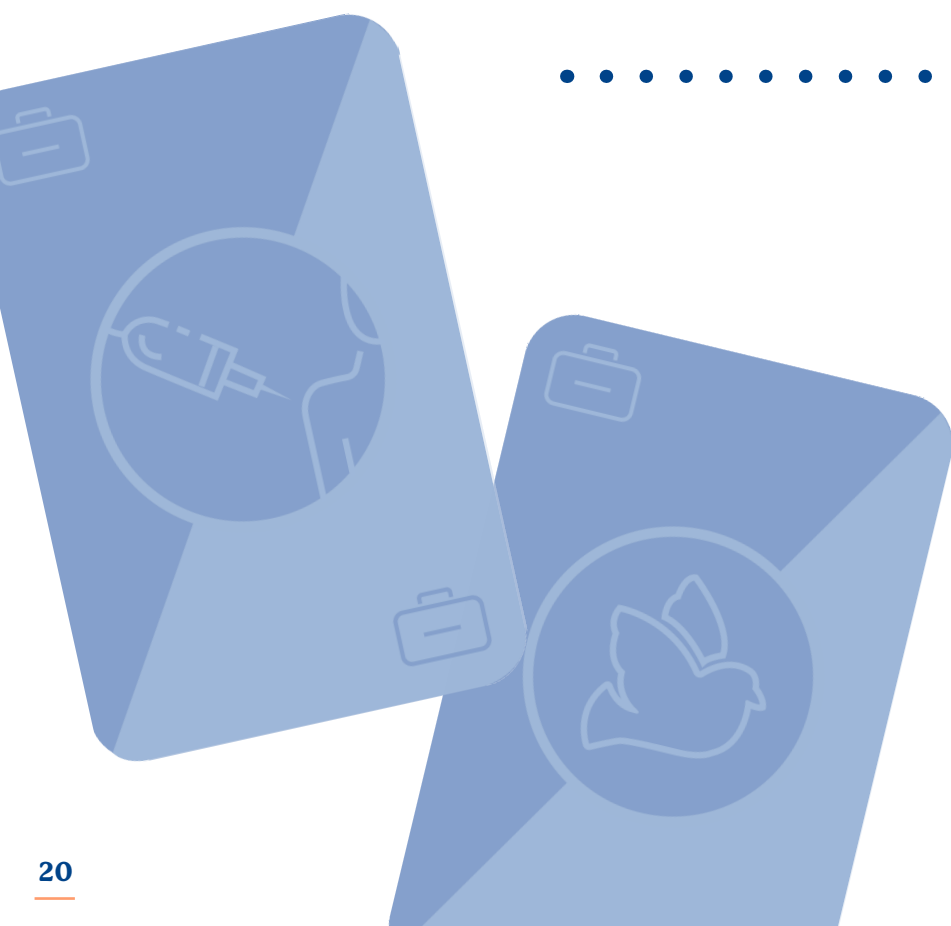


The Missing Links

(of Data)

While most licenses have years of back practitioner data, some licensing entities have not maintained such records. For example, the Tennessee Board of Funeral Directors and Embalmers only maintains a record of the number of current licensed funeral directors and embalmers statewide.

Additionally, the Department of Health does not maintain historical data for the number of licensed tattoo artists or body-piercing technicians. Regulators should be encouraged—or if necessary, required—to maintain such records so policymakers can identify trends in all regulated industries.



Conclusions and Recommendations

Old Habits Dying Hard

The number of professions and industries requiring an occupational license has boomed in Tennessee over recent decades. For some, the stated reason was public health and safety, or to ensure quality even when there was no evidence of consumer complaints. For others, it was to “enhance” the standing of a profession and its practitioners. Meanwhile, some critics have pointed out the anti-competitive nature of new licenses, including the fact that practitioners already in a field are typically exempted from new licensing requirements.

Regardless of the reason, the explosion of new licenses in the Volunteer State has brought new scrutiny on licensing and its impacts on consumers and those looking to obtain a job or start a business. However, these studies have tended to focus only on current requirements, when the reality is that licensing requirements change over time. Here, Beacon sought to investigate how changing requirements—either through deregulation or increased regulations—changes Tennesseans’ ability to meet those barriers to entry.

