

ALTERNATIVES TO OCCUPATIONAL LICENSING IN MISSOURI AND THE U.S.

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SUMMARY

- Occupational licensing alternatives like certification, registration, mandatory bonding, and direct regulation place varying degrees of burden on professionals, all of which are less than the requirements of full licensure.¹
- Licensing alternatives largely remove some of the responsibility from the state to ensure public safety and well-being and places that responsibility on the consumer.
- Some economists argue that occupational licensing requirements force consumers to pay a premium for a quality of service they might not need or desire.²
- In professions where the risk to public safety is low, certification or registration could provide an effective and less burdensome alternative to full licensure.
- New, innovative services and industries like Uber and Lyft have forced policymakers to reevaluate the current regulatory structure of taxi drivers and develop new policies.
- Recommendations have been made by federal agencies to states to reform occupational licensing to reduce barriers and increase economic opportunity.
- A thorough cost-benefit analysis conducted through sunrise or sunset statutes could provide valuable information to states that are considering occupational licensing reform.

INTRODUCTION

This policy brief examines public and private alternatives to occupational licensing in the United States. Some examples of alternatives to full licensure include certification and registration. These alternatives remove some control from the state and require consumers to take a more active role in selecting professional services. This policy brief is a supplement to the research report, *Occupational Licensing and Women Entrepreneurs* in Missouri, produced by the Institute of Public Policy in November 2016 for the Women’s Foundation. The Women’s Foundation commissioned this research because of their mission to promote equity and opportunity for women of all ages and develop policy solutions to make meaningful change.

HISTORY AND CONTEXT

Occupational licensing is designed to protect the health, safety and well-being of the public. Each state sets its own standards for professional qualifications, including education and experience, which the state believes are necessary to protect the public.³ In Missouri, the Division of Professional Registration manages the system that protects the public from “incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty.”⁴

Additionally, licensing regulations are also used to ensure a satisfactory level of quality in the service provided. In Missouri, the Division of Professional Registration is also responsible for investigating consumer complaints and administering disciplinary actions to persons in violation of the state's standards or codes of conduct.⁵

There are many job categories and professions that pose a significant risk to the public's well-being and safety and therefore have stringent standards and regulations in place. Some of the job categories that are licensed in all U.S. states include:

- Accountant
- Dentist/Dental Hygienist
- Nurse
- Pharmacist
- Physician/Surgeon
- Psychologist
- Veterinarian⁶

However, not all occupations pose the same threat to public well-being and safety, as a result there are significant disparities among the licensing requirements throughout the nation.⁷ In professions where the risk to the public's safety is very low, some argue that less stringent regulations such as certification or registration could provide acceptable alternatives to full licensure.

ECONOMIC DEVELOPMENT

There are economic and social arguments on each side of the occupational licensing debate. While some argue the intent of occupational licensing regulation is to ensure public health, safety and well-being, others see regulations as barriers to economic opportunity. While some argue licensing restrictions limit market competition and breed an environment for unfair market control, others argue that individuals and families benefit by earning a living wage and being fairly compensated for their work.

In 2016, the Bureau of Labor Statistics began collecting data on people with professional certifications and licenses. They did not distinguish between the two categories, therefore a comparison between license holders and certificate holders is not possible.⁸ In the U.S. in 2015, employed women were more likely to hold a certification or license than employed men.⁹ People with a certification or license earned about 1/3 more than those without these credentials.¹⁰ Employed people were more likely to hold an active certification or license (25.5%) in 2015 than the unemployed (12.7%) or those who were not in the labor force (6.1%).¹¹

New research indicates that having an occupational license could also reduce the wage gap between men and women by 36-40% and between black men and white men by 43%.¹² Researchers believe the wage gap decreases because licensing signals that the individual is not a felon and has higher observable human capital characteristics achieved through training and continuous education requirements.¹³

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LICENSING ALTERNATIVES

This brief will discuss public and private alternatives to occupational licensing. A few prominent methods of alternatives are certifications, registrations, mandatory bonding, and direct regulation from private firms or associations. These alternatives place varying degrees of burden on the professional and in certain cases may be more effective in addressing regulatory hurdles. These options could provide an intermediate choice between no state regulation and mandated licensure.¹⁴

