Testimony on Occupational Licensing in Kansas Given before the Senate and House Commerce Committees, Kansas State Legislature

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Members of the committees:

I thank you for the honor of your invitation to present this testimony before you. The issues surrounding occupational licensing are many. A survey of the research literature in occupational licensing shows that the unintended consequences of extending state regulation over an industry can overshadow the purported benefits in so doing.

Even if the rationale in seeking licensure is based in concern over safety and service quality, in general occupational licensing is rather like a medieval guild system. It burdens would-be job seekers and puts up hurdles that are especially difficult for the poor to cross. It effectively turns incumbent service providers into a cartel, artificially boosting their earnings at the expense of consumers and those competitors and innovators kept out. Meanwhile, the safety and quality benefits supposed to result from licensure tend to be illusory.

Kansas is one of the freer states in terms of occupational licensure, nationally as well as regionally. Nevertheless, the Kansas State Legislature regularly sees attempts to expand licensure. In my testimony today I make several proposals here that would help Kansas remain a national leader in occupational freedom.

First, by enacting sunrise provisions for future licensing boards and job categories, Kansas can prevent gratuitous, creeping expansion of occupational regulation. Beyond that, Kansas can start winnowing away unnecessary boards and licenses by enacting sunset provisions with periodic review for current licensing boards.

There are several principles Kansas policymakers can use in determining which boards and licenses are unnecessary, such as if other states find them unnecessary, if they only recently came under state regulation, if they primarily affect low-income workers and entrepreneurs, and if a board finds itself having to provide little actual oversight.

Judicious action now can preserve for Kansas a legacy of occupational freedom that other states should aspire to.

Introduction: A 'Parking Brake' on Growth

In 2012 the Kansas Board of Barbering requested a bill to shorten the expiration date of a barber's license to two years from three, codify two new fees, and strengthen the board's power over licensees. The bill, Senate Bill No. 353, passed both chambers of the legislature by supermajorities: 35-5 in the Senate and 117-7 in the House. [1]

[1] Senate Bill No. 353, kslegislature.org/li_2012/b2011_12/measures/sb353.

When it reached Gov. Sam Brownback, he vetoed it. In his veto message, the governor cited economic recovery underway in Kansas and said:

> While SB353 deals only with one business, it is a clear example of the steady growth of state power over economic activity. By vetoing SB353, I intend not only to prevent this small increase of government interference in the marketplace, but also to send the clear message that Kansas will not accept unnecessary government burdens on the free market. It is time to take the parking brake off of the dynamic economic engine that is the Kansas spirit, which if unleashed, will generate growth and prosperity for all.[2]

Brownback's veto was sustained. More importantly, his rationale — that expanding licensure would have been applying a brake to economic growth — is an idea that is consistent with economic analysis of occupational licensure. Furthermore, barbers are one of the lower-income occupations often subject to state licensure, so making licensing in that profession stricter would put additional burdens on lower-earning workers and entrepreneurs, and by extension, their communities.

Sunsetting: A 'tool of limited government'

The governor vetoed another bill, Senate Bill No. 37, that would have made permanent the Kansas Home Inspectors Registration Board, which was slated for sunset on July 1, 2013. Favored by the Kansas Association of Real Estate Inspectors and the Kansas Association of Realtors, that bill also passed with supermajorities in both chambers (36-3 in the Senate, 102-17 in the House).[3] In consequence, the board did sunset as scheduled in 2013.[4]

Brownback wanted to avoid adding unnecessary fees and regulations and spoke of the importance of sunset provisions. He invited a bill to extend the sunset for two years once his other concerns were addressed. As for the sunset itself, the fact that it "was added to the statute in 2009 allows us to reconsider the efficiency, effectiveness, and necessity of the board," he said, calling sunset dates "an important tool of limited government and should only be removed under very limited circumstances."[5]

A 2012 study published by the Mercatus Center of George Mason University demonstrated just how important sunsetting is. College of Charleston visiting scholar Russell S. Sobel and Mercer University assistant professor of economics John

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[2] Gov. Sam Brownback, "Message from the Governor," April 4, 2012, kslegislature.org/li_2012/b2011_12/measures/documents/sb353_enrolled.pdf.
[3] Senate Bill No. 37, kslegislature.org/li/b2013_14/measures/sb37/.
[4] Jerry Siebenmark, "Expiration of law deregulates home inspectors in Kansas," *The Wichita Eagle*, January 19, 2014, www.kansas.com/news/business/article1132000.html.
[5] Gov. Sam Brownback, "Message from the Governor," April 11, 2013, kslegislature.org/li/b2013_14/measures/documents/sb37_enrolled.pdf.

A. Dove examined different kinds of regulatory review processes used in all 50 states. They found weak or uncertain effects of most kinds of review, but not for sunset provisions:

> The final independent variable in the periodic review section, **the presence of a sunset provision, is robustly statistically significant — in fact, the most significant finding in our initial results**. Sunset provisions are negative and significant in all six different measures of state regulatory climates. The coefficients are sizeable as well, implying that **the impact is not only statistically but economically significant**.[6] (Emphasis added.)

Those two impacts of sunset provisions —reducing a state's total level of regulation, seeing a strong, positive economic impact for a state — are not coincidental. Regulatory accumulation (i.e., a stock of regulations growing over time) has a negative economic impact that grows with it.[7] A review of the past 20 years' worth of peer-reviewed academic research on academic research on state economic growth showed that studies of state regulatory burdens were more likely to find negative effects on the economy than were studies of state taxes.[8]

Sobel and Dove concluded that, for leaders seeking policies to bring about effective regulatory reform, "The single most important policy in a state is the presence of a sunset provision."[9]

A Present-Day Guild System

The purpose behind occupational licensing is ostensibly to ensure the safety and quality of work, to protect consumers from incompetent, negligent, or fraudulent service providers. Essentially, an occupational license is a certificate of permission from the government allowing an individual to do the kind of work he wants to do.