Overall, the professions we observed that require a bachelor’s degree or more tend to change little or not at all. As a result, the number of practitioners in those professions has tended to stay within a consistent range. Meanwhile, trades or “blue-collar”

professions have seen more changes to their licensing framework, including increased requirements, expansions of scope, and the creation or exemption of specialized or sub-disciplines within the profession. Generally, these changes have had significant impacts on the decline (or growth) of a profession. Additionally, some regulated professions are so small that we must ask why regulation is necessary at all. If lawmakers do feel the necessity to add regulations for a certain profession, they should consider less-restrictive means of regulating than licensure or new licensing requirements. As the case of pest control applicators has shown, less-restrictive means of regulating, such as bonding and insurance, tend not to impact the number of people entering or remaining in that profession.

Additionally, all state entities, including regulatory boards, are audited, and reviewed every two to six years by the Government Operations Committee as part of the sunset cycle. In these reviews, most of the discussion revolves around a board’s financial health, such as its fees and reserve balances. Lawmakers on the Government Operations Committee should request historical practitioner data going forward as part of their ongoing reviews to identify professions in need of deregulation more quickly.

Finally, as we have seen, many licensing changes have had a significant impact on the number of Tennesseans entering the profession. Because the impact of these new requirements may take years to assess, it is vitally important to analyze if such new changes or requirements are truly necessary to protect public health and safety before they are implemented. The Government Operations Committee was tasked with this once already as part of the “Right to Earn A Living Act” passed in 2016. The General Assembly should consider making this analysis an ongoing requirement. Similarly, licensing boards should be required to state the public health and safety rationale for their actions

and bear the burden to prove that the rule or regulation is necessary to protect public health and safety. By requiring such an analysis and requiring the government to bear the burden of proving the rationale of regulations would help to curtail and prevent new onerous requirements from limiting Tennesseans ability to obtain a new job, start a business, or hire qualified workers. Just as in the (board) Game of Life, if we better knew upfront the costs and consequences of certain regulations and professions, it would lead to better decisions—regardless of whether you are a child playing a game or lawmakers voting on bills.



References

- ¹ The White House, “Occupational Licensing: A Framework for Policymakers.” July 2015. https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.
- ² Morris M. Kleiner and Alan B. Krueger, “Analyzing the Extent and Influence of Occupational Licensing on the Labor Market.” Institute for the Study of Labor. Discussion Paper No. 5505. February 2011. <https://ftp.iza.org/dp5505.pdf>.
- ³ Ibid; Morris M. Kleiner, “Licensing Occupations: Ensuring Quality or Restricting Competition?” W.E. Upjohn Institute for Employment Research. February 10, 2006. https://research.upjohn.org/cgi/viewcontent.cgi?article=1034&context=up_press.
- ⁴ Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erickson, and John K. Ross, “License to Work: A National Study of Burdens from Occupational Licensure.” Institute for Justice. May 2012. <https://ij.org/wp-content/uploads/2015/04/licensetowork1.pdf>.
- ⁵ Ibid; Will Flanders and Collin Roth, “Land of the Free? 50 state study on how professional licensing laws lead to fewer jobs.” The Wisconsin Institute for Law and Liberty. October 2017. <https://will-law.org/wp-content/uploads/2021/01/land-of-the-free-final.pdf>.
- ⁶ Macy Scheck, Ron Shultis, Dr. Daniel Smith, and Protik Nandy, “The Costs of Occupational Licensing in Tennessee & Avenues for Reform.” Beacon Center of Tennessee and Political Economy Research Institute. March 31, 2022. <https://www.beacontn.org/wp-content/uploads/2022/03/LicensingReform-3.25.22.pdf>.
- ⁷ Tennessee 100th General Assembly. Public Chapter No. 700. <https://sharetn.gov.tnsosfiles.com/sos/acts/100/pub/PUBC0700.htm>.
- ⁸ Tennessee 101st General Assembly. Public Chapter No. 609. <https://sharetn.gov.s3.amazonaws.com/sos/acts/101/pub/pc609.pdf>.
- ⁹ Tennessee 105th General Assembly. Public Chapter No. 19. <https://publications.tnsosfiles.com/acts/105/pub/pc0019.pdf>.
- ¹⁰ Tennessee 106th General Assembly. Public Chapter No. 26. <https://publications.tnsosfiles.com/acts/106/pub/pc0026.pdf>.
- ¹¹ Tennessee 109th General Assembly. Public Chapter No. 595. <https://publications.tnsosfiles.com/acts/109/pub/pc0595.pdf>.
- ¹² House Business and Utilities Subcommittee. Tennessee 109th General Assembly. February 2, 2016. [Video]. https://tnga.granicus.com/MediaPlayer.php?view_id=278&clip_id=11490.
- ¹³ House Commerce Committee. Tennessee 105th General Assembly. April 24, 2007. [Video]. https://tnga.granicus.com/MediaPlayer.php?view_id=535&clip_id=19933.
- ¹⁴ Tennessee 105th General Assembly. Public Chapter No. 215. <https://publications.tnsosfiles.com/acts/105/pub/pc0215.pdf>.
- ¹⁵ Senate Commerce Committee. Tennessee 110th General Assembly. March 21, 2017. [Video]. https://tnga.granicus.com/MediaPlayer.php?view_id=354&clip_id=13268.
- ¹⁶ Ibid.
- ¹⁷ Tennessee 110th General Assembly. Public Chapter No. 329. <https://publications.tnsosfiles.com/acts/110/pub/pc0348.pdf>; Tennessee 112th General Assembly. Public Chapter 904. <https://publications.tnsosfiles.com/acts/112/pub/pc0904.pdf>.

