



# 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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This report is available from the Commission's website at [www.lhc.ca.gov](http://www.lhc.ca.gov).

## LETTER FROM THE CHAIR

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October 4, 2016

The Honorable Edmund G. Brown, Jr.  
Governor, State of California

The Honorable Kevin de León  
President pro Tempore of the Senate  
and members of the Senate

The Honorable Anthony Rendon  
Speaker of the Assembly  
and members of the Assembly



The Honorable Jean Fuller  
Senate Minority Leader

The Honorable Chad Mayes  
Assembly Minority Leader

Dear Governor and Members of the Legislature:

One out of every five Californians must receive permission from the government to work. For millions of Californians, that means contending with the hurdles of becoming licensed. Sixty years ago the number needing licenses nationally was one in 20. What has changed? What once was a tool for consumer protection, particularly in the healing arts professions, is now a vehicle to promote a multitude of other goals. These include professionalism of occupations, standardization of services, a guarantee of quality and a means of limiting competition among practitioners, among others. Many of these goals, though usually well intentioned, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers.

In its study on occupational licensing, the Commission sought to learn whether the state properly balances consumer protection with ensuring that Californians have adequate access to jobs and services. It learned the state is not always maintaining this balance, as evidenced by discrepancies in requirements for jobs that pose similar risks to the consumer. Manicurists, for example, must complete at least 400 hours of education, which can cost thousands of dollars, and take a written and practical exam before becoming licensed. In contrast, tattoo artists simply register with their county's public health department and take an annual bloodborne pathogens class, which can be completed online for \$25.

The effects of occupational licensing extend well beyond people encountering hurdles to entering an occupation, the Commission learned. When government limits the supply of providers, the cost of services goes up. Those with limited means have a harder time accessing those services. Consequently, occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach. The Commission found that over time, California has enacted a thicket of occupational regulation that desperately needs untangling in order to ease barriers to entering occupations and ensure services are available to consumers of all income levels.

Fortunately, there is an effort underway to review licensing laws and adopt evidence-based approaches to consumer protection: The White House is providing \$7.5 million in grant funding for a consortium of states to assess whether their current levels of occupational regulation are appropriate.

California should be part of this effort. Additionally, the state should consider the impact of licensing on groups disproportionately harmed by these regulations, including:

- **Former offenders.** Witnesses testified there is no evidence demonstrating that having a criminal record is related to providing low quality services. Unnecessary restrictions on criminal convictions simply punish again people who have already served their time.
- **Military spouses.** When military spouses cannot transfer their licenses across state lines due to state restrictions, they spend precious time and resources re-completing requirements they already have, or taking, in all likelihood, a lower-paying, lower-skilled job. Married service members overwhelmingly report their spouse's ability to maintain a career affects their decision to remain in the military.
- **Veterans.** Veterans often face difficulty transferring their military education and experience into civilian licensing requirements. Sometimes they must repeat these requirements for a job they have been performing for years. Taxpayers then pay twice for them to learn the same set of skills: once while in the military and again through the G.I. Bill.
- **Foreign-trained workers.** Like veterans, foreign-trained workers often have difficulty translating their education and experience into state licensing requirements and often take lower-skilled jobs instead. With worker shortages looming in mid- and high-skilled professions, the state should embrace these workers instead of erecting barriers to keep them out of jobs.

Examining and assessing California's occupational regulations does not mean stripping consumer protection. Rather, experts should consider whether the current level of regulation strikes the appropriate balance between protecting consumers and limiting access to occupations and services.

California once tried an ambitious restructuring of its boards and commissions, including many licensing boards, as part of the 2004 California Performance Review. Governor Arnold Schwarzenegger, informed by the work of the California Performance Review, sent a Governor's Reorganization Plan to the Little Hoover Commission in January 2005 that went far beyond a review of occupational regulation: It was a complete overhaul of the state's boards and commissions. Facing insurmountable hurdles, Governor Schwarzenegger withdrew the plan from consideration a month later. No comprehensive attempts at reform have occurred since.

By participating in a more focused review of occupational regulation, potentially subsidized and supported by the federal government, by beginning reforms where the barriers are egregious and worker shortages loom, and by taking action based on the recommendations of independent experts, the state can avoid repeating the errors of the past and position itself to make a long-term difference for Californians.

The Commission respectfully submits these findings and recommendations and stands prepared to help you take on this challenge.

Sincerely,



**Pedro Nava**

Chair, Little Hoover Commission

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## EXECUTIVE SUMMARY

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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, Maienschein): 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.***

## INTRODUCTION

The Little Hoover Commission began its study on occupational licensing in October 2015, following a review of the July 2015 White House report, *Occupational Licensing: A Framework for Policymakers*. Commissioners expressed interest in understanding how the barriers to entering occupations highlighted in the report applied to California. Licensed occupations in California often are good jobs that open a path for upward mobility for lower- and middle-income residents. Commissioners initiated the study to determine if the financial, time and opportunity costs imposed on a person trying to become licensed are justified by gains in consumer protection. The Commission decided not to study the requirements of specific occupations. Instead, Commissioners opted to examine and make recommendations on California's licensing system as a whole to serve as a guide for policymakers confronting licensing decisions across the entire spectrum of occupations.

### The Commission's Study Process

The Commission held its first occupational licensing hearing in February 2016. The hearing broadly introduced the Commission to the economics and politics of occupational licensing. Commissioners heard from a leading economist about the linkages between occupational licensing and effects on wages and employment and the price, quality and availability of services. Researchers from national think tanks explained the impact of occupational licensing on upward mobility and entrepreneurship. The director of a state-focused public law institute discussed what it means to protect the public interest and offered his assessment of the state's licensing entities in protecting that interest. The Commission also heard from consultants from the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development on how licensing statutes are created and reviewed, through the sunrise and sunset process.

The Commission held a second hearing in March 2016, in which it heard from people representing those personally affected by occupational licensing laws. This included people who experienced difficulty becoming licensed due to past convictions or received training or education out of state, including the military. It heard from people who wanted their occupations to become licensed because they faced difficulties competing without state-recognized credentials. It also heard from people in licensed industries who discussed the consumer protection and accountability benefits of licensing.

In June 2016, the Commission held a roundtable with policymakers from several licensing authorities, business and professions committee consultants and Assemblymember Rudy Salas, Chair of the Assembly Committee on Business and Professions. Commissioners and participants discussed different ideas shared by witnesses in the preceding two hearings to assess whether it would be possible to implement those ideas, and if implemented, whether there might be unintended consequences.

### PROFESSION VERSUS OCCUPATION

For the purpose of this report, the Commission uses the terms occupation and profession interchangeably. California courts, however, have drawn a distinction between the two. Licenses that require character, responsibility, good faith and sound financial status are considered to be for nonprofessional occupational services. Licenses that require education, training and a rigorous exam are considered to be for professional services.

Source: Julia Bishop, Legislative Manager - Division of Legislative & Regulatory Review, Department of Consumer Affairs. September 21, 2015. Written communication with Commission staff.

**North Carolina State Board of Dental Examiners v. Federal Trade Commission**

The Commission's report does not address a topic related to occupational licensing recently in the headlines: the February 2015 Supreme Court decision on *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The Court ruled that the practicing dentist-dominated North Carolina Board of Dental Examiners wrongly sent cease-and-desist letters to non-dentist teeth whiteners and had no antitrust immunity from a federal challenge to its order. While many states, in response, have begun to review the composition of their licensing boards and California continues discussions about the ruling, the Commission did not assess whether California complies with the ruling.

The California Attorney General's Office, Legislature and Department of Consumer Affairs have paid close attention to the case and are reassessing the structure of California's licensing boards.<sup>1</sup> The Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions held a hearing on the topic in October 2015. Legislation subsequently was introduced that would give the director of the Department of Consumer Affairs more authority to review board decisions, but that bill failed to pass committee. Though discussions continue, representatives from the Attorney General's Office maintain the structure of California's licensing boards under the umbrella of the Department of Consumer Affairs, coupled with a robust rulemaking process, prevents a *North Carolina* scenario from occurring in California.

**Report Format**

The report largely follows the Commission's hearing format. The first chapter provides a high-level overview of occupational licensing, its effects and the justification for it, and a discussion of Commission findings on the barriers to entering occupations. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and guide future decision-making. The second chapter examines how the vulnerable groups outlined in the White House report – former offenders, military spouses, veterans, and people trained in other countries – fare in California. The chapter offers recommendations to better incorporate these groups into licensed occupations without loosening licensing standards.



## OCCUPATIONAL LICENSING IN CALIFORNIA

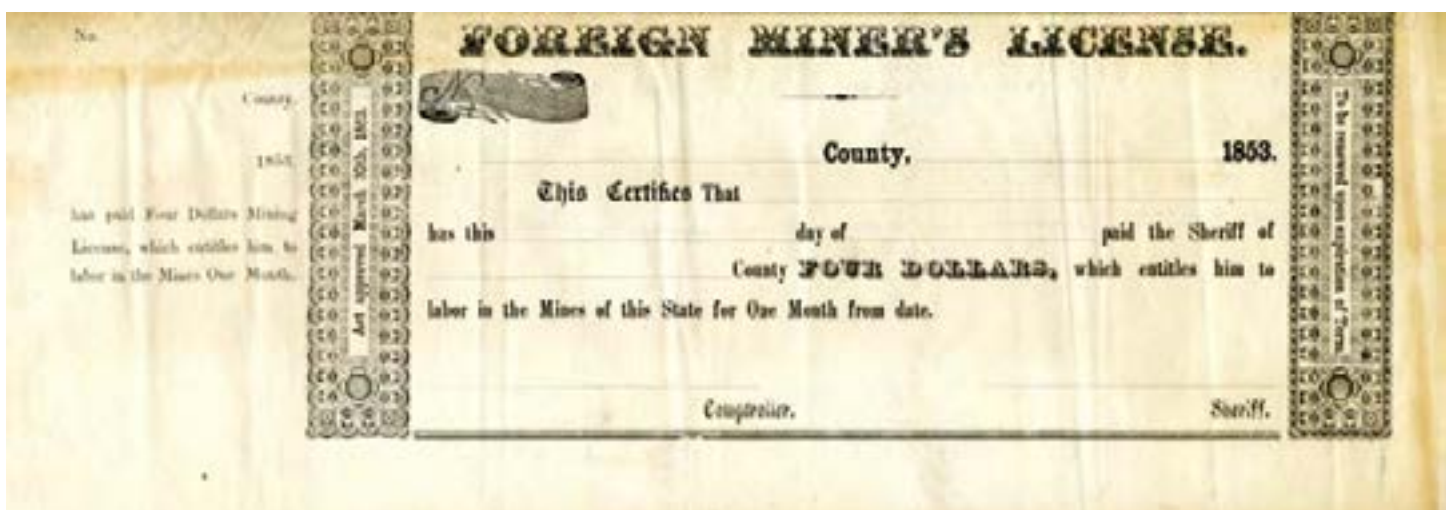
California's history of licensing began in its very infancy as a state. With hundreds of thousands of people pouring into California looking for gold, easily accessible claims were exhausted seemingly overnight. To ease competition, in April 1850 – five months before California was admitted to the union – the first session of California's Legislature required foreigners to become licensed before they could mine for gold. Specifically, non-Americans were required to pay \$20 per month for the license,<sup>2</sup> or an estimated \$569 per month in 2015 dollars.<sup>3</sup> Over the next 20 years, the licensing requirements were repealed, reinstated and reinvented as part of anti-Chinese sentiment until nullified in 1870 through federal civil rights legislation.<sup>4</sup>

Again, on the heels of the 49ers flooding into California came disease and doctors to fight it.<sup>5</sup> Alongside dedicated doctors serving their community were fraudsters who preyed on the uneducated, unsophisticated and desperate. Some borrowed liberally from religious texts to describe the miracles they could perform.<sup>6</sup> In response, California's Legislature opted to regulate who could practice as a doctor. The 1876 Medical Practice Act resulted in practitioners having to prove they had completed medical school or pass

an exam to demonstrate proficiency in the field, plus pay a \$5 fee to cover the expenses of verifying their competency.<sup>7</sup>

These examples highlight the challenge that occupational licensing presents to policymakers. It can serve as a gatekeeper to keep people out of occupations or protect the public from harm. In many cases, it simultaneously does both. There is no one-size-fits-all policy for occupational licensing. Nuance matters – no easy task when it comes to creating and administering laws to regulate a workforce of 19 million to protect California's 40 million inhabitants. "The devil is in the implementation," the director of California's top licensing department told the Commission.<sup>8</sup> The regulatory regime that makes sense for one occupation does not make sense for another, and new technologies and evolving consumer demand render even the most thoroughly-vetted rules and regulations obsolete. Racism, sexism and xenophobia are no longer explicitly written into licensing regulations, but lurk quietly in the outcomes.

