



When the Entrepreneurs Go Marching Out

HOW LICENSING HOLDS
BACK THE PELICAN STATE



*in partnership
with*




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Introduction



Occupational licenses function as a government permission slip to work in a profession. Laws requiring them are generally passed by states and require a professional to meet entry requirements that often include minimum levels of education and training, job experience, passing exams, and paying fees. Proponents of licensing tout it as a form of consumer protection—by setting a mandated minimum standard to practice, the regulation theoretically ensures consumers receive quality service and protects public health and safety. Although there may be some merit in regulating medical professionals to ensure proper training and safety, the use of licensing in Louisiana has expanded far beyond a few highly skilled professionals. This paper will focus on the licensure burden in Louisiana as it relates to people in non-medical low to middle income professions.

In 2015, the Obama administration released a comprehensive report on occupational licensing, summarizing rigorous peer-reviewed research on its effects.¹ Demonstrating the bipartisan nature of licensing reform, the Trump administration issued an executive order at the end of 2020 echoing many of the conclusions.² Highlights of the findings included:

- The evidence that licensing improves the quality of services is ambiguous at best. Few studies find any measurable impact.
- Research consistently finds that licensing reduces the supply of workers in a profession.
- Consumers pay higher prices for services from licensed professionals.
- Licensed workers are less likely to move between states.

Licensing laws and boards limit the number of professionals, consumers end up with longer wait times and are forced to travel further for service. In some cases, consumers may be left with no service providers at all.³ The lack of pressure from new entrants means that professionals do not have to fight as fiercely for customers. Occupational licensing requirements make it more difficult for people to enter professions, reducing the supply of professionals. The time and money spent on education, training, and exam requirements is costly. For some, this cost is too prohibitive. Reductions in the supply of workers also reduce competitive pressure and this can potentially limit innovation, placing a ceiling on quality while turning licensing boards into government-sanctioned cartels.

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The Scope & Costs of Licensure in Louisiana

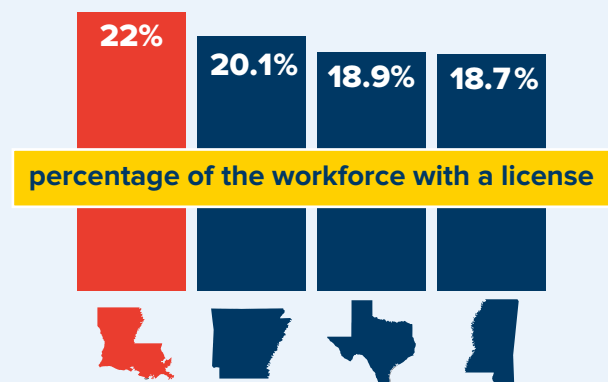


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License to Work report. Louisiana, on the other hand, added licensing requirements for 59 of these professions, the most in the nation. As of 2017, Louisiana licensed 77 of the 102 low- and moderate-income professions in the report, tied for the largest number of this category of licensed professions in the US. Occupational licensing has grown from 5 percent of workers in 1950 to around 20.1 percent of workers today. According to a database maintained by the Kneer Center for the Study of Occupational Regulation, at least 400 different professions require a license in at least one state. Economists estimate that licensing reduces the number of professionals by as much as 27 percent. Louisiana is one of the most widely licensed states. Over 22 percent of workers must obtain a license to work in Louisiana, the seventh highest rate in the US and the highest in the region. For example, the percentage of the workforce with a license is 20.1 percent in Arkansas, 18.9 percent in Texas, and 18.7 percent in Mississippi.

Occupational licensing acts as a barrier to

opportunity, making it more difficult to achieve the American Dream. For lower income individuals, entrepreneurship is an avenue out of poverty. In fact, the rate of entrepreneurship is higher for low-income residents, suggesting that entrepreneurship is a viable path to upward mobility.⁴ Self-employment is a good strategy for improving one's income over both the short and long term. Researchers from the Aspen Institute tracked 1,500 low-income entrepreneurs over time. The entrepreneurs' household assets increased by an average of more than \$15,000, 53 percent had moved out of poverty, and the amount of public assistance they accepted declined by 61 percent.⁵ Yet many aspiring entrepreneurs must first meet licensing requirements. The sacrifice of time, money, and income to do this can discourage or even prevent some from starting a new business.