¹⁸ While data existed going back to 1980, 1993 was an anomalous year, with licenses issued nearly 20 times more often than the average prior to 1993 and the average since. We began our graph in 1994 to mitigate the impact of that outlier.

¹⁹ Office of Science and Technology Policy. “Progress Report on the Implementation of the Federal STEM Education Strategic Plan.” Office of the President of the United States. December 2021. <https://www.whitehouse.gov/wp-content/uploads/2022/01/2021-CoSTEM-Progress-Report-OSTP.pdf>. Tennessee 103rd General Assembly. Public Chapter No. 529. <https://sharetn.gov.s3.amazonaws.com/sos/acts/103/pub/pc0529.pdf>.

²⁰ Tennessee 103rd General Assembly. Public Chapter No. 529. <https://sharetn.gov.s3.amazonaws.com/sos/acts/103/pub/pc0529.pdf>.

²¹ While data existed going back to 1980, in 1993, there was an anomaly year, with licenses issued over 10 times the average prior to 1993 and the average since. Rather than skew results, we began our graph in 1994 to mitigate the impact of that outlier.

²² Tennessee 99th General Assembly. Public Chapter No. 897. <https://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0745&GA=99>.

²³ Tennessee 102nd General Assembly. Public Chapter No. 804. <https://sharetn.gov.s3.amazonaws.com/sos/acts/102/pub/pc0804.pdf>; Public Chapter No. 706. <https://sharetn.gov.s3.amazonaws.com/sos/acts/102/pub/pc0706.pdf>.

²⁴ Tennessee 109th General Assembly. Public Chapter No. 267. <https://publications.tnsosfiles.com/acts/109/pub/pc0267.pdf>.

²⁵ Tennessee 109th General Assembly. Public Chapter No. 983. <https://publications.tnsosfiles.com/acts/109/pub/pc0983.pdf>; Public Chapter No. 991. <https://publications.tnsosfiles.com/acts/109/pub/pc0991.pdf>; Tennessee 110th General Assembly. Public Chapter No. 979. <https://publications.tnsosfiles.com/acts/110/pub/pc0979.pdf>.

²⁶ Tennessee 110th General Assembly. Public Chapter No. 227. <https://publications.tnsosfiles.com/acts/110/pub/pc0227.pdf>.

²⁷ Tennessee 111th General Assembly. Public Chapter No. 207. <https://publications.tnsosfiles.com/acts/111/pub/pc0207.pdf>.

²⁸ While data existed going back to 1980, 1994 was an anomaly year, with licenses issued nearly five times the average prior to 1994 and the average since. We began our graph in 1995 to mitigate the impact of that outlier.

²⁹ Tennessee 108th General Assembly. Public Chapter No. 964. <https://publications.tnsosfiles.com/acts/108/pub/pc0964.pdf>.

³⁰ Tennessee 109th General Assembly. Public Chapter No. 402. <https://publications.tnsosfiles.com/acts/109/pub/pc0402.pdf>.

³¹ Zarate v. Tennessee Board of Cosmetology and Barber Examiners, Case No. 18-534-II (Davidson Co. Chancery, August 5, 2020).

³² Tennessee 85th General Assembly. Public Chapter No. 335.

³³ Senate Floor Session. Tennessee 85th General Assembly. May 22, 1967.