Impeding entry into occupations matters in California. As one reporter noted, approximately 100 miles separates those with the highest quality of life in the in the United



An 1853 iteration of the Foreign Miner's License. Source: State Legislature Records, California State Archives

States from those with the lowest.<sup>9</sup> Removing licensing barriers will not fix all the ills that contribute to this economic inequality. But it is an important step because the impacts of licensing fall hardest on some of the most difficult groups to employ: former offenders, military spouses, veterans, and people who were educated and trained outside of the state.<sup>10</sup> Evaluating occupational regulation is bigger than simply modernizing the State of California’s regulatory regime: It allows the state to step out of people’s way as they seek a good job. Because every occupational regulation creates a barrier to entry into the occupation, there is one question that must be asked every time a new regulation is considered: Does that particular barrier provide the most appropriate level of consumer protection? Over the course of its study, the Commission consulted astute, dedicated and

conscientious state officials working diligently to answer that question, often in the face of powerful political forces. The Commission found silos and structural barriers that prevent people from answering those questions as effectively as they otherwise could.

This chapter provides a high level overview of occupational licensing, the justification for it, its effects and some of the obstacles the Commission found. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and to guide future decision-making. The next chapter will discuss the groups of people who face the most difficulties becoming licensed. It provides recommendations on how the state can help them move into licensed occupations – without relaxing licensing standards.

### **Spectrum of Occupational Regulation, from Most to Least Restrictive**

*Governments should select the least restrictive form of regulation necessary to protect consumer safety*



Sources: Dick M. Carpenter II. February 4, 2016. Written testimony to the Commission. Also, Dick M. Carpenter II and Lee McGrath. July 2014. “The Balance Between Public Protection and the Right to Earn a Living.” Institute for Justice Research Brief.



## What is Occupational Licensing?

Economist Morris Kleiner defines occupational licensing as the process by which a government establishes the qualifications required to practice a trade or profession.<sup>11</sup> The government may set its own standards or adopt those of a national body, but regardless of which qualifications it requires, practitioners may not legally practice without meeting them. This differs from certification in that individuals who do not meet the requirements for certification may continue to practice, but cannot present themselves as certified. The act of credentialing individuals is called different things by different authorities. The Commission refers to any occupation in which an individual cannot practice without meeting qualifications set by the government as licensed, regardless of what the credentialing agency calls it. For example, the Commission considers teachers to be licensed, even though the credential they receive is called a certification.

## Occupational Licensing in California

Approximately 21 percent of California's 19 million workers are licensed, a dramatic increase from the 1950s, when approximately one in 20 workers nationwide were required to apply for permission from the government to practice their profession.<sup>12</sup> California licenses a lower percentage of its workforce than many other states: According to data by economists Morris Kleiner and Evgeny Vorotnikov published in the White House report, 29 states license a higher percentage of their population than California.<sup>13</sup>

California compares poorly, however, to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. Researchers from the Institute for Justice selected 102 lower-income occupations – defined by the Bureau of Labor Statistics as making less than the national average income – and examined what, if any, licensing requirements were required to enter these professions in the 50 states and District of Columbia.<sup>14</sup> These occupations ranged from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62 – or 61 percent – of them. Here it ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and

## MOST STATES LICENSE MORE PEOPLE THAN CALIFORNIA

| Rank | State                | % of Workforce Licensed |
|------|----------------------|-------------------------|
| 1    | Iowa                 | 33.3                    |
| 2    | Nevada               | 30.7                    |
| 3    | Washington           | 30.5                    |
| 4    | Florida              | 28.7                    |
| 5    | Kentucky             | 27.8                    |
| 6    | Hawaii               | 26.6                    |
| 6    | North Dakota         | 26.6                    |
| 8    | Oregon               | 26.1                    |
| 9    | New Mexico           | 25.9                    |
| 10   | West Virginia        | 25.8                    |
| 11   | Alaska               | 25.5                    |
| 12   | Oklahoma             | 25                      |
| 13   | Connecticut          | 24.7                    |
| 13   | Illinois             | 24.7                    |
| 15   | Nebraska             | 24.6                    |
| 16   | Texas                | 24.1                    |
| 17   | Utah                 | 23.8                    |
| 18   | Mississippi          | 23.1                    |
| 18   | Tennessee            | 23.1                    |
| 20   | Idaho                | 22.8                    |
| 21   | Arizona              | 22.3                    |
| 21   | Louisiana            | 22.3                    |
| 23   | North Carolina       | 22                      |
| 24   | South Dakota         | 21.8                    |
| 25   | Massachusetts        | 21.3                    |
| 25   | Missouri             | 21.3                    |
| 25   | Montana              | 21.3                    |
| 28   | Wyoming              | 21.2                    |
| 29   | Alabama              | 20.9                    |
| 30   | <b>California</b>    | <b>20.7</b>             |
| 30   | Maine                | 20.7                    |
| 30   | New Jersey           | 20.7                    |
| 30   | New York             | 20.7                    |
| 34   | Michigan             | 20.6                    |
| 35   | Arkansas             | 20.2                    |
| 35   | Pennsylvania         | 20.2                    |
| 37   | District of Columbia | 19.7                    |
| 38   | Wisconsin            | 18.4                    |
| 39   | Ohio                 | 18.1                    |
| 40   | Colorado             | 17.2                    |
| 40   | Maryland             | 17.2                    |
| 40   | Virginia             | 17.2                    |
| 43   | Vermont              | 16.8                    |
| 44   | Georgia              | 15.7                    |
| 45   | Delaware             | 15.3                    |
| 46   | Minnesota            | 15                      |
| 47   | Indiana              | 14.9                    |
| 47   | Kansas               | 14.9                    |
| 49   | New Hampshire        | 14.7                    |
| 50   | Rhode Island         | 14.5                    |
| 51   | South Carolina       | 12.4                    |

Source: White House. July 2015. "Occupational Licensing: A Framework for Policy-makers." Quoting Kleiner and Vorotnikov (2015), Harris data.

Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: On average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam.<sup>15</sup>

## How Does Licensing Work in California?

California's licensing boards, bureaus, commissions and programs are created by the Legislature. The creation of a new regulatory entity requires a "sunrise" review before a bill is introduced. In this review, the requestor of the new regulation completes a questionnaire that is disseminated to the Assembly Committee on Business and Professions, the Senate Committee on Business, Professions and Economic Development and other relevant committees to review when considering the necessity of the legislation. There are three concepts that guide the sunrise review process:

- The public is best served by minimal governmental intervention.
- The decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government's responsibility to protect the public when protection is needed.
- Small or poorly-funded groups should not be deterred from making legitimate requests for regulation. (Most requests for regulation come from professional associations that can provide extensive statistics and documentation in support of their proposal. Here, the Legislature is concerned that private citizens, even if they are not able to afford a formal data-collection process, have the ability to propose new statutes).<sup>16</sup>

The nine-part questionnaire seeks to establish:

- If the proposed regulation benefits public health, safety or welfare;
- If the proposed regulation is the most effective way to correct existing problems;
- And, if the level of proposed regulation is appropriate.

## CALIFORNIA LICENSES MORE LOWER-INCOME JOBS THAN OTHER STATES

| Rank | State                | % of Low-Income Occupations Licensed |
|------|----------------------|--------------------------------------|
| 1    | Louisiana            | 70                                   |
| 2    | Arizona              | 63                                   |
| 3    | <b>California</b>    | <b>61</b>                            |
| 4    | Oregon               | 58                                   |
| 5    | Mississippi          | 54                                   |
| 5    | Nevada               | 54                                   |
| 7    | Connecticut          | 53                                   |
| 7    | Iowa                 | 53                                   |
| 7    | Washington           | 53                                   |
| 10   | Tennessee            | 52                                   |
| 11   | Arkansas             | 51                                   |
| 11   | New Mexico           | 51                                   |
| 13   | South Carolina       | 50                                   |
| 14   | Delaware             | 48                                   |
| 14   | Rhode Island         | 48                                   |
| 14   | West Virginia        | 48                                   |
| 17   | New Jersey           | 47                                   |
| 17   | North Carolina       | 47                                   |
| 19   | Alabama              | 46                                   |
| 19   | Idaho                | 46                                   |
| 19   | Wisconsin            | 46                                   |
| 22   | Utah                 | 45                                   |
| 22   | Virginia             | 45                                   |
| 24   | Florida              | 44                                   |
| 24   | Nebraska             | 44                                   |
| 26   | Alaska               | 43                                   |
| 26   | Montana              | 43                                   |
| 26   | Pennsylvania         | 43                                   |
| 29   | Hawaii               | 42                                   |
| 30   | Maryland             | 41                                   |
| 30   | Michigan             | 41                                   |
| 32   | District of Columbia | 40                                   |
| 33   | Illinois             | 39                                   |
| 33   | North Dakota         | 39                                   |
| 35   | Maine                | 38                                   |
| 36   | Massachusetts        | 36                                   |
| 37   | Minnesota            | 35                                   |
| 38   | Kansas               | 33                                   |
| 38   | New Hampshire        | 33                                   |
| 38   | Texas                | 33                                   |
| 41   | Georgia              | 32                                   |
| 41   | New York             | 32                                   |
| 43   | Missouri             | 30                                   |
| 43   | Ohio                 | 30                                   |
| 45   | Oklahoma             | 28                                   |
| 46   | Colorado             | 27                                   |
| 46   | Indiana              | 27                                   |
| 46   | South Dakota         | 27                                   |
| 49   | Kentucky             | 26                                   |
| 49   | Vermont              | 26                                   |
| 51   | Wyoming              | 24                                   |

Source: Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erickson and John K. Ross, Institute for Justice. May 2012. "License to Work."

After creation, a licensing entity is reviewed every four years by a joint session of the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. This process is called sunset review. The box on page 18 outlines the goals and objectives of the sunset review process. If problems are found with the licensing entity, legislators will introduce bills to provide fixes and it will be asked to reappear before the Legislature sooner than its regularly-scheduled four-year review. On rare occasions, the Legislature has used the sunset review to dissolve a licensing body. Notably, in 1997, the Legislature eliminated the Board of Barbering and Cosmetology and transferred its functions to the Department of Consumer Affairs. In 2002, Senator Richard Polanco successfully authored legislation to reconstitute the board. In 2016, the Legislature enacted Senate Bill 1039 (Hill), which sunsets the Telephone Medical Advice Services Bureau. In 1986, the Legislature dissolved the Board of Dry Cleaning and Fabric Care. But such dissolutions of licensing authorities are few and far between.

The 40 boards, bureaus, commissions and programs within the Department of Consumer Affairs (DCA) oversee most licensing in California. In addition to licensed individuals, the department also oversees many licensed facilities in California, such as smog check stations and funeral homes. In 2015, approximately 3.5 million individuals and facilities were licensed by DCA.<sup>17</sup> Significant numbers of Californians, however, are licensed by other authorities: The Department of Insurance, State Bar Association, Department of Public Health and California Commission on Teacher Credentialing collectively license more than a million Californians.<sup>18</sup>

Why License?