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[6] Russell S. Sobel and John A. Dove, "State Regulatory Review: A 50 State Analysis of Effectiveness," *Working Paper* No. 12-18, Mercatus Center, George Mason University, June 2012, http://mercatus.org/publication/state-regulatory-review-50-state-analysis-effectiveness.

[7] Patrick McLaughlin, Richard Williams, "The Consequences of Regulatory Accumulation and a Proposed Solution," *Working Paper* No. 14-03, Mercatus Center, George Mason University, February 2014, mercatus.org/publication/consequences-regulatory-accumulation-and-proposed-solution. Cf. John W. Dawson and John J. Seater, "Federal Regulation and Aggregate Economic Growth," *Journal of Economic Growth*, Springer, vol. 18(2), June 2013, pp. 137–177; Working Paper version viewable at http://www4.ncsu.edu/~jjseater/regulationandgrowth.pdf.

[8] John Hood, "State Taxes and Regulations Matter," *Carolina Journal*, September 18, 2013, www.carolinajournal.com/daily_journal/display.html?id=10496.

[9] Sobel and Dove, "State Regulatory Review."

In practice, occupational licensure acts as a reimagining of the medieval guild system, protecting established members of a profession from competition, allowing them to charge higher prices, and making them wealthier at the expense of consumers and excluded service providers.[10]

Under the guild system, craft guild members held exclusive rights to practice within a city. Aspiring practitioners could enter the field only by first being admitted to working under an established member craftsman (a "master") as an apprentice, an arrangement that could last several years. Guild members controlled the number of apprentices and the length of apprenticeship, and by placing these hurdles and limits on potential competitors, they guaranteed for themselves higher wages.[11]

Likewise, occupational licensing puts hurdles on prospective competitors in the regulated fields of labor. These include, among other things, the costs of the license and fees, some of which recur annually or periodically; required time spent in academic instruction, which can be as arbitrarily determined as apprenticeship lengths and moreover imposes costs in time and tuition; passage of a qualifying exam or exams, plus payment of exam fees; and time and tuition costs of supplemental education.

Milton Friedman, in his landmark work *Capitalism and Freedom* (1962), opened his chapter on occupational licensure by noting that, "The overthrow of the medieval guild system was an indispensable early step in the rise of freedom in the Western world." He declared it a "triumph of liberal ideas" that by the mid-nineteenth century, "men could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority."[12]

The turn to licensure in the twentieth century, however, Friedman considered a "retrogression."[13] He used that term in 1962, when licensure was markedly less rigorous than it is now. In the early 1950s, about one in 20 workers required a license to work in his chosen field, according to labor economists Morris M. Kleiner

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[10] Morris M. Kleiner, "Occupational Licensing," *The Journal of Economic Perspectives*, Vol. 14, No. 4 (Autumn 2000), pp. 189–202, https://www.aeaweb.org/articles.php?doi=10.1257/jep.14.4.189; Milton Friedman and Simon Kuznets, *Income from Independent Professional Practice*, National Bureau of Economic Research, New York, 1945, www.nber.org/chapters/c2324.pdf, p. 12.
[11] See the discussion in Adam Smith, *An Inquiry into the Nature and Causes and he Wealth of Nations*, Book X, Part II, "Inequalities occasioned by the Policy of Europe," 1776, viewable at Project Gutenberg, www.gutenberg.org/files/3300/3300-h/3300-h.htm#link2HCH0010.
[12] Milton Friedman, "Chapter IX: Occupational Licensure," *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962, p. 137.
[13] Friedman, "Occupational Licensure."

and Alan B. Krueger. By the 1980s, that ratio was about one in six; by 2000, one in five; and in 2006 heading toward one in three (29 percent).[14]

Licensure in Kansas

Kansas is one of the relatively freer states in terms of occupational licensure. A 2012 report on occupational licensing by Byron Schlomach of the Goldwater Institute found Kansas tied with Arizona and Utah for 9th fewest licensed job categories at 85. Neighboring states license more job categories: Colorado licenses 88; Iowa, 124; Oklahoma, 130; and Missouri, 137 job categories.[15] A study conducted in 2007 by Adam B. Summers for the Reason Foundation, using slightly different criteria for counting and comparing licensed job categories across the states, had Kansas with the third fewest licensed job categories (56), but Missouri ranked first with only 41 (Colorado had 69, Iowa had 85, and Oklahoma had 91).[16] Differences in how states classify licensed jobs make counting discrete occupations subjective (and, incidentally, underscore the guild-like nature of licensure).[17]

Nevertheless, from 2009 to 2011 Kansas had fallen two spots in the rankings of "Freedom in the 50 States" by the Mercatus Center at George Mason University, from 8th to 10th. Among other things, Mercatus recommended that Kansas repeal "harmful and unnecessary occupational licenses, such as those for pharmacy technicians, psychiatric technicians, occupational therapy assistants, lead paint

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[14] Morris M. Kleiner and Alan B. Krueger, "The Prevalence and Effects of Occupational Licensing," National Bureau of Economic Research *Working Paper* 14308, September 2008, www.nber.org/papers/w14308.

[15] Byron Schlomach, "Six Reforms to Occupational Licensing Laws to Increase Jobs and Lower Costs," Goldwater Institute *Policy Report* No. 247, July 10, 2012, http://www.goldwaterinstitute.org/en/work/topics/free-enterprise/related-reforms-free/six-reforms-to-occupational-licensing-laws-to-incr.