Some policymakers believe certification or registration, as an alternative to full licensure, can also offer a better balance between quality and worker flexibility.¹⁵ According to the Bureau of Labor Statistics, those who are certified but not licensed make roughly the same amount as those who are licensed.¹⁶ Offering alternatives to consumers gives them more choice, and reduces the chance of potential monopolies.¹⁷ Some argue that alternative licensing could lower the quality of services delivered. As a counterpoint, some economists argue that consumers demand varying levels of quality and licensure requires consumers to pay a premium for a level of quality they might not need or desire.¹⁸

Making the move from full licensing requirements to an alternative method has not been overly successful. According to the Bureau of Labor Statistics, there have been only eight instances of delicensing in the last several decades up until 2015.¹⁹ The eight instances of successful de-licensing include: barbers in Alabama, morticians in Colorado, naturopaths in Virginia, private Investigators in Colorado, egg candlers in Colorado, interior designers in Alabama, and watchmakers in Minnesota and Wisconsin.²⁰ In the past few years there have been many attempts to remove or reform licenses, many of which have failed.

PUBLIC ALTERNATIVES TO OCCUPATIONAL LICENSING

Certification

Certification is a prominent alternative to occupational licensing adopted by some states and is commonly known as “volunteer licensing,” or “right-to-title.”²¹ This licensing alternative restricts the use of a professional title to only those who voluntarily obtain certification, through the state or through a non-governmental agency or association. Others can practice the profession and perform the duties, without certification, but do not have recognition from the certifying authority.

Voluntary certification provides some information regarding the qualifications of the professional to consumers but poses fewer barriers to entry into a profession compared to full licensure.²² In many cases, emerging technology has produced new methods for consumers to easily evaluate the quality of a service provider. This abundance of consumer information brings into question the need for stringent licensing for consumer protection.²³ As a counterpoint, some argue there are significant limitations to consumer information technology and varying levels of confidence in consumer reported data.²⁴

Some studies have found little evidence that licensing individuals has a substantial impact on the quality of service delivered to the consumer.²⁵ A comparison of data from healthcare occupations in Wisconsin and Minnesota found no difference in the number of consumer complaints for physical therapists and physician assistants who are both licensed in Wisconsin yet only certified in Minnesota.²⁶

Certification as an alternative to full licensure also allows consumers to identify the level of service or that they can afford or are interested in purchasing.²⁷ This alternative may provide more affordable options for professional services.

A recent example of a state moving from full licensing requirements to certification occurred in Texas. In 2009, Texas created a voluntary registration of interior designers, allowing anyone to practice interior design, but only allowing those who met specific requirements to use the title “registered interior designer.”²⁸ A key recommendation of the sunset review for interior designers was to “discontinue the regulation of registered interior designers.”²⁹ Since 2009, the volume of complaints and enforcement actions against interior designers has decreased from 19 in 2009 to 5 complaints in 2011, most of which were failure to complete ongoing education.³⁰ This deregulation was estimated to cost the state \$928,600 in loss of funds paid by the professionals to become registered interior designers.³¹

In professions where the risk to public health and safety is low, certification could provide an effective and less burdensome alternative to licensure.

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Registration

Another alternative to occupational licensure is registration. Registration is the simplest form of professional regulation requiring only submission of name, address, and in some cases qualifications or character references to the registration authority, usually the state.³² Registration can include some sort of minimum qualifications in order to become registered.³³ For example, athlete agents in Missouri need to receive a certificate of registration before performing any services.³⁴ Registration for athlete agents requires a background check and payment of a small fee. Similar to other licensing measures, applicants can be denied registration for felony convictions, fraud, engaging in prohibited conduct, previous sanctions or previous denial of registration.³⁵

In this alternative, the registration authority simply maintains a list of individuals in the state registered to perform the type of service. This information allows the authority to contact the professional in the event of a complaint or to address any adverse circumstances, but supplies no other measure of protection to consumers. Registration poses very few barriers to entry into the profession compared with the requirements of full licensure. As previously stated, in professions where the risk to public health and safety is very low or minimal, registration could provide an effective alternative to full licensure.