Proponents of occupational licensing argue that it protects health and safety, prevents the privatization of health and safety standards, is sometimes necessary for upward mobility and provides an accessible means of accountability.

Health and Safety Concerns

California has a legal obligation to protect its residents’ health and safety: This is the primary purpose of

TOP 10 LICENSED OCCUPATIONS IN CALIFORNIA

| Occupation              | Number Licensed |
|-------------------------|-----------------|
| Registered Nurse        | 400,134         |
| Insurance Agent/Broker  | 390,000         |
| Teacher*                | 295,025         |
| Investment Agent/Rep    | 287,197         |
| Security Guard          | 282,189         |
| Cosmetologist           | 254,271         |
| Real Estate Salesperson | 264,816         |
| Contractor              | 230,204         |
| Lawyer*                 | 187,190         |
| Real Estate Broker      | 138,121         |

\*Indicates teachers in public schools.  
\*Active members.  
Sources: Please see endnote 18 in Notes.

occupational licensing. Given that the health and safety components of licensing healthcare professions seem obvious to many, the Commission invited witnesses from seemingly less-intuitive industries to speak about their health and safety considerations. Myra Irizarry Reddy of the Professional Beauty Association told the Commission that many people think of the cosmetology industry as simply a haircut. “They think that if someone doesn’t like their haircut, their hair will grow back and they can leave a bad review on Yelp – no harm done,” she said.

The problem, she said, is that many of the procedures cosmetologists do can result in irreparable damage. The chemicals used by hair stylists to color hair are stronger than those available in drug stores. If used improperly, they can burn the scalp to the extent that hair will not grow back. Light chemical peels – the process of applying acid to the skin to cause it to blister and peel off for a more youthful appearance – are performed by estheticians, who must perform the procedure without going too deep and must assess if the patient is a good candidate for a peel, as the acid can change a poor candidate’s skin color. Even simple manicures leave customers at risk for blood-borne diseases, viruses, and bacterial and fungal infections if the manicurist does not follow proper safety procedures.<sup>19</sup>

## LEGISLATIVE GOALS AND OBJECTIVES IN SUNSET REVIEW

### Goals of Sunset Review:

- Eliminate unneeded, nonfunctional or redundant boards or programs, or any unnecessary rules and regulations.
- Improve the quality of services provided to the consumer by examining the board's requirements for education, experience and testing of professionals and other actions to assure competency.
- Eliminate overly restrictive eligibility standards, or standards of practice that unduly limit competition between professionals or place undue burdens on those who want to enter the occupation.
- Ensure people know where to go if injured or harmed by a licensed or unlicensed person, what actions they can take and what the outcomes may be.
- Ensure the public's complaints are handled in a courteous and expeditious manner.
- Ensure boards are providing the appropriate remedy for the consumer: mediation, arbitration, restitution, disciplinary action and/or criminal action against the licensee or person posing as a licensee.
- Ensure the public is informed about any complaints, disciplinary actions, judgments and criminal actions against a licensed professional.
- Use information technology advancements to provide better and more uniform information on licensed professionals for the consumer to make informed decisions about using the services of particular professionals.

### Objectives of the Sunset Review Process:

- Determine if the membership of the board adequately represents both consumer interests and the licensing population, and whether the board encourages public participation in its decision-making.
- Examine the board's organization and management and recommend elimination, consolidation and reorganization of programs where appropriate.
- Identify opportunities for improvements in the management of the board's daily operations and for providing more efficient and effective consumer services.
- Identify consumer concerns and those of the regulated profession regarding the way the board operates.
- Establish appropriate performance measures for each board reviewed.
- Evaluate the board's programs and policies to identify overlapping functions and outmoded methodologies.
- Determine whether the board's licensing, examination and enforcement programs are administered so as to protect the public, or if they are instead self-serving to the profession, industry, or individuals being regulated by the board.
- Review the law and regulations pertaining to the board and determine whether they restrict competition in the marketplace, the extent to which they are still necessary to regulate the profession and whether the board is carrying out its legal mandate or has exceeded its authority.
- Examine the board's fiscal management practices and financial relationships with other agencies.

Sources: Joint Committee on Boards, Commissions & Consumer Protection. Also, Le Ondra Clarke Harvey, Consultant, Assembly Committee on Business and Professions. October 6, 2015. Communication with Commission staff.

Deborah Davis, a commercial interior designer, said that the health and safety impacts of her work cannot be regulated by the free market. Many people think of interior designers as people who pick out pillows, carpets and curtains, she told the Commission. While those are components of her job, she continued, a lot of her job involves code-impacted work. Interior designers, who currently are not licensed in California, she said, can design all interior elements of a building outside of seismic components and load-bearing walls.<sup>20</sup> When she is hired to move a wall four feet, she adjusts the HVAC system, fire sprinklers, electrical wiring, lighting and other elements. “This is the interior designer’s purview,” she told Commission staff. “Architects don’t want this job. No one becomes an architect to move a wall four feet.”<sup>21</sup>

Licensing opponents say that there is a spectrum of activities to manage health and safety risks and that licensing should be considered the nuclear option. It can make sense to license many of the healing arts professions, for example, because of the potential adverse effects on public health. But for many occupations, they say, there are ways that the state and the private sector can work together to ensure standards are met. Lee McGrath, an attorney from the Institute for Justice, gave an example to Commission staff: Outside of driving, he said, eating out is one of the most harmful activities the average consumer will do on a regular basis. But the state doesn’t license food handlers, he continued. Consumers may spend time researching a restaurant, but outside of a few establishments with celebrity chefs, they don’t research who works for the restaurant and assess their qualifications. Yet, millions of people eat out every day without dying, thanks to inspections and shutting down unsafe establishments, quick action by public health officials on suspected food poisoning and restaurateurs’ concern for their reputations, he contended. The costs of regulations and standards to protect public safety do not fall on the backs of the cooks, servers and bussers.<sup>22</sup>

## **Prevents Privatization of Health and Safety Standards**

Some licensing opponents argue that certification offers a viable alternative to licensing. Dr. Morris Kleiner, the national expert on occupational licensing, advocates for certification because it allows more flexibility for workers:

They can still practice their occupation without a license. He also told the Commission that certification benefits consumers. This is because it signals that someone has met the government’s requirements to work in the occupation, yet uncertified individuals are still able to work so long as they do not call themselves certified. Consequently, certification identifies standards without lowering the supply of practitioners.<sup>23</sup>

Licensing advocates argue that, in practice, governments often turn their authority over to a private certification authority, and the private certification authority then sets the standards instead of the state – essentially privatizing the protection of the public interest.<sup>24</sup> Assembly Bill 1279 (Holden, 2015) would have done just that, for example, had it not been vetoed by Governor Brown. The bill was a “right to title” act for music therapists, meaning that music therapists would have had to meet the standards set by the Certification Board for Music Therapists in order to use that title.<sup>25</sup>

A representative for the California Nurses Association told the Commission that the rationale for occupational licensing is the protection of public health and safety. If the state identifies a threat to public health and safety that justifies intervening in the economy, she said, then the state – not a private entity – should set the standards.<sup>26</sup>

## **Real World Conditions Disadvantage Some Unlicensed Occupations**

Some people in unlicensed occupations face immediate disadvantages that cannot be discounted when considering upward mobility. Commercial interior designers, for example, push for occupational regulation because they are disadvantaged by other industries’ occupational regulations, according to industry advocates. Because commercial interior designers work in code-impacted environments, their plans must be approved by a licensed architect. A small percentage of interior designers work for architectural firms, where obtaining a colleague’s approval can be quick and inexpensive. However, if the interior designer is self-employed, this requirement results in a delay and increased costs to the interior designer. As 90 percent of the industry is women-owned small businesses,

this disproportionately impacts female small business owners.<sup>27</sup> By asking to be licensed, commercial interior designers are asking to drop the requirement that architects sign off on their plans, and establish qualifications so the public can trust their work without architectural oversight.<sup>28</sup>

## **Practical Means of Accountability**

Ms. Irizarry Reddy disputed the commonly-held idea that the court system should ensure accountability and be the first recourse in disputes between practitioners and consumers. It's just not practical, she told the Commission. The delays from an already-overwhelmed and backlogged court system would be extensive and expensive for the consumer, practitioner and the state. The mediation and complaint systems created through the licensing boards provide a practical resolution for most problems consumers have, she said, and the state should not switch to a system that disadvantages consumers and practitioners.<sup>29</sup>

## **Effects of Occupational Licensing**

Critics of occupational licensing contend that it raises prices, slows growth and costs jobs. They add that it does not provide the same benefits to lower-earning occupations as higher-earning occupations, inhibits entrepreneurship and is subject to political forces that favor practitioners over consumers and the unlicensed without justifiable protections to health and safety. In other words, licensing causes unwarranted barriers to entry to many occupations.

## **Raises Prices Without Always Increasing the Quality of Service**

Witnesses told the Commission that occupational licensing essentially is the government granting a monopoly to a subsection of service providers within a given occupation. The results are what economists expect from a monopoly: higher prices and fewer providers. Dr. Kleiner's research found that licensing raises prices by 5 percent to 33 percent, depending on occupation. Restrictive licensing for dentistry, for example, raises prices between 8.5 percent and 18 percent. Restrictions on nurse practitioners raise the

price of well-child exams by 10 percent. Dr. Kleiner, citing his and colleagues' work with economic models on the topic, estimates that occupational licensing restrictions cost consumers nationwide \$203 billion annually.<sup>30</sup>

Consumer health and safety does not necessarily increase with the price of the service, according to witnesses. Researchers found that more lenient dentistry licensing policies did not result in more bad outcomes. Stricter licensing, however, resulted in higher prices and a reduced supply of dentists.<sup>31</sup> In the preceding nurse practitioner example, the 10 percent increase in cost that accompanied the restrictions had no effect on child mortality or malpractice insurance rates. A study in Louisiana and Texas found that licensed florists in Louisiana did not generate any perceivable increase in consumer protection while increasing the price of floral arrangements.

In some cases, however, licensure does improve the quality of service. A study found that giving building contractor licenses to people who previously did not meet licensing requirements resulted in a modest decrease in quality.<sup>32</sup> These studies suggest that occupational regulation is nuanced and there is no "one-size-fits-all" policy of regulating who can work.

## **Slows Growth in Licensed Professions**

According to Dr. Kleiner's research, working in a universally licensed occupation appears to increase hourly earnings by 10 percent to 15 percent compared to unlicensed individuals with similar qualifications.<sup>33</sup> Working in an occupation that is licensed in some states, but not others, results in a 5 percent to 8 percent increase in wages.<sup>34</sup> Due to grandfather clauses often included in legislation, it typically takes 10 years to see the effects of licensing on employment. By the end of the initial 10 years following the legislation, entry into occupations is limited. Employment growth in an occupation that is licensed in one state will be slower than in a state that does not license it.<sup>35</sup> Dr. Kleiner estimates that occupational licensing restrictions have resulted in approximately 2.8 million fewer jobs nationwide.<sup>36</sup>

## Benefits are Concentrated in Higher-Income Professions

Increases in wages and limited competition are most concentrated in higher-paying licensed occupations, such as physicians, dentists and attorneys.<sup>37</sup> The effect of licensing on wages and limiting competition for lower-income occupations, including those that have expensive educational or training requirements such as teachers, nurses and cosmetologists, range from little to none.<sup>38</sup> This suggests that middle- and lower-class occupations are the least likely to enjoy the financial benefits from licensing.

