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Re: Public Comment in Support of Occupational Licensing Reform

Dear Members of the Committee:

I am a Senior Fellow at the Cato Institute, where I research labor market regulation, occupational licensing, and economic liberty. I submit this comment in strong support of reform to Montana's occupational licensing system—and in particular, reform of the boards that enforce those laws. Decades of empirical research and a growing body of legal precedent make clear that the current structure of occupational licensing boards imposes significant economic harms on workers, entrepreneurs, and consumers while providing few of the public health and safety benefits their proponents claim.

The Collateral Consequences of Occupational Licensing

Occupational licensing requirements—which now affect nearly one in five American workers—impose measurable economic costs that consistently outweigh any benefits they provide. Research shows that licensing restrictions reduce labor supply and depress business formation, particularly for low-income workers and entrepreneurs. Estimates suggest licensing laws lower employment rates for affected groups by between 11 and 27 percent. Licensing also restricts geographic mobility, since licenses generally do not transfer across state lines without explicit reciprocity arrangements.

For those who have served a prison sentence, licensing laws add an additional barrier to reentry, pushing some back toward criminal activity and raising recidivism rates. There is little credible evidence that these costs are offset by meaningful improvements in service quality or public safety.

The barriers that licensing creates for those reentering the workforce after incarceration are particularly acute in Montana. For instance, the state deploys inmates to fight wildfires—a rigorous and valuable form of public service—yet state law prohibits those same individuals from obtaining occupational licenses after release because of licensing and certifications provisions that prohibit those with convictions “for which the applicant could have been imprisoned in a federal or state penitentiary.”

The Justice Department's Bureau of Justice Statistics estimates that about 66 percent of those released from prison are rearrested within three years, and 82 percent are rearrested within 10 years. Research consistently finds that obtaining gainful employment is one of the strongest predictors of whether a formerly incarcerated person will avoid reoffending. Yet licensing boards in 30 states can deny licenses based on an arrest that did not even lead to a conviction, and boards in five states can disqualify applicants based on a felony entirely unrelated to the licensed field. These types of provisions give licensing boards often give broad discretion to exclude former

offenders from licensed occupations, with little guidance and no required nexus to public safety. Montana currently has a version of these types of provisions on the books and other accompanying levers that penalize those just trying to obtain a second chance outside of prison.

The Problem with Licensing Boards

While licensing laws themselves create economic distortions, the structure of the boards that enforce them compounds the problem. Across the country, roughly 85 percent of occupational licensing boards are required by statute to award a majority—and sometimes a supermajority—of voting seats to active members of the very profession they regulate. These are individuals with a direct financial interest in limiting competition. As antitrust scholar Rebecca Allensworth of Vanderbilt University has written, “licensing boards are public-private partnerships that in some ways combine the most dangerous features of a professional association and a governmental agency. Boards have all the interests and incentives of a private club, and the police power of the state to back them up.”

Analysis of enforcement records shows that some boards spend more resources pursuing cease-and-desist actions against unlicensed practitioners than disciplining license holders who are providing substandard or dangerous services. Boards have also used expansive interpretations of licensing statutes to target innovative competitors—most notably, dental boards that moved to shut down low-cost teeth-whitening entrepreneurs, conduct the U.S. Supreme Court found to be anti-competitive in *North Carolina State Board of Dental Examiners v. FTC* (2015).

Recommended Reforms

The most meaningful reform available to Montana is to transfer enforcement authority over licensing laws from industry-controlled boards to accountable executive branch agencies—the same institutions that enforce many other categories of state law. This does not mean ending oversight of licensed professions; it means placing that oversight under the supervision of officials who are answerable to the governor and, ultimately, to the public.

If Montana opts to preserve licensing boards in some form, those boards should at minimum be stripped of direct rulemaking and enforcement authority and converted into advisory bodies only. The Federal Trade Commission’s own guidance—issued in the wake of the Supreme Court’s *NC Dental* decision—confirms that states can avoid antitrust liability “by creating regulatory boards that serve only in an advisory capacity, or by staffing a regulatory board exclusively with persons who have no financial interest in the occupation that is being regulated.” Additional steps, such as requiring a near-parity of public members on oversight boards would further reduce the cartel-like character of the current system.

Montana should also reform the provisions that allow licensing boards or local jurisdictions to deny applications based on criminal history unrelated to the occupation at issue. The most straightforward reform is to prohibit licensing boards from considering a criminal conviction unless it is substantially related to the specific occupation being licensed. This would ensure, for example, that a felony DUI conviction could bar someone from driving a school bus, but could not prevent them from becoming a construction contractor or electrician.

Montana can model leadership here by ensuring that those who have paid their debt to society—including those who have already been trained and served the state fighting wildfires while part of the state prison firefighting corps—are not permanently locked out of the labor market by arbitrary licensing barriers with no connection to public safety.

Finally, Montana should seriously consider whether many of the occupations currently subject to licensing requirements need to be licensed at all. Eliminating unnecessary licenses is the most direct and durable way to restore economic opportunity to workers and entrepreneurs who are currently blocked from earning a living by laws that serve incumbent interests far more than the public.

I appreciate the committee's attention to this issue and am available to provide additional research, testimony, or analysis as the committee's work continues.

I urge Montana to lead on reforms like these and return the right to earn a living to the workers and entrepreneurs the current system has harmed. Linked below are sources that served as the basis for my comments and can supply the committee with further information.

Respectfully submitted,

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Sources:

[Americans shouldn't need government permission slips to work](#) Washington Post, December 3, 2025

[The Case Against State Occupational Licensing Boards](#) Cato Institute Briefing Paper, October 7, 2025

[Guardians or Gatekeepers? Industry Capture of Dental Boards 10 Years After NC Dental](#) Pacific Legal Foundation, February 2025.

[Turning Shackles Into Bootstraps](#) Center for the Study of Economic Liberty, Arizona State University, 2016