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In previous research for the Archbridge Institute, we examined the effect of occupational licensing on economic mobility.⁶ Compared to the average state, the growth in Louisiana’s occupational licensing is associated with a 6.6 percent reduction in upward economic mobility, meaning the average child born to a family in the bottom quartile of the income distribution in Louisiana experiences a 6.6 percent reduction in their expected income as an adult. The study estimates that the increase in licensing is associated with a 15.4 percent increase in income inequality. A child born into a low-income family in Louisiana faces more difficulty escaping poverty just because of Louisiana’s overburdensome licensing laws. The additional licenses make it harder for today’s Louisianans to earn more than the generations that came before them.



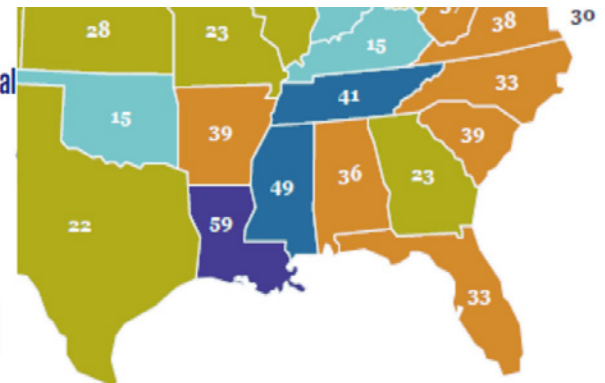
The growth in Louisiana’s occupational licensing is associated with a **6.6 percent reduction in upward economic mobility.**

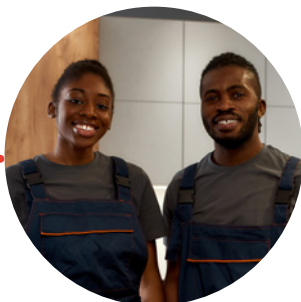
Combined, the analysis suggests that occupational licensing limits economic opportunity for the poor and widens the income gap. Expanding the number of low- and medium-skilled professions that require a license in Louisiana has made it more difficult for low-income individuals to improve their careers through entrepreneurship. The ability to start a business without unnecessary restrictions is central to the American Dream of giving your children a better life than you had. But as licensing grows, it stifles entrepreneurship, especially for those who most need it.

Growth in Low Income Occupational Licensing, 1993-2012

- 50-59
- 40-49
- 30-39
- 20-29
- 15-19

Source: 1993 data collected from David P. Bianco, Ed. Professional and Occupational Licensing Directory, 2012 data collected from <http://ij.org/report/license-to-work/>.





Entrepreneurship is a pathway for a better career, but the proliferation of occupational licensing makes it more difficult by adding additional hurdles. For professions like massage therapists, florists, barbers, and interior designers, opening a business becomes more challenging when they are forced to go through the licensing process before being able to start their business. Licensing is widespread in Louisiana, so it should be no surprise that the state has the lowest new business formation rate of any state in the country, excluding the District of Columbia.⁷ Because professional associations shape licensing requirements and professionals serve on the licensing board, established businesses can use the law to prevent competition from new entrants. This type of cronyism makes businesses less responsive to consumer needs and limits entrepreneurship. As a result, aspiring entrepreneurs are prevented from starting businesses.

Occupational licensing costs often worsen social inequities, especially for a state licensed as broadly as Louisiana. Occupational licensing requirements are often a barrier to entry for aspiring workers, and these barriers do not affect all groups equally. For those from low-income backgrounds, the cost of education makes licensure prohibitively expensive, and for those without the means to forego an income for an extended period, the length of education and training may be far too great. This removes a pathway to the middle class for many without a college degree. Racial or ethnic minorities are less likely to attend college, so licensing laws that require a college degree can disproportionately exclude them.