## Services are Standardized, Entrepreneurship Suffers

Occupational licensing requirements standardize service. Professional and occupational organizations argue that standardization improves service and reduces uncertainty in consumers' minds. Critics argue that standardization inhibits innovation and entrepreneurship. Jason Wiens of the Kauffman Foundation offered the example of barbershops. The foundation worked with someone who wanted to open a mobile barbershop, though the regulations of that state required a fixed location for a barbershop. State officials were unwilling to work with the entrepreneur to find a solution that would allow for the mobile barbershop. Eventually he gave up on his idea even though he had data indicating demand for that service.<sup>39</sup>

The problem becomes magnified with low-income entrepreneurship. Decades of research have shown entrepreneurship in low-income populations is an important path out of poverty. The University of Michigan's Panel Survey of Entrepreneurial Dynamics found that nearly 40 percent of nascent entrepreneurs live in low- and moderate-income areas. Nearly 10 percent of emerging entrepreneurs come from households below the poverty line. Researchers from the Aspen Institute followed 1,500 low-income entrepreneurs for five years, and found that 72 percent of them increased their household income by an average of \$15,000 during the study period. Fifty-three percent moved out of poverty.<sup>40</sup>

Working under the assumption that policies that promote

entrepreneurship are key to upward mobility, researchers from the Goldwater Institute combined data from the Institute for Justice and Kauffman Foundation and found that states that license more lower-income occupations have a lower entrepreneurship rate. They also found the converse: states that license fewer lower-income occupations have a higher entrepreneurship rate.<sup>41</sup>

Professional and occupational organizations argue that consumers are receiving better services in exchange for the higher prices: Better-trained dentists with more training, for example, provide a higher quality of care for the consumer with higher-quality equipment because of better standards. But economists worry that, particularly in high-income professions such as dentistry and law, wealthier consumers can steer the supply of services away from the reach of low- and middle-income consumers. If wealthier consumers demand the highest standards of cosmetic dentistry as the basis for licensing requirements, for example, lower-income consumers who might care more about access to fillings and root canals might find themselves with less access to services and at a higher price.

## Inhibits Interstate Mobility

State licensing requirements make it difficult for many to work in states other than the one that licensed them due to different training or educational requirements. One expert gave the following example: Anyone who attended one of the approximately 40 non-American Bar Association (ABA)-accredited law schools in California is ineligible to sit for the bar exam in Minnesota, no matter whether his or her school was accredited by the California Committee of Bar Examiners, how well he or she performed on the California Bar Exam or how distinguished his or her career in California.<sup>42</sup> The attorney would need to re-complete his or her law school education at an ABA-accredited school in order to sit for the Minnesota Bar Exam.

While these policies affect anyone who moves across state lines, they often fall hardest on those who can least afford them. In the example above, non-ABA law schools often educate people with families and are working full-time jobs while in school<sup>43</sup> – people who might move across state lines for reasons other than their job and who might not have the resources to take out more loans to repeat their law school education.

Military families also are disproportionately affected



by occupational licensing laws, which will be discussed further in the next chapter. Veterans may be trained for an occupation in the military only to discover upon discharge that they do not meet state licensing requirements. Service members' spouses and sometimes working-age children may discover that they are not eligible to work in their occupation when the service member is transferred to a new state.

Simply requiring that all state licenses be portable across state lines would not necessarily solve the problem, however. With licensing regulations varying wildly across the nation, it often would be difficult to tailor a set of licensing requirements to meet every other state's requirements. Some occupations have a national standard developed by a credentialing or professional association. The standards set by a private organization do not always put consumers first, and sometimes may create as many barriers as would be removed by adopting a national standard. For example, the national standard to become a physician assistant, set by the Accreditation Review Commission on Education for the Physician Assistant, was recently changed to require a master's degree to become a physician assistant. California previously had a pathway to becoming a physician assistant through its community colleges. Because community colleges are unable to award masters degrees, this pathway is now no longer an option.<sup>44</sup> By adopting the national standard California has solved the reciprocity problem, yet has enacted more barriers to upward mobility for lower-income Californians.

The state should consider license portability and strive to make its licenses reciprocal where possible. In some cases, it may not make sense for the state to have reciprocity with every state, but it could grant partial reciprocity with some states with similar licensing requirements. In situations where meeting a national or other states' standards would create more barriers to entry for Californians, the licensing boards should explain to the sunrise and sunset review committees why the state is not opting for reciprocity.

## The Political Forces of Licensing

Occupational licensing regulations are made in the name of protecting the public interest. The reality, witnesses told the Commission, is that occupational regulation often amounts to rent-seeking. Briefly

defined, rent-seeking is an attempt to influence the political, social or other environment to achieve an economic gain for oneself without contributing to productivity.<sup>45</sup> In occupational licensing, the rules serve to keep competitors out of the industry. Most of the time, experts told Commission staff, the groups behind requirements for occupational licensing are industry

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***“Usually it’s not consumer groups going to the Legislature and saying that consumers need protections from certain practitioners. It’s the other way around. It is practitioners telling legislators, ‘you need to protect consumers from us.’”***

Jason Wiens, Policy Director, Kauffman Foundation

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associations trying to create regulations to keep out the competitors.<sup>46</sup>

Robert Fellmeth of the Center for Public Interest Law explained that occupational regulation does not reflect the consumer's point of view due to the concept of concentrated benefits and diffuse (sometimes called dispersed) costs.<sup>47</sup> This is a key point in what political scientists call public choice theory. The higher costs caused by occupational licensing are dispersed among a large number of consumers, while the benefits are limited to a relatively small number of practitioners.

Therefore, the practitioners who receive the benefit have an incentive to lobby and take other action to protect their benefit. Consumers, on the other hand, might spend more to lobby against the regulation than the increase in cost they would pay for the service due to a functional monopoly. Quite simply, witnesses told the Commission, practitioners benefit from the system, not consumers, and certainly not the workers who are unable to become practitioners.

## Gatekeeping and Inequality

The effects and political nature of occupational licensing combine to create formidable challenges for those with fewer means. Licensing requirements protect those who are already licensed at the expense of those who are not, and California licenses more occupations traditionally entered into by lower-income people than nearly every

other state. The financial and time costs to become licensed are not insignificant. Licensing results in higher prices and reduces the availability of services to lower-income people. The costs of organizing to be represented in occupational regulation often are insurmountable for the underrepresented. Though the testimony of economists, researchers and legal experts featured prominently in the Commission's hearings, it is important to remember that for most Californians, this conversation is not academic. It is many Californians' reality in a society with ever-increasing income inequality.

## Licensing Silos and Missing Data

Policymakers focus much of their attention on the Department of Consumer Affairs because the boards, bureaus, commissions and programs under its umbrella license so many Californians. More than 3.5 million individuals and facilities are licensed by the department across more than 250 occupations.<sup>48</sup> Proposals to license new occupations under the department must undergo the sunrise review process discussed previously. New rules made by the boards and bureaus under the department are subjected to a public rulemaking process. Every four years the department's licensing authorities undergo legislative scrutiny to justify their

existence. Legislation to improve occupational licensing often targets the Department of Consumer Affairs. For example, if a recent bill, AB 1939 (Patterson, 2016), had passed, it would have required the Legislative Analyst's Office to review the occupations under the Department of Consumer Affairs and identify any unnecessary barriers to entry.<sup>49</sup>

The focus on the Department of Consumer Affairs misses the enormous numbers of Californians who are licensed by other entities. More than 250,000 people are licensed by the State Bar.<sup>50</sup> The Department of Insurance licenses some 390,000 insurance agents and brokers.<sup>51</sup> The California Teacher Credentialing Commission licenses more than 295,000 teachers.<sup>52</sup> Other departments license smaller numbers of Californians. The California Department of Public Health licenses nursing home administrators and certified nursing assistants. The Division of Labor Standards Enforcement under the Department of Industrial Relations licenses farm labor contractors. No government official asked was able to provide the Commission with a comprehensive list of every licensed occupation in California.

It is impossible for the state to holistically evaluate its performance in protecting the public and determine

## DISCREPANCIES IN OCCUPATIONAL REQUIREMENTS

The discrepancies in requirements to become manicurists and tattoo artists highlight the need to review California's occupational regulations. Both occupations involve hands-on contact with customers' bodies. Practitioners of these occupations are exposed to bloodborne diseases, bacteria and fungi, yet the requirements to work in each occupation vary dramatically.

Manicurists must complete at least 400 hours of classwork and training. At some schools this costs thousands of dollars. They then must take written and practical exams before becoming licensed. The practical exam only is offered in two cities: Fairfield and Glendale. Applicants are assigned dates for both portions of the exam and are unable to reschedule the date assigned to them for the practical exam. If they cannot travel to one of those two cities on the date assigned to them, their candidacy is terminated, they lose their application fee and they must begin the application process all over again.

Conversely, tattoo artists must register with their county's public health department, provide proof of Hepatitis B vaccination and take an annual two-hour bloodborne pathogens class, available online for \$25.

If state and local governments successfully protect consumers through the lighter regulatory regime for tattoo artists, state officials might consider whether the burdens imposed on aspiring manicurists are justifiable and whether lower levels of regulations might result in the same public safety outcomes.

whether it is unnecessarily acting as a gatekeeper to upward mobility if there is no single authority that knows who is licensed. Fortunately, there currently is an initiative underway that can provide the groundwork. Dr. Kleiner, funded in part by the Kauffman Foundation and Smith Richardson Foundation, is cataloguing the nation's universally licensed occupations. The goal is to provide data for a comprehensive cross-comparison study of licensing. Most academic studies of occupational licensing focus on a single occupation because getting data from multiple states is time-consuming and difficult. The work is expected to be completed within a year.<sup>53</sup> California officials across all departments that license one or more occupations should work with Dr. Kleiner to share their licensing data with this initiative, as the results of cross-comparison studies based on this data would help inform evidence-based policy decisions. They should then build on this effort and catalog all of California's licensing requirements in a single, easily and publicly accessible location, so that policymakers and stakeholders can better understand the extent of California's licensing regime.

Knowing which occupations are licensed in the state is only a start, however. For most occupations, demographic information is collected on a voluntary basis; the Legislature must authorize mandatory collection of information. The reasoning behind this is valid: "The person who decides whether someone receives a license should be blind to the individual's race and ethnicity," said Department of Consumer Affairs Director Awet Kidane. He went on to say that he believes in the utility of data and that demographic information in the aggregate would be helpful, but licensing and enforcement authorities should not have an individual's demographic information in front of them while they're making decisions.<sup>54</sup>

Not collecting demographic data, however, leaves the state unable to track whether a licensing requirement is having an adverse racial, gender or other demographic impact. As will be discussed further in the next chapter, there is significant anecdotal evidence that some licensing requirements harm certain groups. But without data, it is difficult to know for certain. The Legislature should authorize the collection of demographic data, including race, ethnicity, gender, age, education level and languages spoken. For some occupations, it may be beneficial to collect other types of data, such as specific pre-licensure programs the applicant completed in order

to assess which pathways applicants are using to enter the occupation.

Given the impact of licensing on prices, availability, wages both inside and outside the licensed occupation, geographic mobility and entrepreneurship, it is critical that the state be absolutely sure that effects are justified by the consumer health and safety provided by each regulation. Most licensing authorities were created before the institution of the sunrise process, and never had to prove that the level of regulation requested was necessary to protect consumers. The sunset review process cannot completely escape political forces, and requires a small legislative staff to sort through a mountain of data compiled by the very boards under review in a relatively short period of time.

It is long past time for a nonpartisan research body to sift through the complete body of California's licensed occupations to determine whether each requirement justifiably protects public health and safety, then make recommendations for legislative action. California has the opportunity to participate in just such a venture. The U.S. Department of Labor is issuing a grant of up to \$7.5 million to consortia of states to examine licensing criteria, licensing portability issues and whether licensing requirements are overly broad or burdensome.<sup>55</sup> Additionally, the Department of Labor indicates that states may consider the approaches to licensing to protect public health and safety, such as certification.<sup>56</sup> The Upjohn Institute of Employment Research is organizing a consortium of states to apply for grant funding, and has invited California to participate. The opportunity to evaluate California's licensing laws with the assistance of federal funding, a nonprofit to coordinate the work, and the expertise of economists such as Dr. Kleiner is too valuable to squander. California should accept the Upjohn Institute's invitation and begin reviewing its licensing laws and regulations across all licensing authorities, not just the Department of Consumer Affairs.