Mandatory Bonding

Bonding is a type of insurance agreement which provides protection to the consumer by ensuring the bondholder will follow all established standards and guidelines.³⁶ Businesses or employees can maintain a fund against which a consumer can file a claim for poor service. For example, contractors are typically required to secure bonds on construction projects, especially projects that exceed \$100,000.³⁷ Because

construction bonds are higher risk they may cost as much as 10% of the bond's value. However, professionals in lower risk businesses can secure surety bonds for as little as 1-2%, often based on an individual's personal credit score, so a \$10,000 bond will cost a one-time fee of \$100.³⁸ This alternative provides confidence to the consumer and poses fewer barriers for the practitioner, compared to full licensure.

De-Regulation

De-regulation of a profession would remove licensing regulations and allow all individuals to practice the profession without any state mandated requirements, voluntary certification or registration. This licensing alternative would remove barriers to entry into the profession, however would provide no measure of protection for consumers' safety or well-being.

Other Common Terms and Licenses

Credentialing is a generic term often used in place of licensure, certification, or registration and therefore is not discussed further in this brief.

The Missouri Division of Professional Registration also licenses and inspects specific businesses such as, salons, barber shops, funeral homes, and tattoo shops to check for compliance with state laws.³⁹

The Missouri Department of Health and Senior Services also licenses and regulates certain businesses and facilities such as nursing homes, hospitals, child care centers, lodging establishments, and restaurants. The Department conducts regular inspections of these businesses and facilities.

Business licenses are issued by municipalities to any business engaged in soliciting business or offering goods or services for sale or hire.⁴⁰

Some municipalities in Missouri set their own rules and regulations about additional licensing or certification requirements. For example, in Kansas City contractors are required to hold a license from the City Planning and Development – Development Services.⁴¹ The City of Springfield has a Building Development Services division which certifies trade crafts such as electricians, plumbers, gas and mechanical trades.⁴² Municipalities are allowed, but not required, to license for trade crafts such as electricians.⁴³ By streamlining occupational licensing rules and requirements efficiencies could be created which lessen the burdens on individuals as they enter professional occupations.

PRIVATE ALTERNATIVES TO OCCUPATIONAL LICENSING

Consumer Ratings and Reviews

In the past few years, consumers have begun relying heavily on the recommendations and reviews of other consumers to select service providers. Survey research indicates 88 percent of consumers trust online reviews as much as recommendations from friends or family.⁴⁴ Additionally, only 12 percent of respondents reported that they did not regularly read online reviews for products and services.⁴⁵ Relatively new services like Uber and Airbnb have allowed consumers to rate and review

Approximately 88% of consumers trust online reviews as much as recommendations from friends or family.

services and providers, allowing consumers to make a choice based on the opinions of previous users.

Transportation Network Company Model

Transportation Network Companies (TNC) like Uber and Lyft are on-demand transportation services which allow consumers to request a ride through an online or mobile application. These new innovative services also pose complicated questions for regulators and policymakers who are responsible for licensing occupations like taxi drivers and businesses like hotels.

The ride sourcing model is booming in the U.S. and worldwide, with Uber valued at over \$50 billion and Lyft valued at \$7.5 billion. Uber reports more than 160,000 drivers in the U.S. and Lyft has over 100,000 drivers.⁴⁶ While these services are very popular among consumers, policymakers are tackling the tough questions of regulation requirements and consumer protection. For example, questions have been raised regarding the extent of required background checks for these types of services. Uber claims to have “industry-leading” screening practices which consist of a social security check, a criminal background check for national, state, and local convictions in the last seven years, including the National Sex Offender Registry and National Criminal Search databases.⁴⁷ Others argue that background checks which do not include fingerprints and a check of the FBI’s criminal record database are not strong enough.⁴⁸ States like Massachusetts have adopted stringent regulations that allow the state to review criminal and driving records for an unlimited period, unlike Uber’s current standard of seven years.⁴⁹

Some states and cities have enacted specific regulations aimed at Uber and Lyft drivers to clarify rules and regulations related to Uber drivers and traditional taxi drivers.