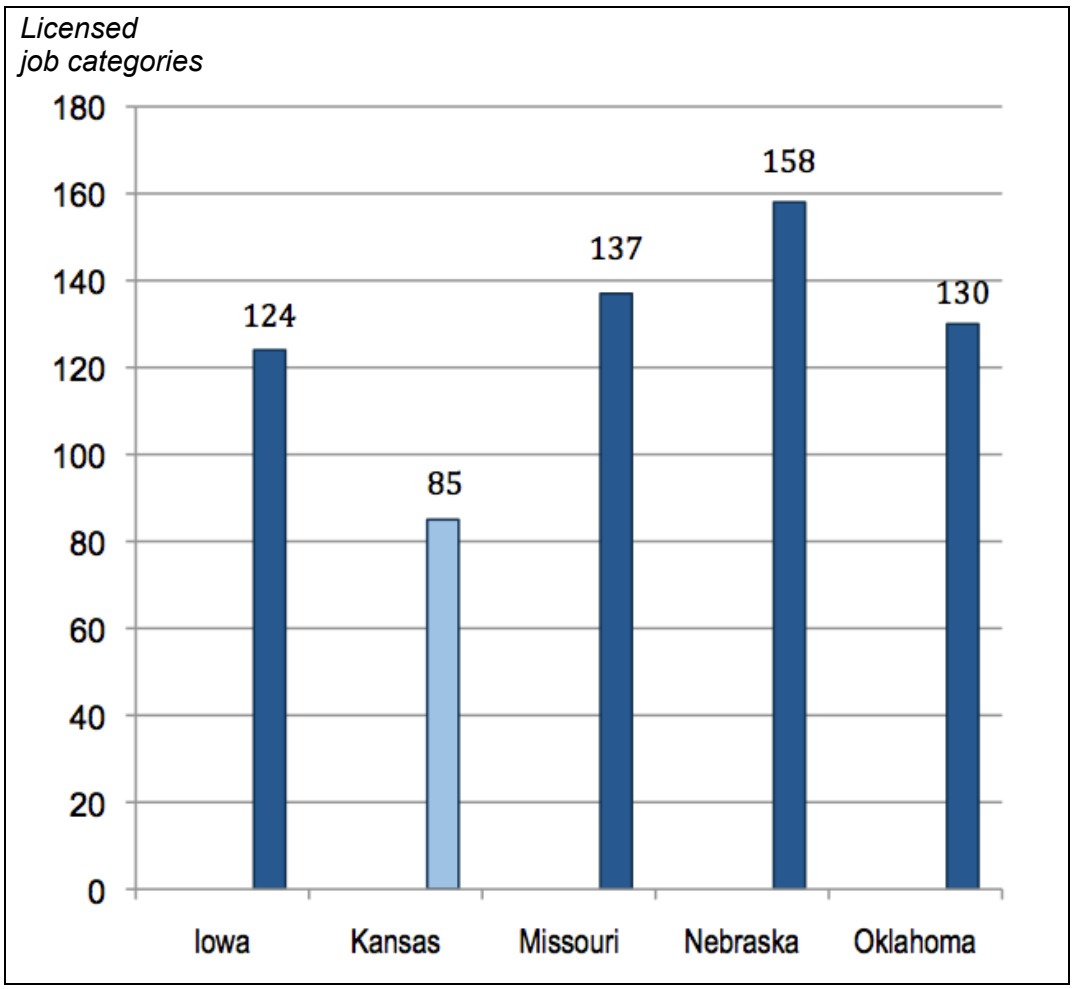
[16] Adam B. Summers, "Occupational Licensing: Ranking the States and Exploring the Alternatives," Reason Foundation *Policy Study* No. 361, August 2007, reason.org/news/show/1002854.html.

[17] Schlomach and Summers' counts are both based on data from CareerOneStop, www.acinet.org/licensedoccupations, a web site sponsored by the U.S. Department of Labor, Employment and Training Administration. Summers explained, for example, that "one state may require licenses for 'contractors' (of all kinds), while others may require licenses for several specializations of contractors." Several occupations are listed by subcategories: e.g., apprentice plumber, journeyman plumber, and master plumber (notice the use of guild terminology). Both Schlomach and Summers attempted to make the licensed categories across the states as similar as possible for comparison's sake; in his "Disclaimers" on pp. 7–8, Summers discussed this issue and stated that the number of job categories presented in his report "*understates* the number of licensed occupations" (emphasis in original).

removers, dietitians, title examiners, court reporters, geoscientists, mortgage lenders, funeral directors, and property managers."[18]

The legislature has seen several recent bills filed concerning licensure affecting such occupations as acupuncturists, bail enforcement agents, behavioral science professions, dental therapists, massage therapists, and many others.

Chart 1. Number of Licensed Job Categories, Kansas and Peer States[19]



[18] "Freedom in the 50 States," Kansas page for "Occupational Licensing Freedom," Mercatus Center at George Mason University, freedominthe50states.org/occupational-licensing/kansas.
[19] Schlomach, "Six Reforms to Occupational Licensing Laws."

Table 1. Kansas State Licensing Organizations[20]
The following state departments, boards, and commissions include licensure of relevant occupations among their duties.