Finally, California's sunrise and sunset review process is critical to ensuring occupational regulation erects the fewest barriers to entry into occupations while protecting health and safety. It is incumbent upon the state to provide the committees that carry out this important function with the resources they need. For future sunrise and sunset reviews, the Legislature should fund additional resources to assist the Assembly Committee

on Business and Professions and Senate Committee on Business, Professions and Economic Development to verify information submitted to the committees. This could take the form of dedicated analysts within the committees or funding for additional help from nonpartisan research bureaus or consultants outside the committees. When the data supplied by licensing entities is incomplete or questionable, legislators should request an audit by the state auditor.

## Recommendations

***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 different demographic groups.***

***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, particularly for individuals who have moved to California from another state or country, transitioning service members, military spouses and former offenders. 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.***

***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.

***Recommendation 4: The Legislature should fund 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.***

## PATHWAYS TO UPWARD MOBILITY

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At the heart of all conversations about occupational regulation are people: protecting people, removing barriers for people, enabling upward mobility for people. The 2015 White House Report on occupational licensing described several groups of people particularly vulnerable to occupational licensing laws: former offenders, military spouses, veterans and immigrants.<sup>57</sup> With ever-increasing economic inequality, policymakers must think about the impact of occupational licensing policies on vulnerable groups. That is, how to create pathways for upward mobility for those who have the hardest time becoming employed – even though they may be qualified. In this chapter, the Commission explores how the groups identified in the White House report fare in California and offers recommendations on how the state can break down the barriers preventing them from finding good jobs:

- **Former Offenders:** People with convictions on their record often face difficulties in becoming licensed. They typically must demonstrate that their convictions were not substantially related to the duties of the occupation, or if their convictions were, that they have been rehabilitated. The problem is that “substantially related” and “rehabilitated” are not always clearly defined. Advocates report encountering some arbitrariness in licensing authorities’ decisions. Further, appealing a denial can be confusing and expensive for former offenders.
- **Military Spouses:** Military spouses suffer when their licenses do not transfer across state lines with them. Already at a disadvantage when job searching because employers know they will likely move again in a few years, starting over by spending a year or two redoing licensing requirements further diminishes their employability. The cost of lost job opportunities and of repeatedly meeting licensing requirements is considerable to military families. Most service members say their spouses’ ability to

maintain their career is an important factor when deciding whether to remain in the service – and Department of Defense personnel say they lose some of their best people because of spouses’ career difficulties. Ensuring that military spouses have rewarding careers has a positive impact on national security.

- **Veterans:** Veterans may be trained in the service in occupations that are licensed in the civilian sector. Sometimes, upon separation from the military, they have difficulties gaining credit for their military education and experience and have to begin again. Not only does this impose a cost on the veteran, it also affects taxpayers who pay for the veteran to learn an occupation in the military, then pay for it again upon separation through the G.I. Bill. Lawmakers have been proactive in passing laws to make it easier for veterans to become licensed. The Commission learned, however, that there may be a disconnect between the intent of the laws that were passed and the reality on the ground.
- **Foreign-trained Workers:** Workers trained in other countries often possess the skill sets for occupations in which California faces shortages, but there are a number of obstacles preventing them from gaining licensure in the state. Many have gaps in their training or experience. But there are few gap, or bridge, education programs to quickly fill those gaps, forcing them to begin again. Even those fully qualified may not be able to practice due to licensing statutes and regulations. This matters because California not only needs qualified personnel to meet its impending shortages, but it particularly needs professionals who are fluent in languages other than English and familiar with other cultures – needs that foreign-trained workers can easily meet.

This chapter offers recommendations to help these groups more easily enter occupations, without overhauling California’s regulatory regime or reducing standards. Further, these recommendations will help all Californians – not just those belonging to vulnerable groups – more easily enter licensed occupations: a rising tide that lifts all boats.

## Former Offenders

Approximately eight million Californians have criminal records.<sup>58</sup> Ninety-six percent of Californians who are sent to prison will re-enter their communities.<sup>59</sup> This figure does not include the thousands of Californians who are sent to county jails for lesser offenses, who also will re-enter their communities after completing their sentences. In 2012, more than 18,000 prisoners were paroled and nearly 29,000 offenders were released from prison to post-release community supervision.<sup>60</sup> Tens of thousands more are released from county jails every year. A 2015 survey found that nearly 35 percent of unemployed men had a criminal record.<sup>61</sup> Former offenders are most likely to recidivate in their first year after release.<sup>62</sup> A 2008 Urban Institute Justice Policy Center Study found that at fewer than half of the former offenders were employed at eight months after release.<sup>63</sup>

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***“...no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. In other words, simply having some type of a past record does not predict an individual’s ability to perform in an occupation.”***

Michelle Natividad Rodriguez, Senior Staff Attorney,  
National Employment Law Project

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A job does not guarantee successful re-entry into society. That requires housing, mental and physical health care and other services tailored to the specific needs of the individual. But researchers have found employment is essential to helping former offenders. In addition to allowing former offenders to support themselves and their families, a job develops pro-social behavior, strengthens community ties, enhances self-esteem and improves mental health – all of which reduce recidivism.<sup>64</sup> These effects are strengthened the longer the individual holds the job and especially when it pays more than

minimum wage.<sup>65</sup> The ability of former offenders to hold stable jobs is enormously important to society.

Nationally, there is an ongoing bipartisan conversation about the loss of employment as a collateral consequence of incarceration. In November 2015, President Obama directed federal agencies to “ban the box.” Ban the box refers to not asking applicants about their convictions on the initial job application, instead waiting until later on in the hiring process to discuss convictions. Twenty-four states and more than 100 counties and cities also have adopted ban the box policies.<sup>66</sup> More than 100 companies, ranging from Google to Coca Cola, also have pledged to give people with convictions opportunities to work there through actions such as banning the box, providing internship opportunities to ex-offenders and hosting job fairs for former offenders.<sup>67</sup> Yet these efforts are limited in their effectiveness if people with convictions on their records face barriers to obtaining the credentials needed to work.

## The Problems Former Offenders Encounter in Being Licensed

Several levels of regulation and guidelines govern how former offenders may be licensed. Licenses issued by the entities under the Department of Consumer Affairs are regulated by the California Business and Professions Code, which states that a license may be denied if the offense is substantially related to “the qualifications, functions, or duties of the business or profession for which application is made.”<sup>68</sup> Convictions that are not substantially related are not supposed to be a cause for denial. The Business and Professions Code also says that licenses cannot be denied if applicants meet the criteria for rehabilitation. The Business and Professions Code goes on to give the boards, bureaus, commissions and programs under the Department of Consumer Affairs authority to develop the criteria for what constitutes “substantially related” and “rehabilitation.”<sup>69</sup>

The many licenses issued by other licensing authorities are governed by a patchwork of laws across many legal codes that, as one witness told the Commission, may allow license denial even for a conviction not substantially related to the duties of the occupation.<sup>70</sup> Under federal law for example, the Insurance Commissioner must provide permission for anyone convicted of a felony



involving dishonesty or breach of trust who wants to work in the business of insurance, including jobs without access to sensitive information.<sup>71</sup> Hearing witness CT Turney, a lawyer for the Los Angeles-based A New Way of Life Reentry Project, told the Commission that often licensing entities have internal guidelines that further determine how a former offender is evaluated. While these criteria usually can be obtained through a Freedom of Information Act request, they're sometimes not easily available to applicants.<sup>72</sup>

Applicants face similar challenges in some occupations that technically are non-licensed. California licenses many types of facilities, and the regulations governing the facilities' licenses may have employment requirements that make it difficult for former offenders to find employment. Witnesses cited the California Department of Social Services and the Department of Developmental Services as two examples for which employees would "provid[e] care for children, elderly, and developmentally disabled adults".<sup>73</sup> CT Turney emphasized that the ability to work in these types of jobs is important to the re-entry community.<sup>74</sup>

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***"When policies and decisions are made based on visceral fear rather than on a reasoned analysis of actual risk, they reach far beyond the justification of public safety. Instead they merely serve as additional punishment for a past offense. In the process, such policies impose greater burdens on individuals, who lose out on stable work and better pay, and on communities, who lose out on financially stable members as well as the services of otherwise qualified professionals."***

CT Turney, Senior Staff Attorney,  
A New Way of Life Reentry Project

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## The Tradeoff Between Certainty and Flexibility

There is a fine balance between outlining specific offenses that will disqualify an individual from licensure and leaving licensure requirements vague enough to allow for flexibility. For some occupations in California, there are a few crimes that automatically disqualify

people. For example, sex offenders may not be licensed as teachers.<sup>75</sup> Beyond that, however, it is often up to the discretion of the licensing entity. This is problematic for former offenders who must decide whether to invest in the education, training, and application process – which often requires an expensive test and fees – when there is no certainty they will be eligible for licensure. For example, individuals applying for employment at facilities licensed by the Department of Social Services technically may be denied employment for anything beyond a traffic violation.<sup>76</sup>

The problem, however, with creating a list of automatic disqualifications is the state loses the flexibility to assess applicants according to the nuances of their offenses. Awet Kidane, director of the Department of Consumer Affairs told the Commission, "There is a difference between a doctor who gets a DUI driving home after a shift versus a doctor who gets a DUI on the way to the operating room."<sup>77</sup> Licensing officials reiterated the need for flexibility throughout the Commission's study process. One licensing board cited the case of a woman convicted of assault that, when it examined the case, transpired to be a mother confronting someone who assaulted her child. By outright rejecting assault convictions, licensing officials warned, people who pose no legitimate threat to consumers also will get caught in that net.

Director Kidane told the Commission that his department constantly evaluates room for improvement in licensing former offenders. He said there is significant discussion about what "substantially related" means and of what constitutes "mitigating circumstances."<sup>78</sup> Representatives from other licensing entities also told the Commission that they, too, aim to improve their licensing processes for former offenders.

## Background Checks

Applicants with criminal convictions on their records face another barrier: what CT Turney called the candor trap. Applicants often are asked to list criminal convictions on their applications, as well as undergo background checks. If the convictions an applicant lists do not match the convictions on the background check, the applicant may be disqualified for lying. CT Turney explained there are reasons an applicant may unintentionally err when listing previous convictions. Many, particularly those who are less educated or legally unsophisticated, see three lines



on the application and assume they only need to write a broad overview instead of obtaining police reports and a lawyer to get the details right. People also often do not remember their conviction histories correctly. People with 30-year-old convictions or addiction or mental health issues, and those who have accepted plea agreements to charges differing from what they remember being arrested for, often unintentionally make misstatements on their application form. All of society loses when former offenders cannot get a good job because they were automatically disqualified due to unintentional misstatements not matching their background checks.

