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MORE THAN JUST A TRIM IN THE WORKFORCE: THE BARRIERS OF INCONSISTENT OCCUPATIONAL LICENSING IN THE UNITED STATES

*Ethan Schow*¹

Imagine two scenarios:

In the first, Brittney, who works as a newly licensed cosmetologist in Florida, receives news that her mother, who lives alone in Nebraska, has suffered a brain aneurism. Brittney packs up immediately to go and help her mother, who has no other relatives nearby. It turns out that Brittney's mother requires more help than expected and that Brittney must relocate to Nebraska for the foreseeable future and find a job there.

There is only one problem: Nebraska requires 2,100 completed hours of training for cosmetology licensure,² while Florida requires only 1,200.³ Because of this inconsistency, Brittney cannot transfer her license. She has only worked as a licensed cosmetologist for a few months—not enough time for

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2 *Cosmeticians, Cosmetology, and Estheticians*, NEB. DEP'T OF HEALTH & HUM. SERVICES, <http://dhhs.ne.gov/publichealth/pages/crlCosmCosmEsthAppsReqsFees.aspx>.

3 Fla. Bd. of Cosmetology, *Frequently Asked Questions and Answers*, FLA. DEP'T OF BUSINESS & PROF'L REGULATION 1 (Aug. 2017), http://www.myfloridalicense.com/dbpr/pro/cosmo/documents/cosmo_faq.pdf.

her work experience to compensate for the hour discrepancy.⁴ Without additional training hours, Brittney cannot be licensed in Nebraska and thus cannot work in her trained profession.

In the second scenario, Josh, who has recently acquired his cosmetology license in Nevada (which requires 1,600 hours of experience),⁵ meets and marries a woman from New York. The couple then moves to her home state to be close to her parents. Since New York (which requires 1,000 hours of experience)⁶ has a cosmetology license reciprocity arrangement with Nevada, Josh can transfer his license simply by providing certification from Nevada's cosmetology board, filling out an application, and paying a \$40 fee⁷—a relatively simple process compared to that faced by Brittney.

Are workers in some states entitled to an easier licensing or license-transfer process? Do consumers in one state deserve more protection than consumers in another? In most cases, the ideal of equality tells us that the answer to these questions is “no,” but occupational licensing inconsistencies that contradict that answer still exist among the states in many forms. These forms include required levels of schooling, required hours of experience, and other criteria.⁸ Although the above scenarios are not based on actual people or incidents, licensed professionals across

4 *Practice of Cosmetology, Electrology, Esthetics, and Nail Technology*, NEB. DEP'T OF HEALTH & HUM. SERVICES 6 (Sept. 22, 2004), http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Health_and_Human_Services_System/Title-172/Chapter-036.pdf.

5 NEV. REV. CODE § 644.200 (2015).

6 N.Y. Div. of Licensing Services, *FAQ – Cosmetology*, N.Y. DEP'T OF STATE, https://www.dos.ny.gov/licensing/cosmetology/cosmetology_faq.html (last visited Dec. 11, 2017).

7 N.Y. Div. of Licensing Services, *Cosmetology Reciprocity*, N.Y. DEP'T OF STATE (May 24, 2017, 4:44 PM), <https://www.dos.ny.gov/licensing/cosmetology/cosmetreciprocity.html>.

8 Dep't of the Treasury Office of Econ. Policy ET. AL., *Occupational Licensing: A Framework for Policymakers*, OBAMA WHITE HOUSE 25 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

America—even those with a significant amount of experience in their careers—find themselves in similarly inequitable and difficult circumstances when trying to find employment after crossing state lines. The spouses of United States military members are just one example of a group particularly affected by these circumstances. Thirty-five percent of these spouses work in licensed professions,⁹ and they must relocate their families ten times more often than non-military spouses.¹⁰ Even reciprocity agreements are not enough to resolve these problems for everyone—if a professional must move to a state without an agreement with their current home, they are out of luck.

To address differences among the current licensing practices of the states, I propose that the states undertake a cooperative effort to coordinate their licensing practices and requirements through the creation of a broad multistate compact. This compact would be concerned with coordinating the licensing needs of many professions. The professions currently affected by licensing inconsistency are substantially diverse, so for convenience, I have selected cosmetology and barbering as model professions for this article.