Animal Health Department
Athletics Commission
Attorney General
Behavioral Sciences Regulatory Board
Board of Accountancy
Board of Barbering
Board of Cosmetology
Board of Emergency Medical Services
Board of Examiners in Fitting and Dispensing of Hearing Instruments
Board of Examiners in Optometry
Board of Healing Arts
Board of Law Examiners
Board of Mortuary Arts
Board of Nursing
Board of Pharmacy
Board of Technical Professions
Board of Veterinary Examiners
Bureau of Investigation
Corporation Commission
Dental Board
Department of Aging
Department of Agriculture
Department of Commerce
Department of Education
Department of Health and Environment
Department of Revenue
Department of Wildlife and Parks
Insurance Department
Racing and Gaming Commission
Real Estate Appraisal Board
Real Estate Commission
Secretary of State
Securities Commissioner
Small Business Environmental Assistance Program
State Bank Commissioner
State Board of Examiners of Court Reporters
State Fire Marshal

In 2015 the Kansas State Board of Education relaxed teacher licensure requirements for six school districts termed "Innovative Districts." Affected schools now have greater flexibility to find and hire candidates for specialized technical classes.[21]

Even though potential candidates to fill those teaching needs are often impeded by barrier of licensure, research shows that traditional metrics generally used for licensure have difficulty measuring and evaluating *teaching effectiveness*. As education policy analyst Dr. Terry Stoops explained,

> There is no question that high-quality teachers produce high-achieving students. The problem is that none of the standards that states and school districts traditionally use to identify high-quality teachers has a significant effect on student performance. A large body of research shows that advanced degrees, years of experience, completion of education courses, teacher test scores, and certification status do not improve teacher effectiveness.[22]

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[20] CareerOneStop.
[21] Celia Llopis-Jepsen, "Kansas State Board of Education passes controversial teacher licensure waiver," *Topeka Capital-Journal*, July 14, 2015, cjonline.com/news/2015-07-14/state-board-passes-controversial-licensure-waiver.
[22] Dr. Terry Stoops, "Virtually Irrelevant How certification rules impede the growth of virtual schools," John Locke Foundation *Spotlight* No. 412, July 6, 2011, www.johnlocke.org/research/show/spotlights/263. For the passage quoted, Stoops

An expansion of alternative avenues to certification would therefore not only open doors to effective educators left out by current standards, but also offer potential benefit to pupils whose learning is the primary focus of education.

Licensure of low-income occupations

In 2012 the Institute for Justice published a national study of occupational licensure focused on "how widely low- and moderate-income occupations are regulated through licensure" and the burdens licensing laws place on lower-earning workers. Conducted by Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, the study identified 102 lower-income occupations often subject to licensing in individual states, such as barbers, cosmetologists, dental assistants, and many types of construction workers.[23]

As Adam Smith observed in *The Wealth of Nations*, describing the evils of the guild system,

> The property which every man has in his own labour, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of a poor man lies in the strength and dexterity of his hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of this most sacred property.[24]

In other words, putting legal hurdles in front of the poor seeking to find employment, or hire themselves out as independent contractors, is a "plain violation" of their civil rights. Smith then observes that this "manifest encroachment" also harms those who would wish to employ them. Carpenter et al. observe that, since half of those licensed lower-income occupations are possible sources of new job creation and independent business starts, there are social costs as well to making entry into those fields so costly to the aspiring laborer.[25]

Stephen Slivinski at the Center for the Study of Economic Liberty, Arizona State University, showed that entrepreneurship is especially important for low-income individuals and their communities. He cites Federal Reserve research showing entrepreneurship yielding a "double dividend" in low- and moderate-income

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made the following note: "For a good overview of the research on teacher quality and credentials, see Jay P. Greene, *Education Myths: What Special Interest Groups Want You to Believe About Our Schools—and Why It Isn't So* (New York: Rowman & Littlefield, 2006), pp. 59-70."

[23] Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, "License to Work: A National Study of Burdens from Occupational Licensing," Institute for Justice, May 2012, www.ij.org/licensetowork.

[24] Smith, *The Wealth of Nations*, Book X, Part II.

[25] Carpenter et al., "License to Work."

communities, because of the goods and services in addition to jobs that it brings to the communities. Importantly, entrepreneurship offers a ladder out of poverty for the low-income entrepreneur, but not only that. As "large shares of entrepreneurs are centered in industries that rely on low-wage workers," Slivinski finds that entrepreneurs can be "extremely effective in fostering local job creation and driving economic growth."[26]

There is racial disparity as well to licensure's effects. Kleiner and Krueger found differences in licensing rates according to race, with African-Americans and Hispanics having a higher percentage of licenses than whites and Asians.[27] Carpenter et al. found the proportions of African-Americans and Hispanics working in lower-income occupations to be greater than their proportions in the general population.[28] Licensing, educational mandates, and written examinations have all been shown to have negative effects on minorities.[29]

On the other hand, entrepreneurship has been found to have a greater positive effect for minorities. Researchers Douglas Holtz-Eakin, Harvey S. Rosen, and Robert Weathers found the "striking result" that "on average, entrepreneurship was a more successful long-term strategy for blacks than for non-blacks."[30]

Carpenter et al. found that Kansas licensed one-third of the 102 lower-income occupations they tracked. When they considered the average burden of the licensing requirements (fees, education requirements, and exams) alongside the number of lower-income occupations that are licensed, they found Kansas ranked 46th out of 51 states (including the District of Columbia). Only five states were less burdensome than Kansas, including peer states Missouri (47th) and Colorado (50th). Iowa (20th), Nebraska (31st), and Oklahoma (41st) ranked higher as more burdensome.[31]

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[26] Stephen Slivinski, "Bootstraps Tangled in Red Tape: How State Occupational Licensing Hinders Low-Income Entrepreneurship," Goldwater Institute, *Policy Report* No. 272, February 23, 2015, http://goldwater-media.s3.amazonaws.com/cms_page_media/2015/2/23/OccLicensing3.pdf.
[27] Kleiner and Krueger, "The Prevalence and Effects of Occupational Licensing."
[28] Carpenter et al., "License to Work," Table 2.
[29] Patrick A. McLaughlin, "What Information Could Help in Analyzing Regulation? Is There a Problem to be Fixed?", Table 3, "Empirical Studies of the Effects of Licensing on Minorities," Testimony before the Commonwealth of Pennsylvania House State Government Committee, Mercatus Center, March 19, 2013, mercatus.org/publication/what-information-could-help-analyzing-regulation-there-problem-be-fixed.
[30] Douglas Holtz-Eakin, Harvey S. Rosen, and Robert Weathers, "Horatio Alger Meets the Mobility Tables," National Bureau of Economic Research, *Working Paper* No. 7619, March 2000, http://www.nber.org/papers/w7619.
[31] Carpenter et al., "License to Work," Table 8.