The Department of Insurance offers an alternative model to learn about applicants' criminal convictions. The department asks applicants to submit certified court documents regarding their convictions with their applications. In this way, applicants are not inadvertently caught in the candor trap. However, this model comes with a price: Applicants pay \$32 for a state background check, \$17 for a federal background check, plus fees charged by the live scan locations and the costs of procuring other requested documentation.<sup>79</sup> The state has a fee-waiver program for low-income applicants for the state background check, but there is room for improvement. Applicants must first apply for a fee waiver and cannot proceed with their background check until they receive a response, which can take several weeks. Then they must wait for the background check, which also takes several weeks.<sup>80</sup> Implementing instant responses to requests for fee waivers would make important progress in getting applicants to work faster, advocates said.<sup>81</sup>

### Complex Appeals Process

Application processes vary by licensing authority. But in general, when individuals with convictions on their records apply for licenses, their applications are flagged and reviewed by analysts, who are not necessarily legal professionals. In many cases, these analysts work with internal guidelines based on the licensing authority's interpretation of substantially-related duties and rehabilitation. Advocates working with former offenders said that sometimes denials seem arbitrary.<sup>82</sup>

Many applicants do not appeal denials because they are intimidated, advocates told the Commission.<sup>83</sup> When applicants do appeal, the process is expensive

and not straightforward. When applicants appeal denials, advocates said, they often believe they are simply meeting with licensing board officials to explain their convictions. In some cases, however, they find themselves in formal legal hearings overseen by administrative law judges with attorneys representing the licensing boards. There, they discover they need to present evidence and witnesses to prove they meet certain legal standards. People often do not understand the process, CT Turney said, and the client base A New Way of Life Reentry Project serves often cannot afford attorneys. Further, very few organizations provide *pro bono* occupational licensing-related legal services to low-income applicants. Applicants often lack the knowledge or experience to defend themselves against state attorneys, advocates said, and consequently, often lose.<sup>84</sup>

An intermediate review process would help mitigate some of the barriers these applicants face. That process, between an applicant's initial denial and an administrative law hearing, allows applicants to meet with licensing officials and explain why they believe their denial was erroneous. Advocates cited the good results of the Bureau of Security and Investigative Services' intermediate review program as a model for other licensing authorities.<sup>85</sup> Further, because administrative law proceedings require judges, lawyers, and court reporters, they are costly for the state. Instituting an intermediate review process between licensing entity officials and the applicant could save the state money.

### Steps to Help Former Offenders Gain Employment

The entire community benefits when former offenders are gainfully employed. Yet as a group they face severe obstacles when looking for work. Easing licensing barriers does not mean unconditionally allowing former offenders to work in any job. No one suggests allowing convicted child molesters to become schoolteachers or convicted elder abusers to become nurses. But a 10-year-old drug conviction should not keep individuals from finding a job to support themselves and their families.

As discussed in the previous chapter, a thorough review of all of California's occupational licensing regulations is needed and part of the review must include whether there are unnecessary barriers for ex-offenders. In the

meantime, the state can take steps to ease barriers to licensing for former offenders. Among them:

- Make the criteria licensing authorities use to evaluate former offenders more transparent. Some licensing authorities do this, and the rest should follow suit. The Commission recognizes that the final determination of whether a license is issued or not results from a conversation between the licensing authorities and the applicant. The Commission understands that addressing applicants with convictions on a case-by-case basis allows flexibility. But applicants should not have to file Freedom of Information Act requests to know the guidelines by which they will be evaluated. Having this information up front can help potential applicants make informed decisions about how to invest their time and resources.
- Follow the Department of Insurance model by relying on background checks and court documents for reviewing convictions. For occupations that require background checks, the licensing authority should not rely on applicants' recollection of convictions to make its decision. Requiring applicants to outline their criminal histories in addition to a background check serves no purpose. The state also could make its background check fee waiver more efficient for low-income applicants so they do not have to wait as long to begin working.
- Institute an intermediate review process within the licensing authorities that do not have one. Some licensing authorities keep the lines of communication open with applicants throughout the entire application process, while others do not. An intermediate review process allows applicants who are not legally sophisticated to discuss problems with their applications with licensing authorities before it turns into an administrative law hearing. This saves the state money as well.

Though the specific convictions that qualify as "substantially related" will vary by occupation, the principles guiding the development and application of those standards will not. As the umbrella organization over most of the state's licensing authorities, the

Department of Consumer Affairs is a logical choice to develop best practices for licensing former offenders. The Department of Consumer Affairs also should share its best practices with licensing authorities not under its purview, and periodically coordinate roundtables with these other authorities to promote the exchange of ideas and assess whether California is helping its eight million residents with criminal records find employment.

## Those Who Serve

Separating service members and military spouses also are hard hit by occupational licensing regulations. Every few years there is a burst of legislation designed to ease the barriers they face, yet on-the-ground reports say that little changes. The men and women who serve our country, as well as their families, deserve better than to be kept out of occupations for which they qualify. California must focus less on new legislation and more on implementing past legislation.

## Military Spouses

Military spouses are particularly vulnerable to state licensing laws. In the civilian population, approximately 1.1 percent of spouses move across state lines each year due to their spouse's job. In the military population, 14.5 percent of spouses move across state lines annually. Thirty-four percent of military spouses hold occupational licenses, and 19 percent of military spouses report challenges in maintaining their licenses through moves.<sup>86</sup>

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***"We know that most decisions to stay in the military are made around the kitchen table and not in the personnel office. To retain our trained and experienced military, we must retain the family. ... Sixty-eight percent of married service members reported their spouse's ability to maintain a career impacts their decision to remain in the military by a large or moderate extent, thus making the ability of the spouse to obtain a professional license in each state of assignment an influence on national security."***

Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy

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This affects more than the military spouse, however. Sixty-eight percent of married service members report their spouse's ability to maintain a career affects their decision to remain in the military.<sup>87</sup> "We lose good service members and we see this as a national security issue," a Department of Defense witness told the Commission.<sup>88</sup> Military spouses report that employment is critical for two reasons. One, it is difficult to support a family on the service member's salary alone, particularly

for lower-ranking service members. Secondly, being employed, many military spouses report, provides a distraction and boosts their morale while the service member is deployed.<sup>89</sup>

## Veterans

More than one million service members are expected to leave military service and enter the civilian workforce between 2014 and 2020,<sup>90</sup> joining the approximately 11 million veterans of working age.<sup>91</sup> California, home to approximately 1.9 million veterans, has more veterans than any other state.<sup>92</sup> Though the unemployment rate for veterans in general is not significantly different from that of the civilian population, there is an important exception: Male veterans between the ages of 25 and 35 post-September 2001 (what the U.S. Bureau of Labor Statistics defines as the Gulf War II era) have a significantly higher unemployment rate than their civilian counterparts, at 6.8 percent versus 5.4 percent.<sup>93</sup> As nearly half of the veterans in the Gulf War II era are 25-35 years old,<sup>94</sup> their higher rate of unemployment is a challenge states must address.

The primary occupational licensing problem for separating service members is licensing boards' not accepting their military-acquired knowledge, skills and abilities toward credentialing requirements. This common roadblock impacts taxpayers as well as service members, noted Commission witness Laurie Crehan, of the Department of the Defense. Taxpayers foot the bill twice to train service members for the same job: the first time while they're in the military, then again following discharge to meet licensing requirements.<sup>95</sup>

The Department of Defense is taking steps to make it easier for state licensing boards to credit military experience and education to licensing requirements. In the past, each branch of the military had its own transcript for the education its service members received. The department now has a standardized transcript so that employers can more easily understand the document. The department has hired consultants to cross reference the knowledge, skills and abilities acquired in each military job to their civilian equivalent. Finally, the military is working with the American Council of Education to analyze military training to see if it meets the rigor, content and criteria for college credit. The goal is to prevent separating service members from having to

## HELPING MILITARY SPOUSES BECOME LICENSED

The Department of Defense asks state licensing boards to do three things to help military spouses gain licensure in a new state:

1. Endorse the license if a military spouse or separating service member holds a license significantly similar to the state's license. If military spouses must spend a year or two becoming re-credentialed, they become virtually unemployable – as employers know their service member spouse will soon be transferred again.
2. Issue temporary licenses. Allow military spouses to work under the direction of others who are fully licensed while they complete the state licensing process.
3. Expedite the licensing process. It takes too long to collect and validate paperwork, a problem compounded by licensing tests that are offered infrequently. The Department of Defense asks states to simply take the supporting documents applicants supply and allow them to practice instead of waiting while the documents are being verified. If there is a problem with the documents, the licensee's ability to practice can be revoked.

The Department of Defense stresses that it is not asking states to remove or dumb down standards, only to make the licensing process more flexible to support service members and their spouses.

Source: Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy. February 12, 2016. Phone call with Commission staff.

start from scratch. Many need only “bridge education” (also called gap education) to fill in the gap between what they learned in the military and what they need to learn for their license.<sup>96</sup> However, even after all this work, the Department of Defense cannot force licensing boards to use these translations to credit veterans for their past experience or to provide bridge education programs.

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***“Taxpayers pay for the service member to be trained twice. Once while in the military, then again when the service member returns, through the GI Bill.”***

Laurie Crehan, Regional State Liaison, Southwest,  
Office of the Deputy Assistant Secretary of Defense,  
Military Community and Family Policy

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### Legislative Fixes, but What Progress?

Enacting legislation to make employing veterans and military spouses easier is popular. Since 2010, California has enacted numerous laws to ease licensing barriers for veterans and military spouses. Some are limited to specific occupations, while others are far-reaching, including:

- **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, Maienschein): 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.

Despite the state’s having enacted appropriate legislation, the Commission heard anecdotally that veterans and military spouses still face difficulties in becoming licensed. No studies or implementation tracking have been done to assess how effectively the legislation has been implemented. One glaring omission in the above legislation is state licensing authorities outside of the Department of Consumer Affairs.

Experts identify common problems in state laws nationwide intended to ease licensing barriers for veterans and military spouses:

- Broadly written laws provide too little guidance.
- Veterans may be unaware of their licensing eligibility.
- Legitimate skills gaps may go unaddressed.
- Insufficient partnerships between state, schools and the military.
- Lack of consistent metrics to measure licensure challenges.<sup>97</sup>

Many laws are in place in California. But we do not know if they are having the desired effect. Because the retention of experienced military personnel depends on spouses’ ability to hold a job – making military spouse licensure a national security concern – and because helping veterans secure gainful employment after their service is often stated as a policymaker priority, the Commission recommends that the Legislature authorize a research institute to work in collaboration with the Department of Defense to conduct a study on the implementation of the legislation listed on this page. The

review should identify gaps between the intent of the laws and practice outcomes, and issue recommendations for executive or legislative action on how to bridge those gaps. The review should examine and include recommendations on whether the legislative focus on the Department of Consumer is sufficient or whether policymakers should encourage other departments to prioritize veterans and military spouses. The review also should assess licensing authorities' outreach efforts to inform veterans that they are eligible for expedited licensing, and provide recommendations on how the state can better educate veterans about these benefits.

The beneficial effects of finding work are personal. A representative from Swords to Plowshares, a San Francisco-based nonprofit that provides wraparound services for veterans including employment assistance, told Commission staff that the impact of not being able to secure a job in the field that the veteran has been working in for perhaps the last eight or 10 years is significant. Being experienced in a field and leaving the military only to discover that they are considered unqualified to work in that field is a rude awakening, she said.<sup>98</sup>

## Foreign-Trained Workers

The impacts of occupational licensing regulations on out-of-state workers were discussed in the first chapter. This problem is magnified when it comes to foreign-trained workers. Foreign-trained workers can be a sensitive subject. To some it conjures images of undocumented immigrants. To others the topic brings to mind the questionable use of H-1B temporary work permits to hire foreign professionals, often in the information technology industry, at lower wages than Americans.<sup>99</sup> While these issues deserve thoughtful attention by policymakers, they should not obscure the fact that foreign-trained workers are a legal and dynamic part of California's workforce, and in many cases, are native or naturalized Californians who were educated or trained abroad.