The costs of meeting occupational licensing requirements have a disproportionate impact on minorities, reducing the number in licensed professions. Research has found similar reductions in employment for minorities in barbers, cosmetologists, and teachers.⁸ While not designed to reduce minority employment, licensing does make entering a licensed profession more difficult for minorities. For instance, the proportion of Vietnamese manicurists falls by 17.6 percent for each additional 100 hours of required training.⁹ Licenses that require a bachelor's degree (like interior designers) limit opportunities for Black and Hispanic people, who are 30 percent less likely to hold a college degree than their white or Asian American colleagues.¹⁰

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FROM 1997 TO 2007.**



Good moral character provisions keep people with criminal convictions out of licensed low- and medium-income professions, even if the crime is unrelated to their work. Licensing boards can use vague standards like “moral turpitude” to deny licenses to aspiring workers with criminal records, regardless of how much time has elapsed since the conviction or whether the crime is related to the profession. The broadness and vague wording can make it difficult to determine who would be disqualified. Occupational licensing often requires more education than former inmates have and going back to school right after release is rarely an option. As a result, even professions without blanket bans on justice-involved individuals make it more difficult for them to find jobs upon release. Sometimes licensure requirements even prevent them from entering the professions they were trained to do by corrections-based vocational training programs. The Institute for Justice conducted an analysis for states’ level of restrictiveness

for ex-offenders. Louisiana scored just 21 out of 100, which was 44th in the country.

These barriers contribute to higher unemployment for former inmates. Work provides money and dignity, both key to reintegration into the community. The recidivism rate for those with employment after being released from prison is 19 percent, almost half of the rate of recidivism for those without employment. Tough occupational licensing requirements, high rates of licensed professions, and good moral character clauses all make it more difficult for former inmates to find work, increasing the recidivism rate.

Research has found that states with the strongest restrictions on former inmates entering licensed professions had higher recidivism rates. States with the highest burden saw recidivism grow by 9 percent, compared to an average of just 2.6 percent from 1997 to 2007.¹¹ High recidivism rates are harmful for communities and costly for taxpayers.



LOUISIANA RANKS **SIXTH**
MOST BURDENSOME IN
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IN THE NATION



Table 1 summarizes an important national comparison of licensing requirements in Louisiana.¹² In general, Louisiana is more broadly licensed than other states. For instance, of the 102 low- to moderate-income professions examined by the Institute for Justice, Louisiana was tied with Washington state for the highest number licensed in the US with 77. **On average, applicants are forced to pay the seventh highest licensing fees in the nation.** One bright spot is that Louisiana ranks near the bottom in the number of days lost to meet training and education requirements. **Overall, combining the number and average burden of licensing requirements, Louisiana ranks sixth most burdensome in the nation.** A subsequent report from the Institute for Justice ranks Louisiana seventh in the nation with respect to the barriers occupational licensing presents to individuals with criminal records.¹³ In summary, Louisiana places a unique burden on its citizens as a result of its occupational licensing restrictions. We now turn to some avenues for reform.

Table 1. Occupational Licensing Summary for Louisiana

	Average	Rank (out of 51)
Number of low- and medium-income professions licensed	77 out of 102	Tied 1st
Average licensing fees	\$360	7th
Days lost to education	202 days	44th
Percentage of workers licensed	22%	7th
Overall licensing burden		6th
Licensing barriers for ex-offenders		7th



Alternatives to Professional Licensure

In short, licensing imposes significant costs with few measurable benefits. **That means that licensing should be seen as the last resort—only applicable in rare instances where there are significant measurable risks of consumer harm.** Policymakers have

a wide range of alternatives to licensing which can be designed to meet the specific risks for each profession (see Figure 1). For example, states can require certification, which protects the use of certain titles (e.g., certified massage therapist), but does not make it illegal to practice the profession without meeting minimum requirements.

When public health and safety is a concern, states can require inspections of facilities to

ensure that proper safety precautions are being followed. Inspections are widely used in the food services industry to maintain cleanliness standards and protect consumers.

“That means that licensing should be seen as the last resort—only applicable in rare instances where there are significant measurable risks of consumer harm.”