Section I of this article will present a states' rights-oriented solution to the problem of licensing inconsistency in the creation of a voluntary, multistate licensing commission formed by an interstate compact. This commission would have the capacity to determine and provide educated recommendations to the states for standardizing the licensing requirements of many licensed professions. Section I will also explore how this commission might best be organized and adopted in a process modeled after the creation of the existing Multistate Tax Commission.

9 *Resolution Supporting Intergovernmental Collaboration on Occupational Licensing for Military Spouses*, THE COUNCIL OF STATE GOVERNMENTS (2016). [HTTP://KNOWLEDGECENTER.CSG.ORG/KC/SYSTEM/FILES/RESOLUTION%20SUPPORTING%20INTERGOVERNMENTAL%20COLLABORATION%20ON%20OCCUPATIONAL%20LICENSING%20FOR%20MILITARY%20SPOUSES.PDF](http://knowledgecenter.csg.org/kc/system/files/Resolution%20Supporting%20Intergovernmental%20Collaboration%20on%20Occupational%20Licensing%20for%20Military%20Spouses.pdf).

10 *Id.*

To examine the utility of the effects of licensing standardization on professionals in general, Section II will demonstrate some of the licensing inconsistency problems that the proposed Multistate Licensing Commission could address for barbers and cosmetologists and for other professions as well. These inconsistencies include (but are not limited to) variations in required hours of experience, job definitions, and certification testing.

Section III will enumerate benefits that could result from licensing standardization. For licensed professionals, these benefits would include the removal of mobility barriers caused by license-transfer difficulties. They would also include alleviation of the opportunity-cost and economic disadvantages caused by these barriers. For consumers, these benefits would include standardized quality of services and a resulting nationwide, uniform protection of consumers' right to safety.

Other solutions to the problem of occupational licensing inconsistency have certainly been proposed elsewhere with varying levels of merit. To address the advantages and disadvantages of these other proposals in-depth would be to go beyond the scope of this article, but the merits of the proposal presented here should make it a candidate for consideration by state lawmakers and those with a vested interest in occupational licensing.

I. BACKGROUND: HISTORY OF OCCUPATIONAL LICENSING IN THE UNITED STATES

Occupational licensing is an issue that safely falls under the powers reserved to the states in the Tenth Amendment,¹¹ and the states have historically utilized this power.¹² Even when state legislation has severely limited access to a profession, the Supreme Court has upheld states' rights to institute licensing requirements, especially for professions that entail extensive

11 U.S. CONST. amend. X. art. I.

12 *Dent v. West Virginia*, 129 U.S. 122, 114 (1889).

training or that involve possible risk to patients or customers. This precedent is evident in early licensing cases like *Dent v. West Virginia*, an 1889 case in which the Supreme Court upheld the state of West Virginia's ability to pass a statute requiring medical practitioners to acquire certification from the State Board of Health verifying their graduation from a credible medical college.¹³

Licensing has not remained limited to professions like medicine, though. Taking a historical view, the percentage of the American workforce controlled by state-level licensing requirements has increased dramatically over time from only 5% in 1950 to over 20% by 2000.¹⁴ Despite this high percentage and licensing's long history, there is a dearth of interstate licensing standards since the issue has been addressed separately and dissimilarly by the individual states, as can be seen in the diversity of requirements that exist today. For example, although around 1,100 different professions (everything from acupuncture¹⁵ to optometry),¹⁶ are regulated somewhere in the country

13 *Id.*

14 Morris M. Kleiner & Alan B. Krueger, *The Prevalence and Effects of Occupational Licensing* 3 EconStor IZA DISCUSSION PAPERS, Working Paper No. 3675, (Aug. 2008), <https://www.econstor.eu/bitstream/10419/35147/1/578526824.pdf>.

15 Alaska Department of Commerce, Community, and Economic Development Division of Corporations, Business and Professional Licensing, *Regulation of Acupuncturists*, ALASKA DEP'T OF COMMERCE, COMMUNITY, AND ECON. DEV., <https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/Acupuncturists.aspx> (last visited Dec. 11, 2017).