High-skilled workers who are trained abroad typically have a post-secondary degree, are more likely than others to speak English or take classes to build English proficiency, and often work in a high-demand field. Currently that field is STEM, or Science, Technology, Engineering and Math.<sup>100</sup> The licensing difficulties they face are similar to those of veterans: An applicant may have the appropriate skill set for the occupation, but

the licensing board may not be able to translate the applicant's foreign education and experience to the board's requirements. Often, there will be differences between the education and experience an individual needs to successfully practice in an individual's country of origin and what the individual needs to practice successfully in California. A researcher from the Migration Policy Institute writes:

*"Perhaps the central problem that makes credential recognition difficult is that foreign professionals, especially the newly arrived, are not interchangeable with their locally trained counterparts. ... Professionals with the same job title do not always perform exactly the same set of tasks in different countries, creating real differences in knowledge and skills gained on the job. In the medical field, for example, different medical procedures and responsibilities may be delegated to nurses as compared to doctors, and to generalists as compared to specialists; certain medical devices are not as widely available in all countries, giving practitioners less experience in their use; institution or administrative functions such as medical referral processes can differ widely; and some health-care practitioners require relatively high levels of language proficiency to communicate with patients and colleges."*<sup>101</sup>

José Ramón Fernández-Peña, associate professor at San Francisco State University and policy chair of IMPRINT, an immigrant advocacy organization, testified that there are few options for bridge education for foreign-trained workers in California who meet all but a few licensing requirements.<sup>102</sup> Many find themselves having to start over. In some cases this borders on the absurd. Foreign-trained doctors with many years of experience, for example, must complete an entire residency program to be licensed in the United States, often enduring the same residency matching process and low pay as students freshly graduated from medical school.<sup>103</sup> A foreign-trained doctor cannot even work as a physician assistant in California without completing an approved physician assistant training program.<sup>104</sup> Dental hygienists can have equivalent experience in their home country and earn a perfect score on the exam, but cannot be licensed because they did not graduate from an accredited dental hygiene program.<sup>105</sup>

Foreign-trained dentists used to be able to become licensed in California after successfully passing dental exams, Mr. Fernández-Peña testified. But professional associations lobbied to have that right removed. Now there are two ways foreign-trained dentists can become licensed in California. They can attend a foreign dental program that has been approved by the Dental Board of California. As the program must teach California Occupational Safety and Health Standards, few foreign schools qualify. Currently, only the University de La Salle in Leon, Guanajuato, Mexico is approved.<sup>106</sup> The second way to qualify is to take a two-year Advanced Standing Program and earn a Doctor of Dental Surgery degree. There are four schools in California that offer this two-year program, with an average total cost of \$150,000, Mr. Fernández-Peña told the Commission.<sup>107</sup>

## **Why it Matters that Foreign-Trained Workers Face Barriers to Licensure**

By 2025, California will have a shortfall of one million workers with four-year degrees and 2.5 million workers with other levels of degrees, certificates and diplomas.<sup>108</sup> When qualified foreign-trained workers are stuck working lower-level jobs because they did not graduate from an accredited school or are missing a couple of classes, it hurts all Californians. Consumers have a harder time finding service providers and may have to pay more. Lesser-qualified Californians are pushed out of lower-skilled jobs and face unemployment or menial tasks. Then there are the impacts of a lower income on workers and their families. This is an inefficient use of resources and it exacerbates growing economic inequality.

## **Professional Shortages are Looming**

As described above, in fewer than 10 years, California will face a workforce shortfall of approximately 3.5 million workers with varying levels of education and expertise. Looking at shortfalls in specific industries gives a clearer picture of how this affects Californians. By 2030, California will have only two-thirds of the primary care physicians it needs to maintain its current physician-to-population ratio – which already is worse than the national average.<sup>109</sup> By 2030, according to projections, California will have 193,000 fewer registered nurses than it needs.<sup>110</sup> California already is 60,000 teachers short to maintain pre-recession student-teacher

ratios and 135,000 teachers short of national average student-teacher ratios.<sup>111</sup> The greatest deficiency is in mathematics, science and special education.<sup>112</sup> Mathematics and science are the fields in which current waves of high-skilled immigrants are trained.<sup>113</sup> Foreign-trained workers often possess many, if not all, the qualifications to fill these gaps, if the state eases barriers that keep them from practicing.

## **California Needs Professionals Fluent in Other Languages and Cultures**

California has a diverse population and needs professionals and workers who can fluently serve its diversity. Lack of diversity in the health workforce, for instance, is a contributing factor to racial and ethnic health disparities, witnesses testified.<sup>114</sup> In California, 37 percent of the population is Latino, yet only 5 percent of doctors, 8 percent of registered nurses and 7 percent of dentists are Latino.<sup>115</sup> By 2025, 48 percent of the senior population in California will be non-white.<sup>116</sup> Positive health outcomes will depend on access to geriatric care providers who can communicate with and understand them.

## **Inefficient Labor Market Outcomes Result in Lower Paychecks**

Many high-skilled immigrants take lower-skilled jobs for which they immediately qualify, or which require only minimal training, instead of the occupations they practiced in their countries of training. The Migration Policy Institute found that many people accept a lower-skilled position as a more attractive option than starting from the beginning again in their own profession.<sup>117</sup> California is home to approximately 1.7 million foreign-born, college-educated immigrants. (This figure includes foreign-born immigrants who were educated in California and excludes California-born residents who were educated abroad.) Of these, 400,000 are unemployed or working in low-skilled jobs.<sup>118</sup> Sometimes this may be a lower-skilled job within the individual's industry, such as a physician becoming a laboratory technician. Sometimes this means taking a low-paying job outside of the industry. IMPRINT offered the Commission numerous examples, such as foreign psychologists becoming housekeepers and doctors becoming car wash attendants in the U.S.<sup>119</sup> The problem is that these individuals and their families will live on less money than the market rate



for their skill sets, and they take lower-skilled jobs from those who legitimately have fewer qualifications. These situations aggravate California's upcoming shortages of trained professionals.

## Models to Get People Working

The state need not wait for a complete overhaul of occupational licensing regulation to reduce the barriers keeping people out of jobs. Several models exist that could be applied to other licensed occupations. Not all of these models are appropriate for all occupations. But collectively they present a variety of options for workers already qualified and licensed, and individuals who want to develop qualifications for upward mobility. The state could implement these programs now to help move people into good jobs. Moreover, none of these models require lessening requirements or abolishing licensing: They only require policy or statute changes to let people into the occupations.

### California Commission on Teacher Credentialing Model

The California Commission on Teacher Credentialing has a straightforward model for teachers who possess out-of-state licenses. It issues licenses to teachers with a provision that they meet all of California's education and training requirements during the five years before they are required to renew their licenses.<sup>120</sup> The state could use this model to allow people in other licensed occupations to work while meeting requirements.

### Medical Service Technician-to-Registered Nurse Model

In 2015, the Legislature enacted a bill, SB 466, requiring nursing programs to grant credit for military education and training to fast track veterans who were medical service technicians in the military to become registered nurses.<sup>121</sup> In this model, the Legislature took several steps to better position the initiative for success:

- It gave a deadline, January 1, 2017, for nursing programs to have their processes in place to begin fast tracking veterans.
- It gave the Board of Registered Nursing the authority to apply swift and severe sanctions to

nursing programs that fail to comply: Schools that are not in compliance by the deadline will be stripped of their approval to teach nursing.

- It required continuous monitoring of nursing programs' performance in fast tracking veterans. The Board of Registered Nursing must review schools' policies and procedures for granting credit to veterans for their military education and training at least once every five years.<sup>122</sup>

### THE STATE WORKFORCE PLAN: MID-SKILLED JOBS AS A PATH TO UPWARD MOBILITY

The Commission recommends piloting bridge education and apprenticeship programs in the state's own facilities. The state also should look to its own State Workforce Plan and concentrate resources on developing pathways for upward mobility within the areas of expected job needs. Below are the top 12 mid-skilled – defined as needing more than a high school education but less than a four-year degree – occupations with anticipated worker needs:

| Occupation                    | Annual New Workers Needed, 2012-22 |
|-------------------------------|------------------------------------|
| Registered Nurses             | 9,230                              |
| Teacher Assistants            | 4,470                              |
| Truck Drivers                 | 4,410                              |
| Nursing Assistants            | 4,180                              |
| Medical Assistants            | 3,450                              |
| Licensed Vocational Nurses    | 3,040                              |
| Computer User                 |                                    |
| Support Specialists           | 2,490                              |
| Preschool Teachers            | 1,820                              |
| Hairstylists / Cosmetologists | 1,750                              |
| Dental Assistants             | 1,640                              |
| Actors                        | 1,500                              |
| Dental Hygienists             | 1,060                              |

Source: California Workforce Development Board. State Workforce Plan.



This bridge education model could be applied for other veteran employment categories, as well as for workers from outside California to rapidly complete missing requirements and begin working.

## The Apprenticeship Model

Though hundreds of years ago apprenticeships were gateways into the original guilds, which limited who could practice an occupation, today they represent an opportunity for inclusion into, instead of exclusion from, occupations. Instead of placing the burden of educational costs and training onto the job seeker, California's apprenticeship model pays job seekers while they complete their education and training and gain the experience and skills necessary to thrive in their jobs.

California has the largest apprenticeship program in the United States.<sup>123</sup> Its programs, overseen by the Division of Apprenticeship Standards (DAS) within the Department of Industrial Relations, are created through partnerships between post-secondary educational institutions and employers. There is a minimum requirement of 144 hours of training in the classroom with one year of on-the-job training. Most programs last 3.5 years.<sup>124</sup> Employers can, on an individual basis, give credit for past experience, making apprenticeships a potential

option to efficiently integrate veterans and others trained outside of California into the workforce. Additionally, there are apprenticeships designed to integrate former offenders into the workforce – sometimes starting while the offender is still in prison, through the Prison Industry Authority. These often operate as pre-apprenticeship programs focusing on training, with the offender eligible to join an apprenticeship program upon release.<sup>125</sup>

Approximately 70 percent of California's apprenticeships are in the construction industry.<sup>126</sup> The prevalence of construction apprenticeships likely can be attributed in part to California's requirements that public works projects include apprenticeship programs.<sup>127</sup> Outside of construction there are not many apprenticeships in licensed industries, Department of Apprenticeship Standards officials reported. In some practice areas, particularly healthcare occupations, scope-of-practice restrictions prevent it, they said.<sup>128</sup> Learners still gain hands-on experience. For example, nursing students are required to have clinical experience, but in the current nursing school model, they pay for the practical learning experience. Whereas in an apprenticeship, learners would be paid for their time and work.

There is, however, a new pilot program in the California Health Care Facility in Stockton to create a pathway for 50 licensed vocational nurses (LVNs) to become registered

## WHATS IN A NAME? MAKING APPRENTICESHIP PROGRAMS ACCESSIBLE

The Little Hoover Commission has long advocated clarity and plain language in state job titles and program descriptions. Most recently, in its 2015 report on customer interactions with government, the Commission wrote, "Government can perhaps most easily improve the customer experience by changing the way it communicates with the public: being succinct, clear, accurate, precise, as well as approachable, and easy to find and understand." In its 2014 report on civil service, the Commission detailed how job-seekers could not find state jobs by searching for commonly-used job titles, such as policy analyst. If they did not know the complicated language the state used for job titles, their state job search yielded zero results.

The Commission's call for clear, easily-understandable communication applies to the state's apprenticeship programs as well. The title of the state's new "Earn and Learn" program is catchy, but it does not immediately convey that it is an apprenticeship program. The term often is used to describe youth job programs. Job-seekers would not be blamed for thinking that it might refer to a college grant or tuition reimbursement program, or a typical work-study program not designed to build skills for an upwardly mobile career path. "Earn and Learn" is an apprenticeship program: The first step in recruiting people to it is to call it what it is.

Sources: Little Hoover Commission. October 2015. A Customer-Centric Upgrade for California Government. Page 43. Also, Little Hoover Commission. February 2014. From Hiring to Retiring: Strategies for Modernizing State Human Resources. Page 14.

## NONPARTISAN AND BIPARTISAN SUPPORT FOR OCCUPATIONAL LICENSING REFORM

Support for occupational licensing reform can be found in nonpartisan think tanks as well as institutions that span the political spectrum. Below is a list of recent studies calling for states to reevaluate their occupational licensing policies:

Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson. May 2012. [License to Work: A National Study on the Burdens of Occupational Licensing](#). Institute for Justice.

Kauffman Foundation. January 2012. [A License to Grow: Ending State, Local, and Some Federal Barriers to Innovation and Growth in Key Sectors of the U.S. Economy](#).

Morris M. Kleiner. January 2005. [Reforming Occupational Licensing Policies](#). The Brookings Institution Hamilton Project.

Michelle Natividad Rodriguez and Beth Avery. April 2016. [Unlicensed and Untapped: Removing Occupational Barriers to State Occupational Licenses for People with Records](#). National Employment Law Project.

