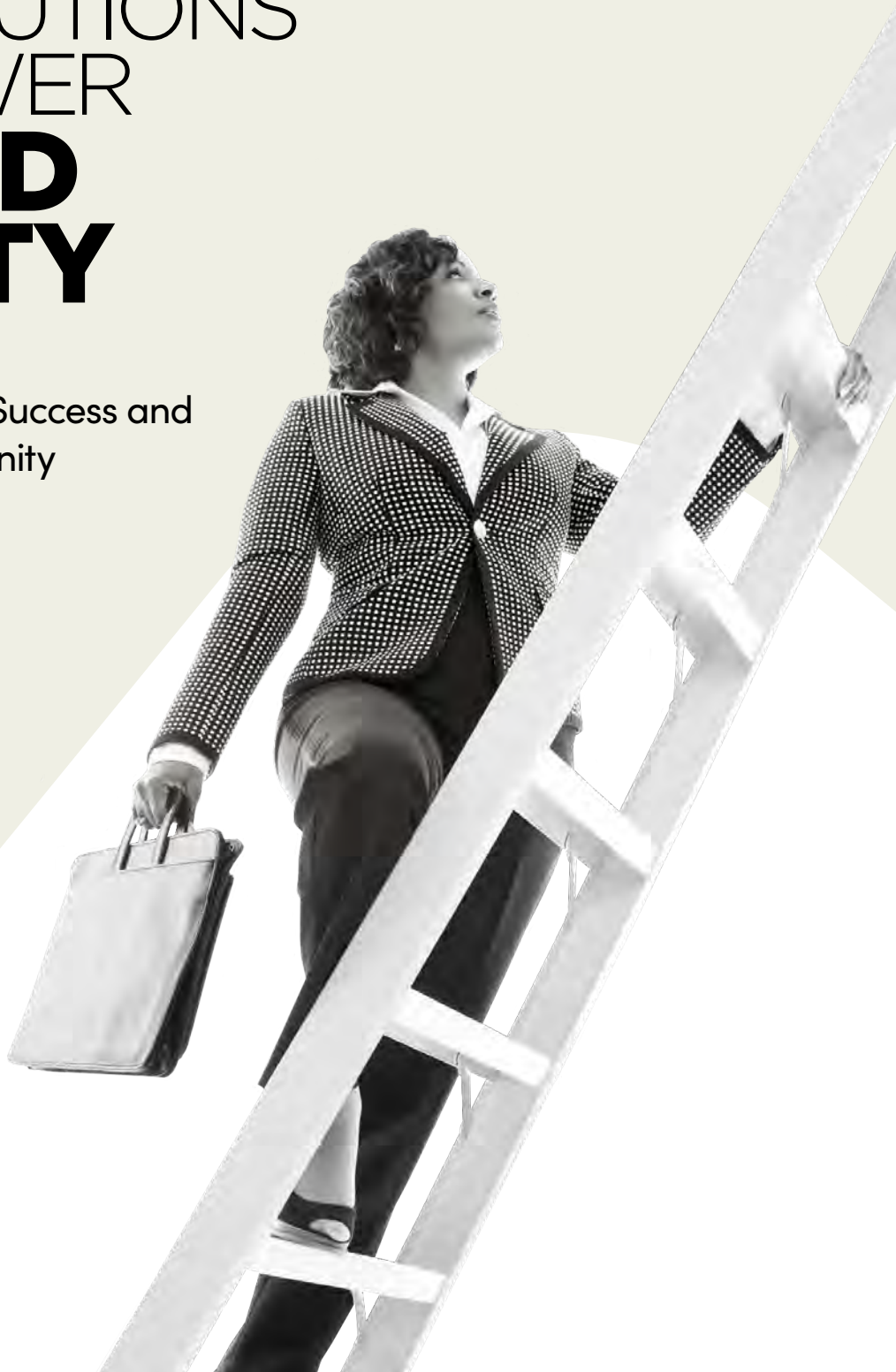
ARCHBRIDGE INSTITUTE

Lifting barriers. Lifting lives.

STATE SOLUTIONS TO EMPOWER **UPWARD MOBILITY**

Building a Foundation for Success and Lifting Barriers to Opportunity

STATE POLICY AGENDA



what's inside?

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PROLOGUE

The Archbridge Institute is pleased to release "State Solutions to Empower Upward Mobility," a compilation of essays featuring state-based policy reforms to increase economic opportunities and improve upward mobility for Americans across the 50 states. We hope this publication, along with our "Social Mobility in the 50 States" report, will serve as a framework for removing barriers to human flourishing. We are grateful to all the authors and organizations who contributed to this publication.

We are delighted to include a foreword from Gov. Spencer Cox of Utah, which ranked first in our 2023 report "Social Mobility in the 50 States." He makes a great case for the American Dream, which rejects zero-sum thinking and promotes a positive narrative for all citizens.

At the Archbridge Institute, we take a holistic view of social mobility that is aligned with the economics of human flourishing. That is why we are inspired to share eight policy ideas across the lifespan that we believe will foster mobility and help more people achieve their American dreams.

FOREWORD

In case you haven't heard, Utah is thriving.

For the second year in a row, *U.S. News and World Report* named Utah the best state in the nation. We have the best economy in the country and the best quality of life. We lead the nation in GDP growth, our taxes are low, and we have a strong entrepreneurial spirit. We've got a new National Hockey League team, the PGA and LPGA and, of course, come July 24, we expect to be named the host of the 2034 Winter Olympics.

So what's the secret of our success?

Someone from out of state recently mentioned to me that Utah has built-in advantages. I wholeheartedly agreed, noting that Utah is the most beautiful state in the nation, with five national parks, 48 state parks, and the greatest snow on Earth.

While our landscapes are stunning, he said, that's not what he meant. Instead, he said every Utahn he had met was hardworking, honest, patriotic, cared about their neighbors, and cared about their families. Simply put, our advantage is our people.

As the Archbridge Institute Social Mobility Index notes, Utah ranks highest on upward mobility, meaning that if you start life poor, living in Utah is your best shot at climbing out of poverty. Of all the reasons I'm proud of Utah, this is at the top of the list, and it's worth offering the reasons for our success.

First and foremost, we care about our fellow Utahns. Every year, Utah leads the nation in service, volunteering, and charitable giving. This matters. By serving others and giving back, we build community.

Second, we still believe in the power of our institutions—our schools, civic organizations, nonprofits, and religious groups. These institutions foster common bonds, give us a place to serve and belong, and hold us accountable to each other.

Third, we're creating policies that expand opportunities for all. Certainly, government alone can't solve the problems for each of its citizens, but it can and should be an active participant in helping people create a better life.

For example, more than 25 years ago, Utah started consolidating public assistance programs and employment programs under one roof. The Utah Department of Workforce Services became a one-stop-shop for food, medical, child care, utility and financial assistance as well as unemployment insurance, vocational rehabilitation, and help with skill-building and job searching. By operating in a unified way, the department has streamlined how it delivers resources to those families and individuals who need it most and has become a national model other states are trying to follow.

This holistic, work-first model assists Utahns in getting their first jobs, finding better jobs, and obtaining fulfilling careers. When someone registers for temporary public assistance or unemployment insurance, they start at jobs.utah.gov. When someone needs face-to-face service for public assistance program eligibility, they come to one of 30 American Job Centers, where employers are often on site recruiting for available jobs, and our staff engage citizens in work and education opportunities.

Workforce Services plays an important role as part of the social capital network in helping meet Utahns where they are and developing a path forward to enhanced economic prosperity.

The collaborative partnerships with state and local governments as well as community organizations is critical to this effort.

Education is another critical element of upward mobility, but degrees have become a barrier to entry in too many jobs. Earning a degree is a valuable way to create social mobility, but a degree should not be the only way to get a good paying job or have a fulfilling career.

In Utah, we recognize the importance of both higher education and the importance of skills-based hiring. Today, about 98% of executive branch jobs do not require a degree. Instead, the state's hiring managers and hiring committees consider comparable experience as equal to educational qualifications at every step in the evaluation and recruiting process. A common narrative is that government is slow to adopt private sector innovations, but Utah's leadership in skills-based hiring is one area where we're encouraging the private sector to follow *our* lead. We're grateful for private sector employers like Delta who are helping set the pace.

Social capital is about we, not me. Too many Americans believe if I win, you lose. But instead of a scarcity mentality, Utahns believe that if someone else wins, it's good for all of us. I'm proud that we reject zero-sum thinking.

Utah is a place where the American dream is still possible and our people are our strength.

Governor Spencer Cox
State of Utah

Through careful consideration of these policies and others like them, policymakers can preserve and expand the American Dream for years to come.

LEGISLATIVE GUIDES AND MODEL POLICIES PRESENTED THROUGHOUT THIS REPORT INCLUDE:

- Reduce Marriage Penalties
- Reasonable Childhood Independence Law
- Education Tax Credits
- Eliminate Work Permits for Teenagers
- Occupational Licensing Review Act
- Flexible Benefits
- Home-Based Business Fairness Act
- Accessory Dwelling Units Act

Introduction

A LIFECYCLE APPROACH TO SOCIAL MOBILITY

BEN WILTERDINK

For generations, the American Dream has been a touchstone of American life—a source of optimism and hope that hard work and integrity are the keys to a better life for oneself and those we care about. Despite the many challenges we face today, the Dream is still alive and well, at least according to most Americans. But preserving the American Dream is not something that can be taken for granted. Rather, it requires a concerted effort to ensure that future generations have access to opportunities for success and the chance to live their lives on their own terms. Achieving this task cannot be accomplished through piecemeal efforts here and there alone. Instead, we must adopt a more holistic approach, one that aims to lift barriers to success at each point in a person's life, ensuring that at every turn, there is an abundance of opportunities to fulfill one's fullest potential.

While the American Dream is an idea, an aspiration, there are some ways in which economists and policymakers have sought to approximate it. One way to do this is by measuring the rate of intergenerational economic mobility, or, put simply, by examining whether a person is able to earn more, in real dollars, than their parents did at the same age. Increasing upward economic mobility is an exemplary goal, not least because, at least in absolute terms, everyone can potentially earn more than their parents and achieve a higher standard of living. Rather than the divisive "us vs. them" dynamic inherent to the obsession with inequality, mobility offers an opportunity for everyone to be better off.

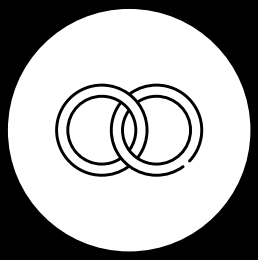
Through careful consideration of these policies and others like them, policymakers can preserve and expand the American Dream for years to come.

In practical terms, achieving higher rates of upward economic mobility means ensuring more opportunities to work, climb the income ladder, or even start new businesses. Policymakers rightly care a great deal about fostering a healthy environment for economic growth, new business creation, and more employment opportunities. However, these aspects of economic success are only one side of the opportunity coin. The other side is concerned with cultivating the skills and prerequisites necessary to seize and fully take advantage of such opportunities. Only by focusing on both sides of this coin—on the whole person—can policymakers most effectively achieve the goal of preserving and promoting the American Dream.

To that end, this publication is divided into two distinct sections. The first section is concerned primarily with setting a solid foundation for success, beginning early in life. Encouraging stable families, giving kids the opportunity to develop essential skills, providing a range of educational choices, and supporting the ability to gain vital early work experience are all fundamental building blocks to a successful life. The second section picks up where the first leaves off. Lowering barriers to employment opportunities, expanding opportunities for flexible work arrangements, legalizing home-based businesses, and promoting affordable housing are key components of providing options for those entering the workforce, advancing in their careers, or starting families. Taken together, these policies build toward the success that happens when proper preparation meets opportunity.

PART 1

BUILDING A FOUNDATION FOR SUCCESS



Starting with a Strong Foundation

REDUCING MARRIAGE PENALTIES TO PUT CHILDREN FIRST

WILLIS KRUMHOLZ

Introduction

For the last sixty years, marriage has been on the decline. Most don't realize that this decline is entirely class- and income-based. Between 1970 and 2020, the percent of women of childbearing age who are currently married has declined from over 70 percent to 42 percent, yet upper middle-class and upper-class marriage rates are similar to those of fifty years ago.[1] Importantly, this decline in the rate of marriage has not been accompanied by a similar decline in the rate of childbirth.

The class-based concentration of this marriage decline harms our democratic and social fabric. For one, a functioning democracy requires a strong civil society, and marriage is a key indicator for broader participation in civil society—for example, young men don't attend church and then get married; studies show they get married and then go to church.[2] A vibrant democracy also requires upward social mobility—the ability for one's children to achieve a social and economic status that surpasses that of their parents and grandparents. But the lack of marriage for America's lower classes saps this opportunity for social mobility, especially for children.

Much attention has been paid to culture, and studies do show that people are influenced by those around them, even on life-changing decisions like marriage and divorce. But too little attention has been paid to the large marriage penalties that exist in America's welfare programs—programs which by definition touch the exact income groups where we've seen marriage decline the most. This deserves careful consideration from thoughtful policymakers.

Why marriage matters for children

Policymakers should be concerned with marriage among the bottom half of incomes because marriage is an anti-poverty tool and immensely important to America's children. Put bluntly, family fracture and the absence of marriage among America's lower classes traps children in poverty. According to Raj Chetty, a Harvard researcher, the number of two-parent families in a neighborhood is a primary factor in predicting rates of upward income mobility later in life for the children in that neighborhood. This is true even when controlling for variables such as the quality of schools, race, or ethnicity.[3]

Family structure impacts the choices kids will make as adults. Kids without a father in the home are more likely to drop out of school, go to jail, and suffer mental health problems such as depression as adults. Fatherless kids are even at a higher risk of abuse.[4]

Research by David Autor and David Figlio examined and rejected the idea that these effects are due to bad neighborhoods and schools. Instead, "neighborhoods and schools are less important than the 'direct effect of family structure itself.'"[5]

Two-parent families are such a huge driver of economic mobility that family status often trumps government policy efforts to combat poverty. While rarely discussed in policy circles, especially when it comes to anti-poverty efforts,[6] the family status of children often even explains outcomes in government programs like early childhood education. Programs are unsuccessful if they don't "engage the family," according to Dr. James Heckman, a University of Chicago economist and Nobel Laureate.

"Nobody wants to talk about the family and the family's the whole story," says Heckman. "And it's the whole story about a lot of social and economic issues."[7]

Heckman continues: "It's amazing to me, when we see these high rates of return on early childhood programs, and I've written about them, we get returns of about 13% per annum. I'm willing to bet that if we really evaluated what the benefits were of a mother working with the child, we'd find rates of return of more like 30 or 40%. But nobody has ever studied it."[8]

A self-defeating social safety net

Welfare's marriage penalties trap future generations in poverty. Brad Wilcox, a professor of sociology at the University of Virginia and a nationally recognized expert on the matter, notes that an R-Street Institute study found that a working-class couple in Arkansas stood to lose 32 percent of their real income if they married. "Not surprisingly, these penalties seem to play a role in fueling working-class Americans' retreat from marriage," writes Wilcox.[9]

This author's research has found a marriage penalty of between 15 and 20 percent of pre-tax income, not including the penalty in healthcare welfare (Medicaid).[10] To put it in dollar terms, this comes out to more than $10,000 per year in lost benefits—so added costs to the family for food, rent, or childcare—when a couple is making a combined $60,000, is extremely material and absolutely will drive decision-making.