16 Alaska Department of Commerce, Community, and Economic Development Division of Corporations, Business and Professional Licensing, *Board of Examiners in Optometry*, ALASKA DEP'T OF COMMERCE, COMMUNITY, AND ECON. DEV., [HTTPS://WWW.COMMERCE.ALASKA.GOV/WEB/CBPL/PROFESSIONALLICENSING/BOARDOPTOMETRY.ASPX](https://www.commerce.alaska.gov/web/cbpl/ProfessionalLicensing/BOARDOPTOMETRY.ASPX) (last visited Dec. 11, 2017).

through licensing, certification, or registration¹⁷ fewer than sixty professions are regulated in more than half of the states.¹⁸ On top of this obvious inconsistency, even universally licensed professions—like barbering and cosmetology¹⁹—can experience vast requirement discrepancies among the various states, which is illustrated in the two aforementioned hypothetical scenarios.

II. PROPOSAL FOR AN INTERSTATE COMPACT

A. *The Multistate Tax Commission as a Model*

In the past, inconsistencies among state laws have caused problems in other areas besides licensing. For instance, taxation of businesses operating in multiple states was one such problem, and an appropriate solution was found in the creation of the Multistate Tax Commission.²⁰ In the 1960s, Congress was prepared to impose the standardization of tax law in the realm of multistate businesses through national legislation in the form of the Willis Bill (H.R. 11798).²¹ However, the Federation of Tax Administrators (then called the National Association of Tax Administrators) resolved that such legislation would infringe on the taxation jurisdiction of the states.²² In lieu of federal

17 Pamela L. Brinegar and Kara L. Schmitt, *State Occupational and Professional Licensure*, 567 THE COUNCIL OF STATE GOVERNMENTS (1992), http://knowledgecenter.csg.org/kc/system/files/bos_1992_08.pdf.

18 *Id.*

19 Adam B. Summers, *Occupational Licensing: Ranking the States and Exploring Alternatives*, THE REASON FOUNDATION app. B 42 (Aug. 2007), <http://reason.org/files/762c8fe96431b6fa5e27ca64eaa1818b.pdf>.

20 Multistate Tax Commission, *Timeline of Events in the History of the MTC*, <http://www.mtc.gov/The-Commission/MTC-History> (last visited Dec. 11, 2017).

21 Interstate Taxation Act, H.R. 11798, 89th Cong. (1966).

22 *Id.* at 20.

regulation, the Federation proposed a multistate compact.²³

The creation of this compact was an exercise in multistate cooperation and standardization in which “a widely representative group of state officials, including tax administrators, attorneys general, state legislators, and a special committee of the Council of State Governments” came together and drafted a model law that could be adopted by all states wishing to join the compact.²⁴ The purposes of the Multistate Tax Commission, as stated in the model law, are the following:

1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.²⁵

Today, nearly fifty states and the District of Columbia are committed to this effort of cooperation and uniformity through affiliation with the Multistate Tax Commission to some degree, with sixteen states claiming full membership.²⁶

23 *Id.*

24 *Id.*

25 Multistate Tax Commission, *Model Multistate Tax Compact with Recommended Amendments*, MTC art. I, <http://www.mtc.gov/getattachment/The-Commission/Multistate-Tax-Compact/Model-Multistate-Tax-Compact-with-Recommended-Amendments-to-Art-IV.PDF.aspx> (last visited Dec. 11, 2017).

26 Multistate Tax Commission, *Member States*, MTC, <http://www.mtc.gov/The-Commission/Member-States> (last visited Dec. 11, 2017).

B. A Multistate Licensing Commission

It is appropriate to consider a successful solution to the problems caused by multistate business taxation when seeking to solve the problems caused by state licensing. Although taxation is a concurrent power constitutionally granted to both the states and the federal government,²⁷ the Multistate Tax Commission is primarily concerned with taxes on the state level. Since licensing is also addressed primarily at the state level, both issues fall under the jurisdiction of the states in the matters addressed in this article, and it is reasonable to draw an analogy between the principles involved in each.

The same states' rights principle at stake in the circumstances surrounding the Willis Bill makes proposed licensing inconsistency solutions that appeal to federal power and national legislation unfavorable. An interstate compact, on the other hand, with the goal of "promot[ing] uniformity or compatibility"²⁸ of licensing requirements would give the states the capacity to address licensing inconsistency problems while preserving their sovereignty in the area of licensing.

