



Companies, People, Ideas

The New Unions

Suzanne Hoppough 02.25.08, 12:00 AM ET

In the Middle Ages you couldn't be a baker unless you were admitted to the guild. In Louisiana you can't sell flowers.

Mortgage brokers passed along some bum loans, and now the subprime market is in tatters. What's to be done? Impose tougher license requirements on brokers. So declares one interested group.

Cynics and students of the history of occupational licensure will not be surprised where the call for the crackdown came from--the brokers themselves. Responding to criticism of the mortgage industry by Hillary Clinton, the National Association of Mortgage Brokers put out a statement reiterating its call for "an increase in professional standards, education requirements and criminal background checks." Mortgage brokers already must be licensed in 23 states, but if the requirements are tightened there won't be quite so many brokers fighting over what business is left.

So it goes in a lot of professions. In California you are not welcome if you're an out-of-state contractor looking to help rebuild the areas destroyed by last fall's fires. The government rushed out a press release while the fires still raged warning that working without a state license to remove debris, repair a roof or rewire a home is a felony. The punishment: a fine of up to \$10,000 or 16 months in prison.

In Ohio a parent was fined \$10,000 after the Cleveland Bar Association filed a complaint that he didn't hire a lawyer and instead represented his autistic son when he sued the Akron school board over the boy's education. In South Carolina dentists intent on protecting their turf blocked oral hygienists from examining the teeth of poor schoolchildren without a dentist's supervision. The American Dental Association backed the move.

Such occupations are the new unions. These modern-day guilds have replaced organized labor as the main vehicle for workers seeking to shield themselves from competition. As the economy has switched from manufacturing to services, some 28% of U.S. workers--or 43 million people--now belong to a licensed profession, according to a Princeton University/Gallup survey last year. That's up from 4.5% 50 years ago. Over the same period union membership has fallen from 35% to 12%.

University of Minnesota economist Morris Kleiner recently estimated what occupational licenses cost the U.S. through higher fees and the lost output of people excluded from the roped-off professions: \$100 billion a year. Some guilds are especially adept at keeping out new members even as demand balloons. The population has grown 22% since 1990, but the number of dentists and hairdressers hasn't budged. The shortage of dentists has pushed up their average real hourly pay 45% over that period.

Milton Friedman complained about the excesses of occupational licensing in his 1962 book, *Capitalism and Freedom*. Since then the phenomenon has only accelerated. Today there are 1,100 occupations--from secretaries and librarians in Georgia to wallpaper hangers in California--that require a license in at least one state, according to the Council of State Governments. That's up from roughly 80 in 1981. "These are monopolies created by the government," says William Mellor, president of the Institute for Justice, a nonprofit in Arlington, Va. that litigates on behalf of property rights and other civil liberties. "They have requirements so onerous that they deter everyone except the most well-heeled or persistent." Indeed, in Louisiana florists face a harder test to get their licenses than do lawyers: The pass rate for the bar exam in 2006 was 76%; for the florist test it was only 68%.

But tough rules protect consumers, don't they? Not necessarily. A 1981 study in the *Southern Economic Journal* found that in states that make it toughest to become an electrician--keeping the numbers low and the fees high--accidental electrocutions happened more often because customers

are tempted to do the work themselves. Strict rules in some states on the types of work that can be done only by doctors--protecting them from competition from nurse practitioners, for instance--help slow the spread of chains of low-cost medical clinics. Says Shirley Svorny, the economics department chairman at California State University, Northridge: "It's like the [unionized] entertainment industry, where only one guy can work the lights."

Licensing laws hit the poor particularly hard. They're often shut out of jobs that would hoist them onto the first rungs of the economic ladder--shampoo assistant, pipe layer's helper, home health aide--because they lack the time and money to take the classes and serve the apprenticeships to pass the exam. All consumers miss out on the creativity and added quality that entrepreneurs and other innovators would bring to many lines of work, says Mellor. In some states only funeral directors are allowed to sell caskets, so discounters such as Costco are kept from expanding into those markets.

There are occasional victories for competitive markets. Without legal help Brian Woods, the parent of the autistic boy, won the case against the school board--and \$160,000--while the lawyers' group dropped its complaint after a storm of bad publicity. In June 2007 the dentists who were stopping hygienists from giving checkups to children settled a complaint from the Federal Trade Commission, allowing the checkups to resume. Last May Florida Governor Charlie Crist vetoed a bill that called for tougher requirements for nail salon workers and cosmetologists. New manicurists and pedicurists would have needed 350 hours of classroom training, 110 more than now. (California sets the highest bar, mandating 600 hours.)

But fans of licensing are winning more battles than they are losing. Accountants once needed 120 hours of college study; now they need 150 in most states. And it seems that states will get tougher on people who want to be interior designers.

Rose Botti-Salitsky, an interior design professor at Mount Ida College in Newton, Mass. spends her free time lobbying the state to license interior designers, as 23 other states do. The proposed requirements: a four-year college degree, a two-year apprenticeship and a \$720 fee to take an exam that only 49% now pass. She's irked that the little-known occupation--which involves picking the location of ramps for the handicapped, as well as plumbing and other fixtures inside buildings--is often confused with interior decorating. That's why the bill would prohibit decorators from using the title Registered Interior Designer. "Students leave for other states after graduating, and it's discouraging," she says. "I owe it to the next generation."

Botti-Salitsky's campaign helps explain why licensing laws proliferate. Her bill was getting nowhere until she called on the American Society of Interior Designers for help and went to its symposium for prospective lobbyists, in Minneapolis. With its coaching and funding, she rewrote the bill, recruited senators as cosponsors and hired a professional lobbyist. Last year the society and Botti-Salitsky's coalition hosted a reception honoring the chairman of the Joint Committee on Consumer Protection & Professional Licensure, her bill's first stop. Nationwide the society imposes a \$15 annual fee on top of its dues for its 38,000 members to fund lobbying efforts such as Botti-Salitsky's.

Her students pitch in, too. Colleen Anderson, a senior, created a database to track each legislator's constituents who have signed an online petition for the bill; 2,000 have signed so far. In 2006 she placed second in the society's nationwide contest to pick the best student lobbyist, winning a \$1,500 scholarship. Getting the bill passed "is going to make a difference in my career," she says. "It's huge."

"Occupations are politically powerful," says economist Kleiner. "Members get together and say, 'We need to protect the public.' If you oppose it, they campaign against you." Often there is no one lobbying against the bills. So with all the pressure and contributions coming from one side, it's an easy bill for governors to sign. "It would be nice if there was an American Clients Association protecting the people," says Larry E. Ribstein, a visiting law professor at New York University.

Is this country going to get tougher on mortgage brokers? It seems that way. Massachusetts says it's hiring 50 more people this year to beef up its oversight of the profession. Is that going to help home buyers? Probably not. A National Bureau of Economic Research paper in December by Kleiner and Richard Todd of the Federal Reserve Bank of Minneapolis showed that there is no relationship between tough education requirements for mortgage brokers and better outcomes for borrowers. But financial hurdles (a requirement for bonding or a minimum net worth for brokerage firms) appear to have an impact. The result, the economists found, is fewer brokers, fewer subprime mortgages, higher foreclosure rates and more high-interest-rate mortgages.

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