To understand why welfare has marriage penalties, consider an unmarried mother of an infant child, who depends on a handful of benefits to pay rent and purchase groceries. She has family help watch her child and also receives subsidized daycare assistance, which allows her to earn $45,000 per year. Most of the state's benefits cut off at $50,000 per year of family income. If her boyfriend, the biological father of her child, had his income counted too, she would suddenly be well beyond eligibility for these benefits.

Usually, if program eligibility is $50,000 for a family of two, it might increase to $55,000 or $60,000 for a family of three, making no distinction between whether that third additional family member is a parent or a child. Because one adult earner is very likely to be below the $50,000 eligibility threshold for a two-person family (a mother and her baby) but two adult earners are likely to earn more than $60,000, the program will only be available when just one adult's income is counted.

On paper, the state in our example counts the income of the biological father toward welfare eligibility whether the parents are married or not, as long as the bio-father lives with the child and bio-mother. Perversely, an adult who is not a biological parent and resides with the mother will not have his income counted (though the details on how his income is excluded depend on whether the test is an economic unit, based on shared resources, or biological unit test).

But in practice, it is easy for cohabiting biological parents to conceal their cohabitation from authorities, while it is impossible for a married couple to conceal their marriage from authorities. So, the mother in our example—making just $10,000 below the cutoff to welfare programs she depends upon—has a major economic incentive against marriage. The problem is that these cohabiting relationships are much more unstable than marriage and are thus a worse situation for children—not something public policy should incentivize.[11]

What has been done so far

Reforms to address this issue can be tricky, both because of the politically charged nature of single motherhood and because reform requires thoughtful policymaking—it isn't a simple "fix" akin to a tax cut or spending more on a perceived problem. When moving forward with any of these ideas, policymakers should emphasize the importance of two-parent families without denigrating single-parenting. Indeed, many single parents are more equipped to instill good values in their children than two-parent families, and single-parenthood is often not a choice.

Because of the complexities, very few states have attempted meaningful reform. In Minnesota, Temporary Assistance for Needy Families (TANF) was given a "honeymoon period" where the program eligibility extends an extra twelve months after marriage. This is an extremely welcome reform, driven by the state's Catholic Conference.[12] But the TANF program is small relative to other welfare programs such as subsidized housing, subsidized childcare, and food assistance, so it makes up a very small percentage of the overall marriage penalty. On top of this, TANF recipients tend to be in the lowest income tiers and less marriageable than working-class Americans in higher income tiers who are closer to the eligibility cutoff for larger, more generous welfare programs. In other words, this change is the right thing to do, but it's not necessarily likely to drive marriage rates higher among TANF recipients.

A similar bill in Wisconsin is being pushed by the Wisconsin Catholic Conference. It would do the same—create a "honeymoon period" for welfare eligibility—but this time for the state's earned income tax credit (EITC), a subsidy to lower-wage earners. However, at the time of writing, that bill appears to be stuck in committee.[13]

The path forward

At the federal level, a comprehensive solution could be a shift toward something that is marriage neutral, more like the tax code, and replaces the child tax credit and all welfare for cash payments per child that cut off at a high-income threshold, and where that threshold doubles when the tax filer is married. Sen. Mitt Romney proposed something like this, but the proposal would only be optimal if it replaced all welfare, not just a few programs. Other federal solutions could, over time, make welfare less generous relative to inflation.

At the state level, however, reforms will generally be less comprehensive but are just as necessary. An important place to start is to end the method of counting the income of the biological dad in the home but not the income of the live-in boyfriend (an able-bodied adult) toward welfare eligibility. This won't solve the *marriage* penalty, because cohabiting joint-biological parents will still be able to hide their cohabitation while married couples cannot, but it will end the discrimination on paper against both biological parents residing with their children (or, said differently, will end the perverse incentive on paper privileging the live-in partner, who is an unrelated adult of the child[ren], over the biological parent in the home).

Policymakers could also work to increase the eligibility threshold for married couples in select welfare programs. So, where a single mother and her child have an eligibility threshold cutoff of $45,000 per year in income, a married couple could see their eligibility threshold end at $70,000 of combined income, and the benefits would taper off gradually as income increases so there is no benefit cliff—where a recipient earns a bit more and loses a much larger share of benefits, resulting in an effective take-home pay penalty for earning slightly more market income.

Finally, policymakers can create eligibility extensions for program recipients who get married—"a honeymoon period" so existing benefits are extended a certain amount of time after marriage, even when the recipient is now above the eligibility threshold.

Each potential solution has its benefits and possible drawbacks. Only the solution of ending the family-unit test, and instead counting the income of all the able-bodied adults in a home, is costless.

Particularly at the state level, policymakers should continue to push for "honeymoon period laws" and should immediately work to change the way adult incomes are counted toward eligibility. But the more impactful reform, not yet passed in any state, will be when policymakers target the large marriage penalties experienced by young working-class adults.

Working-class, non-college-educated adults see the highest penalties because their earnings aren't insubstantial but are still individually below eligibility cutoff thresholds for the most generous programs, such as childcare subsidies.[14] Reform should work to push back against the incentive to go unmarried at this cohort's peak years of family formation.

For a select program, say childcare assistance, eligibility should increase for married couples only. Within this increased eligibility window, the amount of assistance would slide down as income increases. This is, without completely ending welfare, the only way to fix the fact that welfare doesn't account for the basic truth that two adults are likely to earn more than one adult. Even the federal tax code recognizes this by allowing married couples to file jointly so marginal tax rates don't kick in until higher income levels, accounting for the combined earning power of two adults in a marriage. We've mostly fixed marriage penalties for the top half but not the bottom half who need marriage the most; thoughtful policy can fix this.

REPORT ENDNOTES BEGIN ON PAGE 51

The following recommendations were developed to guide policymakers in crafting legislation to reduce marriage penalties.

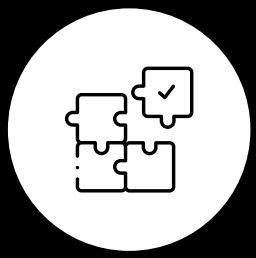
End the unfair treatment, on paper, of two parents both living with their biological children. End the family-unit test for determining income eligibility for most welfare, where the income of a second adult in the home only counts toward program eligibility if that adult is also the biological parent of the children covered by the program. Instead, count the incomes of all able-bodied adults in a home toward determining welfare eligibility, not just the incomes of biological parents.

Follow the federal tax code's example and account for the combined earning power two adults can have in a family unit. Raise the eligibility threshold for married couples to 1.7 times the eligibility threshold for the number of persons in the family with two married parents minus one. For example, if two married parents have one infant child, their eligibility threshold should be 1.7 times the eligibility threshold that would exist if the family consisted of just one adult and one program-eligible child.

Reduce the benefit cliff that occurs when a program recipient gets married or earns more than the threshold, which currently results in the sudden loss of benefits far outweighing any gain in household income.

- Phase out the program for married couples between 1.4 times and 1.7 times the program benchmark *(the eligibility threshold for a family with the same number of children but only one biological parent)*. The phaseout occurs gradually via higher program copayments. For example: Family copayments should equal roughly half the actual cost of childcare at 1.55 times the program benchmark; over a third of the cost at 1.5 times; two-thirds of the cost at 1.6 times; and copayments should equal the full cost at 1.7 times (at this point program eligibility ceases).
- Copayments should rise gradually before, and entering, the phaseout period of 1.4 to 1.7 times the program benchmark: (1) Increase the income required to trigger a higher copay by roughly 30 percent for married parents' copayment schedule, relative to the copayment schedule for a single adult with the same number of children—both before and after the enhanced eligibility threshold; (2) Fit this modification with the provision of ramping copayments until eligibility ends, to ensure a relatively gradual copayment increase.

Allow family flexibility. To save taxpayer funds and allow families flexibility, this enhanced eligibility for married couples should require full-time work by the first spouse but allow part-time work by the second spouse, and only pay for part-time childcare commensurate with that part-time work.



Unlocking the Power of Play

SOFT SKILLS AND THE FUTURE OF WORK

BEN WILTERDINK

Introduction

The most reliable way to climb the income ladder is through a job. On this basic point, most people agree, including most economists and policymakers. Fostering an environment in which there is an abundance of employment opportunities has been a longstanding goal for those who want to enable individuals to succeed. But another key aspect of workplace success is ensuring that potential workers have the capacity to secure those opportunities and thrive in them. That is where skills come in.

Skills are the building blocks of success in the labor market. Employers seek out certain skills, and those who possess them have greater opportunities to climb the income ladder and shape their own lives. But while skills have always been important, the exact skills sought after by employers are not static; in fact, the skills that most employers seek today are meaningfully different from the skills that would have unlocked workplace opportunities seventy years ago. Identifying skills for today's jobs and fostering environments in which the upcoming workforce can best develop them is a fundamental element in ensuring that the workers of tomorrow are best equipped to succeed.

The growing importance of soft skills

Since about the late 1950s, the American economy has continued a steady transformation from a primarily goods-based economy to a primarily service-based economy, particularly in terms of employment. Indeed, "goods-sector employment peaked at 25 million in 1979. In that year, service-sector employment was already higher at 49 million; since then, it has grown to be 109 million [in 2022]."[15] This shift has been accompanied by a shift in the skills most valued by employers. Rather than prioritizing strength, endurance, or a tolerance for repetition, new skills in the areas of precise technical knowledge, strong interpersonal skills, and self-regulatory skills became important. And while skills in the domains of science, technology, engineering, and mathematics (STEM), the "hard skills," are still sought after, so too are the more personal and people-oriented "soft skills."

Soft skills, sometimes called character or non-cognitive skills, refer to a broad range of personality traits, communication, socio-emotional, and interpersonal skills that enable people to effectively navigate their environments, work well with others, self-regulate, and achieve their goals.[16] These skills are not typically captured by traditional academic and fact-based achievement tests but are often at least as important if not even more important than traditional cognitive skills. Economists studying the labor market and the skills necessary for success have long argued that soft skills deserve more attention.

A 2014 analysis from economists Tim Kautz, James Heckman, and others found that soft skills' predictive power "rivals or exceeds that of cognitive skills."[17] Harvard economist David Deming has identified a clear trend of employment opportunities favoring soft skills compared to hard skills.[18] And, in 2022, Swedish researchers Per-Anders Edin, Peter Fredriksson, and their coauthors found that "between 1992 and 2013, the economic return to noncognitive skill—a psychologist-assessed measure of teamwork and leadership skill—roughly doubled."[19] In addition to the academic work demonstrating the impor-

tance of soft skills, employer-based interviews and surveys communicate the same message.

A LinkedIn report from 2023 found that, from an analysis of 800 million global users' hiring and job posting data, the top five most in-demand skills were management, communication, customer service, leadership, and sales.[20] Moreover, when Deloitte surveyed 1,116 chief information officers in 2018, they found that creativity, cognitive flexibility, and emotional intelligence were the skills rated as most likely to "grow significantly in importance during the next few years."[21]

The shift in preference toward soft skills reflects a fundamental change in the American economy. Despite having a higher manufacturing *output*, manufacturing *employment* has significantly declined.[22] And as automation and technology enabled the shift from goods to services, soft skills became more relevant and important. Just as the previous wave of technology enabled a sharp increase in productivity resulting from automation, the next wave of technological change seems poised to increase the value of soft skills even further.

Artificial intelligence (AI), including tools like ChatGPT, is already changing the nature of work, a trend that is almost certain to continue and become even more widespread. While the exact changes to the nature of work are still unknown, there are some useful clues that hint at what we might expect going forward. In general, tasks that are routinized in some way or rely on knowledge of a particular subject area are likely to be disrupted by these new technologies.

However, rather than the mass unemployment predicted by some, the most likely outcome of these new technologies infiltrating the workplace will instead be a shift toward other kinds of productive work. Tasks that require creativity, problem-solving, teamwork, and frequent interpersonal communication are all areas that are likely to grow alongside the adoption of these new technologies. And these tasks are all increasingly dependent on the successful mastery of soft skills.

Building soft skills

Unlike traditional academic or cognitive skills, soft skills are less amenable to formal classroom instruction. Although there are some promising educational and early childhood interventions that have been shown to foster soft skill development, practical experience in navigating social environments appears to be the most effective path to developing these skills. Furthermore, soft skills build on one another and are therefore most effectively developed early in life.

Because starting early matters so much for developing soft skills, the family is the first and most important incubator of these skills. Although often touted as a proponent of universal preschool programs, economist James Heckman has noted that even successful programs cannot replace the family. In a 2020 interview, he commented that "[p]ublic preschool programs can *potentially* compensate for the home environments of disadvantaged children. No public preschool program can provide the environments and the parental love and care of a functioning family and the lifetime of benefits that ensue."[23] Strengthening the stability of families has many benefits, and developing soft skills should be counted among them.

However, social environments outside the family also play a key role in the development of soft skills, especially for children. Peer groups are vitally important in providing opportunities to socially interact with others and allow for practice with skills like teamwork, perseverance, creativity, and problem-solving. Nowhere are these opportunities more abundant than when children are engaging in free play.

Free play is activity that is undirected or independent in nature. Typically, free play means a lack of adult supervision as kids play in peer groups, often with a mix of ages. Psychologist Peter Gray describes free play as an important part of biologically ingrained social and psychological development: "Free play is the means by which children learn to make friends, overcome fears, solve their own problems, and generally take control of their own lives."[24] Basically, free play is precisely the type of activity in which children acquire and develop a broad range of soft skills.

Child-directed and based on both interest and joy, free play is a stream of social interactions in which children cooperate, play creatively together, and learn from each other. Crucially, the lack of adult supervision means that children are left to their own devices to come up with activities and resolve conflicts. Younger kids are incentivized to try hard to keep up with their older peers. Older children must make sure to devise parameters and rules that can keep the younger children involved so that the games can continue. Gray notes, "In free play, children learn to make their own decisions, solve their own problems, create and abide by rules, and get along with others as equals rather than as obedient or rebellious subordinates."[25]

While children are unaware of it in the moment, this kind of activity is building the soft skills essential for success, both in school and later in life. Economist David Deming summarized his findings about the role of decision-making in the workplace as follows:

Modern jobs increasingly require workers to adapt to unforeseen circumstances and to solve abstract, unscripted problems without employer oversight. As automation technology progresses, machines can increasingly perform many pre-scripted tasks better than a person, which leaves non-routine, open-ended tasks as the domain of human labor.[26]

Unfortunately, despite its myriad of benefits, free play is on the decline. Both social norms and legal barriers hinder the kinds of free play that can be so crucial to soft skill development. Reversing these trends and protecting free play is an indispensable step in ensuring that children can build the skills necessary for success.