In a process similar to the creation of the Multistate Tax Commission, representatives from interested states and a selection of licensed professions could come together to create model legislation for the proposed Multistate Licensing Commission. Admittedly, the voluntary nature of state participation in the creation and adoption of the model legislation might lead to limited initial state participation. However, the Multistate Licensing Commission would ideally follow the example of the Multistate Tax Commission²⁹ and encourage a gradual increase in membership.

State legislation based on the model law of the existing Multistate Tax Compact does not give the Multistate Tax

27 U.S. CONST. amend. X art. I.

28 *Id.* at 25.

29 *Id.* at 21.

Commission power to create or enforce laws,³⁰ and the same would be true for the proposed Multistate Licensing Compact. However, the simple status of membership in the compact would give states an incentive to comply with the recommendations of the Multistate Licensing Commission, since they would have joined it voluntarily to seek those recommendations. In addition, individual states would best be able to gain the benefits of licensing standardization outlined elsewhere in this article by complying with those recommendations.

The proposed compact and resulting commission would provide the states with a mechanism to better serve their citizens by turning the idea of licensing standardization into something more than simply best-practices recommendations by the federal government.³¹ These current, general guidelines have not brought about standardization. In addition, while current guidelines do not address the specific needs of individual professions, that is a function that the Multistate Licensing Commission could perform.

Instead of being simply another layer of bureaucracy, a commission based on model law and adopted by multiple states would be a coordinating agent. It would communicate with existing state licensing boards and with professional associations to determine recommendations for licensing requirements that, if adopted, would best balance the safety, economic well-being, and other needs of both professionals and consumers. A brief published by the Council of State Governments asserts:

As states and the federal government dedicate more time, resources and attention to the issue

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- 30 Multistate Tax Commission, *Model Multistate Tax Compact with Recommended Amendments*, MTC art. XI, <http://www.mtc.gov/getattachment/The-Commission/Multistate-Tax-Compact/Model-Multistate-Tax-Compact-with-Recommended-Amendments-to-Art-IV.PDF.aspx> (last visited Dec. 11, 2017).
- 31 Dep't of the Treasury Office of Econ. Policy ET. AL., *Occupational Licensing: A Framework for Policymakers*, OBAMA WHITE HOUSE 43 (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.

of occupational licensure, interstate compacts offer a proven path forward for states to work collaboratively to break down barriers while also ensuring that the quality and safety of services across a wide spectrum are not compromised.³²

The National Center for Interstate Compacts (a program of the Council of State Governments) currently oversees compacts for licensing in a few fields;³³ however, no compacts in development or operation address licensing in general or across diverse professions,³⁴ so a gap exists that the commission could fill.

III. TASKS FOR THE COMMISSION

The licensing requirements of cosmetology and barbering provide ready examples of inconsistency that the Multistate Licensing Commission could help standardize. These professions also involve a certain level of education, training, and practice as well as a modest degree of potential danger to consumers (think chemical-mixing and straight-razor use), so they are ideal as model professions that reasonably require some level of regulation.

A. Experience Hours

As illustrated in the hypothetical examples given at the beginning of this article, the experience-hours requirements of these professions are counterintuitively inconsistent

32 *Top 5 Interstate Compacts 2017*, THE COUNCIL OF STATE GOVERNMENTS (2017). [HTTP://KNOWLEDGECENTER.CSG.ORG/KC/SYSTEM/FILES/NCIC_2017.PDF](http://knowledgecenter.csg.org/kc/system/files/NCIC_2017.pdf).

33 National Center for Interstate Compacts, *NCIC Compacts*, THE COUNCIL OF STATE GOVERNMENTS, <http://www.csg.org/NCIC/compacts.aspx> (last visited Dec. 11, 2017).

