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Blow-drying a crime?

1,000

hours to get a
blow-dry license?

Goldwater Institute

on a commonsense solution
to stop blow-dry bar
overregulation

Let's
FIX
this

6

months
in jail for...
washing hair?

\$2,000

fine for blow-drying
without a license?

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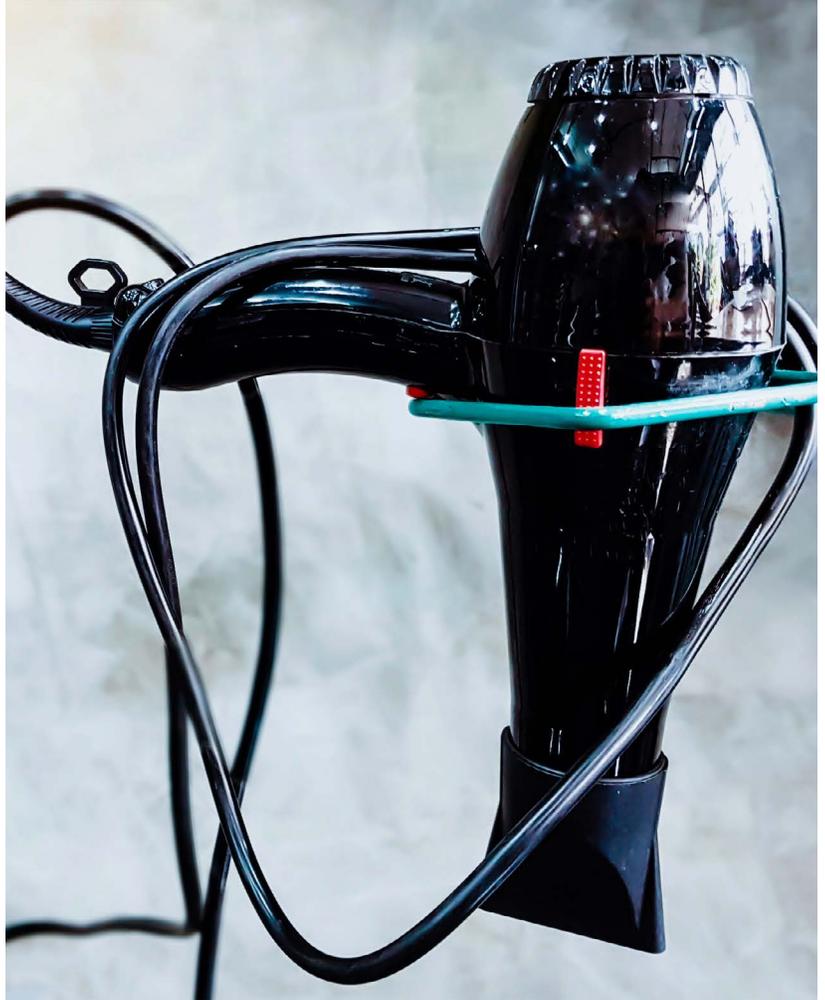
Blow-drying a crime?

by Jenna Bentley & Christina Sandefur

Executive Summary

In today's convenience-focused economy, new business concepts enter markets almost daily with entrepreneurs developing alternative ways to offer goods and services. One such business is blow-dry salons, where stylists wash, condition, and style a customer's hair using everyday tools like blow-dryers and curling irons. Customers who simply want their hair washed and styled—no cutting, dyeing, or perming services—can schedule an appointment at a blow-dry bar and avoid the time and expense of visiting a traditional salon.

Blow-dry bars are becoming increasingly popular. Yet every state except Virginia requires a state-issued, full cosmetology license to blow-dry and style hair. This results in a regulatory mismatch, forcing a person who wants only to wash and dry hair to invest considerable time and money taking classes on a host of complex services they will not offer. And blow-drying someone's hair without that license is a crime punishable by up to six months in jail and a \$2,000 fine.



The Goldwater Institute has a solution to this unnecessary and burdensome licensing requirement: model legislation that exempts blow-dry stylists from the general cosmetology license. The Act would (1) allow people who only want to wash, dry, and style a person's hair to do so without obtaining an occupational license, (2) provide for government oversight and inspection of traditional salons that offer such blow-dry services, and (3) require stylists practicing under this exemption to post a sign notifying the public that their services are not regulated by the state board of cosmetology.