Stephen Slivinski. February 2015. [Bootstraps Tangled in Red Tape](#). Goldwater Institute.

The White House. July 2015. [Occupational Licensing: A Framework for Policymakers](#).

nurses. In this apprenticeship program, called “Earn and Learn,” LVNs spend 20 hours a week in the classroom and 20 hours a week in hands-on training, and are paid for both the classroom and the practical portions. The demand to participate in this pilot program was overwhelming: Ninety-seven LVNs expressed interest in being chosen for one of the 50 spots.<sup>129</sup> This pilot program opens a path for upward mobility from a lower-paying occupation into a higher-paying profession, while also addressing some racial disparities. Statewide, 80 percent of LVNs are minorities, while only 33 percent of registered nurses are minorities.<sup>130</sup>

California’s apprenticeship programs are proving effective at reaching minorities. In 2014, 59 percent of the 53,000 Californians participating in apprenticeship programs were minorities.<sup>131</sup> The gender divide is bleaker: Women represented 5.3 percent of apprenticeship participants in 2014.<sup>132</sup> The concentration of apprenticeships within the construction sector explains a lot of the gender differentials, Department of Apprenticeship Standards officials said. They are working to counteract the inequity by promoting apprenticeships in other industries – and encouraging women to participate in construction apprenticeships.<sup>133</sup>

In April 2016, the Commission released a report on excess overtime for state healthcare personnel in state hospitals, correctional facilities, veterans’ homes and

developmental centers. It found that in 2014-15, state health professionals logged 3.75 million hours of overtime – at a cost to taxpayers of nearly \$179 million – often due to staffing shortages.<sup>134</sup> Instead of spending excessively on overtime, the state could better use the money to create apprenticeship programs within its own institutions. This would train a new generation of healthcare professionals to meet its staffing needs while helping more Californians move into better-paying jobs.

## Summary

Certain populations are more vulnerable to occupational licensing regulations than others. People with convictions on their records can face uncertainty in knowing whether they are eligible for the job in the first place, an application process that can seem arbitrary and confusing, and an intimidating appeals process. People who move across state lines face problems of licensing portability and may have to re-complete education or training. This is particularly challenging for military spouses who move more than most and may only have a limited amount of time at a new location. Veterans and foreign-trained workers face similar challenges in that their existing credentials may not be recognized by licensing authorities, or they may have completed most, but not all, of a state’s licensing requirements and there are no programs to help them quickly complete missing requirements and start working. Many laws have been passed to expedite

licensing for veterans and military spouses, but those laws primarily focus on occupations under the Department of Consumer Affairs and no one is tracking outcomes.

Though there should be a comprehensive review of California's licensing statutes and regulations, there are many ways to help Californians start working quickly and more easily without overhauling California's licensing system. Make the application process more transparent and straightforward. When conviction histories are needed, rely on background checks instead of applicants' memories, and make the fee-waiver process more customer-friendly. Give applicants a chance to explain red flags on their application before proceeding with an administrative law hearing. Create bridge education programs to help those who are mostly qualified swiftly complete the gaps in their education. Allow interim licensing so those who come to California with other states' qualifications can work under supervision while finishing California-specific requirements. Create apprenticeship programs to allow people to develop their skills through hands-on experience. California does not have to sacrifice consumer protection to make it easier for its residents to hold good jobs.

## Recommendations

***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.

***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.***

***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.

***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.***

## APPENDICES

### APPENDIX A

#### Public Hearing Witnesses

The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.

**February 4, 2016**

***Sacramento, California***

Dick Carpenter II, Ph.D., Director of Strategic Research,  
Institute for Justice

Morris Kleiner, Ph.D., Professor, Humphrey School of  
Public Affairs, University of Minnesota

Le Ondra Clark Harvey, Ph.D., Chief Consultant,  
Assembly Committee on Business and Professions

Sarah Mason, Consultant, Senate Committee on  
Business, Professions and Economic Development

Robert Fellmeth, Executive Director, Center for Public  
Interest Law, University of San Diego

Jason Wiens,\* Policy Director in Research and Policy,  
Ewing Marion Kauffman Foundation

**March 30, 2016**

***Culver City, California***

Laurie Crehan, Ed.D., Regional State Liaison,  
Southwest, Office of the Deputy Assistant Secretary of  
Defense, Military Community and Family Policy

Michelle Natividad Rodriguez, Senior Staff Attorney,  
National Employment Law Project

Deborah Davis, President & CEO, Deborah Davis  
Design

Tracy Rhine, Chief Deputy Director, Department  
of Consumer Affairs for Awet Kidane,\* Director,  
Department of Consumer Affairs

José Ramón Fernández-Peña, MD, MPA, Associate  
Professor, Health Education, San Francisco State  
University; Policy Chair, IMPRINT; Director, Welcome  
Back Initiative

Jane Schroeder, Regulatory Policy Specialist, California  
Nurses Association

Myra Irizarry Reddy, Government Affairs Director,  
Professional Beauty Association

CT Turney, Senior Staff Attorney, A New Way of Life  
Reentry Project

*\*Submitted written testimony but was unable to attend in person*

**APPENDIX B**

**Public Meeting Witnesses**

**The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.**

**Roundtable on Occupational Licensing  
June 30, 2016  
*Sacramento, California***

Shannon Carrion, Manager, Curriculum and Office Review Bureau, Department of Insurance

Adam Quiñonez, Assistant Deputy Director of Legislative and Regulatory Review, Department of Consumer Affairs

Vincent Chee, Consultant, Assembly Committee on Business and Professions

Assemblymember Rudy Salas, Chair, Assembly Committee on Business and Professions

Awet Kidane, Director, Department of Consumer Affairs

Joshua Speaks, Legislative Representative, California Commission on Teacher Credentialing

Keith Kuzmich, Chief, Licensing Services, Department of Insurance

Peter Williams, Deputy Secretary and General Counsel, California Business, Consumer Services and Housing Agency

Sarah Mason, Consultant, Senate Committee on Business, Professions and Economic Development

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- 18 Keith Kuzmich, Licensing Services Division Chief, California Department of Insurance. April 20, 2016. Written communication with Commission staff. Also, California Department of Education. August 18, 2015. "Fingertip Facts on Education in California – CalEdFacts." <http://www.cde.ca.gov/ds/sd/cb/ceffingertipfacts.asp>. Accessed May 18, 2016. Also, the State Bar of California. August 17, 2016. Member Demographics. <https://members.calbar.ca.gov/search/demographics.aspx>. Also, California Department of Consumer Affairs. See endnote 17. Also, Department of Business Oversight. "Number of Licensees 2015-16." Commission staff communication with Legislative Analyst's Office. September 27, 2016.
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- 20 Deborah Davis, President & CEO, Deborah Davis Design. February 25, 2016. Phone call with Commission staff.



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- 22 Lee McGrath, Managing Attorney, Institute for Justice. October 1, 2015. Phone call with Commission staff.
- 23 Morris Kleiner, Professor, Humphrey School of Public Affairs, University of Minnesota. February 4, 2016. Written testimony to the Commission.
- 24 Jane Schroeder, Regulatory Policy Specialist, California Nurses Association. February 16, 2016. Sacramento, CA. Meeting with Commission staff.
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- 26 Jane Schroeder, Regulatory Policy Specialist, California Nurses Association. February 16, 2016. Sacramento, CA. Meeting with Commission staff.
- 27 Susan Stuart, Partner and Erin Evans-Fudem, Legislative Counsel, Capitol Advisors. February 22, 2016. Sacramento, CA. Meeting with Commission staff.
- 28 Susan Stuart, Partner and Erin Evans-Fudem, Legislative Counsel, Capitol Advisors. February 22, 2016. Sacramento, CA. Meeting with Commission staff.
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# Little Hoover Commission Members

**CHAIRMAN PEDRO NAVA** (*D-Santa Barbara*) Appointed to the Commission by former Speaker of the Assembly John Pérez in April 2013. Government relations consultant. Former state Assemblymember from 2004 to 2010. Former civil litigator, deputy district attorney and member of the state Coastal Commission. Elected chair of the Commission in March 2014.

**VICE CHAIRMAN JACK FLANIGAN** (*R-Granite Bay*) Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2012. A member of the Flanigan Law Firm. Co-founded California Strategies, a public affairs consulting firm, in 1997.

**SCOTT BARNETT** (*R-San Diego*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in February 2016. Founder of Scott Barnett LLC, a public advocacy company, whose clients include local non-profits, public charter schools, organized labor and local businesses. Former member of Del Mar City Council and San Diego Unified School District Board of Trustees.

**DAVID BEIER** (*D-San Francisco*) Appointed to the Commission by Governor Edmund G. Brown Jr. in June 2014. Managing director of Bay City Capital. Former senior officer of Genentech and Amgen. Former counsel to the U.S. House of Representatives Committee on the Judiciary. Serves on the board of directors for the Constitution Project.

**SENATOR ANTHONY CANNELLA** (*R-Ceres*) Appointed to the Commission by the Senate Rules Committee in January 2014. Elected in November 2010 and re-elected in 2014 to represent the 12th Senate District. Represents Merced and San Benito counties and a portion of Fresno, Madera, Monterey and Stanislaus counties.

**ASSEMBLYMEMBER CHAD MAYES** (*R-Yucca Valley*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in September 2015. Elected in November 2014 to represent the 42nd Assembly District. Represents Beaumont, Hemet, La Quinta, Palm Desert, Palm Springs, San Jacinto, Twentynine Palms, Yucaipa, Yucca Valley and surrounding areas.

**DON PERATA** (*D-Orinda*) Appointed to the Commission in February 2014 and reappointed in January 2015 by the Senate Rules Committee. Political consultant. Former president pro tempore of the state Senate, from 2004 to 2008. Former Assemblymember, Alameda County supervisor and high school teacher.

**ASSEMBLYMEMBER SEBASTIAN RIDLEY-THOMAS** (*D-Los Angeles*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in January 2015. Elected in December 2013 and re-elected in 2014 to represent the 54th Assembly District. Represents Century City, Culver City, Westwood, Mar Vista, Palms, Baldwin Hills, Windsor Hills, Ladera Heights, View Park, Crenshaw, Leimert Park, Mid City, and West Los Angeles.

**SENATOR RICHARD ROTH** (*D-Riverside*) Appointed to the Commission by the Senate Rules Committee in February 2013. Elected in November 2012 to represent the 31st Senate District. Represents Corona, Coronita, Eastvale, El Cerrito, Highgrove, Home Gardens, Jurupa Valley, March Air Reserve Base, Mead Valley, Moreno Valley, Norco, Perris and Riverside.

**JONATHAN SHAPIRO** (*D-Beverly Hills*) Appointed to the Commission in April 2010 and reappointed in January 2014 by the Senate Rules Committee. Writer and producer for FX, HBO and Warner Brothers. Of counsel to Kirkland & Ellis. Former chief of staff to Lt. Governor Cruz Bustamante, counsel for the law firm of O'Melveny & Myers, federal prosecutor for the U.S. Department of Justice Criminal Division in Washington, D.C., and the Central District of California.

**JANNA SIDLEY** (*D-Los Angeles*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. General counsel at the Port of Los Angeles since 2013. Former deputy city attorney at the Los Angeles City Attorney's Office from 2003 to 2013.

**HELEN TORRES** (*NPP-San Bernardino*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Executive director of Hispanas Organized for Political Equality (HOPE), a women's leadership and advocacy organization.

**SEAN VARNER** (*R-Riverside*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Managing partner at Varner & Brandt LLP where he practices as a transactional attorney focusing on mergers and acquisitions, finance, real estate and general counsel work.

“Democracy itself is a process of change, and satisfaction and complacency are enemies of good government.”

*Governor Edmund G. “Pat” Brown,  
addressing the inaugural meeting of the Little Hoover Commission,  
April 24, 1962, Sacramento, California*