Alternatively, policy makers can require providers to obtain liability coverage when the risk of an adverse event is rare and may affect third parties. Louisiana, as an example, is one of only seven states to require tree trimmers to obtain a license. Nearly all other states (including Texas, Oklahoma, Arkansas, Mississippi, and Florida)

require that tree trimmers are bonded instead. This way, if an accident occurs, the consumer

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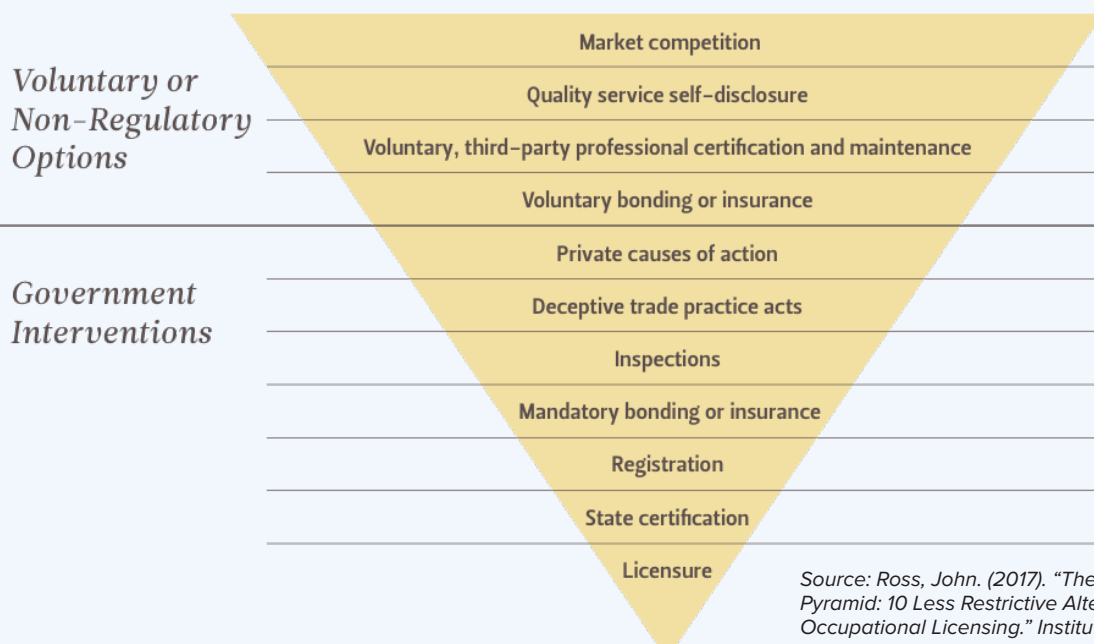


will be protected from damages. **Increasing the cost of providing tree trimming services through licensing may have the unintended consequence of making the state of Louisiana more vulnerable to storm damage as residents delay removing problematic vegetation.** These regulations may also impede disaster clean-up by restricting the ability of non-licensed out-of-state tree trimmers to help in recovery.

The market itself is also an important regulator—particularly when supplemented with online

reviews. Most people who need a haircut aren’t interested in the government’s opinion about their barber or stylist’s qualifications. Instead, they ask their friends or consult online reviews to make an informed decision. The market will discipline poor quality providers—they will not be in business for very long. For 30 years, Alabama did not license barbers, and the market regulated itself.¹⁴ These are just some examples of alternatives that can provide protection without many of the associated costs of occupational licensing.

Figure 1



Source: Ross, John. (2017). “The Inverted Pyramid: 10 Less Restrictive Alternatives to Occupational Licensing.” Institute for Justice.

Reform Recommendations



THE RIGHT TO EARN A LIVING ACT

Louisiana should enact The Right to Earn a Living Act to limit occupational licensing by elevating and stressing the right of individuals to work.¹⁵ The legislation places the onus on the state to document why licensing is necessary, and to tailor it to achieve public health, safety, or welfare objectives. Both Arizona and Tennessee have passed a version of this legislation.

When courts judge the constitutionality of occupational licensing statutes, they currently consider them under the rational basis test. This test presumes that government regulation is justified and constitutional and puts the burden on the victim to demonstrate that it is onerous. Only the most extreme licenses have been found unconstitutional under rational basis; nearly all are upheld. In some cases, where the government is unable to come up with justification for these regulations, the courts create reasons on the government's behalf. The Right to Earn a Living Act changes this, requiring

The regulation will not stand if it can be accomplished with less burdensome means. For instance, if facility inspections are enough to prevent consumer harm, licensing will be replaced by inspections.

