Reducing Licensing Increases Opportunity

by Cameron Gower

On June 27, the Minnesota Supreme Court stood up for the right to earn an honest living by ruling that licensed attorneys from other states who graduated from non-ABA-accredited law schools can take the Minnesota state bar exam.

By changing its rules, the Supreme Court recognized that the ABA’s monopoly over accreditation was nothing other than a protectionist measure that benefited the legal establishment at the expense of graduates of approximately 40 low-cost state-accredited and registered law schools in California and three other states.

Though this is a welcome change, it represents only a small fix to a much larger problem of excessive occupational licensing that ripples through the economy. First and most directly, licensing requirements keep out those who use innovative or unique approaches in favor of a “one size fits all” system. Ultimately this prevents workers from engaging in their chosen profession and creates significant costs.

University of Minnesota Professor Morris Kleiner estimates that replacing licensing with certification programs would create approximately 15,000 more jobs in Minnesota. Unfortunately, the impact of this is felt most heavily by minority entrepreneurs who experience the most difficulties complying with the expensive requirements imposed by the state.

Proponents of licensing claim that these losses are outweighed by the protection they provide to consumers from fraud and incompetence. But as Kleiner explained to the Minnesota Senate Commerce and Consumer Protection Committee earlier this year, there is little evidence to support this claim. His research with Richard Todd at the Federal Reserve Bank of Minneapolis of licensed versus non-licensed mortgage bankers, for example, showed that license mortgage bankers have no lower default rates than brokers in states without licensing but charge significantly higher fees to originate loans. Kleiner has generally found those same results in other occupations in his own studies and the research by others.

To make matters worse, not only do licensing schemes fail to improve the quality of professionals, they actively harm consumers. While little evidence exists to show any pros to licensing, the cons are clear and significant. Most obviously, consumers lose choices that they would otherwise have in an unlicensed market. This loss of choice is unfortunate in and of itself but is magnified by the higher prices that it creates. A lack of choices means there is a loss in the supply of available practitioners, which, as Kleiner testified, causes prices to be about 15 percent higher than they would be otherwise. This results in approximately $3 billion a year that Minnesotans pay in higher prices to licensed practitioners.

Who benefits from licensing laws? A select group of politically connected insiders already in compliance with licensing requirements. These professionals are able to profit from increased market prices and decreased competition. The artificially high prices created by licensing serve as a tempting prize for trade associations and their lobbying groups. By organizing and lobbying, trade associations are able to pass licensing requirements that eliminate competition, even in cases where the danger to the public is virtually nonexistent, such as in Louisiana, where even flowers cannot be sold without a license. This is one of the reasons that it is usually trade associations that are the first to defend a licensing scheme, not consumer groups.

In fact, successful lobbying for licensing laws is continuously on the rise. In the past half century, the percentage of jobs regulated through licensing has multiplied by more than seven times. In the 1950s only 4 percent of workers nationwide were licensed, but today the proportion has reached almost 30 percent, according to Kleiner and Professor Alan Krueger, a former assistant secretary of the Treasury under President Barack Obama. Minnesota licenses more than 100 professions, putting it 21st among states with the highest number of regulated occupations.

There are legitimate public health and safety concerns regarding certain unlicensed professions, but we must be careful about the requirements we advocate. Rather than speculative harms from unlicensed professionals, many of those concerns could be addressed through the creation of civil actions or periodic inspections, a far less intrusive type of regulation. Moreover, we should question the efficacy of certain requirements for lawyers, such as continuing legal education or even the third year of law school.

Government officials should be concerned about the highly organized lobbyists and trade associations that have an overwhelming interest in using licensing to protect profits instead of people.

For now, it is good that the Supreme Court recognized the danger of the ABA’s accreditation monopoly and taken one step toward revoking the anti-competitive restrictions dictating who can take the bar exam. But this is only one licensing requirement of many, in numerous professions including the law, that need to be reconsidered.