Unlocking the power of play

In a seminal article for *Reason* magazine, social psychologist Jonathan Haidt and journalist Lenore Skenazy discuss the growing trend of safetyism that has resulted in children having fewer unsupervised free play opportunities than ever.[27] Despite the rates of violent crime being far lower today than in the '70s, '80s, and '90s, parents are still reluctant to allow their children to play by themselves or with friends in an unsupervised setting. Complicating the issue further is the relentless pressure to pack children's days full of "enrichment" activities that are inevitably scheduled, closely supervised, and rigidly structured.

Perhaps as a result of these parenting trends or perhaps partially driving them, there has been a significant increase in instances in which law enforcement becomes involved in punishing parents for allowing their children the opportunity to engage in unsupervised free play. From the Florida mother who was confronted by police for allowing her (cell phone carrying) seven-year-old to walk less than half a mile to a local park, to the New Jersey father who was arrested for attempting to prevent police officers from taking his seven-year-old daughter into protective custody after they were alerted by a neighbor that she was walking around the block by herself, examples of this trend are plentiful.[28]

Whatever the cause, broad child neglect laws are being aggressively applied to prevent behaviors that would have been common just a generation ago. Even if parents wanted to allow their children the opportunity to engage in free play, these legal barriers put them at risk. While addressing the wider social trend toward safetyism will take time and concerted effort, the first step must be to shield parents from legal punishment for allowing their children some reasonable room to grow.

Fortunately, a growing number of states are becoming aware of this problem and are acting to address it. Pioneered by Lenore Skenazy and her nonprofit organization LetGrow, several states have adopted "Reasonable Childhood Independence" laws to protect children and their parents from these legal barriers to free play. Although there are different variations, these laws modify state statutes to protect parents from being charged with negligence or neglect merely for allowing their kids to engage in appropriate unsupervised activities. Such laws do not repeal laws governing child neglect and negligence but refine them by limiting the extensive discretionary power of authorities enforcing these laws and prohibiting neglect charges from being brought against parents for a single incident of a child being unsupervised for a reasonable period of time. Some versions even list specific activities that are exempt from neglect or negligence violations, such as walking to or from school or playing outside.

Utah was the first state to protect parents by adopting a reasonable childhood independence law in 2018. Since then, six more states, including Oklahoma (2021), Texas (2021), Colorado (2022), Illinois (2023), Virginia (2023), and Connecticut (2023), have adopted similar policies or effectively changed neglect and negligence policies in a way that protects parents.[29] All states should consider adopting similar policies. Such protections are a prerequisite for the kinds of activities that can help kids succeed in the long term.

Ultimately, employment is the most reliable way to gain experience and climb the income ladder; and skills, in turn, are the essential building blocks of securing and thriving in a job and career. As new technologies change the way we work, soft skills are quickly becoming indispensable in capturing those opportunities, and fostering their development should be a key policy priority. The most urgent and effective policy to help create that environment is simply to allow kids more room to play and learn freely with one another. In short, letting kids be kids again is the best way to ensure they have the skills necessary for success.

REPORT ENDNOTES BEGIN ON PAGE 51

MODEL POLICY | Reasonable Childhood Independence Law

The following model bill is based on the Reasonable Childhood Independence Law adopted in Oklahoma in 2021 and is featured on the Let Grow website.

It is reprinted here with permission.

SUMMARY

This policy is intended to protect parents from charges of negligence, neglect, or child endangerment for merely allowing their children to engage in appropriate independent play or activities.

SECTION 1

Evidence of material, educational or cultural disadvantage as compared to other children shall not be sufficient to prove that a child is deprived or neglected; the state shall prove that the child is deprived or neglected as defined pursuant to this title.

SECTION 2

"Neglect" means [includes the following, as well as other categories unrelated to children being alone]:

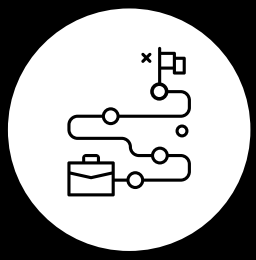
1. the failure or omission to provide supervision or appropriate caretakers to protect the child from harm or threatened harm of which any reasonable and prudent person responsible for the child's health, safety or welfare would be aware, special care made necessary for the child's health and safety by the physical or mental condition of the child.

SECTION 3

"Neglect" shall not mean a child who engages in independent activities, except if the person responsible for the child's health, safety or welfare willfully disregards any harm or threatened harm to the child, given the child's level of maturity, physical condition or mental abilities.

Such independent activities include but are not limited to:

1. traveling to and from school, including by walking, running or bicycling,
2. traveling to and from nearby commercial or recreational facilities,
3. engaging in outdoor play,
4. remaining at home unattended for a reasonable amount of time,
5. remaining in a vehicle if the temperature inside the vehicle is not or will not become dangerously hot or cold, except under the conditions otherwise prohibited by law, or
6. engaging in similar activities alone or with other children.



Education Freedom

A PATH TO UPWARD MOBILITY

ERICA JEDYNAK

Introduction

America remains one of the few bastions around the world where one's economic status at birth does not determine one's ultimate potential. The spread of knowledge has catapulted human progress, and the next period of great transformation in this country will no doubt be defined by the advancement of education freedom and technological innovation.

Reflections on 2023: Movement toward education freedom

The year 2023 was a banner one for education freedom. Universal (or almost universal) education savings accounts and funding programs have been enacted in Iowa, Arkansas, Florida, Utah, Ohio, North Carolina, and Indiana.[30] Oklahoma enacted a universal, refundable personal tax credit, which has the potential to catalyze the next series of states to enact policy change, enabling families to have even more autonomy.

Less noticed but with wider reach, since the majority of American children attend public schools, was the opening up of public education access across multiple states. In Idaho last year, Governor Brad Little signed into law transformational legislation prohibiting school districts from discriminating against students based on residential address or charging tuition for attending a public school. In Arkansas, open enrollment was expanded considerably, eliminating a previous prohibition preventing districts from allowing more than 3 percent of their students to transfer, as well as adopting a Transportation Modernization Grant for families who need transportation support. West Virginia, North Dakota, and Montana also expanded flexibility for children to attend the public school that is best for their needs.

Expanding education freedom

How can state legislators bring a healthy dose of freedom to antiquated education systems in their states?

Personal education tax credits and education savings accounts are policy solutions that can potentially be customized to individual states. Both options empower families to direct their children's education through tax dollars. When considering these alternatives, policymakers should consider two main principles when developing new laws: 1) trusting families; and 2) making such programs universal. When we believe in families, we trust parents and children to make the best decisions for themselves, removing any elitism or paternalism in making choices for others based on our own values or disconnected experiences. It is also crucial that these programs have universal eligibility because every child deserves education opportunity.

In 2023, Oklahoma enacted The Parental Choice Tax Credit Act—the first refundable, universal tax credit of its kind, where families will have access to between $5,000 and $7,500 for private school tuition or home schooling. According to a case study on personal education tax credits by yes. every kid:

Tax credits offer a unique way to allow funding for education to flow directly to families and minimize regulations placed on families. Specifically, education tax

credits: 1) allow for low regulations and high family autonomy, 2) establish flexible funding streams, 3) create a strong legal basis, and 4) fund students strategically.[31]

Separately, education savings accounts (ESAs)[32] create a different mechanism for states to empower families with direct funding. ESAs are taxpayer-funded and publicly administered savings accounts for parents to use for their children's education expenses, from private school tuition to tutoring to special education therapies, depending on the state. Ten states now have universal or almost universal education savings accounts, where 100 percent of children are or will be eligible for funds, including Alabama, Arizona, Arkansas, Florida, Indiana, Iowa, North Carolina, Utah, West Virginia, and Ohio.

State legislators might also consider opening up public school access by empowering children to attend the public school that best meets their needs. Education is one of the few, perhaps only, areas of government where citizens have limited access to necessary services by zip code and de facto wealth. No public park, pool, or hospital is managed this way, restricting access based on outdated boundary lines. Many school district boundaries are modern-day reflections of discriminatory and outdated redlining practices of the 1930s, so getting rid of boundary lines could be a major stride in removing barriers for families of color.

Currently, a child's access to certain public schools is coupled with their parents' ability to purchase a home and de facto family wealth. Jude Schwalbach, policy analyst at the Reason Foundation, noted:

When the price of admission to a public school is built into the cost of housing, mortgages function like fees to a private school. Accordingly, residential assignment's de facto sorting mechanism—property wealth—often isolates students into socioeconomic enclaves.[33]

Additionally, according to research by Harvard University economist Raj Chetty:

Children who grow up in communities with more economic connectedness (cross-class interaction) are much more likely to rise up out of poverty. ... The social disconnection by class is due in equal part to segregation by income across social settings and friending bias within settings. ... Our analysis reveals that children who grow up in communities that are rich in bridging social capital—where low-income families are more likely to interact with high-income families—have significantly better chances of rising out of poverty.[34]

By ending the practice of residential assignment of public schools, children will have access to the public schools that best meet their needs, regardless of income or race. Fortunately, a movement is growing to further open up public school access and flexibility. The movement to champion parental rights alongside upward mobility is bipartisan, uniting the political spectrum, from progressives to conservatives.

The future of education

States that have planted the seeds of education freedom, and others on the horizon, will see a flourishing of education entrepreneurship and new marketplaces where families can customize their children's education based on what works best for their individual needs. The future of education—emerging today throughout the country—will look more à la carte, where students could participate in a STEM co-op for part of the week, a surfing workshop for physical education, or a self-directed literature study the following week. The possibilities for personalized education journeys are limitless.

Through education freedom, a greater number of children will have access to educational experiences that look more like self-discovery and identifying potential career paths, in contrast to the cookie-cutter education system based on Carnegie units and producing factory workers. There is great dignity in work, and education is often the foundation for one's future career trajectory and self-actualization in life. Testifying before Congress, *Dirty Jobs* host Mike Rowe noted:

In high schools, the vocational arts have all but vanished. We've elevated the importance of "higher education" to such a lofty perch that all other forms of knowledge are now labeled "alternative." Millions of parents and kids see apprenticeships and on-the-job-training as "vocational consolation prizes," best suited for those not cut out for a four-year degree. And still, we talk about millions of "shovel ready" jobs for a society that doesn't encourage people to pick up a shovel. ... A few years from now, an hour with a good plumber—if you can find one—is going to cost more than an hour with a good psychiatrist. At which point we'll all be in need of both.[35]

After several decades of debt-laden college degrees being pushed on young people as the only path to success, the trades are seeing increasing workforce shortages while Americans have the ability to earn considerable incomes as electricians, plumbers, and contractors without incurring enormous debt.

Following the COVID-19 pandemic, education reform in America has been within the Overton Window, and both funding and residential assignment changes have the ability to transform education from a top-down model to a bottom-up approach shaped by learners themselves. Education freedom is a key path to upward mobility, especially when public policy relies on trusting families and believing in people.

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LEGISLATIVE GUIDE | Education Tax Credits

The following guide is based on the report "Education Tax Credits" published by yes. every kid., written by Lily Landry.

It is reprinted here with permission. See their website for examples of existing state programs.

ELEMENTS TO CONSIDER WHEN CREATING PERSONAL EDUCATION TAX CREDITS

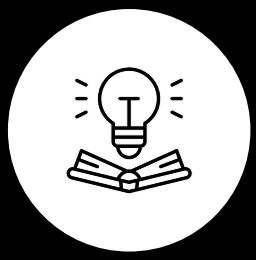
1. The program should be **universal** to all students eligible to enroll in the public school system who are not enrolled full time in a public school.
2. Families should be the receiver of their individual student's tax credit to allow for maximum autonomy in driving the child's education.
3. The amount of an education tax credit should be as close as possible to **100%** of the amount the state spends per pupil or would spend on a specific pupil based on his or her individual characteristics.
    - A program should allow for a prorated amount for students partially enrolled in public school.
    - A program should be available to all students who choose to not enroll in a public school, but could weigh the credit amount based on a parent or guardian's tax bracket.
4. Tax credits can be **refundable** to allow low-income families to truly benefit from the program.
5. There should be a mechanism to allow **for early claims** of the tax credits.

PROGRAM IMPLEMENTATION

To ensure that every citizen has access to quality education, tax credits can emerge as a powerful tool for families. Success of an education tax credit program hinges on taxpayers being aware of the benefits, processes, and eligibility requirements.

A complicated process can deter families. Consider incorporating these features for effective implementation of an education tax credit program:

- Timely and adequate information for taxpayers
- Hassle-free claim process
- Avoid over-regulation
- Collaborative engagement
- Open channels for taxpayer feedback
- Provide periodic evaluation of efficacy



Setting People Up for Career Success

YOUTH DEVELOPMENT AND EARLY WORK EXPERIENCE

BEN WILTERDINK

Introduction

Few events can rival the sense of accomplishment and pride that comes with earning one's first paycheck. Having tangible proof that your efforts and hard work have been rewarded, and that others recognize and value your contribution, is a unique experience as one firmly steps onto the first rung of the income ladder. Moreover, earning a first paycheck comes with more than just the money. Confidence, work experience, and subtle skill acquisition are all important parts of the package. Indeed, these are the building blocks of future career success and the ticket to climbing further up the ladder over time—the most powerful positive benefits of which are captured early.

Both academic research and real-world experiences have long demonstrated the positive value of youth employment.[36] But despite this track record, youth employment has been on a steady decline in recent decades. Minimum wage laws have priced younger workers with little to no experience out of the labor market.[37] Ruthless college admissions processes have steered teens toward educational and other non-work "enrichment" activities.[38]

Perhaps most perniciously, well-intended but misguided legal "protections" have pushed the prospect of working as a teenager all but out of reach. Layers of bureaucratic red tape and government permission slips have made gaining important work experience and life skills as a teenager all but illegal in some states. Lifting these barriers and putting the benefits that come with youth employment back within reach should be among the top priorities for policymakers looking to make it easier to climb the income ladder.

The benefits of early work experience

Skills are the key components that enable individuals to secure job opportunities and thrive in the workplace. Soft skills, such as the ability to work well in teams, communicate effectively, and self-regulate, are particularly valuable in the modern labor market.[39] Developing these skills starts early, first in a family setting and then in early childhood—particularly by engaging in free play.[40] As one matures, however, another significant opportunity to gain and hone these important life skills is through early work experience.