New York City TNC Rules

New York City requires all TNC drivers to be licensed by the Taxi and Limousine Commission, the same requirements imposed on licensed taxi drivers in the City. TNC drivers are considered independent contractors and the model has put a strain on the taxi industry, as consumers have more choice. Proponents argue that taxi drivers in New York were undersupplied at specific times of day. Uber claims to be able to fill the need for drivers more efficiently than taxi services.⁵⁰ Additionally, research indicates that alcohol related car collisions dropped significantly when Uber was introduced to New York City by about 25-35%.⁵¹

On the other hand, the introduction of TNCs has pushed taxi drivers and for-hire vehicles to drive for longer shifts as competition increases, contributing to the death of at least one woman in New York.⁵² Although the Taxi and Limousine Commission (TLC) does not allow drivers to drive for more than 12 hour shifts, the TLC says they have never fined a driver for breaking the 12-hour rule.⁵³

Missouri TNC Rules

In April 2017, Missouri Governor Eric Greitens signed a bill that lightens regulations for Transportation Network Companies like Uber and also for traditional taxi drivers. Under the new law, TNC drivers are not required to secure any license beyond a class F license, which all drivers are required to have. This stipulation was extended to traditional taxicab drivers as well, removing any previous requirements for more stringent testing and licensing. This state law also overrides any rules or regulations previously developed in individual municipalities. As a result, Kansas City is moving most of its taxis to the Transportation Network Company (TNC) model, to take advantage of the same licensing standards.⁵⁴

Uber believes the expansion would create 10,000 jobs in Missouri.⁵⁵ As this law was recently signed, there is no available data on impacts, although taxi drivers are worried about competition.⁵⁶ Appendix A summarizes the TNC regulations in Missouri.

Direct Regulation

Another alternative to licensing is to grant private organizations the right to certify workers in an industry where licensing is used.⁵⁷ This would allow unlicensed workers to pay a mandatory bond, mentioned above, and be overseen by an agency.⁵⁸ These bonds would protect consumers from malpractice, and would allow for lower costs to entry.⁵⁹ These private certifying organizations would have a strong incentive to make sure participants are qualified in order to be considered reputable. An example of this is the CFA Institute's financial analyst certification.⁶⁰

A Chartered Financial Analyst (CFA) and a Master in Business Administration (MBA) are seen as career advancement avenues which require professionals to carefully weigh the costs and benefits.⁶¹ To become a CFA charter holder, one must complete and pass three exams (\$1,000-\$1,500 each); CFA candidates spend an average of 322 hours preparing for the exams.⁶² Pass rate on exams is around a 43%.⁶³ To receive an MBA, the Trulaske College of Business at the University of Missouri estimates the cost to be about \$73,000.⁶⁴

A CFA is cheaper and takes less time to receive than an MBA, making it much more accessible.⁶⁵ According to PayScale, the median pay for a MBA with no CFA is \$57,700, where the median pay for a CFA with no MBA is \$72,900.⁶⁶ Privatizing certifications allows the opportunity for higher wages for individuals while offering options for professionals seeking career advancement.

FEDERAL RECOMMENDATIONS FOR LICENSING ALTERNATIVES

Individual states are responsible for regulating occupational licensing, however, federal officials and agencies have recently developed and presented some recommendations for licensing alternatives.

ALTERNATIVES TO LICENSING THAT LOWER OBSTACLES TO WORK (ALLOW ACT)

In 2016, a bill was introduced in Congress that would reduce occupational licensing requirements for military families, D.C. workers, and tour guides in some national parks.⁶⁷ The goal of the bill was to promote economic opportunity for military families and remove barriers for some federally controlled workers. Ultimately, the bill was not passed by Congress, however the model outlined in the Act could serve as a model for states that are interested in reviewing their licensing structure.

