The de-licensing of occupations in the United States

Occupational licensing directly affects nearly 30 percent of U.S. workers today and continues to grow in density and scope. In this article, we identify and analyze those rare instances when occupational licensing laws have been eliminated—what we refer to as “de-licensing.” We also discuss recent examples in which courts decided to limit the scope of occupational licensing laws, and we analyze recent efforts (almost uniformly unsuccessful) of a few states to de-license groups of occupations. The reason proposed for most of these efforts is that excessive levels of licensing have hindered job creation, especially for people with lower levels of education. We argue that the paucity of successful de-licensing efforts is due to intense lobbying by associations of licensed professionals as well as the high costs of sunset reviews by state agencies charged with the periodic review of licensing and its possible termination.

Unions and occupational licensing share several common characteristics. For example, both unions and occupational licensing have had roughly equal effects on relative wages, at least on average, with effects in the 10- to 15-percent range, as H. G. Lewis first estimated several decades ago for unions and Morris Kleiner and Alan Krueger most recently observed for occupational licensing. Furthermore, the proportions of the labor force represented by unions and by licensing (their “densities”) at their peaks have been roughly equal at 30 percent. Of course, the big difference here is that union density peaked nearly 50 years ago and has been falling since, while licensing density continues to rise.

In this article, we focus on another characteristic that unions and licensing have in common: the possibility of cessation of coverage. With unions, this outcome can be attained by a decertification election that removes a union as an exclusive bargaining representative of workers. With licensing, it can be attained by legislation (or, in rare cases, by court decisions), eliminating the requirement that an individual must have a license to practice...
the occupation in question. For the latter case, we have elected to use the term “de-licensing.” We believed that we had coined a new term, but the word “delicense” is sometimes used (although rarely) to refer to the process of depriving a person of a license to practice an occupation because of, for example, unethical behavior or malpractice. To avoid confusion, we shall use our term (with a hyphen) to refer to the elimination of a license as a legal requirement for practicing a particular occupation. In this context, it is the best word to use.

“Deregulation” is a much more general term and can describe many types of occupational deregulation, such as moving from a regime of licensing to one of certification or to registration.

This article is the first to document and analyze attempts at the state level—both successful and unsuccessful—to de-license certain occupations in the United States over the past several decades. We also analyze the sources, motivations, and mechanisms behind such efforts. In addition to de-licensing, we further analyze several highly publicized cases of reductions in the scope of licensure, as well as recent state-level attempts to de-license collectively certain groups of occupations. We end by suggesting reasons de-licensing attempts have been so uncommon.

Background

Each year, hundreds of petitions are filed with the National Labor Relations Board to hold a union decertification election. From 2001 through 2010, the number of such petitions has averaged over 700 a year. Of those petitions in which a union decertification election is held (about half of such petitions), unions lose about 60 percent of the time. The point is that union decertification in the private sector, while certainly not common, is by no means rare.

On the other hand, attempts (successful or otherwise) to eliminate occupational licensing are seldom encountered. As Kleiner notes, “It is rare for an occupation to become deregulated by a government agency, for the regulatory powers of a licensing board to be stripped by the legislature, or for the licensing board to ask to be terminated.” How rare is de-licensing? Our analysis of the past 40 years has uncovered only a handful of cases in which an occupation licensed at the state level was de-licensed by legislative action. As we will show, state sunset committees have occasionally recommended that specific occupations be de-licensed, only to have the committee recommendation not acted on. The sunset review process is one that involves periodic reviews—usually called “legislative audits”—of licensing and licensing boards (as well as other public agencies) and their possible termination, unless continued by the legislature. In other cases, legislative bills recommending the de-licensing of certain groups of occupations have been drafted only to die in committee, fail to be passed by the state legislature, or go unsigned by the governor. In the following sections, we document and analyze these cases. The few examples of complete de-licensing that we have uncovered over the past 40 years are from reviewing state legislative audit committee records, reports of the Council on Licensure, Enforcement and Regulation (CLEAR), and various other sources.