The process of developing skills and their effect on lifetime success has been studied from a variety of different angles, with researchers often arriving at surprisingly similar conclusions. For example, economist Tim Kautz and his coauthors note that "[s]kill development is a dynamic process, in which the early years lay the foundation for successful investment in later years. . . . [W]orkplace-based programs that teach character skills are promising."[41] This observation was then echoed in a USAID report which concluded that "[t]heoretical literature suggests that adolescence and young adulthood are optimal times to develop and reinforce these skills."[42]

In addition to the broader evidence about the optimal time to learn the skills necessary for success, there is substantial evidence on the benefits of teenage work experience specifically. In her 2005 book based on a longitudinal study of a thousand students, University of Minnesota sociologist Dr. Jeylan Mortimer offers the following conclusion:

[H]igh school students who work even as much as half-time are in fact better off in many ways than students who don't have jobs at all. Having part-time jobs can increase confidence and time management skills, promote vocational exploration, and enhance subsequent academic success. The wider social circle of adults they meet through their jobs can also buffer strains at home, and some of what young people learn on the job—not least, responsibility and confidence—gives them an advantage in later work life.[43]

More recent work has continued to prove the key findings from Dr. Mortimer's research. A 2014 report from the Employment Policies Institute finds a clear connection between early work experience and positive future outcomes. The report's authors, economists Charles Baum and Christopher Ruhm,

"find clear evidence that part-time work by young adults—both during senior year of high school, and during the summer months—translates to future career benefits that include higher hourly wages, increased annual earnings and less time spent out of work...

Most importantly, [Baum and Ruhm] find that this career benefit of entry-level work persists in the long term: Young adults who graduated high school in the late 1970s and early 1980s and worked part-time during their senior year saw a career benefit 5–10 years after graduation—and the earnings differential still existed nearly 30 years later. ...

Drs. Ruhm and Baum demonstrate that these future career benefits are occurring specifically as a result of the career experience that's gained in early work experience." [44]

The academic case for the benefits of early work experience is clear, but the practical case made by employers who work with people and companies on the ground every day should not be overlooked. Bob Funk, the chairman, CEO, and founder of one of the nation's largest job agencies, Express Employment Professionals, draws on his decades of experience to make the point clearly, stating that "[t]hose low-paying, entry-level jobs are good training for the soft skills you need for upward mobility."[45]

Academic evidence and real-world knowledge converge on the significant benefits of early work experience. The skills and confidence gained through early work experience set the stage for further development and even more opportunities. Recognizing these benefits is essential to ensuring that young Americans have the chance to acquire the tools that can propel them to be successful in their futures.

Lifting barriers to early work experience

Despite the vast benefits that come with early work experience, teenage employment has declined over the past several decades.[46] Summer jobs or part-time work after school used to be much more common than they are today. In fact, "only 36% of those ages 16 to 19 participated in the labor force at the end of 2021, down from almost 60% in the late 1970s."[47]

This decline doesn't have a single cause; minimum wage hikes, increased academic competition, and cultural changes are all contributing factors. But in addition to these more general factors, there is at least one particularly damaging reason that stands out. Over the past several decades many states have created legal barriers to early employment experience by adopting laws that make it increasingly difficult for teenagers to work. The most common form of this barrier is youth work permits.

These laws strip the authority of parents and teens to make employment decisions and instead require a government permission slip to be obtained as a precondition of youth employment. In some cases, this permission slip must come directly from a state official, but in most cases, it must come from a school administrator tasked with reviewing and evaluating the potential job, employer, and hours. Some state laws even require a physician's certification that a teen is physically fit enough to work or require a new permit each time an employed teen changes jobs.[48] In all cases, the ultimate decision about employment is taken from parents and teens and transferred to bureaucrats.

As of January 2024, thirty-four states require some version of youth work permit to be obtained before parents and teens can decide whether to allow the teen to accept a job.[49] Fortunately, some states, like Indiana in 2020 and Arkansas in 2023, have enacted legislation to eliminate youth work permits and return decision-making authority to parents and teens. States that still maintain laws denying them that authority should follow suit. Notably, putting teens and parents back in the driver's seat by eliminating youth work permits doesn't change the federal labor laws that protect minors from dangerous working conditions or unreasonable working hours. These protections, established by the Fair Labor Standards Act (FLSA) remain fully binding.[50]

Restoring the authority to make decisions about early work opportunities to teens themselves and their parents is an essential step in lifting the legal barriers to a fundamental pathway of skill development—decisions which can have consequences (positive or negative) for a lifetime. No child, teen, or, indeed, any other person should be forced to work a job they do not want. But for the millions of teens who may want the opportunity to earn their own paycheck and gain valuable early work experience that can help them thrive in the long term, the option to do so should be with them and their parents. The opportunity to develop essential life skills shouldn't only be available to those who can afford to take unpaid internships or jump through bureaucratic hoops. It should be available to any teen who chooses it.

REPORT ENDNOTES BEGIN ON PAGE 51

MODEL POLICY | Eliminate Work Permits for Teenagers

The following model policy was developed by the Foundation for Government Accountability.

It is reprinted here with permission. See their website for examples of existing state programs.

A. DEFINITIONS. FOR THE PURPOSES OF THIS ACT, THE TERM

1. "Certificate of age" means a written authorization issued by the federal or a state government for the purpose of establishing the correct age of a minor, as described in 29 CFR Part 570.
2. "Employment certificate" means a written authorization issued by *[reference to state government entity, typically education department and/or labor department]* for the purpose of legally employing a person under eighteen years of age.

B. PROTECTION OF PARENTAL RIGHTS

1. A state government entity or political subdivision in this State shall not, by rule or practice, require that a person under eighteen years of age be issued an employment certificate or certificate of age as a condition of employment.
2. Nothing in this section precludes the [*state department of labor*] from issuing a certificate of age upon request.

C. SCHOOL ATTENDANCE

This Act shall not be construed to authorize a minor of compulsory school age to be absent from school in violation of attendance requirements of this State.

D. REPEAL

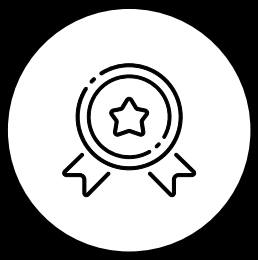
All laws and parts of laws in conflict are repealed [*eliminate existing statutory references to work permits*].

E. EFFECTIVE DATE

This Act shall take effect upon becoming law.

PART 2

LIFTING BARRIERS TO OPPORTUNITY



Easing Paths to Employment

REMOVING OCCUPATIONAL LICENSING BARRIERS

CONOR NORRIS | EDWARD TIMMONS

Introduction

Occupational licensing, broadly defined as a set of entry requirements that individuals must meet to legally practice certain occupations, now covers one in five workers in the United States. Although licensing may have historically been intended to protect public safety and ensure professional competence, it has today extended to professions where its justification is dubious. Because meaningful work is an essential component of human flourishing, removing unnecessary licensing laws that harm aspiring professionals while failing to serve the public interest should be a priority for policymakers. In this essay, we highlight three reforms that policymakers should consider to reduce the harmful effects of licensing.

Background

Occupational licensing laws set minimum government standards and requirements to enter a profession. It is the most stringent and costly form of labor market regulation. Before an individual can legally offer their services, they must apply to a state board that oversees the profession. Applicants often must complete education programs, obtain experience under the supervision of a licensed professional, pass exams, pay fees, and pass background checks.

In the past, licensing was relatively unimportant compared to other labor market regulations and institutions. Just 5 percent of workers needed a license to work in the 1950s. They were reserved for professions like physician, dentist, and lawyer, where poor services posed a substantial risk of death, permanent injury, or incapacitation. Today, licensing has grown to cover around 20 percent of workers, including professions like barber, veterinarian technician, and interior design, who pose little risk of physical harm to consumers. Only a small portion of this growth can be attributed to the shift from a manufacturing-based economy to a service-based economy; most of the growth has been the result of additional professions being licensed. Today, over 300 professions are licensed in at least one state.[51]

Several researchers have estimated the economic consequences of excessive occupational licensing. Because licensing creates barriers to entry like education and training requirements, it reduces the supply of professionals by 17 to 27 percent.[52] In many cases, potential workers choose to enter an unlicensed profession that is easier to enter. Additionally, licensed professions tend to grow more slowly than unlicensed professions.[53] Not only do fewer professionals offer services in licensed professions, when consumer demand increases, it takes longer for the profession to grow to keep up with the increase in demand.

The relative shortage of workers results in more than simply inconveniencing consumers; it also increases the prices they pay.[54] The higher prices are a direct result of the higher wages commanded by licensed professionals. Higher wages, when a result of improved quality or productivity, are beneficial. However, when wage increases result from laws that reduce competition, it hurts consumers and the would-be professionals prevented from entering the profession.

In addition to death and taxes, the third certainty in life is the existence of tradeoffs. If licensing can improve the quality of services, it may still be beneficial, despite the

tradeoffs of higher prices and fewer professionals offering their services. At the turn of the twentieth century, there is evidence that licensing improved quality.[55] Analysis using more recent data from the present and past several decades, however, finds little to no evidence that licensing is helping consumers.[56]

Given the lack of public benefit of licensing in the present, why has is it grown? Public choice theory, which uses economic concepts like self-interest to analyze politics, offers some insight. Professionals organize an association to represent their profession. That association then can lobby elected officials to enact licensing laws that limit competition from new entrants. While the public is much larger than a single profession, each member of the public stands to lose much less than each professional will gain, making it easier for professions to organize.[57]

These protectionist motives can help explain why licensing laws are often designed to be anti-competitive. Education requirements—the most expensive and time-consuming barrier to entry—tend to increase over time. Meanwhile active license holders, who should also benefit from the additional education, are grandfathered in, and allowed to continue to practice. Likewise, fully licensed professionals from other states must reapply for licensure, often retaking exams and sometimes even training when the requirements differ between states. These are difficult to justify to ensure quality but are effective at limiting competition.[58]

The accumulation of occupational licensing laws also results in significant economic costs.[59] In total, licensing laws across the United States reduce employment by 1.9 million jobs. Because licensing increases the prices that consumers have to pay for services, some choose to delay purchases or forego them entirely. This lost output totals about $7 billion per year.

Given the significant costs of occupational licensing, several reforms have emerged as policy considerations in recent years, being supported by both parties. Reforming licensing does not mean delicensing every profession. In some cases the high costs are warranted, but it is nonetheless critical for states to right-size current regulations. Below, we offer three reforms that have been adopted in some form in at least one state and are both realistic and effective.

Universal recognition

Because of the added hassle of obtaining a license in a new state, licensed professionals tend to move less frequently. Universal recognition of out-of-state licenses has emerged as a mechanism to ease the burden of relicensure for licensed professionals. Under this reform, individuals who hold valid licenses in one state can transfer their qualifications and credentials to another state with minimal bureaucratic hurdles. The licensing board must recognize a license issued by another state, given that the license holder meets certain minimal requirements. These provisions differ between states, but in general, they must have practiced for at least a year and with no disciplinary actions. Some states require "substantially similar" education and training, residency before they can apply, or similar scope of practice between states.

Currently, twenty states have passed some form of universal recognition. New Jersey was the first state to adopt it in 2014. Adoption was slow until Arizona's 2019 reform, which was heralded by lawmakers as a groundbreaking reform for its removal of the substantially similar requirement. Since 2019, over eight thousand professionals have moved to Arizona and obtained a new license under the reform. Subsequent reforms, like Iowa in 2020, allow professionals moving from a state without licensure to substitute professional experience for a previous license. Best practices for universal recognition include eliminating residency requirements, accepting relevant professional experience in lieu of state-issued credentials, and avoiding an arbitrary "substantially equivalent/similar" standard. We estimate that universal recognition increases the migration of licensed professionals by 50 percent (among low-portability licensed professions) and resulted in the creation of more than sixty thousand jobs nationally.[60] Border counties seem to achieve the largest gains, receiving an additional thirty-three residents and $1.7 million in tax receipts per year.[61]

Licensing review commission

Universal recognition will help those moving into a state but does nothing to address unnecessary barriers to entry facing residents. While states have been attempting individual reforms—some successful—a more systemic approach is necessary. One such approach is creating an independent commission to conduct a review of a state's licensing laws with the goal of relying on the least restrictive form of regulation to achieve their goal, typically ensuring public safety. The commission would have two tasks: first, to conduct a retrospective review of all licensing laws over a certain period of time, say five or ten years; second, they would be tasked with reviewing all newly proposed changes to licensing laws, both those

that increase existing requirements and the licensing of new professions.

When most licensing laws were implemented, evidence of the effects of licensing was scarce. Now we can use an independent licensing review commission to reduce the costs of licensing requirements by reducing or removing unnecessary ones or by replacing licensing entirely with less burdensome forms of regulation that still effectively protect the public. An effective commission would leave in place requirements that were necessary to protect consumers, removing only those whose costs exceed its benefits. Giving the commission authority, instead of the legislature, reduces the power of interest groups to maintain licensing that it finds favorable to them.

Mississippi created the Occupational Licensing Review Commission in 2017 to review all newly proposed licenses and added a systemic review to their responsibilities in 2020. Nebraska, Ohio, Arizona, and Louisiana have similar commissions. Fifteen states conduct sunrise reviews for at least some professions. The effectiveness of these reviews varies. Some states rarely issue written reviews, while others produce analyses considering a wide range of costs and benefits. For example, Vermont's Office of Professional Regulation produces detailed reports for each profession seeking licensing.

Licensing budget

A final reform that can be coupled with the review commission is setting a specific target for delicensing (e.g., cutting the number of licensed professions in the state by 10 percent). A licensing budget would not just require the commission to consider reforms; it would require them to commit to reform. Thus far, licensing review commissions have rarely recommended delicensing a profession, although they have been more successful in reducing specific requirements and preventing new licenses from being created. If states tend to use licensing when a less stringent form of regulation would be appropriate, holding the commission to a goal will make them more likely to successfully implement reform. Otherwise, pressure from interest groups may overwhelm the necessary reform.

The sunrise and sunset reviews that currently exist are not the most effective in practice, suggesting that interest group pressure does have some impact. A recent survey of sunrise reviews found that in 20 percent of cases, the sunrise review recommended creating a new license. Yet in reality, legislatures create new licenses in 40 percent of cases.[62] Additionally, even when sunset reviews recommend delicensure, legislatures rarely vote to delicense the profession.

Currently, no states have a licensing budget. However, this reform is not without precedent. The federal government and numerous states have a similar reform for a general regulatory budget or the removal of existing regulations for the creation of each new one. We are suggesting something similar, focused solely on licensing.

Conclusion

While they are designed to protect consumers, occupational licensing laws have gone far beyond where they are necessary or even effective. The barriers to entry created by licensing requirements are costly for aspiring professionals, consumers, and professionals looking to move to a new state. But the ability to reform licensing laws rests with state legislators. We recommend that states implement universal recognition to make it easier for skilled professionals to move to their state and begin working without unnecessary costs and delays. States should also conduct a systemic review of current and proposed licensing laws with an independent commission with the goal of protecting the public using the least-restrictive regulatory tool. Including a licensing budget, or a mandated level of reform, will increase the commission's effectiveness. These three reforms will make life easier for workers and remove unnecessary barriers to meaningful work.

REPORT ENDNOTES BEGIN ON PAGE 51

The following model policy was developed by the American Legislative Exchange Council.

The Occupational Licensing Review Act is model legislation that establishes the state policy for reviewing the regulation of occupations, specifying criteria for government regulation to increase opportunities, promote competition, encourage innovation, protect consumers; establishing canons of statutory interpretation; creating a process to review criminal history to reduce offenders' disqualifications from state recognition, and complying with federal and state antitrust laws.

