



INSTITUTE FOR JUSTICE

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September 3, 2019

Dear Chairmen Weiler and Thurston:

Occupational licenses restrict the ability of Utah citizens to earn a living and support their families. As a public interest, civil liberties law firm, the Institute for Justice has worked through litigation, legislation, communications, and activism to end harmful and unnecessary licensing laws that block economic opportunity. In Utah, we successfully challenged a state law that required African-style natural hair braiders to complete 2,000 hours of largely irrelevant cosmetology training before they could work.¹ We have also published several studies that examine the costs and burdens of occupational licensing nationwide.

One study, *At What Cost?*, found that more than 200,000 Utahans are now licensed, or roughly one-sixth of the state's workforce. The breadth and burden of the state's licensing requirements resulted in nearly 20,000 fewer jobs and cost the state over \$1.9 billion in lost productivity and "misallocated resources" each year.² Indeed, according to a separate, updated IJ report, *License to Work*, the average license for low- and moderate-income occupations in Utah forces aspiring workers to pay \$295 in fees, complete 117 days of education and experience and pass one exam.³

One particularly burdensome example is the licensing red tape that entangles blow dry bars. Increasingly popular, blow dry salons let stylists wash, condition, and style hair with blow dryers, curling irons, and sinks—common tools that can be found in almost any American's home. Unlike barbers or cosmetologists, blow dry bars do not cut, dye, or perm hair. Yet 48 states—including Utah—force aspiring blow dry stylists to obtain a license to work (typically in either barbering or cosmetology) before they can earn an honest living.⁴



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In Utah, for instance, the state’s definition of “practice of barbering” expressly includes “draping, shampooing, scalp treatments, basic wet styling, and blow drying.”⁵ So before someone can open up or work in a blow dry bar, they need to become a licensed barber, a credential that takes at least 1,000 hours of training. (Blow dry bars could also arguably fall under the state’s hair design and cosmetology/barbering licenses, but those two licenses require a minimum of 1,200 hours and 1,600 hours of coursework respectively.)

Lawmakers in other states have begun enacting reforms. Last year, Virginia almost unanimously passed HB 790, which made Old Dominion the first state in the nation to completely exempt blow dry bars from occupational licensing.⁶ Earlier this year, Arizona followed suit with its own exemption law for blow dry salons.⁷

Separately, in 2016, Maryland created a 350-hour limited license for “blow dry stylists.” But according to a March 2019 report by the Goldwater Institute, “not one of the cosmetology schools in the state offers the 350-hour program.”⁸ This clear barrier to entry also demonstrates the folly of creating new specialty licenses, rather than exempting occupations outright.⁹

As part of our efforts to enact licensing reform nationwide, the Institute for Justice has developed an “inverted pyramid” of least-restrictive regulatory options.¹⁰ When evaluating an occupational regulation, lawmakers should ask themselves the following two questions:

First, is there any actual evidence of widespread, substantial and permanent harms from the practice of an occupation? Second, if there is documented proof of a genuine threat to consumer welfare, what is the least-restrictive regulation that would both address that problem and minimize the impact on workers, consumers and the economy at large?

For instance, to address concerns that consumers are subject to fraud, lawmakers could seek to enhance the state’s deceptive trade practice act. If the issue is unsanitary facilities, requiring (or increasing) the number of inspections of a provider’s facility could more effectively promote the health and safety of the general public.

Finally, if the problem is asymmetrical information or a knowledge gap between suppliers, the appropriate legislative response is state certification, which acts as an effective signal to customers of training and competence. But unlike mandatory licensing, state certification is voluntary and does not impose higher prices and greater unemployment.

At the very nadir lies licensing as a regulation of last resort. Only when an occupation’s harms cannot be mitigated by one of the less restrictive alternatives should licensing be implemented.



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As Utah's requirements for blow dry bars show, licensing all too often forces workers to complete excessive and unrelated educational requirements and pay expensive fees. There is little evidence to suggest that licensing protects consumers better than a provider's reputation, which is increasingly spread over online rating services. Instead, licensing laws restrict competition, increase unemployment and lead to higher costs for consumers.

The Institute for Justice applauds the Occupational and Professional Licensure Review Committee for looking into this issue. We ask you and members of the committee to support reforms that would eliminate licensing barriers to entry for blow dry stylists and other workers reaching for the first rung of the economic ladder. Thank you.

Yours in Liberty,

Nick Sibilla
Legislative Analyst

¹ *Clayton v. Steinagel*, 885 F. Supp. 2d 1212 (D. Utah 2012)

² Kleiner, M.M., & Vorotnikov, E.S. (2018). *At What Cost? State and National Estimates of the Economic Costs of Occupational Licensing*. Arlington, VA: Institute for Justice. <https://ij.org/report/at-what-cost>

³ Carpenter, D.M., Knepper, L., Sweetland, K., & McDonald, J. (2017). *License to Work: A National Study of the Burdens from Occupational Licensing*, 2nd edition. Arlington, VA: Institute for Justice. <http://ij.org/report/license-work-2/>

⁴ Bentley, J. & Sandefur, C. (2019). *Tangled: Blow-drying a crime?* Phoenix, AZ: Goldwater Institute. <https://goldwaterinstitute.org/wp-content/uploads/2019/03/Tangled-Blow-Dry-2019-03-19.pdf>

⁵ Utah Code § 58-11a-102(29)(b)

⁶ HB 790, Virginia General Assembly. (2018) <http://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+HB790>

⁷ SB 1401, Arizona State Legislature. (2019) <https://apps.azleg.gov/BillStatus/BillOverview/72051>

⁸ Bentley, p.8.

⁹ In addition to considering whether to exempt workers in blow-dry salons from Utah's barber and cosmetology licensing laws, we encourage your committee to consider exemption for other providers of niche services. These include threaders, eyelash extensions applicators, micro-blade practitioners, permanent makeup artisans, hair stylists who do not cut or dye, bridal makeup artists, and other providers of low-risk niche services.

¹⁰ Hemphill, T.A., & Carpenter, D.M. (2016). *Occupations: A Hierarchy of Regulatory Options*. *Regulation*, 39(3), 20-24. <http://ij.org/wp-content/uploads/2016/09/hierarchy-of-regulations-carpenter.pdf>