34 National Center for Interstate Compacts, *State Search*, THE COUNCIL OF STATE GOVERNMENTS, <http://apps.csg.org/ncic> (last visited Dec. 11, 2017).

among the states. New York and Massachusetts represent the low end of the scale for cosmetology, requiring only 1,000 hours of experience.³⁵ At the high end is Oregon, requiring 2,300 hours.³⁶ Barbering experience requirements show a similar disconnect. New Jersey, for example, requires 900 hours;³⁷ Nebraska and South Dakota require 2,100.³⁸

These numbers give rise to some important observations. It is safe to say that barbers and cosmetologists in the Pacific Northwest and Midwest do not need to be twice as qualified as those in the Northeast. It is also safe to say that customers in the Northeast do not deserve half as much protection from harm or incompetence as their fellows elsewhere in the country. These are the extreme examples, but there are enough small inconsistencies across the country to cause great inconvenience to relocating professionals and, by extension, to the clients they serve.

A Multistate Licensing Commission could take the role of a neutral arbiter in investigating what universal tally of hours is most appropriate to ensure quality and safety in these and other professions. The commission could consult with the existing licensing boards of the various states and with existing professional associations, taking research and

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- 35 N.Y. Div. of Licensing Services, *FAQ – Cosmetology*, N.Y. DEP’T OF STATE, https://www.dos.ny.gov/licensing/cosmetology/cosmetology_faq.html (last visited Dec. 11, 2017); *Frequently Asked Questions about Board of Registration of Cosmetology and Barbering*, Commonwealth of Massachusetts, <http://www.mass.gov/ocabr/licensee/dpl-boards/hd/faqs.html#1> (last visited Dec. 11, 2017).
- 36 *Oregon*, BEAUTY SCHOOLS DIRECTORY, <https://www.beautyschoolsdirectory.com/faq/license-requirements/oregon> (last visited Dec. 11, 2017).
- 37 N.J. ADMIN. CODE § 13:28-1.1 (2012).
- 38 *Cosmeticians, Cosmetology, and Estheticians*, NEB. DEP’T OF HEALTH & HUM. SERVICES, <http://dhhs.ne.gov/publichealth/pages/crICosmCosEsthAppsReqsFees.aspx> (last updated May 24, 2017); South Dakota Cosmetology Commission, *Licensing Requirements*, SOUTH DAKOTA DEP’T OF LABOR & REGULATION, http://dlr.sd.gov/cosmetology/licensing_requirements.aspx (last visited Dec. 11, 2017).

precedent into account to come to a consensus recommendation on hours. Enough states operate toward the middle of the spectrum (between 1,500 and 1,800 hours for cosmetologists and around 1,500 hours for barbers)³⁹ to show that even a mean compromise in requirements would not be unreasonable.

B. Job Definitions

Another difficulty faced by professionals relates to inconsistent job definitions. For example, different states currently use the term *cosmetologist* in different ways and to refer to slightly different classes of professional. New York, for one, defines cosmetology as the following:

[P]roviding service to the hair, head, face, neck or scalp of a human being, including but not limited to shaving, trimming, and cutting the hair or beard either by hand or mechanical appliances and the application of antiseptics, powders, oils, clays, lotions or applying tonics to the hair, head, or scalp, and in addition includes providing, for a fee or any consideration or exchange, whether direct or indirect, services for the application of dyes, reactive chemicals, or other preparations to alter the color or to straighten, curl, or alter the structure of the hair of a human being.⁴⁰

Nebraska, on the other hand, defines it thus:

[T]he practice of performing for compensation

39 *State Board Exam: Licensing*, BEAUTY SCHOOLS DIRECTORY, <https://www.beautyschoolsdirectory.com/faq/license-requirements#node> (last visited Dec. 11, 2017).

40 N.Y. Div. of Licensing Services, *Cosmetology*, N.Y. DEP'T OF STATE, <https://www.dos.ny.gov/licensing/cosmetology/cosmetology.html> (last visited Dec. 11, 2017).

any or all (1) of the acts of arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, styling, or similar work upon the hair, wig, wiglet, or hairpiece of any person, by any means, with hands or a mechanical or electrical apparatus or appliance; (2) esthetics; (3) nail technology; and (4) other similar practices upon the hair, scalp, face, neck, arms, hands, feet, or nails of any person when performed for the purpose of beautifying or enhancing physical appearance or the teaching of any practice specified in this section for occupational purposes.⁴¹