Table 2. Licensing Requirements for Low-Income Occupations in Kansas

*Compared with their licensing burdens in Colorado, Iowa, Missouri and Oklahoma**

Burden of Licensing Requirements for Low-Income Occupations Licensed in Kansas

*Compared with their licensing burdens in Colorado, Iowa, Missouri and Oklahoma**

Occupation	Licensing Fees						Education/Experience (Days)						Exams						No. States That License This Job
State	*KS*	*CO*	*IA*	*MO*	*NE*	*OK*	*KS*	*CO*	*IA*	*MO*	*NE*	*OK*	*KS*	*CO*	*IA*	*MO*	*NE*	*OK*	
Preschool Teacher	$36	$135	$150	$102	$55	$95	1,825	1,825	1,825	1,825	1,825	1,825	2	1	0	1	1	2	49
Athletic Trainer	$380	$0	$420	$400	$417	$475	1460	1,460	1,460	1,460	1,460	1,460	1	0	1	1	1	2	46
Veterinary Technologist	$220	N/A	$135	$190	$300	$330	730	N/A	730	730	730	730	1	N/A	2	2	1	2	37
Barber	$180	$95	$280	$125	$110	$70	350	350	420	350	490	350	3	2	2	2	2	2	50
Cosmetologist	$95	$165	$175	$125	$165	$40	350	420	490	350	490	350	2	2	1	2	1	2	51
School Bus Driver	$49	$149	$41	$30	$34	$47	367	0	2	1	2	4	6	6	6	6	6	6	51
Skin Care Specialist	$135	$165	$115	$165	$47	$40	233	140	140	175	140	140	2	2	2	2	1	2	50
Psychiatric Technician	$70	$65	N/A	N/A	N/A	N/A	210	210	N/A	N/A	N/A	N/A	1	1	N/A	N/A	N/A	N/A	4
Manicurist	$140	$95	$180	$120	$30	$40	82	140	9	93	72	140	2	2	1	2	2	2	50
Emergency Medical Technician	$50	$70	$20	$70	$70	$155	35	26	28	23	4	36	2	2	2	2	2	2	51
Mobile Home Installer	$495	$110	$300	$150	N/A	$200	0	181	366	0	N/A	1	1	1	1	1	N/A	0	39
Bus Driver (City/Transit)	$39	$149	$26	$30	$26	$47	0	0	0	0	0	0	5	5	5	5	5	5	51
Truck Driver	$29	$149	$16	$0	$26	$47	0	0	0	0	0	0	4	4	4	4	4	4	51
Teacher Assistant	$45	N/A	N/A	N/A	$325	N/A	0	N/A	N/A	N/A	3	N/A	1	N/A	N/A	N/A	1	N/A	29
Animal Breeder	$405	$280	$16	$100	$125	$48	0	0	0	0	0	0	0	0	0	0	0	0	26
Animal Control Officer	$0	N/A	$25	N/A	N/A	$68	2	N/A	0	N/A	N/A	0	1	N/A	1	N/A	N/A	1	17
Vegetation Pesticide Handler	$85	$350	$75	$50	$90	$100	0	0	0	0	0	0	2	2	2	2	2	2	51
Pest Control Applicator	$75	$350	$75	$50	$90	$150	0	0	0	730	0	0	2	2	2	2	2	3	51
Tester, Tank	$100	N/A	$350	N/A	N/A	N/A	9	N/A	739	N/A	N/A	N/A	1	N/A	1	N/A	N/A	N/A	14
Earth Driller	$110	$100	$500	$250	$150	$350	0	730	730	730	0	730	1	2	2	2	2	1	47
Gaming Cage Worker	$60	$100	$66	$125	N/A	N/A	0	0	0	0	N/A	N/A	0	0	0	0	N/A	N/A	22
Gaming Dealer	$60	$100	$66	$125	N/A	N/A	0	0	0	0	N/A	N/A	0	0	0	0	N/A	N/A	24
Gaming Supervisor	$60	$100	$66	$125	N/A	N/A	0	0	0	0	N/A	N/A	0	0	0	0	N/A	N/A	23
Slot Key Person	$60	$100	$66	$125	N/A	N/A	0	0	0	0	N/A	N/A	0	0	0	0	N/A	N/A	21

Source: Institute for Justice

Table 2 shows how the burdens for the lower-income occupations licensed in Kansas compare with how they are treated in the peer states of Colorado, Iowa, Missouri, Nebraska, and Oklahoma.

Benefits and Costs of Occupational Licensure

Though occupational licensing is promoted for improving public safety and quality of service, the research literature on those effects is mixed at best. There are several reasons why the public safety benefits of licensure would be much less than promised.

Quality and safety
First, states differ widely over which occupations they choose to license. Over 1,100 different professions are subject to state licensing. But only a little over 5 percent are licensed in *every* state.[32] Among other things, this fact suggests that the public-safety need behind many licenses is dubious and subject to interpretation.