A Cosmetology Innovation: Blow-Dry Stylists

Entrepreneurs enter today's convenience-focused markets almost daily with cutting-edge approaches to meet customer needs. A classic example is blow-dry salons, where stylists wash, condition, and style a customer's hair using blow-dryers and curling irons—household tools in modern America. Unlike traditional salon employees, blow-dry stylists do not cut, color, perm, or otherwise permanently alter the structure of the hair. They simply perform many of the basic tasks that millions of Americans do at home daily—washing, drying, straightening, and curling hair—albeit often more quickly and with more skill. Consumer demand for blow-dry salon services has skyrocketed. The ease and convenience of getting a quick hairstyle vs. a more costly and time-consuming visit to a traditional salon has prompted the opening of blow-dry salons in almost every state.¹

Unfortunately, many states have not welcomed this entrepreneurial growth and the jobs that go along with it, but rather have imposed antiquated or incongruent rules designed to shut down the innovation. Indeed, in most states, blow-drying someone's hair without government permission is a crime.²

Even though blow-dry salon employees only wash and dry-style hair, 49 states require a cosmetology license to perform the service. The required training to receive a cosmetology license varies from state to state. Arizona has four cosmetology licenses, each requiring a certain number of hours in training, plus corresponding examinations: A nail technician license requires 600 hours of training to perform nail services, such as artificial nails, man-

icures, and pedicures;³ an aesthetician license requires 600 hours of training to perform such skin care services as waxing, exfoliating, and microdermabrasion;⁴ a hairstylist license requires 1,000 hours of training and allows a person to cut, perm, dye, and otherwise permanently alter the structure of the hair;⁵ and a full cosmetology license requires 1,600 hours of training for a person to practice in all areas.⁶

Blow-dry stylists must undergo a minimum of 1,000 hours of training to learn procedures they do not perform: cutting, permanent waving, singeing, bleaching, dyeing, and tinting hair. Some states, including Arizona, also require students to pass a state board exam before the government will grant them permission to do their jobs. Arizona's demands go even further, including both a written and in-person practical examination.⁷ The latter examination involves haircutting, chemical waxing, coloring, and chemical straightening—all activities that blow-dry stylists do not perform.⁸ This is a classic case of regulatory mismatch. After all, why should a person who only wants to wash and dry hair be required to invest considerable time and money taking classes on a host of complex services they will not offer? Yet failure to do so has serious consequences: Blow-drying someone's hair without that license is a crime punishable by up to six months in jail and a \$2,000 fine.⁹

Regulatory Mismatch

Americans are experiencing a growing national trend toward government prohibiting them from working or starting a business without

first asking permission—even if they aren't posing any health or safety threat to the public. Over 60 years ago, only one in 20 American workers was required to get permission from the government to do their jobs. But today, over 25 percent of American workers are subject to occupational licensing.¹⁰ While fewer than 30 occupations are licensed in all 50 states (most of which are in the medical, dental, and mental health professions), over half of all state-licensed occupations are licensed in only one state—occupations including graphic designers, audio engineers, braille instructors, and travel agents.¹¹ In other words, many of these licenses are not serving a legitimate public safety need and have not been adapted to suit the modern economy. Too often, when approaching a new business, government asks “How do we regulate?” without first considering “Should we regulate?”

This is especially true in the cosmetology industry. Laws that impose one-size-fits-all licensing structures may be well intentioned, but unreasonably applying old rules governing established practices to new businesses can stifle innovation. Governments can, of course, regulate professions, but any occupational licensing law that restricts a person from practicing a trade must have a rational relationship to a legitimate public interest.¹² While it may make sense to require a license for stylists who cut, color, perm, or otherwise permanently change the structure of the hair, requiring blow-dry stylists to get cosmetology licenses does not protect the public health and safety—after all, Americans shampoo, blow-dry, and style hair in their homes all the time without any special training. So why do states like Arizona require more hours of training to use a curling iron than to become an emergency medical technician or security guard?¹³

When people are required to spend the time and money to get an occupational license, they generally want to offer their customers the full extent of services allowed under that license. In the case of the cosmetology industry, some states offer a hairstyling license where a person can cut, dye, and otherwise alter the structure of a client's hair. Most of these license holders choose to cut and dye hair, as those are the most profitable services they can perform, as well as the most their license permits them to do. Seldom do those with a hairstyling license only wash and dry a person's hair. In other words, stylists with 1,000-hour hairstyling licenses are overqualified to merely wash and dry hair, without providing other services. This can lead to a shortage of employees willing to work in blow-dry salons. With demand rising, businesses may struggle to find licensed cosmetologists willing to work at the bottom of their occupational licenses.