SECTION 1. POLICY

For occupational regulations and their boards, it is the policy of the state that:

A. The right of an individual to pursue a lawful occupation is a fundamental right.

B. Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety.

C. Legislative leaders will assign the responsibility to review legislation and laws related to occupational regulations.

D. (OPTIONAL) The governor will establish an office of antitrust and active supervision of occupational boards. The office is responsible for actively supervising the state's occupational boards.

SECTION 2. DEFINITIONS

For the purposes of this chapter, the words defined in this section have the meaning given:

A. Government certification. "Government certification" means a voluntary, government-granted, and non-transferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not synonymous with "occupational license." It also is not intended to include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

B. Government registration. "Government registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Government registration" does not include personal qualifications and is not transferable but it may require a bond or insurance.

   Upon the government's receipt of notice, the individual may use "government registered" as a title. A non-registered individual may not perform the occupation for compensation or use "government registered" as a title. In this chapter, "government registration" is not intended to be synonymous with "occupational license." It also is not intended to include credentials, such as those held by a registered nurse, which are prerequisites to working lawfully in an occupation.

C. Lawful occupation. "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

D. Least restrictive regulation. "Least restrictive regulation" means, from least to most restrictive,

   1. market competition,
   2. third-party or consumer-created ratings and reviews,
   3. private certification,

4. voluntary bonding or insurance,
5. specific private civil cause of action to remedy consumer harm,
6. deceptive trade practice act,
7. mandatory disclosure of attributes of the specific good or service,
8. regulation of the process of providing the specific good or service,
9. regulation of the facility where the specific good or service is sold,
10. inspection,
11. bonding,
12. insurance,
13. government registration,
14. government certification,
15. specialty occupational certification solely for medical reimbursement, and
16. occupational license

E. Occupational license. "Occupational license" is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

F. Occupational regulation. "Occupational regulation" means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes government registration, government certification, and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation.

G. Personal qualifications. "Personal qualifications" are criteria related to an individual's personal background and characteristics. They may include one or more of the following: completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite knowledge and skills, passing a review of the individual's criminal record, and completion of continuing education.

H. Private certification. "Private certification" is a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation as determined by the private organization. The individual may use a designated title of "certified" or other title conferred by the private organization.

I. Specialty occupational certification solely for medical reimbursement. "Specialty occupational certification solely for medical reimbursement" means a nontransferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of new or niche medical services based on meeting personal qualifications established by the legislature. A private health insurance company or other private company may recognize this credential. Notwithstanding this specialty certification, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty certification to provide the identified medical services for compensation, but the non-certified individual will not qualify for payment or reimbursement from a government agency.

SECTION 3. SUNRISE REVIEW OF OCCUPATIONAL REGULATIONS

A. Sunrise analysis of legislation involving occupational regulations. The Speaker of the House of Representatives, the President of the Senate and the chair each relevant committee of the Legislature will assign to the _____ staff (hereafter "staff") the responsibility to analyze proposals and legislation (1) to create new occupational regulations or (2) modify existing occupational regulations.

B. Sunrise reviews.

(a) The staff is responsible for reviewing legislation to enact or modify an occupational regulation to ensure compliance with the policies in Section 1.

(b) The staff will require proponents to submit evidence of present, significant, and substantiated harms to consumers in the state. The staff also may request information from state agencies that contract with individuals in regulated occupations and others knowledgeable of the occupation, labor-market economics, or other factors, costs and benefits.

(c) The staff will determine if the proposed regulation meets the state's policy in Section 2 of using the least restrictive regulation necessary to protect consumers from present, significant, and substantiated harms.

(d) The staff's analysis in (c) will employ a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies, as listed in Section 2 subdivision D (1)-(4). The staff will give added consideration to the use of private certification programs that allow a provider to give consumers information about the provider's knowledge, skills and association with a private certification organization.

(e) The staff may rebut the presumption in (d) if it finds both credible empirical evidence of present, significant and substantiated harm, and that consumers do not have the information and means to protect themselves against such harm. If evidence of such unmanageable harm is found, the staff will recommend the least restrictive government regulation to address the harm, as listed in Section 2 subdivision D (5)-(16).

(f) The staff will use the following guidelines to form its recommendation in (e). If the harm arises from:

1. contractual disputes, including pricing disputes, staff may recommend enacting a specific civil cause of action in small-claims court or district court to remedy consumer harm. This cause of action may provide for reimbursement of the attorney's fees or court costs, if a consumer's claim is successful;
2. fraud, staff may recommend strengthening powers under the state's deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service;
3. general health and safety risks, staff may recommend enacting a regulation on the related process or requiring a facility license;
4. unclean facilities, staff may recommend requiring periodic facility inspections;
5. a provider's failure to complete a contract fully or to standards, staff may recommend requiring the provider to be bonded;
6. a lack of protection for a person who is not a party to a contract between providers and consumers, staff may recommend requiring the provider have insurance;
7. transactions with transient, out-of-state, or fly-by-night providers, staff may recommend requiring the provider register its business with the secretary of state;
8. a shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), staff may recommend enacting government certification;
9. an inability to qualify providers of new or highly-specialized medical services for reimbursement by the state, staff may recommend enacting a specialty certification solely for medical reimbursement;
10. a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license; and
11. the need to address multiple types of harm, staff may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer-created ratings and reviews, or private certification.

(g) The staff's analysis of the need for regulation in (e) will include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The staff's analysis of the need for regulation in (e) also will compare the legislation to whether and how other states regulate the occupation, including the occupation's scope of practice that other states use, and the personal qualifications other states require.

(i) The staff will report its findings and recommendations to the initial and subsequent committees that will hear the legislation. The report will include recommendations addressing:

   1. the type of regulation, if any;
   2. the requisite personal qualifications, if any; and
   3. the scope of practice, if applicable.

(j) The staff also may comment on whether and how much responsibility the legislation delegates to a licensing board to promulgate administrative

rules, particularly rules relating to establishing (a) the occupation's scope of practice or (b) the personal qualifications required to work in the occupation. The comment may make legislators aware of exposure to antitrust litigation that the legislation may cause because of excessive or ambiguous delegation of authority to licensing boards to engage in administrative rulemaking.

(k) The staff shall submit its report to the chair of each relevant committee no less than nine months after the staff receives the request for analysis.

(l) The staff will make its report publicly available and post it on a state website.

C. Rule. The House of Representatives and the Senate will each adopt a rule requiring a committee considering legislation to enact or modify an occupational regulation to receive the staff's analysis and recommendations in subdivision 2 prior to voting on the legislation.

D. Limitations. Nothing in Section 3 shall be construed (1) to preempt federal regulation or (2) to require a private certification organization to grant or deny private certification to any individual.

SECTION 4. SUNSET REVIEW OF OCCUPATIONAL LICENSES

A. Sunset analysis of existing occupational licenses

(a) Starting on [DATE], the Speaker of the House of Representatives, the President of the Senate and the chair of each relevant committee of the legislature will assign to the _____ staff (hereafter "staff") the responsibility to analyze existing occupational licenses.

(b) Each relevant committee of the legislature is responsible for reviewing annually approximately 20 percent of the current occupational licenses under the committee's jurisdiction. The committee chair will select the occupational licenses to be reviewed annually.

(c) Each relevant committee of the legislature will review all occupational licenses under the committee's jurisdiction within the subsequent five years and will repeat such review processes in each five-year period thereafter.

B. Criteria. The staff will use the criteria in Section 3 paragraphs 2(b)-(h) to analyze existing occupational licenses. The staff also may consider research or other credible evidence whether an existing regulation directly helps consumers to avoid present, significant and recognizable harm.

C. Sunset reports.

(a) Starting [DATE], the staff will report annually the findings of its reviews to the Speaker of the House of Representatives, the President of the Senate, Chairs of each relevant committee, the Governor, and the Attorney General. In its report, the staff will recommend the legislature enact new legislation that:

1. repeals the occupational licenses,
2. converts the occupational licenses to less restrictive regulations in Section 2 subdivision D,
3. instructs the relevant licensing board or agency to promulgate revised regulations reflecting the legislature's decision to use a less restrictive alternatives to occupational licenses;
4. changes the requisite personal qualifications of an occupational license;
5. redefines the scope of practice in an occupational license; or
6. reflects other recommendations to the legislature.

(b) The staff also may recommend that no new legislation is enacted.

(c) The staff will make its report publicly available and post it on a state website.

D. Limitations. Nothing in Section 4 shall be construed (1) to preempt federal regulation, (2) to authorize the staff to review the means that a private certification organization uses to issue, deny or revoke a private certification to any individual, or (3) to require a private certification organization to grant or deny private certification to any individual.

SECTION 5. INTERPRETATION OF STATUTES AND RULES

In construing any governmental regulation of occupations, including an occupational licensing statute, rule, policy or practice, the following canons of interpretation are to govern, unless the regulation is unambiguous:

1. Occupational regulations will be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
2. Any ambiguities in occupational regulations will be construed in favor of workers and aspiring workers to work; and
3. The scope of practice in occupational regulations is to be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.

SECTION 6. A REVIEW OF A CRIMINAL RECORD

A. Fundamental right. The right of an individual to pursue a lawful occupation is a fundamental right.

B. Application. Notwithstanding any other law, a board, agency, department or other state agency (hereafter "board") will use only this chapter to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition because of a criminal conviction.

C. No automatic bar. A board will not automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration.

D. Information from a criminal record to be considered. A board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.

E. Excluded information from a criminal record. A board will not consider:

1. a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
2. a conviction for which no sentence of incarceration can be imposed;
3. a conviction that has been sealed, annulled, dismissed, expunged or pardoned;
4. a juvenile adjudication;
5. a non-violent misdemeanor; or
6. a conviction for which the individual's incarceration ended more than two years before the date of the board's consideration except for a conviction of:

   (a) felony crime of violence pursuant to statute section _____;

   (b) a felony related to a criminal sexual act pursuant to statute section _____; or

   (c) a felony related to a criminal fraud or embezzlement pursuant to statute section _____.

F. Rule of lenity.

(a) Any ambiguity in an occupational regulation relating to a board's use of an individual's criminal record will be resolved in favor of the individual.

(b) The board will not use a vague term in its consideration and decision including:

1. good moral character;
2. moral turpitude; or
3. character and fitness

G. Included information. The board will consider the individual's current circumstances including:

1. the age of the individual when the individual committed the offense;
2. the time since the offense;
3. the completion of the criminal sentence;
4. a certificate of rehabilitation or good conduct;
5. completion of, or active participation in, rehabilitative drug or alcohol treatment;
6. testimonials and recommendations including a progress report from the individual's probation or parole officer;
7. other evidence of rehabilitation;
8. education and training;
9. employment history;
10. employment aspirations;
11. the individual's current family responsibilities;
12. whether the individual will be bonded in the occupation; and
13. other information that the individual submitted to the board.

H. Hearing. The board will hold a public hearing, should the individual request one, pursuant to section _____ of the state's administrative procedure act.

I. Totality of the circumstances test.

(a) The board may deny, diminish, suspend, revoke, withhold or otherwise limit state recognition only if the board determines:

1. the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual's non-excluded criminal record as mitigated by the individual's current circumstances in subdivision G, and
2. the state's interest outweighs the individual's fundamental right to pursue a lawful occupation.

(b) The board has the burden of making its decision by clear and convincing evidence.

J. Appeal. The individual may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.

SECTION 7. PETITION FOR BOARD DETERMINATION PRIOR TO OBTAINING PERSONAL QUALIFICATIONS

A. Petition. An individual with a criminal record may petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition.

B. Content. The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

C. Determination. The board will make its decision using the criteria and process in Section 3.

D. Decision. The board will issue its decision no later than 60 days after the board receives the petition or no later than 90 days after the board receives the petition if a hearing is held. The decision will be in writing and include the criminal record, findings of fact and conclusions of law.

E. Binding effect. A decision concluding that state recognition should be granted or granted under certain conditions is binding on the board in any later ruling on state recognition of the petitioner unless there is a relevant, material and adverse change in the petitioner's criminal record.

F. Alternative advisory decision. If the board decides that state recognition should not be granted, the board may advise the petitioners of actions the petitioner may take to remedy the disqualification.

G. Reapplication. The petitioner may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisor decision.

H. Appeal. The petitioner may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.

I. Reapply. The petitioner may submit a new petition to the board not before one year following a final judgment on the initial petition or upon obtaining the required personal qualifications, whichever is earlier.

J. Cost. The board may charge a fee to the petitioner to recoup its costs not to exceed $100 for each petition.

SECTION 8. REPORTING

(a) The Department of _____ will establish an annual reporting requirement of the:

1. number of times that each board acted to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction;
2. offenses for which each board acted in subparagraph 1;
3. number of applicants petitioning each board under Section 4,
4. numbers of each board's approvals and denials under Section 4,
5. offenses for which each board approved or denied petitions under Section 4, and
6. other data the Department determines.

(b) The Department will compile and publish annually a report on a searchable public website.

SECTION 9. LIMITATIONS

(a) Nothing in this chapter shall be construed to change a board's authority to enforce other conditions of state recognition, including the personal qualifications required to obtain recognition or compliance with other regulations.

(b) Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

SECTION 10. OFFICE OF ANTITRUST AND ACTIVE SUPERVISION OF OCCUPATIONAL BOARDS

A. Antitrust law. By establishing and executing the policies in Section 1, the state intends to ensure that occupational boards and board members will avoid liability under federal antitrust laws.

B. Active Supervision. To help execute the policies, the governor will establish the Office of Antitrust and Active Supervision of Occupational Boards.

C. Responsibility. The office is responsible for the active supervision of the state's occupational boards to ensure compliance with Section 1, the applicable licensing statutes, and federal and state antitrust laws. Active supervision requires the office to play a substantial role in the development of boards' rules and policies to ensure they (a) benefit predominantly consumers and (b) do not benefit unreasonably or serve merely private interests of providers who the boards regulate.