Furthermore, while the many costs of obtaining a license (fees, education, exams) and the penalties of shoddy practice (fines, loss of license, jail) may discourage less competent or negligent providers, they may also keep out new entrants with better ideas and safety innovations. In instances where licensing boards have become inflexible with licensing standards, that could also work to prevent safety innovations.

How quality is defined becomes key in interpreting licensure's effects. In his literature survey of 26 research studies into licensing, Stanley J. Gross found "active debate about how to define quality."[33] In general, while professional practitioners prefer input or process measures as ways to measure quality, consumers and researchers are more likely to prefer outcome measures.

To explain, the steps required (process) to obtain a license, including education requirements and demonstration of knowledge (input), are thought by licensed professionals to increase competence among the licensees. Consumers, however, are more interested in the quality of service received (outcome).

A not inconsequential factor in licensure's effect on the overall quality of service received is how consumers react to the higher prices from, and lesser availability of, licensed providers. Some consumers try to do the work on their own, some find friends or acquaintances to do it for them, some choose to forego the work and hope

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[32] Pam Brinegar, "Trends and Issues in State Professional Licensing," *The Book of the States 2004*, Council of State Governments, 2004, p. 447.
[33] Stanley J. Gross, "Professional Licensure and Quality: The Evidence," *Policy Analysis* No. 79, Cato Institute, December 9, 1986, www.cato.org/pubs/pas/pa079.html.

for the best, and some opt for black-market providers, fly-by-night providers, and scammers.

For this reason, researchers have found, for example, greater electrocution rates in states with stricter electrical licensing laws, higher rates of blindness in states with tougher optometry licensing laws, greater rates of poor dental hygiene in states with stricter dental licensing laws, even greater risk of rabies where restrictions on veterinarians were higher (leaving fewer practitioners available to uncover existing cases).[34] In effect, even if licensure yields safer and more competent *licensed* providers, the overall safety level of the work received from *all* providers could be less under licensure.[35]

If, however, the licensing law contained a grandfather clause for preexisting providers in the profession, as many do, it would detract from any presumed safety enhancement by keeping in place the same providers who were there when state policymakers first perceived a need for safety improvement in the profession, which they presumably addressed through licensure.

Finally, if the licensing board develops a club mentality with its licensees, which is a risk especially for boards made up of fellow licensed members, it could work to protect rather than punish negligent providers.[36]

For many of the reasons listed above, licensure's effects on service quality are also uncertain. Friedman postulated that putting barriers to entering a profession would create incentives to find other ways around them, which could result in a decline in quality.[37]

Licensing boards can also negatively affect charitable and emergency provisions of service. Medical licensing boards have been the biggest obstacles to Remote Area Medical bringing in volunteer medical professionals to indigent areas, for example.[38] For this reason Florida and Louisiana have relaxed some licensing standards in the aftermath of hurricanes, to increase the supply of roofers (Florida) and allow for medical personnel, towing operators, even veterinarians (Louisiana) to flow in from out of state.[39]

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[34] See discussion in Gross, "Professional Licensure and Quality," and Summers, "Occupational Licensing."
[35] Gross, "Professional Licensure and Quality."
[36] Summers, "Occupational Licensing."
[37] Friedman, "Occupational Licensure."
[38] See discussion in Jon Sanders, "Guild by Association: N.C.'s Aggressive Occupational Licensing Hurts Job Creation and Raises Consumer Costs," John Locke Foundation *Spotlight* No. 427, January 28, 2013, www.johnlocke.org/research/show/spotlights/278, p. 8.
[39] David Skarbek, "Occupational Licensing and Asymmetric Information: Post-Hurricane Evidence from Florida," *Cato Journal*, Vol. 28, No. 1 (Winter 2008),

Perception of competence
Though research is mixed over whether occupational licensure improves safety and service quality, licensure does have the effect of lending the perception of competence. Licensed professionals, who after all have satisfied training and testing mandates, have been shown to consider themselves to be more competent.[40] Consumers also tend to regard licensed professionals to be more competent.[41]

Realizing in fact this benefit of reassurance from licensure hinges upon the licensing board and the licensing standards and training requirements. If there is a mismatch between what licensure requires and what competencies are actually needed on the job, this perception of competence would be unwarranted.[42]

Gross' survey of research literature yielded several concerns over licensing standards and requirements, including unnecessary discrimination among training methods, use of invalid or irrelevant requirements (including citizenship, residency, character evaluations), reliance on poorly conceived tests, discounting of experience in favor of academic credentialing, continuing education requirements that are practically unnecessary, and reluctance of boards to discipline peer licensed practitioners.[43]

Differences among states with respect to licensing standards and reciprocity agreements can restrict competent providers from moving into a new state and setting up shop, contributing to keeping the supply of competitors limited in a state.[44] Many of Kansas' licensing boards do permit licensure through reciprocity.[45]

Recently, the legislature passed two laws in as many years that allow occupational licenses to be granted to nonresident military spouses who are licensed elsewhere and let credit toward licensing requirements be granted to military service members for their relevant training, education, or work while they were in military service.[46]

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object.cato.org/sites/cato.org/files/serials/files/cato-journal/2008/1/cj28n1-5.pdf.
[40] Kleiner and Krueger, "Prevalence and Effects of Occupational Licensing."
[41] Gross, "Professional Licensure and Quality."
[42] Summers, "Occupational Licensing."
[43] Gross, "Professional Licensure and Quality."
[44] Schlomach, "Six Reforms to Occupational Licensing Laws."
[45] Steven J. Anderson, "Fiscal Note for HB 2187 by House Committee on Health and Human Services," Kansas Division of the Budget, February 8, 2013, www.kslegislature.org/li/b2013_14/measures/documents/fisc_note_hb2187_00_0000.pdf.
[46] House Bill 2178 (2012), kslegislature.org/li_2012/b2011_12/measures/hb2178, and House Bill 2078 (2013), kslegislature.org/li/b2013_14/measures/hb2078.