Licensing hour requirements vary greatly from state to state for no clear reason. According to a study by American Institutes for Research, there is little correlation between an increase of program hours and an increase state licensing exam passage rates.¹⁴ The same can be said for the correlation between longer schooling requirements and a decrease in health and safety concerns for practicing cosmetologists.¹⁵ Nationally, the minimum requirement of training hours for a full cosmetology licenses range from 1,000 hours (lowest) in Massachusetts and New York to 2,300-hour minimum requirements (highest) in Oregon. There is no conclusive proof that increased hours of educational curriculum leads to higher state exam passage rates.¹⁶

Applying cosmetology rules to blow-dry stylists—laws that were never intended for their practice—is irrational and keeps such stylists



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from earning an honest living. As explained below, many aspiring blow-dry stylists cannot afford to obtain a costly and time-consuming cosmetology license just to wash and dry hair. The rules also keep customers from getting simple blow-dry and styling services without visiting a full salon (and paying full salon prices).

To be sure, a license does not ensure that a stylist will be good at their job or even properly trained. Blow-dry salons train their employees, and the salons must adhere to state sanitary and safety standards. Yet removing the licensure requirement for blow-dry stylists does not *prevent* a blow-dry stylist from pursuing a full cosmetology license, nor does it stop a customer from patronizing only those stylists who have obtained government permission. It simply allows consenting and informed adults to make the decision for themselves. The individual preferences of stylists and consumers should not dictate law, especially when law turns innocuous and consensual activity into a crime.

That is why there have been significant efforts to reform Arizona's occupational licensing for cosmetology, and several procedures on par with blow-drying hair no longer require a license in Arizona. For example, for the past 14 years, Arizona has not required people who braid hair professionally to get a license.¹⁷ And since 2011, after practitioners challenged the Board of Cosmetology's unreasonable regulations in court, eyebrow threaders do not need an occupational license to shape eyebrows by removing hair with a cotton string.¹⁸ Most recently, makeup artists have also been exempted from the cosmetology license. The law had previously required a cosmetology license for people who apply makeup for

compensation, but had exempted makeup artists who apply makeup to help sell the product, and those who worked in film, theater, or the medical field.¹⁹ Braiding hair, plucking eyebrows, and applying makeup—activities that people do at home every day—are no longer subject to burdensome occupational licensure requirements in Arizona. Why should blow-drying hair be any different? Indeed, Arizona currently exempts from the licensure requirement (and the Board's supervision) people who are demonstrating products for sale.²⁰ From mall kiosks to large retail chains, workers without state-mandated training and Board supervision use hot tools on the public. If allowing retailers to wield hot tools on people to demonstrate a product does not threaten the public's health and safety, then neither does allowing blow-dry salon employees to do so.

Indeed, even more invasive activities such as tattooing, which involves piercing the dermis layer of the skin to insert pigments, require no license in Arizona. Instead, state law simply requires that all tools be sterilized and then allows consenting adults (or minors with permission from their parents) to decide for themselves.²¹

Cosmetology licensure schemes are often applied unevenly, without regard for the relative risks posed by the practice or consumers' ability to weigh those risks and benefits to suit their individual preferences. When the legislature does not address these mismatches, entrepreneurs must spend years and thousands of dollars seeking refuge from the courts against regulations that were not even crafted with their practice in mind.

Such was the fate of Lauren Boice, a cancer survivor and former hospice nurse assistant who discovered there is a therapeutic value to cosmetology services, even for those who do not leave the home. She established Angels on Earth Home Beauty to connect the elderly and terminally ill with independent, licensed cosmetologists who could perform haircuts, manicures, or massages for them right in their homes.²²

Lauren herself did not practice cosmetology or treat clients; her business merely provided a means of communication between homebound customers and licensed cosmetologists. Yet the Arizona Board of Cosmetology threatened to shut down Lauren's business and subject her to fines and even jail time unless she complied with a host of cosmetology regulations designed for beauty salons, not people booking home visits. The Board even demanded she open a physical salon location, although her homebound clients would never have the opportunity to step foot inside.²³ Boice was ultimately victorious, but she spent years battling the Board in and out of court just to arrive at the commonsense conclusion that a cosmetology board doesn't have the power to regulate a phone dispatch business. Without legislative reform, blow-dry stylists will be likewise forced to turn to the courts.