After the passage of the Right to Earn a Living Act, licensing boards have one year to ensure their regulations comply with the law. They must review each of the requirements for applicants and detail how they improve public safety, removing requirements that fail to meet the standard. After that year, individuals



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that courts judge the constitutionality of licensing laws under strict scrutiny. This standard requires the government to prove that the restriction is narrowly tailored to accomplish a compelling government interest. In practice, the burden is placed on the government to justify occupational licensing laws. This creates a substantive process for individuals to challenge the government and protect their right to work.

Licensing laws must meet three requirements under the Right to Earn a Living Act. They must be legitimate, necessary, and tailored.

can petition a licensing board to repeal or modify regulations. The board must respond, either reducing or removing the regulation, or providing evidence of its need. If they choose to deny the petition and leave the requirement in place, the individual has the right to sue. **The board must be able to demonstrate how the regulation is necessary to prevent specific harms**, or the court will enjoin the regulation. Instead of using the rational basis test, the requirement is judged under strict scrutiny, which places the burden on the licensing board to demonstrate its need.



UNIVERSAL RECOGNITION

Another reform that would help ease the burden of occupational licensing in Louisiana is universal recognition of out-of-state licenses. Over the last two years, Louisiana has recognized out-of-state licenses for military families and medical professionals.¹⁶ Universal recognition would expand this to all licensed professions. A growing number of states have passed this reform since 2019, including bordering state Mississippi last year.¹⁷ **Universal recognition reduces the barriers to interstate mobility created by state level occupational licensing,** helping attract workers from out of state. States typically do not accept licenses they didn't issue, forcing those who move to apply and wait for months to obtain licensure—even when states have identical standards. Universal recognition allows licensed professionals who have already demonstrated their ability to practice without going through the licensing process again.

Several states, including Mississippi, have gone one step further and allowed unlicensed professionals to begin working under this reform, as long as they can document sufficient

professional experience to demonstrate competency. For Louisiana, a state that licenses many professions rarely licensed in other states, a provision accepting relevant experience in place of licensure will make universal recognition more useful.

Both consumers and professionals benefit from universal recognition. It allows licensed professionals to relocate to Louisiana and begin practicing immediately, rather than wasting time and money going through the process of training, educating, testing, applying, and waiting. Because the professionals have already earned a license, proponents of licensing can still use the credential to discern the quality of the professional. By removing the burden of reapplying, universal recognition would make Louisiana a more attractive place for workers. Increasing the number of professionals in the state will increase competition and make services more widely available and convenient for consumers.

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SUNRISE/SUNSET REVIEWS

To move forward with meaningful licensing reform, policy makers in Louisiana should review the scale, scope, and stringency of occupational licensing laws and compare them to other states. Considering other states' regulatory stances will allow Louisiana to find instances where their regulations stand out as more onerous than other states. This should include not only whether professions are licensed, but also the requirements for each profession in each state. As noted previously, there are several unique and unusual licenses required in Louisiana. In other cases, the specific requirements may be stricter or more costly in Louisiana. This analysis can include all 50 states or be limited to the neighboring states. While full comparisons give a clearer picture of alternatives, it may be too demanding—up to 400 professions are licensed in at least one state.

In 2018, the Louisiana legislature enacted Act 693 directing the governor to review 20 percent of licensed professions each year.¹⁸ The law doesn't require recommendations or changes be made and it's unclear if any of the reviews have been completed since going into effect. This is effectively a façade of a review process that accomplished little to nothing. Similarly, the 2018 legislative session led to the creation of the Occupational Licensing Review Commission.¹⁹ The review commission actively supervises occupational licensing boards that are controlled by active market participants. The goal was to ensure new requirements promulgated by an occupational licensing board is the least restrictive regulation(s) available without sacrificing consumer safety. The review commission is appointed by the governor, the secretary of state, the commissioner of agriculture, the commissioner of insurance, and the treasurer. All new regulation being



considered by a licensing board is subject to the commission's approval.

Thus far, the Occupational Licensing Review Commission (OLRC) has primarily served to check a box—providing some degree of active supervision of licensing boards mandated by the Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.²⁰ We are not aware of any documented instances of the OLRC removing existing regulations or blocking new ones. Louisiana should consider strengthening the commission, giving it broader authority to review the need for licensing and consider less costly alternatives.