Earnings premium

While licensure's actual effects on quality are unclear, its effects on the wages of members in a licensed profession is certain and positive. Licensing yields higher earnings for licensed professionals. As Kleiner and Krueger put it,

> The most generally held view on the economics of occupational licensing is that it restricts the supply of labor to the occupation and thereby drives up the price of labor as well as services rendered.[47]

In this respect licensure's resemblance to guilds is strong. Adam Smith observed that the guilds existed to "prevent [the] reduction of price, and consequently of wages and profit, by restraining that free competition which would most certainly occasion it."[48]

Kleiner and Krueger found the lifetime earnings premium under licensing to be an average 15 percent higher than it would have been without it.[49] Going further, Kleiner discovered that this positive impact on earnings to be higher for high-wage occupations than it is for low-wage occupations.[50]

These higher earnings are bought with artificially higher costs to consumers. They impose harm on consumers, especially the poor, not only directly through requiring steeper payments, but also indirectly through putting greater pressure on consumers to find substitute providers.

As Smith observed, allowing competition to increase — that is, removing restrictions on the supply of labor — "would reduce the profits of the masters, as well as the wages of workmen. The trades, the crafts, the mysteries, would all be losers. But the public would be a gainer, the work of all artificers coming in this way much cheaper to market."[51]

The harm imposed is not limited to consumers, however. As noted above, the extra hurdles to entering the field of labor keep out some providers. The higher costs may be more difficult for the poor, the less educated, minorities, and even older workers seeking a new career against the poor and minorities interested in the industry.[52] Meanwhile, differing standards, reciprocity arrangements, and licensing board reluctance could block out-of-state providers from moving in.

The benefit of the wage premium extends, then, only to those providers who pass all the hurdles to obtaining the license.

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[47] Kleiner and Krueger, "Prevalence and Effects of Occupational Licensing."
[48] Smith, *The Wealth of Nations*, Book X, Part II.
[49] Kleiner and Krueger, "Prevalence and Effects of Occupational Licensing."
[50] Kleiner, "Occupational Licensing."
[51] Smith, *The Wealth of Nations*, Book X, Part II.
[52] Carpenter, Knepper, Erickson, and Ross, "License to Work."

Alternatives to Licensure: Private Certification and More

Is there a way to ensure safety and quality of service without recreating the guilds? Put another way, who would step up to fill society's desire for information if government didn't?

It is an answer Kansas seems to know better than most states. An open need is an entrepreneurial opportunity. Private providers of this information have been willing to step up in many ways. Not having to satisfy government standards, service providers still need to cultivate a good business reputation. Consumers seek out which providers to trust, providers wish to demonstrate to consumers they can be trusted as competent, and there are several ways the market fills that need.

Voluntary certification is the most obvious way of meeting those needs. Private providers of certification include such well-known names as Good Housekeeping, Underwriters Laboratories, and the Better Business Bureau.

They also include industry-specific providers. For example, over 300,000 mechanics are certified by the National Institute for Automotive Service Excellence. Over 4,000 locksmiths have been certified by the Associated Locksmiths of America, with another 2,900 still in various stages of the process.[53]

These organizations, in turn, have built up their own strong reputations that their endorsements carry significant weight.

Voluntary certification addresses safety and quality issues while keeping freedom in the process. As Carpenter et al. explained,

> Voluntary certification through professional associations can benefit practitioners by enabling them to distinguish themselves, while consumers remain free to choose among all providers and decide for themselves how much value to place on such credentials.[54]

Private professionals are indeed spontaneously banding together to create and police their own professional standards. Certification is proliferating in unlicensed fields, including especially newer fields. Many private certification programs are themselves reviewed by third-party accreditation organizations such as the National Organization for Competency Assurance and the American National Standards Institute.[55]

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[53] Q.v., National Institute for Automotive Service Excellence, https://www.ase.com/Home.aspx; Associated Locksmiths of America, "Education," http://www.aloa.org/education/aloa-education.html.
[54] Carpenter et al., "License to Work," pp. 32–33.
[55] Brinegar, "Trends and Issues in State Professional Licensing," pp. 447–448.

Chart 2. Comparing Occupational Licensing with Voluntary Certification[56]

	Licensing	Voluntary Certification
Mandatory or choice	Required by law	Chosen by service provider
Legality of work	Illegal to work without license	OK to work without certification; criminal to claim certification falsely
Hurdles	Several costly, mandatory hurdles to licensure: licensing board fees, school tuition and fees, time in school, qualifying exams (some licenses require several), examination fees, etc.	No mandatory hurdles; decision to pursue, satisfy private certification service's requirements a voluntary choice
Supply of labor	Fewer service providers, less competition	More competition, greater range of service providers
Consumer choice	Less consumer choice	More consumer choice, greater range of service options
Earnings	Wage premium: higher earnings by blocking competition	No significant wage premium
Consumer costs	Higher costs on consumers from constraint on labor supply	Lower costs on consumers, greater range of choices, service levels
Low-income entrepreneurship	Especially difficult for low-income individuals to join the industry	More receptive to low-income individuals choosing to join the industry
Low-income communities	Harmed in several ways: higher service costs, less entrepreneurial opportunities, "double blow" against local job creation and local economic growth	Helped in several ways: lower service costs, choice of service levels, more entrepreneurial opportunities, and the "double dividend" of local job creation and local economic growth
Black market	More illegal, under-the-table work from higher consumer costs	Less illegal, under-the-table work
Safety and quality	Safety, quality effects are doubtful — research finds little evidence of safety, quality enhancements	No apparent harm to safety or quality; gets closer to market concerns over safety and quality
Innovation	Resists innovation and improvement	Encourages innovation, lets the market reward new, better service discoveries and improvements
Antitrust	Could even violate antitrust laws	No risk of antitrust violation