First, the ALLOW act limited the creation of occupational licensing requirements in federally regulated areas, like D.C., army bases and national parks.⁶⁸ Rather, the Act promoted the less restrictive certification in those areas. Certification allows professionals to demonstrate qualifications with much lower education, experience, and financial requirements.⁶⁹

Secondly, the ALLOW Act would have created a new occupational licensing supervision office in the capital.⁷⁰ The purpose of this office would be to ensure that licensing requirements in D.C. are reasonable, through the use of occupational benchmarks to remove any ambiguous standards.⁷¹ Termed

“legal obstacles to work” by Republican Senator of Utah Mike Lee, occupational licensing requirements in D.C. have been deemed outrageous by some. For example, one needs a license to shine shoes in DC.⁷²

CONSIDERATIONS

Ultimately, it is the responsibility of each state to determine if an occupation requires full licensure to protect public safety and well-being or if they can utilize a less restrictive form of regulation. This analysis can be conducted through a cost-benefit analysis in conjunction with sunrise and sunset statutes. In the case of occupational licensing, a sunrise review would consist of a thorough investigation to determine the risk to public safety if the occupation were to go unregulated and a cost-benefit analysis of introducing the regulation. Sunset laws require state agencies, boards, and commissions to undergo a periodic review to determine if a continued need for their function exists. An important feature is the inclusion of a clause that automatically terminates state agencies or boards unless they are reauthorized by the legislature.⁷³

A model of how to implement sunrise and sunset review can be found in the Colorado Department of Regulatory Agencies (DORA). DORA is a nonpartisan department that evaluates the need for government functions such as occupational licensing.⁷⁴ Sunrise reviews are conducted on all proposals to regulate previously unregulated professions, sunset reviews are conducted on existing regulations on a regular basis. The agency is tasked with removing any regulatory burden which does not contribute to consumer protection.⁷⁵

Table 1 summarizes the licensing alternatives discussed in this brief including the specific requirements and the impact on consumer protection and consumer choice.

Table 1: Occupational Licensing Alternatives

Regulation	Mandatory vs. Voluntary	Requirements	Consumer Protection	Consumer Choice
Occupational license	Mandatory	Vary by profession, can include substantial education, experience, and fees	High level of consumer protection monitored by the state	Low, only licensed professional services are available to consumers
Certification	Voluntary	Vary by profession, can include substantial education, experience, and fees	Minimal consumer protection	High
Registration	Mandatory	Name, address, some require qualifications or character reference	Minimal consumer protection.	High
Mandatory Bonding	Mandatory	Insurance agreement is designed to protect consumer from poor service	Minimal consumer protection	High
Direct Regulation	Voluntary	Private agencies have the right to grant certification	High level of consumer protection monitored by private industry	High
De-regulation or no requirements	None	None	None	High

CONCLUSION

Alternatives to full occupational licensing remove some authority and responsibility from the state to regulate professions and protect the public. These alternatives provide consumers with more choice and the opportunity to weigh quality and cost when purchasing professional services. New technology and business models have forced policymakers to reexamine policies to remain relevant and continue to ensure public safety. Policymakers must weigh decisions regarding the need and strength of regulation against the cost and benefits of the regulations to professionals and consumers.

Appendix A

MISSOURI TRANSPORTATION NETWORK COMPANY REQUIREMENTS

Uber Requirements	
Universal Uber Requirements	<ul style="list-style-type: none"> • 21 years old • At least 1 year driving experience in U.S. (3 years if under 23 years old) • Valid US driver’s license • Proof of vehicle registration and insurance • Online screening, which includes driving record review and criminal history • 4-door vehicle 2001 or newer
MO TNC Requirements	
Vehicle Registration	<ul style="list-style-type: none"> • A TNC driver is not considered motor carrier, taxicab, or for-hire vehicle service provider. Therefore, a TNC driver is not required to register the vehicle as a commercial or for-hire vehicle. • A TNC driver should register with the company by submitting information regarding his or her address, age, driver’s license, motor vehicle registration, automobile liability insurance, and other information required by the TNC.
License	<ul style="list-style-type: none"> • License other than Class F is not required for a TNC driver driving a vehicle equal to or less than twelve thousand pounds. • TNC drivers are not required to obtain any other municipality or local or state license or permit, or pay a tax other than income tax, or meet any other rate, entry, operational requirement to provide prearranged rides. • An airport should not impose any additional regulatory or licensing requirement on a TNC driver than general motor carrier companies, including requirements for background checks or trade dress.
Inspection	<ul style="list-style-type: none"> • TNC drivers’ vehicles should meet the same inspection requirement of MO Statutes as general motor vehicles.
Background Check	<ul style="list-style-type: none"> • TNC’s should conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include: <ol style="list-style-type: none"> (a) Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation, also known as a primary source search; and (b) United States Department of Justice National Sex Offender public website; and (c) Obtain and review, or have a third party obtain and review, a driving history research report for such individual. • TNC’s should not allow an individual to be a driver if he/she: <ol style="list-style-type: none"> (1) Has had more than three moving violations in the prior three-year period, or one violation in the prior three-year period resulting in assessment of six or more points, including but not limited to driving on a suspended or revoked license; (2) Has been convicted, within the past five years, of a first violation of section 577.010 or