These definitions cover overlapping areas. Both talk about the cutting of hair using manual or mechanical means, both involve hair-styling, both specify that compensation is involved, both mention chemicals or coloring agents. However, the difficulties come in the differences. Nebraska's definition includes work done on nails, hands, arms, and feet⁴²—basically including esthetics and nail work under the umbrella of cosmetology—which is something New York's definition does not do. Nebraska's definition also includes performance of these services for instructional purposes.⁴³ Even just the expectation that Nebraskan cosmetologists be able to work with wigs and other hairpieces is quite an inconsistency.⁴⁴ If a cosmetologist without knowledge of esthetics or hairpieces moves to Nebraska, they are going to have difficulty performing all of the tasks specified by the legal definition in that state.

Definitional inconsistencies do help explain some of the training-hours inconsistencies examined above, but

41 NEB. REV. CODE §71-202 (1943).

42 *Id.*

43 *Id.*

44 *Id.*

understanding why the inconsistencies exist in these two areas does not make those inconsistencies desirable. Both areas still have great potential to limit professional mobility. A clearer set of national differentiations between (and definitions of) the different classes of hair- and body-care providers would thus be helpful. Depending on the carefully considered recommendations of the Multistate Licensing Commission, definitions like Nebraska's could be simplified, or those like New York's could be made more nuanced. Similar changes could also be made to the legal definitions of other professions. Although it would take time and resources for the states to make adjustments, inconsistency in definitions is another problem that the Multistate Licensing Commission could help resolve through recommendations for uniform legislative wording and judicial interpretation of definitions.

C. Examinations

All states require cosmetology license applicants to take at least one exam before they may receive a license,⁴⁵ but these exam certifications do not carry across state lines. Even states that offer license reciprocity to professionals moving from other states often require those professionals to take the new state's exam in order to transfer their licenses.⁴⁶ Once again, inconsistency creates an undue burden of time and effort, and once again, the Multistate Licensing Commission could help by collaborating to standardize licensing examinations.

Adopting such a standardized exam would not be an overnight process; like the model legislation of the commission itself and the other recommendations that would be provided by the commission, a standardized examination for any profession

45 INSTITUTE FOR JUSTICE, *Cosmetologist*, Occupational Licensing, <https://occupationallicensing.com/occupation/cosmetologist> (last visited Dec. 11, 2017).

46 *State Board Exam: Licensing*, BEAUTY SCHOOLS DIRECTORY, <https://www.beautyschoolsdirectory.com/faq/license-requirements#node> (last visited Dec. 11, 2017).

would best be adopted on a state-by-state basis. However, there is successful precedent for this type of coordinated examination.

The Uniform Bar Examination is a good example. Although the *status* granted by a score on this exam does not transfer from one state to another, one's *score* can be transferred if done within a certain amount of time.⁴⁷ Each participating state determines what scores it will accept for admission to its bar association.⁴⁸ The key here is that each participating state or territory (now numbering twenty-nine)⁴⁹ will accept results from part or all of a single, standardized exam.

The Multistate Licensing Commission could work with the states to help create and administer this sort of standardized certification exam for multiple license-requiring professions, including cosmetology and barbering. Whether or not these exams and the acceptance of their results would be structured similarly to the system in place for the Uniform Bar Examination would be up to the commission and its constituents. Nevertheless, the existence of such an examination today illustrates what could be accomplished by a multistate coordinating agent like the commission.

IV. BENEFITS OF STANDARDIZATION

There are multiple potential benefits from the licensing standardization that could be brought about by the proposed Multistate Licensing Commission.

One of the most obvious of these benefits would be increased mobility for licensed professionals, which would be especially helpful to groups like the spouses of frequently

47 National Conference of Bar Examiners, *Understanding the Uniform Bar Examination*, NCBE 2 (July 2017), <http://www.ncbex.org/pdfviewer/?file=%2Fdmsdocument%2F209>.

48 *Id.* at 14.

49 *Id.* at 18.

transferred military personnel⁵⁰ and to individuals who find themselves in situations like Brittney's as described at the beginning of this article. These are people moving across state lines out of unplanned necessity who encounter barriers of inconsistent experience requirements, differing job definitions, and unique examinations as well as barriers related to application process delays and fees. Any of these factors alone might not prohibit productive and gainful employment, but, taken together, they can prove to be a significant challenge. With licenses granted according to universal requirements or with licenses recognized by many states participating in a compact, the problems encountered by people in these groups could be alleviated.