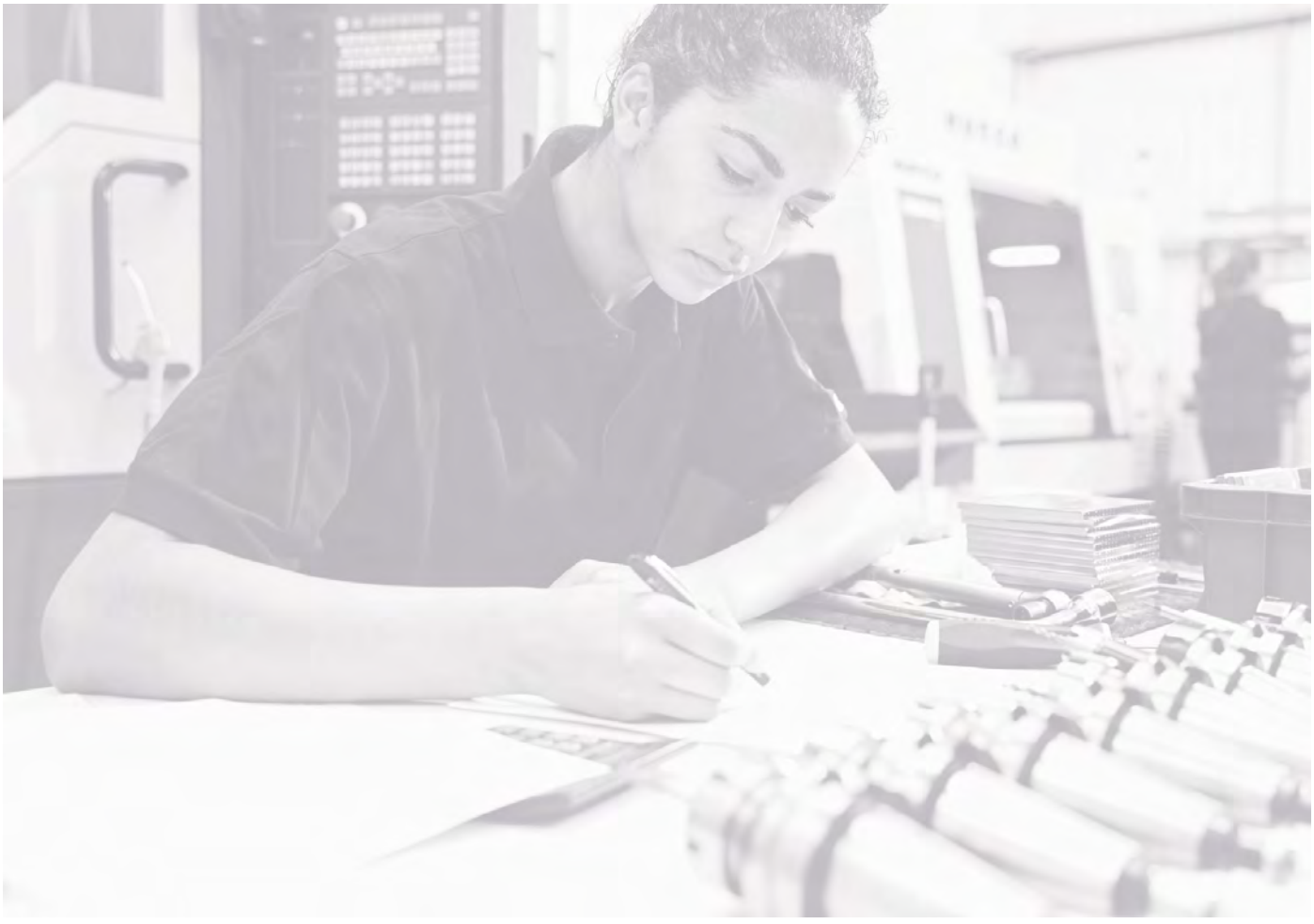
D. Approval. The office will exercise control over boards' processes and substantive actions to ensure they are consistent with Section 1, the applicable licensing statutes, and federal and state antitrust laws. The office must review, and approve or reject any proposed board rule, policy, enforcement, or other regulatory action prior to it being adopted or implemented. The office's approval must be explicit; silence or failure to act will not be deemed approval.

E. Personnel. The office personnel must be independent of boards. A government or private attorney who provides general counsel to a board will not also serve in the office.

F. Cost Allocation. The office may assess its costs on each board for the services of active supervision. Each board may recoup the assessment by increasing the fees paid by license holders.

SECTION 11. EFFECTIVE DATE

This chapter is effective on [DATE].



The Independent Workforce

LEGALIZING ACCESS TO FLEXIBLE BENEFITS

LIYA PALAGASHVILI

Introduction

The growth of freelancing and platform-mediated "gig" work over the last decade has generated substantial public scrutiny. Such workers are legally classified as independent contractors rather than traditional (W-2) employees. This legal distinction has implications for tax treatment, labor regulations (such as those governing minimum wage, overtime, and collective bargaining), and social insurance programs (such as unemployment insurance, health insurance, and retirement benefits programs).

Broadly, these workers are referred to as the "independent workforce," and they span across many industries. There are freelance writers, musicians, and graphic designers; Uber and DoorDash rideshare and delivery drivers; Instagram influencers and online marketplace sellers; construction workers, electricians, and plumbers; nannies, chiropractors, and tutors; and independent consultants in finance, technology, law, and accounting, among many others. About 10 to 29 percent of US workers engage in independent work as their primary source of income, and up to 39 percent use it as a supplementary source of income.[63]

Reclassifying independent workers as employees

The policy concern is that as the independent workforce continues to grow, more workers will be left out of the purview of labor regulations and will not have access to standard employment-based benefits and protections. As a result, federal and state legislatures and agencies are attempting to reclassify independent workers as employees. For example, in 2019, California passed Assembly Bill 5 (AB 5), which introduced a stricter definition of what it means to be legally classified as an "independent contractor." California policymakers were hoping that by making it more difficult for workers to be classified as independent contractors, organizations would be forced to hire them as employees instead. At the federal level, the Department of Labor is about to finalize a new rule change that also makes it more difficult for workers to be classified as independent contractors.

These efforts, far from delivering intended goals, will harm the independent workforce. Indeed, these changes will leave many workers with fewer job opportunities altogether. Because most independent workers, especially gig workers, are supplemental earners, reclassification efforts will not likely benefit them. They already have employment, and reclassification policies risk eliminating their "side" contracting jobs. While reclassification efforts may benefit the smaller fraction of workers who prefer to be full-time employees and will be extended an employment opportunity, it would harm the majority of the independent workforce, especially women and individuals who previously had a criminal record, by limiting the number of flexible work arrangements.

Instead of restricting independent work, policymakers should give independent workers the option to maintain their current work arrangements while still allowing them to access work-related benefits. These policy solutions are referred to as *flexible or portable benefits*—benefits that are not tied to a particular employer and can be accessed by any type of worker, not only those who are legally classified as employees.

A challenge with flexible benefits solutions is that currently, federal and state regulations restrict organizations, businesses, and individuals from providing independent contractors with benefits precisely because these benefits conventionally have been tied to employer-employee relationships. If an organization were to provide benefits to their independent contractors, those workers would likely have to be reclassified as employees and thus lose their independence and flexibility.

Policymakers can help independent workers legally access flexible benefits by removing the presence of "benefits" as a factor in worker classification tests and allowing independent workers to join together for the purposes of buying insurance on the small-group insurance market. This will open the door for independent workers to gain better access to benefits and for organizations to voluntarily provide benefits to independent workers without fear of penalties.

Meeting the needs of the growing independent workforce

To better meet the needs of the independent workforce, it's first important to understand the workforce. Here are some data about the independent workforce:

- The independent workforce is growing, especially in professional, scientific, and technical services and healthcare.[64]
- A vast majority (79 percent) of independent workers prefer their nontraditional work arrangements over a traditional employment arrangement.[65]
- Approximately 73 percent of individuals engaged in independent work do so because of the increased flexibility of their work.[66] Workers cite that independent work gives them the flexibility to be more available as a caregiver for their family or say it gives them flexibility to address personal mental or physical health needs.
- Women are driving the growth of this workforce, primarily because they require flexible work arrangements when they become mothers and caregivers.[67] 96 percent of women in independent work arrangements indicated that the primary benefit of engaging in such work is the flexible working hours. Indeed, 70 percent of these platform-working women were the primary caregivers in their homes. A quarter of these women recently left their full-time employment for independent work.[68]
- Some 80 percent of independent workers said that they would like flexible, shared, or portable benefits—benefits that are not tied to a particular employer and can travel with the worker.[69]
- The majority of gig workers on platforms such as Uber and DoorDash are supplementary earners who have full-time employment elsewhere.[70] For gig workers, the value of flexibility is significantly high. Uber drivers would require salaries almost twice their earnings to accept an inflexible schedule that may come with employment. And for the top 10 percent of DoorDash couriers, losing flexibility is equivalent to a 15 percent pay cut.[71]
- Independent workers turn to non-traditional work to smooth temporary income shocks after they have faced income declines or unemployment.[72]

Ultimately, most independent workers prefer their work arrangements over an employment arrangement because independent work provides far more flexibility in terms of work schedule. These flexible work arrangements can be especially transformative for women who are primary caregivers. Many independent workers, especially those on gig platforms, are working in these arrangements to supplement their incomes. Independent workers want access to flexible or portable benefits that are not tied to one employer.

Flexible benefits for a flexible workforce

To welcome the workers in a diversity of roles, policy reforms are needed to pave the way for flexible benefits. Due to cultural, technological, and global changes, the independent workforce is expected to continue to grow. The current system that ties workplace benefits to employment only will not be sustainable anymore, and it is important that new types of workers also have access to benefits.

However, the problem is that our institutions have tied all workplace benefits to only one form of work: the employment relationship. Current laws in the states and at the federal level restrict organizations from providing independent contractors with benefits precisely because these benefits have conventionally been tied to employer-employee relationships. If an organization were to provide benefits to their independent contractors, those workers would likely have to be reclassified as employees and thus lose their independence and flexibility.[73] Moreover, if organizations allowed independent contractors to buy

into a company's insurance plan to access more affordable "group rates" (like they do for their employees), this would also risk the independent contractor being reclassified as an employee.

There are several other challenges that limit the ability for independent workers to have access to flexible benefits. For example, independent contractors cannot join together to purchase health insurance as a large group (unless they meet a set of exceptions and can be considered as small businesses). The employer-sponsored health insurance subsidy also creates support for the continuation for individuals to purchase health-insurance through the employer (thereby tying benefits to one employer).

There are several steps policymakers can take to enable flexible benefits. In this piece, I provide three simple solutions. First, policymakers can legalize voluntary benefits to independent contractors by ensuring that the presence of benefits to independent contractors cannot be used in worker classification determinations. In other words, organizations should not be punished for voluntarily providing access to benefits to independent contractors, a step that one state has already taken Second, allow independent contractors to buy into a company's insurance plan without it triggering an employment classification criterion. Lastly, policymakers can allow independent contractors to join together as a group for the purposes of buying insurance.

How Utah is paving the path for a voluntary flexible benefits revolution

States are taking more interest in flexible benefits approaches for addressing the needs of the growing independent workforce. There are generally two types of portable or flexible benefits policies that are emerging within states:

1. **Mandatory portable benefits:** State policies that allow app-based workers to maintain their independent contractor status but require companies to provide a set of mandatory benefits for these independent contractors.
2. **Voluntary flexible benefits:** Policies that aim to remove the legal barriers to allow greater access to benefits for independent contractors; they could also reform tax laws to provide more favorable treatment to self-employed workers for health insurance and retirement benefits contributions.

California's Proposition 22 is the most well-known example of a mandatory portable benefits policy in the country. Proposition 22 exempted app-based transportation and delivery drivers (such as those on Uber, Lyft, and DoorDash) from California's AB 5 by stipulating that app-based drivers and delivery workers are legally classified as independent contractors, but companies must provide a menu of benefits to those workers. A mandatory portable benefits approach was also passed in Washington State in 2022 and is being considered in other states. The drawback of the mandatory benefits approach is that it covers only app-based drivers (a minority of the independent workforce), and that it privileges larger companies that have the resources to provide benefits and harms potential entrants into the market. This may result in fewer competitors for these larger companies because the requirement raises the costs of entry.

A voluntary flexible benefits approach focuses on removing the legal barriers to allow greater access to benefits. Voluntary participation could enable companies to provide a "menu of benefits," where some businesses may provide one or two individual benefits, whereas others—especially larger companies—may provide a more complete set of benefits. The voluntary flexible benefits approach is one way to implement a market-based test on whether benefits would flow to independent contractors when legal barriers are removed.

States can pursue flexible benefits reforms built around the following considerations:

1. **Stipulate that hiring parties can provide benefits to independent contractors** and that the presence of those benefits cannot be used to determine a worker's classification status.
2. **Allow independent contractors to buy into a company's insurance** plan as if they were employees.
    - This is for insurance policies regulated by the state (small groups and individuals) and not ERISA plans (large employer plans).
    - It should be clarified that allowing contractors to buy into a company's insurance plan does not make them an employee and cannot be used as a factor for determining a worker's classification status.
3. **Clarify that any groups of individuals can join together for any reason** (as long as they are residents of that particular state) for the purposes of buying insurance on the small-group insurance market.

Utah became the first state in the country to jump on the voluntary flexible benefits approach by passing a reform that mimics the consideration in number 1 above. In May 2023, Utah's Governor Cox signed into law SB 233 Portable Benefit Plan. The bill stipulated that hiring parties can make contributions to a portable benefit plan for independent contractors and that these contributions cannot be used as evidence of an employment relationship, and they cannot not be used as a criterion in determining a worker's employment classification. Utah is now considering legislation that addresses the second and third considerations listed above.

Conclusion

To better meet the needs of the growing independent workforce, policymakers can reform policies to help independent workers legally access flexible benefits. Embracing innovative reforms to legalize flexible benefits will help both workers and employers seize more opportunities in this evolving economy.

REPORT ENDNOTES BEGIN ON PAGE 51

MODEL POLICY | Flexible Benefits

The following model policy was passed by the state of Utah during the 2023 General Session (S.B. 233).

PORTABLE BENEFIT PLAN

2023 General Session

State of Utah

Chief Sponsor: John D. Johnson

House Sponsor: Ryan D. Wilcox

Long Title/General Description:

This bill enacts provisions related to portable benefit plans.

Highlighted Provisions:

This bill:

- provides that government entities or private entities may offer a portable benefit plan;
- This bill requires contributions to a portable benefit plan be voluntary;
- This bill provides that contributions to a portable benefit plan:
  - are not evidence of an employment relationship or employer liability; and
  - may not be used as criteria in determining employment classifications; and
  - defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACT: 34-57-101, Utah Code Annotated 1953

ENACT: 34-57-102, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

SECTION 1. SECTION 34-57-101 IS ENACTED TO READ:

CHAPTER 57. PORTABLE BENEFIT PLAN

PART 1. GENERAL PROVISIONS

34-57-101. Definitions.

As used in this chapter:

(1) "Hiring party" means a person who hires or enters into a contract with an independent contractor.

(2) "Independent contractor" means the same as that term is defined in Section 34A-2-103.

(3) "Portable benefit plan" means a group that:

(a) offers an insurance product regulated by:

(i) Title 31A, Insurance Code; or

(ii) Title 35A, Chapter 4, Employment Security Act; and

(b) is assigned to an individual beneficiary and is not associated with a specific employer or hiring party.

SECTION 2. SECTION 34-57-102 IS ENACTED TO READ:

34-57-102. Administration—Assignment of benefits—Portability.

(1) A governmental entity or private entity may offer a portable benefit plan.

(2) Contributions to a portable benefit plan:

(a) shall be voluntary; and

(b) may not be used as a criterion for determining a person's employment classification.