Importantly, the government upholds the certification through criminal fraud law. As Schlomach noted:

> However, certification does not preclude anyone from practicing a profession. It only precludes someone from claiming a certification. Not unlike companies that pursue the UL label, private professionals will have an incentive to band together and create professional standards outside of government as long as they know their efforts will be protected without

[56] Jon Sanders, "Voluntary Certification: An economically robust, freedom-minded reform of occupational licensing," *Spotlight* No. 464, John Locke Foundation, April 9, 2015, http://www.johnlocke.org/research/show/spotlights/314.

> necessarily going through the high costs of civil litigation. The potential is that there might be competing certifying organizations. This potential is already witnessed with the simultaneous existence of medical doctors, osteopaths, and podiatrists as licensed professions—all with hospital privileges. With certification, though, other types of health professionals with hospital privileges could more easily arise.[57]

Beyond voluntary certification, there are several other ways the private sector meets consumers' informational needs regarding safety and quality of service. They include:

Product comparisons and reviews
These include Consumer Reports, CNET, various trade publications, etc. The strength of the reviews is based in the reviewers' reputations.

Advertising
Service providers not only need to tell you what they do, but also they will be willing to point out when a competitor's service is inferior.

Word-of-mouth
Nothing speaks as definitively as the experiences of those closest to you, family and friends.

Social media
Word-of-mouth can be augmented by sites such as Facebook and Twitter.

Crowdsourcing web sites and applications
Angie's List, Amazon.com, and Yelp! are among the many sites and apps that allow consumers to record their experiences with service providers and vendors for the benefit of fellow consumers.

Conclusion and Recommendations

For Kansas, which offers more occupational freedom than most states, the main objective is not to lose sight of what it's getting right. Rather than merely becoming a latecomer to the expansion of licensure seen elsewhere, Kansas should put into place safeguards now that would prevent such expansions as have plagued other states.

Meeting Gov. Brownback's goal of releasing the parking brake from Kansas' revving economy would require more than merely preventing licensure from growing further, however. Kansas should seek to pare away the occupations it licenses and the costs it imposes, especially on low-income occupations.

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[57] Schlomach, "Six Reforms to Occupational Licensing Laws,"

Toward that end, I recommend the following:

1. Enact sunrise provisions for future licensing boards and job categories
As discussed above, licensure's safety and quality benefits is uncertain, but its effects of raising costs on consumers and limiting opportunities for service providers is sure. Kansas policymakers should be very circumspect about giving into industry lobbying and pressure to create new licensing boards and licenses.

Kansas should require advocates for a new licensing board or license to prove, rather than just allege, that there are health, safety, or quality issues in a field of labor and that they require state licensure to solve. Proof should entail a consideration of alternatives to licensing, explanation of why they are insufficient, and a cost/benefit analysis conducted by an outside party.[58]

2. Enact sunset provisions with periodic review for current licensing boards
All government regulations should be subject to periodic review, because policies that were once thought necessary could become obsolete, unnecessary, even counterproductive as times change, or they could have been based on faulty assumptions. Sunset provisions with periodic review are an important tool for limited government, as Brownback noted in his veto of SB 37, but going further, they are also one of the most effective regulatory reforms that states use.[59]

This reform could be accomplished by a rotation of boards facing sunset unless they can prove the necessity of their ongoing existence. A board under review must be able to show it effectively addresses the problems it was designed to address. The review could also look at, for example, how many other states have similar boards, how many licensees in that field there are, how much or little enforcement activity the board engages in, and how necessary are those enforcement activities.[60] The board should also be subject to the procedures adopted under sunrise provisions.

3. Reduce the number of licensing boards and licensed job categories
There are, of course, definite interests in keeping those regulations in place, as there always are when government policies have created concentrated benefits for a few and dispersed costs among the many. Meeting this recommendation will require a dispassionate, strategic approach, which could include:

- *"Least-cost state" principle.* If some other state can accomplish a perceived need for licensing with lower fees, less burdensome education requirements, or fewer exams, then Kansas should match it. Such a practice would

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[58] Schlomach, "Six Reforms to Occupational Licensing Laws."
[59] Russell S. Sobel and John A. Dove, "State Regulatory Review: A 50 State Analysis of Effectiveness," *Working Paper* No. 12-18, Mercatus Center, George Mason University, June 2012, mercatus.org/publication/state-regulatory-review-50-state-analysis-effectiveness.
[60] Summers, "Occupational Licensing."

encourage reciprocity even further. By extension, if other states find a practice not worthy of licensure, then it likely isn't.

- *"Last in, first out" approach.* Practices that only recently came under state oversight likely were not obvious needs for licensure.

- *"First property" protection.* Licensing of lower-income occupations hamper possible sources of new job creation and independent business starts. This approach takes its name from Adam Smith's recognition that the first property every man has is his own labor, which is the foundation of all his other property.

- *"Sleeping board" syndrome.* If the licensed activity has few practitioners or there is very little enforcement concerning the licenses, the activity likely doesn't rise to the level of need for licensure.

Judicious action now can preserve for Kansas a legacy of occupational freedom that other states should aspire to.

Thank you.

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