Cosmetology School: A Costly Undertaking

Requiring blow-dry stylists to obtain cosmetology licenses imposes high and unnecessary costs on would-be practitioners, setting them up for failure. Cosmetology schools range in cost—tuition averages \$15,611 to \$18,000.²⁴ Additionally, students must purchase books

and supplies, which average another \$1,100 to \$2,275.²⁵ Many cosmetology students cannot afford the out-of-pocket costs before they embark on their careers, and licensure schemes prevent them from blow-drying hair to earn money to help pay for their schooling. This leaves students to rely on federal loans. Because most starting salaries in the cosmetology industry are low, many students struggle to make the minimum payments on these loans after graduation.²⁶ For example, an Iowa woman who put herself through cosmetology school by working in addition to taking out \$21,000 in student loans was only able to earn \$9 per hour cutting hair upon graduation and 13 years later still owes more than \$8,000 on her student loans. According to a study by the Brookings Institution, only six of 671 cosmetology programs surveyed nationwide produced recent graduates whose earnings average more than \$20,000 a year.²⁷ The same study showed that 60 percent of cosmetology schools produced graduates with an average salary of \$10,000 to \$15,000. These are startlingly low salaries for an industry with such expensive educational requirements. Reports released by the U.S. Department of Education revealed that certificate programs like cosmetology have the highest student loan default rates compared to traditional degree programs.²⁸

Of course, the more education that students are required to complete, the more money cosmetology schools earn. They are able to generate revenue from student tuition (including taxpayer-funded grants and loans) and the school-run salons students are required to work in without compensation. Not only are students denied the income collected for their mandatory service in school-run salons, they have to pay the school tuition for the hours

they spend working. This practice has led the cosmetology school industry to bring in \$200 million in revenue from their salons alone in the 2015-2016 academic year.²⁹ Perhaps that is why cosmetology schools have lobbied aggressively against efforts to reduce the number of training hours required to receive a cosmetology license. And while industry proponents claim that higher hours are necessary to protect the public's health and safety, students complain of getting credit for duplicative instruction or sitting idle instead of practicing their techniques on customers.³⁰

Thus, potential blow-dry stylists who are discouraged by the financial risk of cosmetology school are blocked from employment, and those who do take the risk are underemployed. To make matters worse, students who default on paying their student loans can have their cosmetology license revoked, preventing them from earning the money to pay back the loans.³¹

An Entrenched System of Protectionism

The high cost and difficulty of obtaining employment in the cosmetology industry is a bipartisan concern. Both the Obama and Trump administrations have voiced concerns over the need for reform in the educational requirements for industries like cosmetology.³²

Entrepreneurs who pose no health or safety risk to the public should be free to focus on serving their clients rather than navigating a needless labyrinth of red tape.

However, cosmetologists are incentivized to oppose reform to block their competition. Cosmetologists have stated at public hearings that "if we have unlicensed stylists that work in these [blow-dry] bars they're going to take a lot of work from us [licensed cosmetologists]." ³³

Students can earn an occupational license in about half the states by working in an apprenticeship program under a licensed cosmetologist in lieu of formal schooling. Apprenticeship paths vary greatly between states, requiring board approval and an investment of 1,500 to 4,000 hours. However, when non-licensure options are made available, industry thrives. Mississippi replaced its requirement for a cosmetology license to braid hair with a registration system.³⁴ Immediately following this change, Mississippi saw the arrival of 300 new hair braiders from neighboring states. Additionally, people working under the table came forward to practice formally.³⁵

In 2016, Maryland passed a limited license for blow-dry bar employees, requiring only 350 hours of training. Unfortunately, not one of the cosmetology schools in the state offers the 350-hour program. This could be because the schools would make far less in tuition for a 350-hour limited license. These limited license programs also mean that students aren't eligible for traditional Federal Student Aid (FAFSA) benefits and would likely have to pay out of pocket or take Federal Family Education Loans.³⁶

A Better Way

It does not make sense to apply costly and time-consuming cosmetology licensing requirements to people who just want to wash and dry hair. Doing so only prevents students

Appendix: Model Legislation

working toward their cosmetology licenses from earning money to help pay for their schooling. These stifling regulations leave blow-dry stylists without work, and customers with fewer options at higher prices. But there is a better way.