(3) If an Internet or application-based company contributes to a portable benefit plan for the benefit of an individual beneficiary:

(a) the contribution is not evidence of employer liability; and

(b) a court may not construe the contribution as an element of an employment

Relationship for purposes of:

(i) Title 34A, Chapter 2, Workers' Compensation Act; or

(ii) Title 35A, Chapter 4, Employment Security Act.

Standing Up for Small Businesses

THE HOME-BASED BUSINESS FAIRNESS ACT

HEATHER CURRY

Small businesses are the beating heart of the American economy, driving nearly half of the country's economic growth and creating two-thirds of all new jobs in the United States.[74] One would think this sort of economic powerhouse status would come with a little respect: in cities across America, however, small businesses often face an uphill battle just to enjoy the right to exist, particularly when they are based out of a private home.

There are many reasons why home-based work is appealing to Americans. Having access to a home-based option is helpful for stay-at-home parents, the disabled, and others who find it difficult to leave the house, giving them new ways to earn money for their families.[75] It is also extremely useful for the families of America's servicemembers. Military families are frequently required to relocate every two to three years, which can make it extremely difficult to pursue a career path. This is particularly true for those military family members in careers which require an occupational license: these professionals must re-license in each new state before they can get to work. In some cases, obtaining a new license can take months or even years, during which time many qualified workers are unable to provide for their families. A home-based option allows these Americans to pursue other work in the interim or start new careers that can be easily taken across state lines.

The growth of internet commerce also gives entrepreneurial Americans access to more business models than ever before, allowing them to earn income without a steady flow of in-person customers. Social media influencers review products from home, sharing video content and driving engagement and revenue through affiliate links, while drop-shippers coordinate retail distribution without ever having to manage physical inventory.

Of course, home-based businesses provide more than just sales opportunities. Piano teachers, podcasters, accountants, lawyers, bookkeepers, translators, copy editors, graphic designers, and fitness instructors are just a few examples of professions that can operate out of one's home without disturbing the residential neighborhood. And many of these businesses don't even need to keep normal hours, which gives parents the freedom to work while their kids are napping or after they've gone to bed. Plus, the skyrocketing cost of childcare has many parents reconsidering the traditional work model and opting for even more flexibility to earn while saving hundreds or thousands a month by keeping their children home.

While advances in technology have made it easier than ever for Americans to work from home, local regulations have failed to keep up with the fast-paced nature of a twenty-first century economy. Localities from coast-to-coast routinely treat modern home-based businesses as though they are an invasive neighborhood species, demanding fees for business licenses while asking intrusive questions and reserving the right to deny hardworking Americans the right to earn a living from home. In some cases, cities demand that these licenses be approved before home-based businesses can even engage in business activity, even if that activity is completely lawful and isn't bothering anyone.

Adding to the list of challenges, stringent zoning laws frequently limit the kind of work that can be done, the number of employees a business can have, and even the

kinds of work-related materials someone can have in their own home. Unfortunately, these outdated regulations still form the legal framework in which modern home-based businesses must exist, even though they were never designed to handle the kind of economy where commerce happens instantly and an entire business can be run from a laptop at a kitchen table.

Some cities even make operating a home-based business a crime. The problem is so pervasive that a recent Center for Growth and Opportunity analysis[76] of twelve major American cities showed numerous examples of arbitrary restrictions on home-based work, ranging from prohibited occupations to restrictions on how many people can be onsite at a given time. With fines and threats of legal action attached to many of these rules, it is not hard to imagine how such an approach could have a chilling effect on innovation and entrepreneurship for Americans who want to work from home. Writing in the Cato Institute's *Regulation* magazine,[77] the Goldwater Institute's Christina Sandefur notes that, "these arbitrary, one-size-fits-all restrictions fail to recognize that the typical home-based business is a quiet, responsibly run operation that neighbors never even notice. Forcing those businesses to comply with outmoded zoning, licensing, and permit requirements deprives people of economic opportunity and punishes responsible citizens."

Fortunately, state policymakers are taking action to rein in onerous regulations at the local level. In 2022, Iowa and Missouri became the first states to enact the Goldwater Institute's Home-Based Business Fairness Act.[78] This state-level reform allows hardworking Americans to run a no-impact small business from home without having to first jump through hoops to get a costly, time-consuming permission slip from their local government. By prohibiting localities from requiring no-impact home-based businesses to obtain a license, permit, or other variance as a condition of operation, this reform empowers entrepreneurs to pursue their own version of the American Dream and on their own terms. Further, it reasserts the basic right of residents to privacy in their own homes.

Opponents argue that allowing home-based businesses to operate freely will lead to an influx of disruptive activity, painting a picture of a world in which every garage becomes an auto body shop, complete with noxious odors, clanging work tools, and cars lined up and down the block. The reality is that Goldwater's reform clearly defines no-impact home-based businesses as those which are secondary to residential use, fit the residential character of a neighborhood, and sell lawful goods and services. Under such a model, many of the home-based business bogeymen disappear. Further, under the reform, no-impact home-based businesses can't be seen from the street, may not drive increases in traffic or neighborhood noise, and may not exceed municipal occupancy limits.

Additionally, the reform is specifically designed to ensure that localities are empowered to use the regulatory tools they already have to deal with issues that may arise in neighborhoods, like noise and nuisance-related ordinances. Cities are right to want to ensure clean, quiet communities but must use the tools they have to accomplish that task. The reform is also written to ensure cities are not allowed to abuse those existing tools to place onerous restrictions on businesses that aren't bothering anyone: to be specific, regulations must advance a specific health and public safety objective. Describing Arizona's proposed reform from 2018, Sandefur said the following:

Cities retain their authority to ensure all home-based businesses are compatible with the residential environment and that the business activity is secondary to the property's use as a home. In other words, the bill leaves cities with a great degree of flexibility to set forth what uses are permitted in residential zones and only requires that any such regulations are a reasonable fit to ensure the businesses are compatible and secondary to the residential use. And home-based businesses will still be required to obtain and maintain any applicable professional licenses, remit taxes, and comply with public health and safety standards. Cities will be able to prevent dangerous or disruptive activities in neighborhoods just as they do now. This bill is about protecting those activities that don't cause any impact on their communities. If it's ok for a person to do her own income taxes at her kitchen table, it should be ok for an accountant to do someone else's income taxes in her home office.

The Home-Based Business Fairness Act was just common sense to legislator Tony Lovasco, who championed the reform in Missouri. "Many of the most recognizable household names started business in a garage or basement. Getting government out of the way so people can start no-impact home businesses without first getting a permission slip plants the seeds for future innovation,"[79] he explained when the law went into effect.

The Home-Based Business Fairness Act not only modernizes outdated approaches to regulating no-impact home-based businesses it also brings regulatory consistency to the existing patchwork of city ordinances across a state. This approach ensures that Americans will know

what to expect when they decide to work for themselves, either in their hometown or across the state. In addition to Iowa and Missouri, states from Florida to Arkansas have enacted similar reforms with an eye toward broader reforms in the future.

"Home-based businesses help make the American economy run. Home-based businesses also grow into larger enterprises, including some of the biggest companies in America today. Amazon, Apple, Disney, Harley-Davidson, Hewlett-Packard, Google, Mattel, Microsoft, and many other major corporations began in peoples' homes and garages," commented Sandefur.

"But," as Representative Lovasco notes, "they might never have come into existence if they had faced today's growing local restrictions on home-based businesses."

Policymakers should follow the lead of Missouri and Iowa and take bold action to protect America's small businesses and the ability of innovative, entrepreneurial Americans to work from home. The Home-Based Business Fairness Act provides an ideal opportunity to do just that.

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MODEL POLICY | Home-Based Business Fairness Act

The following model policy was developed by the Goldwater Institute.

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SECTION 1. DEFINITIONS

(a) "Goods" means any merchandise, equipment, products, supplies or materials.

(b) "Home-based business" means any business for the manufacture, provision or sale of goods or services that is owned and operated by the owner or tenant of the residential dwelling.

(c) "No-impact home-based business" means a home-based business for which all of the following apply:

(1) The total number of on-site employees and clients do not exceed the municipal occupancy limit for the residential property.

(2) The business activities are characterized by all of the following:

(A) Are limited to the sale of lawful goods and services;

(B) Do not generate on-street parking or a substantial increase in traffic through the residential area;

(C) Occur inside the residential dwelling or in the yard; and

(D) Are not visible from the street.

SECTION 2

The use of a residential dwelling for a home-based business is a permitted use, except that this permission does not supersede any of the following:

(a) Any deed restriction, covenant or agreement restricting the use of land; or

(b) Any master deed, by-law or other document applicable to a common interest ownership community.

SECTION 3

A municipality shall not prohibit a no-impact home-based business or otherwise require a person to apply, register or obtain any permit, license, variance or other type of prior approval from the municipality to operate a no-impact home-based business.

SECTION 4

A municipality may establish reasonable regulations on a home-based business if the regulations are narrowly tailored for any of the following purposes:

(a) The protection of the public health and safety, as defined in [STATE CODE] including rules and regulations related to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, pollution and noise control.

(b) Ensuring that the business activity is:

1. Compatible with residential use of the property and surrounding residential use;
2. Secondary to the use as a residential dwelling; and
3. Complying with state and federal law and paying applicable taxes.

(c) Limiting or prohibiting the use of a home-based business for the purposes of selling illegal drugs, liquor, operating or maintaining a structured sober living home, pornography, obscenity, nude or topless dancing and other adult-oriented businesses.

SECTION 5

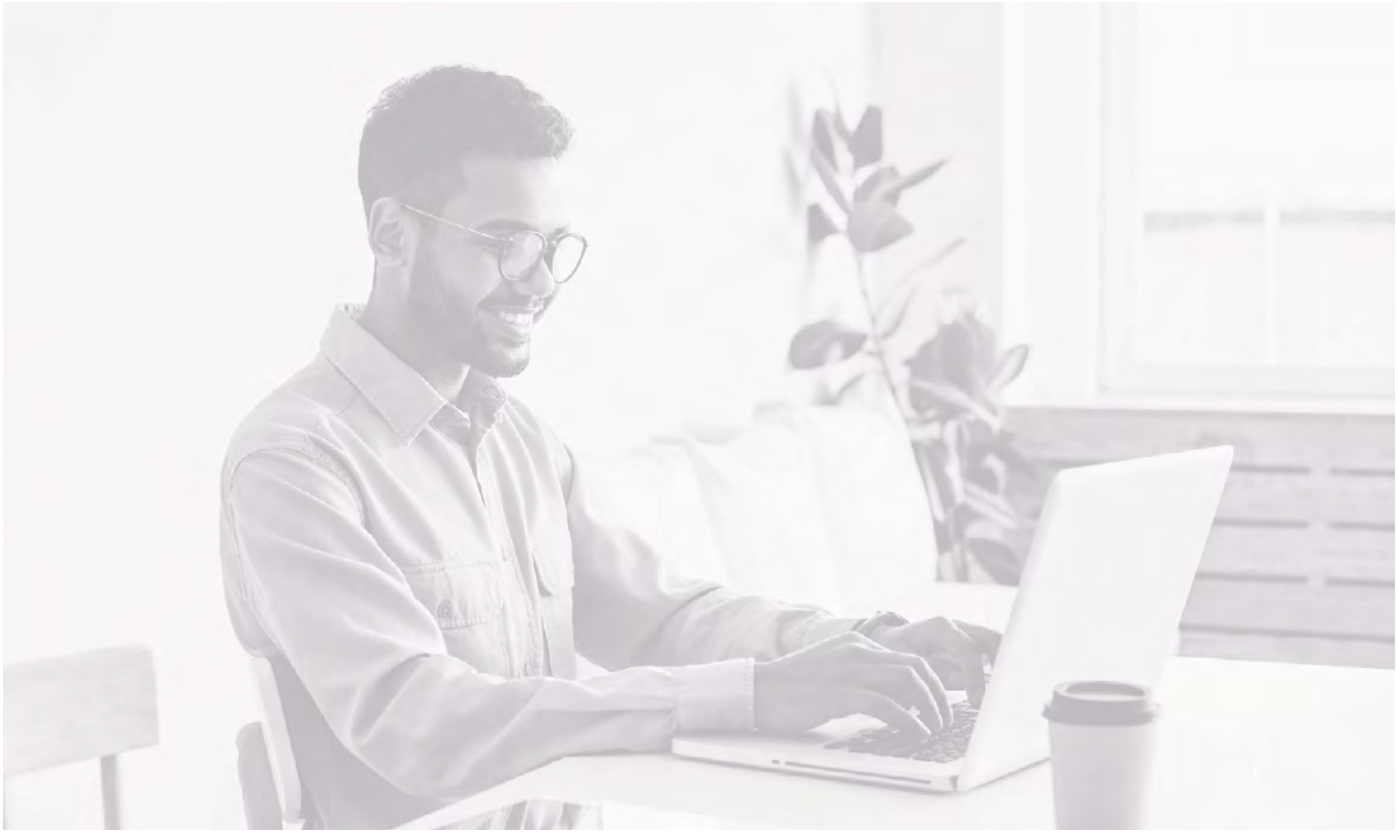
A municipality shall not require a person as a condition of operating a home-based business to:

(a) Rezone the property for commercial use; or

(b) Install or equip fire sprinklers in a single family detached residential dwelling or any residential dwelling with not more than two dwelling units.

SECTION 6

The question whether a regulation complies with this section shall be a judicial question, and the municipality that enacted the regulation shall establish by clear and convincing evidence that the regulation complies with this section.



Lifting the "Paper Wall"

LEGALIZING ACCESSORY DWELLING UNITS FOR HOUSING AFFORDABILITY

EMILY HAMILTON

Introduction

A web of regulations limits the supply of new housing and drives up the cost of housing that does get built. Until recent years, these rules primarily caused serious affordability challenges in a limited number of coastal regions. However, the effects of barriers to housing construction compound over time, and today they're causing widespread housing affordability problems for residents of many states.

The effects of local zoning rules spill across municipalities' borders. When one locality adopts exclusionary zoning rules that stand in the way of housing construction, these policies have an effect on regional housing supply and affordability. In some cases, housing supply restrictions adopted in locality after locality are causing statewide affordability problems. In response, some state policymakers have developed models for reducing barriers to housing construction. Among state limits on exclusionary zoning, laws requiring localities to allow homeowners to build accessory dwelling units (ADUs) have been the most popular.

This policy essay explains the growing housing affordability problem and its roots in regulations that block housing construction, explains the role that ADUs have to play in providing one source of relatively low-cost housing, evaluates state ADU policy, and provides potential models for additional states to legalize this type of housing construction.

Zoning rules and housing affordability

As residents of the United States are becoming materially better off in so many areas, housing is an exception[80] for many. In 1980, the median renter household in the US spent 20 percent of their household income on rent. By 2020, that figure rose to 25 percent. In the country's highest-income, most opportunity-rich regions, the picture is worse. In those areas, the median renter household spends 28 percent of their income on rent.