In addition, standardizing licensing would give licensed professionals the benefits of mobility enjoyed by non-licensed professionals. Although licensed professionals make about 15% higher hourly wages than professionals with similar levels of education in non-licensed professions,⁵¹ their economic initiative in choosing a profitable but regulated profession is currently being punished by the mobility restrictions imposed by licensing. This *de facto* effect, while inadvertent, is nonetheless problematic and unfairly caters to unlicensed professionals.

Another benefit of standardization would be uniform protection for consumers across the country. If one purpose of licensing is to ensure a minimum level of competence on the part of the professional in order to prevent injury to patients or customers, it makes sense that the safety guaranteed by this licensing should be equal for all people—regardless of the state they reside in.

Consumers have a right to safety that has been historically recognized and that needs to be protected. In 1962, President John F. Kennedy gave a *Special Message to the Congress*

50 *Id.* at 7.

51 *Id.* at 13.

on *Protecting the Consumer Interest*,⁵² in which he spoke of the federal government's responsibility to protect citizens' right to safety by restricting the marketing of hazardous goods.⁵³ Although the Multistate Licensing Commission would operate at an interstate (nonfederal) level, it would nonetheless serve to defend this same right to safety by *uniformly* protecting citizens from the marketing of potentially hazardous *services*.

This right has also been recognized at an international level. The United Nations has affirmed safety as a human right by defining "the protection of consumers from hazards to their health and safety" as "a legitimate need,"⁵⁴ and Article 3 of the U.N. *Universal Declaration of Human Rights* also affirms the right to "life, liberty, and security of person,"⁵⁵ an umbrella under which safety fits comfortably.

Thus, although a right to safety is not explicitly stated in the Constitution of the United States, it is reasonable to consider it a universal human right, and there is provision for its recognition in the Ninth Amendment.⁵⁶ Countries like the United States cannot guarantee safety for their citizens from all possible dangers; however, there are areas (such as consumerism) where additional and/or more equitable protection of this right can and should be instituted. Preventable unequal protection of the right to safety exists in the licensing system as it stands today (as seen in the inconsistency of licensing requirements), and the Multistate

52 John F. Kennedy, *Special Message to the Congress on Protecting the Consumer Interest* (Mar. 15, 1962), THE AMERICAN PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=9108> (last visited Dec. 11, 2017).

53 *Id.*

54 U.N. Dep't of Econ. & Soc. Affairs, U.N. Guidelines for Consumer Protection sec. II (1990), http://www.un.org/esa/sustdev/publications/consumption_en.pdf.

55 THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, Universal Declaration of Human Rights, OHCHR art. 3, http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

56 U.S. CONST. amend. IX. art. I.

Licensing Commission could help eliminate the disparity.

V. CONCLUSION

Although licensing is a necessary aspect of many professions today—one that is used to protect consumers, limit access to certain fields, and control supply and demand of services, it does not need to be—and indeed should not be—a barrier to qualified professionals moving across state lines.

Attention has been brought to this problem by the federal government,⁵⁷ but it does not need to be resolved through federal means. To protect the rights and sovereignty of the states, the states themselves can solve this problem through the institutionalized cooperation found in a broad interstate compact concerned with the licensing of multiple professions. Similar large, cooperative efforts have been made before to resolve other multistate problems and could prove effective again.

The needs and rights of consumers and professionals are difficult to balance in today's complicated world, and as a result, many solutions to the problems of occupational licensing inconsistency have been proposed. Once again, these solutions are too diverse to address thoroughly in the scope of this article. However, the creation of a Multistate Licensing Commission, guided by experts in the involved fields could be a valid, beneficial way to find balance and consistency in occupational licensing. This commission could provide the states with educated recommendations that would make fair and consistent requirements and protections a reality.

57 Dep't of the Treasury Office of Econ. Policy ET. AL., *Occupational Licensing: A Framework for Policymakers*, OBAMA WHITE HOUSE (2015), https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf.