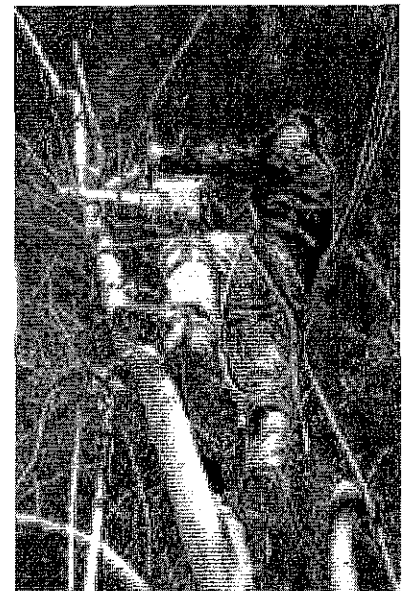


JOBS FOR CALIFORNIANS: STRATEGIES TO EASE OCCUPATIONAL LICENSING BARRIERS

REPORT #234, October 2016



LITTLE HOOVER COMMISSION

*DEDICATED TO PROMOTING ECONOMY AND
EFFICIENCY IN CALIFORNIA STATE GOVERNMENT*

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To Promote Economy and Efficiency

The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

In creating the Commission in 1962, the Legislature declared its purpose:

...to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...

The Commission fulfills this charge by listening to the public, consulting with the experts and conferring with the wise. In the course of its investigations, the Commission typically empanels advisory committees, conducts public hearings and visits government operations in action.

Its conclusions are submitted to the Governor and the Legislature for their consideration. Recommendations often take the form of legislation, which the Commission supports through the legislative process.

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REPORT HIGHLIGHTS

JOBS FOR CALIFORNIANS: STRATEGIES TO EASE OCCUPATIONAL LICENSING BARRIERS

- Occupational licensing is a bipartisan issue. Our work comes out of the July 2015 White House report on occupational licensing. It raised many of the same issues.
- One in five Californians must receive permission from the government to work. This is up from one in 20 nationally in the 1950s.
- Licensing creates barriers to entry for good jobs. To enter a lower-income licensed occupation in California, applicants, on average, pay \$300 in licensing fees, spend 549 days in education and training and pass one exam.
- Licensing disproportionately impacts former offenders, military spouses, veterans and people educated or trained outside of California.
- Californians of modest means are hurt twice: when they encounter barriers to entering licensed occupations, and when they pay more for services provided by licensed occupations.
- Occupational licensing raises costs to consumers. Economists estimate consumers pay an additional \$200 billion more per year due to occupational licensing.
- The purpose of occupational licensing is consumer protection. Newer goals – driving the expansion of licensed occupations – include professionalizing occupations, guaranteeing quality and limiting competition.
- Licensing is a national security issue. Military spouses often can't work due to delays or denials when transferring out-of-state licenses to California. 68 percent of service members say their spouse's ability to maintain a career is a key factor when deciding to reenlist.
- Discharged veterans have a hard time translating military education and experience to civilian requirements. Taxpayers pay twice when veterans have to re-do training: once for the veteran's initial training in the military, and again afterward through the G.I. Bill.
- Former offenders report arbitrary decision-making and lost opportunities when assessed by licensing authorities. Former offenders with jobs stabilize their families and communities.
- Foreign-trained workers have a hard time translating their foreign-earned experience to California requirements. Many of these workers are qualified for occupations where California faces worker shortages. Nurses. Dentists. Primary care physicians.

EXECUTIVE SUMMARY

Californians rely on occupational regulation to protect them. Doctors must prove proficiency in medical knowledge before they treat patients. Electricians must demonstrate they know their trade before they wire a house. Yet for all these important protections, there is a flip side of occupational licensing: The requirements to prove proficiency often serve as a gate, keeping people out of occupations.

Licensing is more stringent than other types of occupational regulation because not being able to obtain a license means someone cannot practice the profession. Certification or registration allows practitioners to demonstrate they meet certain standards of quality or allows the state to know certain types of businesses are operating without barring people from the occupation.

Since Statehood: A Jumble of Licensing Politics

When the Commission began its study on occupational licensing in California, it aimed to learn whether the State of California is striking the appropriate balance between protecting consumers and erecting barriers to entry into occupations. It found more than 165 years of accumulated regulations creating a nearly impenetrable thicket of bureaucracy for Californians. No one could give the Commission a list of all the licensed occupations in California. Licensing is heavily concentrated within the Department of Consumer Affairs, but it also is scattered throughout other government departments and agencies. Want to become a registered nurse? Go to the Board of Registered Nursing. Want to become a licensed vocational nurse? Go to the Board of Vocational Nursing and Psychiatric Technicians. Want to become a certified nursing assistant? Go to the Department of Public Health.

The Commission found that the licensing boards within the Department of Consumer Affairs are semi-autonomous, governed by a rulemaking process. But their considerable autonomy results in no holistic vision on how occupations should be regulated in California. Licensing authorities under the Department of Consumer Affairs undergo a sunset review process every four years to determine whether the authority is best serving Californians. If not, legislative fixes are made or the licensing authority is dissolved. But even when a licensing authority is disbanded it may not be gone for good. When the Legislature eliminated the Board of Barbering and Cosmetology in 1997, Senator Richard Polanco resurrected it with legislation in 2002.

This is the heart of problems the Commission found with occupational licensing: The process often is a political activity instead of a thoughtful examination of how best to protect consumers. Multiple witnesses told the Commission that consumers are not key players in creating and governing licensing regulations, even though the regulations are ostensibly made in their interest. Occupational licensing is not about consumers going to the Legislature and asking for protection, said one witness. It is about practitioners telling legislators that consumers need to be protected from them. Substantial benefits accrue to practitioners of licensed occupations. Working in occupations licensed in some, but not all, states raises wages by 5 percent to 8 percent. Working in occupations licensed in all states drives up wages by 10 percent to 15 percent, witnesses told the Commission.

Effects of Licensing on Consumer Prices

It stands to reason that if wages within licensed professions increase, so will costs to consumers. Witnesses shared research showing that, depending on occupation, instituting licenses raised consumer

prices by 5 percent to 33 percent. One Commission witness estimated that licensing costs consumers more than \$200 billion a year nationally. Meanwhile, there is not necessarily a corresponding increase in consumer safety due to licensing. Researchers reported to the Commission that for many occupations, bad outcomes did not increase when licensing restrictions were relaxed to make it easier to enter those occupations.

Some Groups are More Vulnerable to Licensing Regulations

The Commission learned that certain groups are especially vulnerable to licensing regulations:

- **Former offenders** must withstand scrutiny that is not always straightforward and typically have no advance guidance on whether a conviction will disqualify them from an occupation.
- **Military spouses** can spend a year or two recompleting requirements to meet California-specific regulations for a job they have practiced for years in other states. By the time they become licensed in California, their spouse is soon transferred to a new state.
- **Veterans**, too, often have to redo education and training that taxpayers already paid for while they were in the military. The state has enacted many bills to make it easier for veterans to become licensed. But that legislation has gaps: it is predominately directed at the Department of Consumer Affairs and not other licensing authorities, and no one tracks implementation.
- **Foreign-trained workers**, particularly bilingual professionals, are well suited to ease California's impending worker shortages. But they face many of the same obstacles as veterans: their education and experience abroad is difficult to apply to state licensing requirements.

Legitimate Arguments for Licensing

It would be unfair to characterize all attempts to license an occupation as a means to artificially inflate wages for licensed practitioners. Witnesses made compelling arguments to the Commission about why their

occupations should be licensed. Commercial interior designers, for example often do building code-impacted design work – moving walls that entail electrical, lighting, HVAC and other changes. They design the layout of prisons, where the safety of correctional officers and inmates is on the line. Even though the people performing this commercial work typically have extensive educational and work experience, city and county inspectors do not recognize their unlicensed voluntary credentials. Architects or engineers must sign off on their plans, resulting in time and cost delays.

Other advocates see licensing as a vehicle to professionalize an occupation. This is particularly true of low-wage caretaker occupations, often practiced by minorities. Licensing presents opportunities for practitioners to offer government-guaranteed quality of care in return for being treated like professionals.

Finally, many pleas for the health and safety benefits of licensing are, indeed, genuine. Different people are willing to accept different degrees of risk. As long as humans are allowed to practice an occupation, there will be human errors and bad outcomes. Stricter levels of regulation often will reduce, but never completely eliminate, those errors and outcomes. Where is the line for acceptable risk? One person might be comfortable with *caveat emptor*, while another might see a consumer threat that must be regulated.

California Needs a Holistic Regulatory Strategy

California needs a holistic well-reasoned strategy for regulating occupations. The specific details of who can and cannot practice will vary by occupation. But the underlying principles of what level of consumer protection the state hopes to achieve – and how difficult or easy it should be to enter occupations – should be set by state policymakers and implemented across all occupations. The Commission offers eight recommendations as guiding principles and a way forward. The first four recommendations address systemic issues in how California licenses occupations and governs its regulatory process. The last four recommendations offer ways to make it easier to enter licensed occupations without overhauling California's licensing structure or lowering standards.

Recommendations

Data Collection

It is difficult to assess the impact of licensing regulations on various demographic groups because no one collects demographic data for people who work in many licensed occupations or apply for licenses. Anecdotal reports say minorities are often negatively and disproportionately affected by licensing regulations. But without demographic information it is impossible to know for sure.

The Commission recommends collecting demographic information on licensed workers and applicants so policymakers better understand the impact of regulations on different groups of Californians. Yet safeguards must accompany the collection and analysis of demographic data. Race or gender should not be part of information officials consider when deciding to issue a license or when making disciplinary decisions. Demographic data will have to be tied to specific applicants in order to understand outcomes, such as whether they are issued a license or what reason they were denied. Modifying multiple IT systems used by licensing authorities to ensure this information is not visible to licensing and enforcement personnel will come with costs. The Legislature should ensure the department receives the funds necessary for this enterprise. Finally, supplying this demographic information should be voluntary, and not a requirement for licensure.

Recommendation 1: The Legislature should authorize the mandatory collection of demographic information for license applications across all licensed occupations in California, including those outside of the Department of Consumer Affairs. This demographic information should not be made available to staff members issuing licenses or conducting enforcement actions, but should be studied in the aggregate to determine the impact of licensing requirements on various demographic groups.

Comprehensive Licensing Review

California has created occupational licensing regulations for more than 165 years. It is long past time for a comprehensive review of these accumulated rules to determine whether gains for consumer health and safety justify the barriers they present to entering occupations.

This review should specifically analyze barriers to former offenders, military spouses, veterans and people with education, training or experience outside California. Federal funding exists to perform this analysis and California is invited to participate in a consortium applying for this funding. California should not pass up the opportunity.

Recommendation 2: The State of California should join a consortium of states organizing to attain federal funding to review their licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility. As part of this process, the state should consider whether there are alternative regulatory approaches that might be adequate to protect public health and safety, including, but not limited to, professional certification.

Reciprocity

License transferability across state lines is important to people who need immediately to begin working following a move to California. It is particularly important to military spouses, who move frequently. Licensing authorities should grant reciprocity to applicants licensed in other states. In occupations with dramatically differing requirements across the country, California should grant partial reciprocity to states with similar requirements as its own. California should start by assessing reciprocity in the occupations facing significant worker shortages, such as teachers and nurses. There may be some licenses for which California's standards are so unique that reciprocity is not an option, and in those cases, the licensing authority should justify why reciprocity or partial reciprocity is not feasible.

Recommendation 3: The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded. Specifically, licensing boards should be required to:

- Identify whether licensing requirements are the same or substantially different in other states.
- Grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements.

Sunrise and Sunset Review

In the sunrise review process, a group trying to become licensed supplies the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development with evidence demonstrating that consumers are best protected by licensing the occupation in question. In the sunset review process, the two committees evaluate information submitted by the licensing authority to determine its performance and whether it still continues to present the best method of consumer protection. The committees will introduce legislative bills to fix problems found during the review.

Though the Commission was impressed with the professionalism and dedication of the business and professions committee staff, the two committees are inundated with information that they must verify and analyze in a relatively short period of time. Some have suggested that the state might benefit from the automatic sunset of licensing authorities periodically, perhaps every four or eight years. Licensing authorities and their performance would then be scrutinized by the entire Legislature when bills to reauthorize them were introduced – a more robust process than tasking the two committees with reviewing licensing authorities. Short of that, the Legislature should provide additional resources to enhance the committees' capacity to verify and analyze the information used in the sunrise and sunset reviews. It also should authorize audits when the business and professions committees deem necessary.

Recommendation 4: The Legislature should provide additional resources, in the form of additional staff or outside support, to assist the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development in verifying and evaluating information for sunrise and sunset reviews. The Legislature should request the California State Auditor conduct an audit when warranted.

Former Offenders

Californians with convictions on their record face several challenges when trying to become licensed. Most licensing authorities do not list specific convictions that

automatically disqualify people. Those decisions are made on a case-by-case basis. This provides flexibility to allow people into occupations from which they might otherwise be excluded. Yet it also results in people investing time and money for education and training for occupations they might never be allowed to practice. The Commission recommends making publicly available the list of criteria by which applicants are evaluated. While it might not provide a firm answer to potential applicants on whether they will qualify, it will provide more information with which they can assess their educational decisions.

Applicants also sometimes face difficulty when asked to list their convictions. If significant time has passed since the conviction, if they had substance use disorders or mental health problems at the time or if they pled to a different charge than they remembered being arrested for, the convictions they list on their application might not match what returns on a background check. Even when this mistake is unintentional they can be disqualified for lying on their application. When criminal conviction history is required, the Commission recommends asking only for official records and not relying on applicants' memories. The Commission also urges expediting the background check fee waiver process so lower-income applicants can begin working sooner.

Applicants who are denied a license may engage in an appeals process, but many find it intimidating. Further, some licensing authorities rely on an administrative law hearing to process denials. The Commission learned that some applicants – particularly those who are legally unsophisticated or have lower levels of education – believe that the appeals process involves simply explaining the red flags on their application. Most are unprepared for an encounter with a judge and state attorney. The Commission recommends creating an intermediate appeals process where applicants can explain the problems with their application before encountering an administrative law hearing.

Recommendation 5: With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.
- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

Implementation of Veteran and Military Spouse Legislation

California has passed many laws to make it easier for veterans and military spouses to become licensed quickly and easily. These laws are summarized in the box to the right. Some of these laws have only just begun to take effect, and others, the Commission heard anecdotally, are not having the intended effects. Veterans and military spouses still face delays in receiving licenses. Helping veterans transition to civilian jobs has long been a goal of state policymakers. Military spouses' ability to get and hold jobs is important in retaining experienced military personnel: A U.S. Department of Defense witness testified that the military loses good people because of spouses having difficulty finding work, making it a national security issue. The Commission recommends that the Legislature authorize a research institute to study the implementation of laws designed to ease transitions of veterans and their spouses. The study should determine if they are being implemented effectively, identify how to bridge gaps between the intent of the legislation and current outcomes, and show how to better educate veterans and military spouses about these licensing benefits.

RECENT VETERAN AND MILITARY SPOUSE LICENSING BILLS

These bills were designed to make it faster and easier for veterans and military spouses to become licensed. Some have only recently taken effect, while others, anecdotally, have not been as effective as lawmakers hoped. The Commission recommends a study on the implementation of these bills:

SB 1226 (2014, Correa): Requires Department of Consumer Affairs (DCA) boards to expedite licensure of honorably-discharged veterans. Took effect July 1, 2016.

AB 186 (2014, Malenschein): Requires DCA boards to issue 12-month temporary licenses to military spouses with out-of-state licenses for the following occupations: registered nurse, vocational nurse, psychiatric technician, speech-language pathologist, audiologist, veterinarian, all licenses issued by the Board for Professional Engineers, Land Surveyors and Geologists and all licenses issued by the Medical Board.

AB 1057 (2013, Medina): Requires DCA boards to renew licenses that expire while an individual is on active duty without penalties or examination.

AB 1588 (2012, Atkins): Requires DCA boards to waive renewal fees for licenses that expire while the practitioner is on active duty.

AB 1904 (2012, Block): Requires DCA boards to expedite licensure for military spouses.

AB 2462 (2012, Block et al.): Requires the Chancellor of the California Community College to determine which courses should receive credit for prior military experience, using the descriptors and recommendations provided by the American Council on Education.

AB 2783 (2010, Salas et al.): Requires DCA boards to promulgate regulations to evaluate and credit military education, training, and experience if applicable to the profession.

Recommendation 6: *The Legislature should authorize a research institute, in conjunction with federal partners as needed, to study the implementation of recent legislation that requires the Department of Consumer Affairs to ease or waive licensing requirements for veterans and military spouses. The review should identify gaps between the intent of the laws and outcomes, and issue recommendations for executive or legislative action to bridge those gaps. The review also should assess the effectiveness of licensing authorities' outreach campaigns to inform veterans of their eligibility for expedited licensing.*

Bridge Education

Many people who move to California meet most of the state's licensing requirements, but fall short on a few components. Few options exist for them to quickly make up those missing requirements. The state has created a promising model with its veteran field technician-to-nurse program, in which nursing programs lose authorization to teach nursing if they do not fast track veterans. The state should replicate this model for all veterans and those qualified outside California in other occupations. This should begin in occupations facing worker shortages.

Recommendation 7: *The Legislature should require California colleges and training academies to create bridge education programs for veterans and workers trained outside of California to help them quickly meet missing educational requirements. Specifically:*

- California licensing boards and other departments providing licenses and credentials should identify common educational gaps between the qualifications of returning service members and state licensing requirements.
- California colleges should create and offer programs to fill these gaps and expedite enrollment – or risk losing authorization for these programs.

Interim Work and Apprenticeship Models

There are models to help people work while they are meeting California requirements for licensing or improving their skills to progress up a career path. In the California Teacher Credentialing Commission model, teachers licensed outside of California are allowed to work immediately, but must complete their missing requirements during the five years before their license needs to be renewed.

Additionally, the Department of Industrial Relations' Division of Apprenticeship Standards has a promising apprenticeship model. Individuals complete supervised hands-on training during apprenticeships and receive pay for the work they do. This model, applied as a bridge training program, would allow people to work and earn a living while completing missing requirements. It also would provide an income while training individuals wishing to improve their skills and education for upward mobility. The Legislature would have to adjust occupational practice acts to allow apprenticeships in some occupations. But since many of these occupations already allow or require student practicums, this represents a language change and not a shift in consumer protection.

Recommendation 8: *The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.*



AB-2105 Workforce development: allied health professions. (2015-2016)

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Assembly Bill No. 2105

CHAPTER 410

An act to amend Section 14017 of the Unemployment Insurance Code, relating to workforce development.

[Approved by Governor September 21, 2016. Filed with Secretary of State September 21, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2105, Rodríguez. Workforce development: allied health professions.

Existing law establishes the California Workforce Development Board as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce. Existing law requires the board, among other things, to prepare and submit to the appropriate policy committees of the Legislature a report on the board's findings and recommendations regarding expanding job training and employment for allied health professions.

This bill would require the Department of Consumer Affairs, by January 1, 2020, to engage in a stakeholder process to update policies and remove barriers to facilitate the development of earn and learn training programs in the allied health professions, including barriers identified in the report described above, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14017 of the Unemployment Insurance Code is amended to read:

14017. (a) In efforts to expand job training and employment for allied health professions, the California Workforce Development Board, in consultation with the Division of Apprenticeship Standards, shall do the following:

- (1) Identify opportunities for "earn and learn" job training opportunities that meet the industry's workforce demands and that are in high-wage, high-demand jobs.
- (2) Identify and develop specific requirements and qualifications for entry into "earn and learn" job training models.
- (3) Establish standards for "earn and learn" job training programs that are outcome oriented and accountable. The standards shall measure the results from program participation, including a measurement of how many complete the program with an industry-recognized credential that certifies that the individual is ready to enter the specific allied health profession for which he or she has been trained.

(4) Develop means to identify, assess, and prepare a pool of qualified candidates seeking to enter "earn and learn" job training models.

(b) (1) The board, on or before December 1, 2015, shall prepare and submit to the appropriate policy committees of the Legislature a report on the findings and recommendations of the board.

(2) The requirement for submitting a report imposed pursuant to this subdivision is inoperative on January 1, 2019, pursuant to Section 10231.5 of the Government Code.

(c) (1) The Department of Consumer Affairs shall engage in a stakeholder process to update policies and remove barriers to facilitate the development of earn and learn training programs in the allied health professions, including barriers identified in the report prepared by the board pursuant to subdivision (b), entitled Expanding Earn and Learn Models in the California Health Care Industry. The stakeholder process shall include all of the following:

(A) The department convening allied health workforce stakeholders, which shall include, but are not limited to, the department's relevant licensure boards, the Division of Apprenticeship Standards, representatives appointed by the board of governors from the California community college system, the California Workforce Development Board, and the State Department of Public Health, and which may include other relevant entities such as the Office of Statewide Health Planning and Development, employer and worker representatives, and community-based organizations.

(B) Addressing issues that include, but are not limited to, prec licensure classifications in allied health occupations that would allow students, in a supervised setting, to gain experience in their chosen field before obtaining licensure, and the payment of wages while in a workplace-based training program.

(C) The department ensuring that existing standards of consumer protection are maintained.

(D) Sharing any statutory barriers identified through this process with the relevant committees of the Legislature.

(2) The process described in paragraph (1) shall be completed by, and this subdivision shall be inoperative on, January 1, 2020.