	<p>577.012 (driving while intoxicated or excessive blood alcohol content), a violation of section 304.012 (motorist to exercise highest degree of care), or resisting or interfering with arrest where the conviction results in a class A misdemeanor;</p> <p>(3) Has been convicted, within the past seven years, of a second or subsequent violation of section 577.010 or 577.012 (driving while intoxicated or excessive blood alcohol content), fraud, a sexual offense, resisting or interfering with arrest where the conviction results in a class E felony, use of a motor vehicle to commit a felony, an offense involving property damage, theft, an act of violence, or an act of terror;</p> <p>(4) Is a match in the United States Department of Justice National Sex Offender public website;</p> <p>(5) Does not possess a valid driver’s license;</p> <p>(6) Does not possess proof of registration for the motor vehicle or vehicles used to provide prearranged rides;</p> <p>(7) Does not possess proof of automobile liability insurance for the motor vehicle or vehicles used to provide prearranged rides; or</p> <p>(8) Is not at least nineteen years of age.</p>
Insurance	<ul style="list-style-type: none"> • A TNC driver should maintain primary automobile insurance that (a) recognizes the driver as a TNC driver; and (b) covers the driver while the driver is logged on to the TNC’s digital network or while the driver is engaged in a prearranged ride. • For a driver who is logged onto network and is available to receive transportation requests but is not engaged in a prearranged ride: primary automobile liability insurance should be applied in the amount of at least fifty thousand dollars for death and bodily injury per person, one hundred thousand dollars for death and bodily injury per incident, and twenty-five thousand dollars for property damage. • For a driver who is engaged in a prearranged ride: primary automobile liability insurance should be applied in the amount of at least one million dollars for death, bodily injury, and property damage. • For a driver whose insurance has lapsed or doesn’t provide the required coverage: insurance maintained by the TNC should provide the coverage for the driver or defend the claim.
Revocation of Driver’s Ability to Drive	<ul style="list-style-type: none"> • Upon receipt of information that a TNC driver has been convicted of a violation of section 577.010 or 577.012 (driving while intoxicated or excessive blood alcohol content), fraud, a sexual offense, use of a motor vehicle to commit a felony, an offense involving property damage, theft, an act of violence, or an act of terror, or no longer maintains the minimum motor vehicle financial responsibility required to be carried, the company shall immediately revoke such driver’s ability to accept trip requests through the digital platform, and as soon as practicable, notify Missouri Department of Revenue of the driver’s name, license number, and license plate number. • Upon receipt of information that a TNC driver has been involved in a traffic accident or incident that results in serious bodily injury or a fatality, the company shall notify Missouri Department of Revenue of the driver’s name, license number, and license plate number.
Consumer Protection	<ul style="list-style-type: none"> • Fare Charge: The TNC should disclose to the rider the fare structure on its website or digital network before the rider enters the vehicle. • Driver Info: The TNC network should display the driver’s picture and license plate number of the vehicle before the rider enters the vehicle. • Receipt: Following the completion of a trip, the TNC should transmit an electronic receipt to the rider.

	<ul style="list-style-type: none">• Substance Abuse Policy: TNCs implement a zero tolerance intoxicating substance policy for all drivers with the punishment of suspension of the drivers' ability to accept any requests. The record of the enforcement should be kept two years.• Nondiscrimination Policy
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