In 2018, Virginia passed a law completely exempting employees at blow-dry salons from occupational licensing.³⁷ By freeing people from needing a burdensome and expensive license to blow-dry hair, Virginia opened its doors to a new employee pool. Now, cosmetology students can gain hours of experience working in the field to help them pay for school. Nonstudents can see what it is like to work in the industry prior to investing in cosmetology school. Businesses can hire more people and possibly lower prices for consumers. Full-service salons can employ people to just do blowouts, freeing up their licensed cosmetologists for other services such as cuts and colorings. Moreover, Virginia's comprehensive approach avoids the pitfalls of Maryland's limited-license approach that left would-be blow-dry stylists at the mercy of protectionist cosmetology schools.

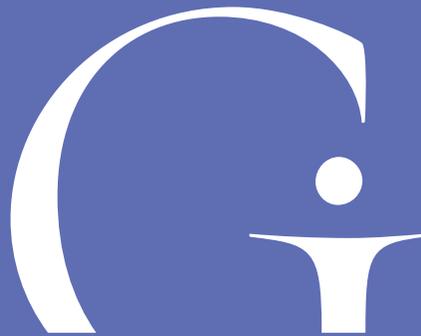
Fortunately, Arizona lawmakers have an opportunity to follow in Virginia's footsteps, removing the requirement that workers who exclusively dry and style hair must obtain an expensive and unnecessary cosmetology license. Entrepreneurs who pose no health or safety risk to the public should be free to focus on serving their clients rather than navigating a needless labyrinth of red tape.

Persons who dry, style, arrange, dress, curl, hot iron, or shampoo and condition hair if the service does not include the application of reactive chemicals to permanently straighten, curl, or alter the structure of the hair. The state board of cosmetology may inspect for safety and sanitation those persons who exclusively dry, style, arrange, dress, curl, hot iron, or shampoo and condition hair only if that person is practicing in a traditional salon that holds an establishment license under the Board's authority by statute. A person who is exempt pursuant to this paragraph shall post a sign in a conspicuous location in the person's place of business notifying the public that the person's services are not regulated by the Board.

ENDNOTES

- ¹ Elana Lyn Gross, "How Alli Webb Turned Drybar Into a \$100M Business," *Forbes*, May 16, 2018, www.forbes.com/sites/elanagross/2018/05/15/alli-webb-drybar/#4e4447b14746.
- ² Thirty-seven states have criminal punishments for practicing without a license: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Punishments range from misdemeanors to a class 6 felony in Colorado.
- ³ A.R.S. § 32-512 (3)(b).
- ⁴ A.R.S. § 32-510 (3)(b).
- ⁵ A.R.S. § 32-512.01(3)(b).
- ⁶ A.R.S. § 32-511 (3)(a).
- ⁷ Arizona Board of Cosmetology Examination Information, <https://boc.az.gov/licensing/examination-information>.
- ⁸ "Arizona Board of Cosmetology Hairstylist Candidate Handbook," Professional Credential Services Inc., September 2018, <https://www.pcshq.com/?page=9-27-18-AZINSCIB2.pdf>.
- ⁹ A.R.S. § 13-707(A)(1); A.R.S. § 32-571(3)
- ¹⁰ Federalist Society Regulatory Transparency Project, "Occupational Licensing Run Wild," <https://regproject.org/paper/occupational-licensing-run-wild/>.
- ¹¹ Mark Flatten, *Protection Racket: Occupational Licensing Laws and the Right to Earn a Living*, Goldwater Institute, December 6, 2017, <http://goldwaterinstitute.org/article/protection-racket-occupational-licensing-laws-and/>.
- ¹² *Schware v. Bd. of Bar Exam. of State of N.M.*, 353 U.S. 232, 239 (1957).
- ¹³ Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, *License to Work: A National Study of Burdens from Occupational Licensing*, Institute for Justice, May 2012, https://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf. Arizona requires 373 days of training to become a cosmetologist but only 53 days of training to become an EMT and only one day to become a security guard.
- ¹⁴ Kalia M. Simpson et al., "Examination of Cosmetology Licensing Issues," American Institutes for Research, August 30, 2016.
- ¹⁵ "Occupational Licensing: A Framework for Policymakers," Department of Treasury Office of Economic Policy, the Council of Economic Advisors, and the Department of Labor, July 2015.
- ¹⁶ Simpson, "Examination of Cosmetology Licensing Issues."
- ¹⁷ Institute for Justice, "Arizona Hair Braiding: Challenging Barriers to Economic Opportunity," <https://ij.org/case/farmer-v-arizona-board-of-cosmetology/>. Five years before, a federal court found an effort by the California Board of Barbering and Cosmetology to impose cosmetology regulations on the practice of hair braiding unconstitutional because, as with blow-drying, the practice does not involve the cutting of hair or treatment of the scalp. *Cornwell v.*