³⁴ Tennessee 100th General Assembly. Public Chapter No. 91. <https://sharetn.gov.tnsosfiles.com/sos/acts/100/pub/PC0091.HTM>.

³⁵ Tennessee 100th General Assembly. Senate Floor Session. April 3, 1997.

³⁶ Tennessee 101st General Assembly. Public Chapter No. 358. <https://sharetn.gov.s3.amazonaws.com/sos/acts/101/pub/pc358.pdf>.

³⁷ Tennessee 109th General Assembly. Public Chapter No. 726. <https://publications.tnsosfiles.com/acts/109/pub/pc0726.pdf>.

³⁸ Tennessee 101st General Assembly. Public Chapter No. 358. <https://sharetn.gov.s3.amazonaws.com/sos/acts/101/pub/pc358.pdf>.

³⁹ Tennessee 105th General Assembly. Public Chapter No. 724. <https://publications.tnsosfiles.com/acts/105/pub/pc0724.pdf>.

⁴⁰ Dick M. Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, “License to Work: A National Study of Burdens from Occupational Licensure. 2nd Edition.” Institute for Justice. November 2017. <https://ij.org/report/license-to-work-2/ltw-occupation-profiles/ltw2-auctioneer/>.

⁴¹ Tennessee 110th General Assembly. Public Chapter No. 941. <https://publications.tnsosfiles.com/acts/110/pub/pc0941.pdf>.

⁴² Tennessee 111th General Assembly. Public Chapter No. 471. <https://publications.tnsosfiles.com/acts/111/pub/pc0471.pdf>.

⁴³ Tennessee 104th General Assembly. Public Chapter No. 533. <https://sharetn.gov.s3.amazonaws.com/sos/acts/104/pub/pc0533.pdf>.

⁴⁴ Tennessee 111th General Assembly. Public Chapter No. 471. <https://publications.tnsosfiles.com/acts/111/pub/pc0471.pdf>.

⁴⁵ *McLemore v. Gumucio*, No. 3:19-cv-00530, Memorandum Opinion Granting Preliminary Injunction, Doc. No. 29, PageID# 781-809 (M.D.T.N., July 23, 2019).

⁴⁶ Dick M. Carpenter II, Ph.D., Lisa Knepper, Kyle Sweetland, and Jennifer McDonald, “License to Work: A National Study of Burdens from Occupational Licensure. 2nd Edition.” Institute for Justice. November 2017. <https://ij.org/report/license-to-work-2/ltw-occupation-profiles/ltw2-auctioneer/>.

⁴⁷ Senate Commerce, Labor, Agriculture Committee. Tennessee 96th General Assembly. March 13, 1990.

⁴⁸ Tennessee 106th General Assembly. Public Chapter No. 595. <https://publications.tnsosfiles.com/acts/106/pub/pc0595.pdf>.

⁴⁹ Senate Judiciary Committee. Tennessee 106th General Assembly. May 27, 2009. [Video]. https://tnga.granicus.com/MediaPlayer.php?view_id=77&clip_id=1573.

⁵⁰ Mohana Ravindranath, “How Facebook, Twitter and LinkedIn have changed private investigation.” Washington Post. October 22, 2012. https://www.washingtonpost.com/business/on-small-business/how-facebook-twitter-and-linkedin-have-changed-private-investigation/2012/10/19/7c4e5e28-1a15-11e2-94aa-9240e72ee00b_story.html.

⁵¹ John Ross, “The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing.” Institute for Justice. November 2017. https://ij.org/wp-content/uploads/2017/11/Inverted-Pyramid_FINAL.pdf.

⁵² Tennessee 101th General Assembly. Public Chapter No. 668. <https://sharetn.gov.s3.amazonaws.com/sos/acts/101/pub/pc668.pdf>.

⁵³ Tenn. Code Annotated §62-2-903.

⁵⁴ Tenn. Code Annotated §62-2-201(a)(3).

⁵⁵ House Commerce Committee. Tennessee 106th General Assembly. March 24, 2009. [Video]. https://tnga.granicus.com/MediaPlayer.php?view_id=77&clip_id=784.

⁵⁶ *Ibid.*

⁵⁷ Tenn. Code Annotated §62-18-209(b).

⁵⁸ Division of Regulatory Boards. Tennessee Department of Commerce and Insurance. Rule 0780-05-06-.07.



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