In practice, the commission should conduct a rigorous cost/benefit analysis for licensed professions, not simply consider isolated events or random anecdotes of public harm.

Consumers should be the top priority. The review process should not consider tangential effects on the prestige of the profession or the profits of professionals. The Senate Agricultural Committee's argument for maintaining florist licensing three years ago is a case in point.²¹

The OLRC should have broader authority to consider what form of regulation is appropriate, whether licensing is necessary, or if less restrictive means would protect the public. It should have broad authority to recommend licensing

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reforms, and the legislature should vote up or down on the entire package to limit regulatory capture. If the vote fails, the commission would return with another set of recommendations. The initiative could also be restarted or periodically reformed if the initial review does not provide adequate reform to existing occupational licensing restrictions.

After making the necessary reforms and strengthening the viability of the OLRC, Louisiana policy makers should remain laser-focused on rightsizing new regulations. **Licensing laws, once passed, are very difficult to remove.**²²

“In practice, the commission should conduct a rigorous cost/benefit analysis for licensed professions, not simply consider isolated events or random anecdotes of public harm.

Therefore, any new licensing proposal must be properly designed, considering all of the costs and benefits of licensure. Those who support

licensing must demonstrate widespread harm to the public. If regulation is necessary, the state should use the least restrictive means to achieve the intended policy goal, in order to minimize the cost. The OLRC should not be a rubber stamp that approves all new regulations. Louisiana can look to states like Vermont and Colorado that

have effective sunrise review processes that limit unnecessary licensing regulations.



RE-ENTRY REFORMS

Louisiana can enact several reforms to allow economic opportunity for former inmates who do not pose a risk to public safety. Louisiana passed a comprehensive overhaul of its criminal justice system in 2017. This reform included bills that eased re-entry, like tax breaks for businesses hiring former inmates. Recidivism fell from 15 percent to 6 percent after the bill was passed, making communities safer and keeping people out of jail.²³ Louisiana can build on this with more targeted reforms, specifically designed to help former inmates find meaningful work to support themselves and join the community.

Louisiana can join 19 other states requiring licensing boards to respond to petitions from potential applicants asking if their criminal record disqualifies them before they apply for licensure. This will prevent some from going through the licensing process only to find at the final step that they were never eligible.

Louisiana should also remove “good moral character” or “moral turpitude” provisions, which are often vague and undefined. They may prevent former inmates from obtaining a license even if their crime was unrelated to the profession and would pose no risk to consumers. Currently, 18 states have enacted this reform.

Additionally, policymakers in the state can prohibit boards from denying any ex-offender a license, unless the board determines that the conviction is directly related to the license being sought. Disqualifying offenses should be limited to specific crimes that would pose a risk to the public. Considering crimes unrelated to the profession does not protect public safety—rather, it extends the criminal punishment. Nineteen states have come to this realization and prohibited the practice.

Finally, Louisiana can join 20 other states that prevent boards from considering an arrest that did not result in a conviction. Allowing boards to take arrests into account means that people considered innocent by the criminal justice system are still being treated by the government as if they were found guilty.

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Conclusion

Currently, Louisiana has one of the most stringent licensing burdens for low-and moderate-income occupations in the nation. These laws contribute to poverty and reduce upward mobility. They also make it more difficult to attract talented professionals to the state. Aspiring entrepreneurs face imposing governmental hurdles. Licensing may even increase crime by preventing those with criminal records from finding employment.

The accumulation of occupational licensing laws is hindering Louisiana, limiting prosperity, hurting workers, would-be entrepreneurs, and consumers—all while often failing to achieve its purported goal. Louisiana must join states that have implemented substantial licensing reforms. The Right to Earn a Living Act, universal recognition, effective sunset/sunrise reviews, and re-entry reforms can reduce the costs of licensing and ensure that regulations are effective and appropriate. Considering these reforms now would help expand economic opportunity for Louisianans, giving more people a path to achieving the American Dream. It's time to stop the steady march of entrepreneurs out of the Pelican State, and help the state realize its full potential by rightsizing occupational licensing.





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