- Hamilton*, 80 F. Supp. 2d 1101, 1108 (S.D. Cal. 1999).
- ¹⁸ Institute for Justice, "Governor Signs Bill Freeing Eyebrow Threaders from Arbitrary Licensing Scheme," news release, March 16, 2012, <https://ij.org/press-release/az-eyebrow-threading-release-3-16-2012/>.
- ¹⁹ Madeleine Winer, "Arizona Makeup Artists No Longer Need Cosmetology License," *Arizona Republic*, June 30, 2015, <https://www.azcentral.com/story/news/arizona/politics/2015/06/30/arizona-makeup-artists-license/29546205/>.
- ²⁰ 20 A.R.S. § 32-506 (6).
- ²¹ A.R.S. § 13-3721.
- ²² *Id.*
- ²³ *Boice v. Aune*, CV2011-021811 (Maricopa Cty Super. Ct. Apr. 30, 2012) Amend. Compl. 24-7, <https://goldwaterinstitute.org/wp-content/uploads/2017/08/3Complaint.pdf>.
- ²⁴ "College Affordability and Transparency Center," College Affordability and Transparency List, U.S. Department of Education, 2016, collegecost.ed.gov/catc/.
- ²⁵ Kaila M. Simpson et al., "Examination of Cosmetology Licensing Issues," American Institutes for Research, August 30, 2016.
- ²⁶ David Wessel, "How to Find Out What Graduates of That Cosmetology Program Actually Make," *Upfront (blog)*, The Brookings Institution, June 25, 2015, www.brookings.edu/blog/up-front/2015/06/25/how-to-find-out-what-graduates-of-that-cosmetology-program-actually-make/.
- ²⁷ Wessel, "How to Find Out."
- ²⁸ "Student Loan Default Rates by School by State 2017," The Student Loan Report, October 16, 2017, studentloans.net/student-loan-default-rates-2017/.
- ²⁹ Meredith Kolodner and Sarah Butrymowicz, "A \$21,000 Cosmetology School Debt, and a \$9-an-Hour Job," *The New York Times*, December 26, 2018, <https://www.nytimes.com/2018/12/26/business/cosmetology-school-debt-iowa.html>.
- ³⁰ *Ibid.*
- ³¹ Jessica Silver-Greenberg et al., "When Unpaid Student Loan Bills Mean You Can No Longer Work," *The New York Times*, November 18, 2017, www.nytimes.com/2017/11/18/business/student-loans-licenses.html.
- ³² "Occupational Licensing: A Framework for Policymakers," Department of Treasury Office of Economic Policy, the Council of Economic Advisors, and the Department of Labor, July 2015.
- ³³ "House Military, Veterans and Regulatory Affairs Committee." *02/15/2017 - House Ways and Means - Feb 15th, 2017* (January 29, 2018), azleg.granicus.com/MediaPlayer.php?viewid=13&clip_id=20254&meta_id=493888 (3:18:00).
- ³⁴ Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson, and John K. Ross, *License to Work: A National Study of Burdens from Occupational Licensing*, Institute for Justice, May 2012, p. 33, https://www.ij.org/images/pdf_folder/economic_liberty/occupational_licensing/licensetowork.pdf.
- ³⁵ Dick M. Carpenter II (2011). "The Power of One Entrepreneur: A Case Study of the Effects of Entrepreneurship," *Southern Journal of Entrepreneurship* 4, no. 1 (April 2011): 19-35.
- ³⁶ "Institutional Eligibility," Federal Student Aid, U.S. Department of Education, 2010.
- ³⁷ VA Code § 54.1-701(7).



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