With rising rents squeezing household budgets, many are left without money to pay for other important goods and services that may improve their long-term opportunities, such as quality childcare or education. Because rents and home prices tend to be most expensive in the places that have particularly productive economies and the highest-paying jobs, many people that would like to pursue these opportunities are shut out. Beyond affecting individual budgets, these high housing costs are reducing economic growth and income mobility.[81]

One core cause of high housing costs is the "paper wall"[82] of local zoning restrictions that limit housing construction, particularly relatively low-cost types of construction like apartments, townhouses, or ADUs. In many parts of the United States, housing that does get built goes through a long and slow permitting process that raises costs.

Local governments get their authority to implement these rules[83] and approval processes from their states. As these problems are presenting housing affordability barriers to

a growing share of states' populations, state policymakers are reevaluating the wide authority they have delegated to local authorities to limit housing construction and drive up prices. Beginning in the mid-2010s, policymakers in several states began implementing new laws[84] that set guardrails on this local authority, including nine with limits on localities' authority to ban ADUs.[85]

What are ADUs?

ADUs are small secondary dwelling units, generally at the site of a single-family house. The single-family zoning rules that most localities adopted in the twentieth century often prevent homeowners from adding these units to their properties. These units are different from duplexes in a few ways. First, ADUs are generally required to be smaller than principal dwelling units. Additionally, ADUs generally cannot be owned separately from their primary dwelling unit, whereas units within a duplex can often be owned separately as condominiums. Localities have historically singled out ADUs for limitations on who can live in them. For example, some localities prevent ADUs from being rented, limiting their occupancy to family or household employees who do not pay rent.

ADUs can take many physical forms. They can be a backyard cottage, a garage converted to an apartment, or a basement unit. Some localities allow manufactured housing units or mobile homes to be ADUs. This may make particular sense in rural areas that have an abundance of land but may lack the workforce to build new housing.

ADUs and housing and affordability

In places where they're built in significant numbers, ADUs can provide an important source of relatively low-cost housing. They tend to be small units built on land with very limited opportunity cost, such as underused backyards. ADUs can present a chance for renters to live in high-opportunity locations for less than alternative housing costs in the same neighborhood. Basement apartments are the most common type of ADU in Washington, DC. Relative to apartments, ADUs in the same neighborhood tend to rent for hundreds of dollars less[86] per month. Researchers have done extensive surveys on characteristics of homeowners who build ADUs in California. They have found that ADUs in Los Angeles typically rent for $400 less per month[87] than the county's median rent.

In addition to providing economic opportunity to tenants, ADUs can financially benefit homeowners by providing an opportunity for them to invest in a rental unit. One estimate finds that adding an ADU increases homeowners' property values by 46 percent on average.[88] The experience of an ADU advocate in New Hampshire[89] indicates that many ADUs are financed by a retiree who sells their primary house to raise funds to build an ADU at the home of a family member, benefiting both sides and creating an opportunity for intergenerational living. Because of the particular benefits ADUs offer to senior citizens, AARP is an important advocate[90] for their legalization.

State legalization of ADUs

California became the first state to begin addressing local limits on ADU construction in 1982. Since then, eight additional states have adopted rules preempting local ADU bans. They are now broadly legal for homeowners to build in Connecticut, Maine, Montana, New Hampshire, Oregon, Utah, Vermont, and Washington as well.

ADUs are generally a type of infill construction, meaning that they're built in neighborhoods with existing construction. For all infill construction, regulatory details are important for determining the feasibility of adding new housing to existing lots. This is perhaps truer for ADUs than other types of infill. Because most ADUs are built by homeowners who are not real estate professionals, the process of permitting them needs to be streamlined to make them feasible to build. Further, the rules about how and where ADUs can be built need to work with the existing housing typology. For example, if garage conversions are the natural place to add ADUs in a particular place, doing so needs to be allowed for them to be built in large numbers.

Because we have seen decades of state and local policy experimentation among policymakers who want to see them feasible for homeowners to build in significant numbers, ADU advocates have been able to identify the set of rules that make them an attractive option for homeowners to build. In particular, three "poison pill" rules[91] have emerged as consistent barriers to ADU construction.

First, owner-occupancy requirements, under which an ADU can only be leased out if the property owner is living in either the primary dwelling unit or the ADU, are a key barrier. These rules limit homeowner flexibility, financing options for building ADUs, and the appraised value that ADUs add to a property. Second, parking requirements that mandate that a house with an ADU must have more parking than a primary dwelling unit alone limit ADU feasibility. Often a property owner has space for an ADU or additional parking for an ADU, but not both. Third, ADUs

need to be permitted through a straightforward, low-cost process where if an ADU complies with a locality's rules on the books, it will be approved. In contrast, many localities permit ADUs through a special exception process or a conditional use permit which may require homeowners to ask their neighbors for permission to build on their property in a contentious process.

In places where ADU rules have been reformed to support construction, permit numbers are rising. California policymakers began addressing all three poison pill rules as well as capping local fees levied on ADU permits with a series of rule changes that started taking effect in 2017. Following this change, the ADU permitting rate in California has soared.[92] From 2016 to 2021, annual ADU permits increased from about one thousand per year to about twenty thousand per year. In 2021, one in seven[93] housing units built in California was an ADU.

While ADUs are a key bright spot in California's housing market, multiple factors affect their prevalence. ADUs make up a large share of units being built in California in part because local and state rules continue to badly stifle other types of construction. The state's very high housing costs also make them more attractive for homeowners to build relative to other states where supply is less constrained.

Beyond California, Oregon also implemented ADU legislation in 2017 addressing all three poison pills. In Washington, ADUs have been broadly legal since 1993, but reforms passed in 2023 removed poison pill barriers statewide. Both states have seen rising rates[94] of ADU construction following policy changes that make them easier to build. As of 2023, Montana was the latest state to broadly legalize ADUs. There, new legislation preempts all three poison pills and impact fees, reflecting lessons learned through decades of policy experimentation on the West Coast.

Why ADUs?

While ADUs provide important benefits for homeowners where policies allow them to be built as well as for tenants who benefit from a new source of relatively low-cost housing, allowing them to be built is but one small piece of a housing abundance agenda, even in the places where ADUs are a particularly good fit for a market's conditions. Los Angeles has seen particular success with ADU permitting, at a rate of about 1 permit per 1,000 residents per year following recent reforms. While this is an important new source of supply in housing-starved Southern California, it is a fraction of the housing stock growth other localities have experienced over the same time period with land use reform strategies such as transit-oriented development.[95]

Why, then, has requiring ADUs to be allowed been the most popular area for state policymakers to limit local zoning authority? In all cases, land use regulations limit property owners' rights to put their land to what they see as its best use. Often, these zoning regulations prevent property owners from building housing where it would make sense to do so. While this effect of land use regulations on housing construction is consistent, in the case of bans on ADUs, the limitation on property rights may be particularly visceral to homeowners, a large constituent in every state. Many homeowners may be able to imagine wanting to build an ADU at some point or empathize with those who do.

Further, because legalizing ADUs represents a small change in development rights across a large share of states' land, the effect of their construction will have a small effect on any given neighborhood. ADUs can make sense in all types of neighborhoods, from urban to rural, creating opportunities for state legislators who represent diverse communities to agree on one way to address their constituents' housing supply challenges.

In multiple states where policymakers first experimented in limiting local authority to prevent housing construction by legalizing ADUs, they have passed additional laws reducing barriers to other types of housing construction. ADU legislation has proven to be a politically feasible way to reduce barriers to housing construction, improving access to opportunity for those who invest in building them and those who live in them.

Among the four states that broadly allowed ADU construction and addressed the three poison pill rules that are particular barriers to their construction as of 2023, Montana's legislation[96] provides the simplest model for a strong bill.

Additionally, at least two organizations provide model bills that address common barriers to ADU construction. The American Legislative Exchange Council recently adopted the Accessory Dwelling Units Act.[97] AARP has an ADU Model State Act.[98]

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The following model policy was developed by the American Legislative Exchange Council.

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The following authorizes the construction of accessory dwelling units (ADUs) on residential property, outlines the building and land requirements for such dwellings, the permitting processes, and, when applicable, a preemption of local laws prohibiting the construction of such dwellings.

SECTION 1. PURPOSE AND INTENT

(1) To promote economic self-sufficiency and address shortages in housing supply and increasing housing affordability problems, it is the policy of [state] to promote and encourage the creation of accessory dwelling units (ADUs) in order to meet the communities' housing needs and to realize other benefits of ADUs. It is the intent of [state] that homeowners will be authorized to create and maintain ADUs as either personal residences or rental units in areas zoned for residential single-family homes, mixed use, and offices.

SECTION 2. DEFINITIONS

(1) Accessory dwelling unit. An accessory dwelling unit (ADU) means a residential living unit on the same parcel as a single-family dwelling or other primary use. The ADU provides complete independent living facilities for one or more persons. It may take various forms: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling.

(2) Junior accessory dwelling unit. A junior accessory dwelling unit (JADU) is a small living unit that does not meet the definition of an ADU because either its cooking or sanitation facilities are shared rather than independent.

SECTION 3. ELIGIBILITY

(1) An ADU or JADU may be built on any lot zoned to permit residential use.

(2) The use of an ADU and/or JADU unit is a permitted accessory use on any lot where the primary use is residence in a single-family house;

(3) The construction and use of an ADU or JADU shall comply with all applicable health and safety codes.

SECTION 4. PREEMPTION

(1) A municipality may not establish any restriction or requirement for the construction or use of an ADU or JADU with respect to:

(a) total lot size;

(b) street frontage; or

(c) connectivity between the ADU/JADU and the primary dwelling;

(2) A municipality may not require that the single-family dwelling or the accessory dwelling unit be occupied by the owner.

(3) A municipality's regulation of architectural elements for ADUs and/or JADUs shall be consistent with the regulation of single-family units, including single-family units located in historic districts.

(4) A municipality may not require the installation of a separate utility meter or utility connection for an ADU or JADU.

(5) A municipality may not restrict the occupancy of an ADU or JADU based on income, family relationship, age, or any other personal characteristic.

(6) A municipality may:

(a) prohibit the installation of a separate utility meter for an ADU and/or JADU;

(b) require the owner of a primary dwelling to abide by local regulations applicable to rentals/landlords for renting an ADU and/or JADU provided that such regulations are consistent with similar regulations for rental property generally;

(c) prohibit the creation of an ADU and/or JADU if the primary dwelling is served by a failing septic tank;

(d) hold a lien against a property that contains an ADU and/or JADU.

SECTION 5. DESIGN

(1) Default design standards for ADUs and JADUs are stated in this section. If not addressed in this section, not withstanding any local rules or standards, [municipality] must issue an ADU permit if it is in footprint of existing structure, in an existing structure, or meets 800 sqft. 4′ setback, 16′ tall.

(2) Parking. No additional parking is required for an ADU or JADU.

(3) Accessory suites must meet the following additional requirements:

(a) Size. An accessory suite ADU may be no larger than the footprint of the structure of which it is part.

(b) Nonconformity. An ADU shall not be penalized if there's a zoning nonconformity elsewhere on the lot.

(4) Garden cottages must meet the following additional requirements:

(a) A municipality may not set maximum building heights, minimum setback requirements, minimum lot sizes, maximum lot coverages, or minimum building frontages for accessory dwelling units that are more restrictive than those for the single-family dwelling on the lot. Additionally,

(1) Structure Separation. Detached ADUs must meet the separation requirements for detached dwellings per state building code.

(2) Side and front setbacks. A newly constructed garden cottage must abide by the side and front setbacks that would apply to a new single family detached house, or the actual setbacks of the existing primary dwelling, whichever is less.

(3) Rear setback. A newly constructed garden cottage must be set back at least three feet from the rear lot line.

SECTION 6. NUMBER

(1) One ADU or one JADU is permitted per lot.

SECTION 7. CREATION

(1) An ADU or JADU may be created through new construction, conversion of an existing structure, addition to an existing structure, or conversion of a qualifying existing house to a garden cottage while simultaneously constructing a new primary dwelling on the site.

(2) ADUs and JADUs may be prefabricated or otherwise constructed offsite.

SECTION 8. DENSITY.

(1) ADUs and JADUs are exempt from the residential density standards and are not considered to increase or exceed the density on a lot.

SECTION 9. APPROVAL

(1) A permit application for an ADU and/or JADU that meets the relevant building code and design standards and fire safety codes shall be approved or denied ministerially without discretionary review or a hearing, notwithstanding any local ordinance regulating the issuance of variances or special use permits, within 30 days after receipt of a completed application. Denial of an application shall be accompanied by written findings detailing the reason for denial and any remedy necessary to secure approval. If the local agency has not approved or denied the completed application within 30 days, the application shall be deemed approved. A request by the applicant to adjust the [state's] ADU/JADU standards will be handled through a separate [discretionary] process and is not subject to the 30 day review period.

SECTION 10. OCCUPANCY AND USE

(1) Occupancy and use standards for an ADU and/or JADU shall be the same as those applicable to a primary dwelling on the same site. [State and Local] Fire and occupancy limits shall apply to the ADU and/or JADU without regard to the number of persons living in other units on the lot.

SECTION 11. EXISTING UNITS

(1) ADUs and JADUs created prior to (date) may be permitted by registering the unit with the (building official) for inclusion into the [Certificate of Occupancy Program]. Application for registration will follow the same ministerial process as an application to build a new ADU and must contain the name of the owner, the address of the unit, the floor area of the two dwelling units, a plot plan of the property, evidence of the date of establishment of the unit, and a signature of the owner. Existing non-conforming ADUs/JADUs shall be permitted unless there is a written health/safety concern.

(2) A [municipality] may only initiate a code enforcement action on an unpermitted ADU or JADU based on the code governing at the time of construction. If [municipality] initiates a code enforcement it must notify the

owner of the process for legalizing the unit and delay the enforcement action to allow the owner to register the unit for inclusion into the [Certificate of Occupancy Program].

SECTION 12. HISTORIC DESIGNATION

(1) ADUs and JADUs are authorized on properties containing structures subject to historic preservation laws, as long as such units do not affect the facade as visible from the right-of-way.

SECTION 13. IMPACT FEES

(1) ADU and JADUs of less than 750 square feet are exempt from all impact fees. Impact fees applied to larger ADUs and JADUs must be scaled by unit size. ADUs and JADUs of less than 500 feet are exempt from school fees.

(2) No municipality or school district shall set an impact fee or school fee for an ADU or JADU that is larger than the impact fee for a single-family house.

SECTION 14. ENFORCEMENT

(1) All incorporated cities in [state] must pass an ADU ordinance incorporating the provisions of this law and stating any compliant local requirements, processes or procedures for ADU construction or permitting. These ordinances must be filed with [State housing authority or agency].

(2) No additional state-level commission approval shall be required to implement this law and allow the permitting of ADUs or JADUs.

(3) The [State housing authority or agency] shall refer instances of non-compliance to the Attorney General who is empowered to take action to ensure compliance.

SECTION 15. EFFECTIVE DATE

This act is ordered to take immediate effect.

ENDNOTES

CHAPTER 1

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