

A LOOK AT

Occupational Licensing Reform

ACROSS THE UNITED STATES

ARKANSAS CENTER FOR RESEARCH IN ECONOMICS

UNIVERSITY OF CENTRAL ARKANSAS



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Occupational Licensing Reform across the United States: What States Have Accomplished

By Marc Kilmer

Our country's occupational licensing system has burgeoned over the last half century. A growing number of occupations require a state license for anyone seeking to work in those fields, and more Americans are working in licensed occupations than ever before.¹ With this increase in licensing has come increasing debate over whether this trend is healthy for American workers. Led by think tanks, governors, and both the Obama and Trump administrations, more people are focusing on reforming the licensing system than ever before.



Each state imposes its own rules for whether someone must become licensed before being able to work legally in a certain occupation. Licensing for some occupations, such as doctors, is universal. Other occupations are licensed in only a few states. States are not only inconsistent in what occupations they license; they are also inconsistent in how they license the same occupations. Each state sets different standards. Someone seeking work in a particular occupation may face stringent requirements in one state but a minimal burden in another.

Since licensing requirements arise from state legislation, licensing reform efforts are appearing in state legislatures around the country. Bills to delicense certain professions have been debated in numerous states. Related legislative efforts, such as bills to give private citizens a cause of action in court to challenge state licensing requirements, have also tried to impact licensing. Further, governors in some states have undertaken licensing reform by requiring a review





of state requirements, with the aim of eventually rolling back such rules. But the movement to scale back occupational licensing has not achieved widespread national success.

In most cases, licensing reform encounters stiff opposition from groups representing the licensed industries. This opposition generally succeeds in stopping or modifying licensing reform bills. When elected officials are willing to spend political capital on the issue, reform can be successful. Outside groups, often free-market think tanks or conservative advocacy groups, have also played a role in countering interest groups opposed to licensing reform.

As Arkansas legislators consider matters related to changing the state's licensing system, they would do well to look at the outcomes of similar proposals in other states. Learning from these states' efforts can help inform the debate in Arkansas.



Michigan



Summary: A committee reviewed 87 occupations licensed by Michigan. The legislature and governor delicensed six occupations and reduced the hours required to obtain a barber's license. Governor Rick Snyder, a Republican who has championed licensing reform, was reelected in 2014. Because of term limits, he is not eligible to run for governor again, and his term will end on January 1, 2019.

Reforms:

- ▶ Occupational Licensing Advisory Rules Committee created to review the state's licensure climate
- ▶ Six occupations delicensed
- ▶ Barber's license hours reduced



Michigan is not in the top tier of states in terms of occupational licensing burdens, but it does have a higher licensing burden than many other states. This was especially true prior to the reform efforts described below. A 2015 report from the Brookings Institution concluded that 20.6 percent of Michigan's workforce was licensed by the state.³ In a letter to legislators, Governor Snyder said that "recent studies have identified Michigan as the 6th most heavily regulated state in terms of occupational licensing."⁴

The push for occupational licensing reform began with Governor Snyder's inauguration in 2011. One of the new governor's first acts in office was to sign an executive order creating the Occupational Licensing Advisory Rules Committee in the Office of Regulatory Reinvention. In that executive order, Governor Snyder charged the committee with reviewing the state's occupational licensing laws using these seven criteria:⁵

- Health or safety benefits
- Whether they are mandated by any applicable constitutional or statutory provision
- Compliance costs, taking into account their complexity, reporting requirements, and other factors
- Conflict with or duplication of similar rules or regulations adopted by the state or federal government
- Extent to which the regulations exceed national or regional compliance requirements or other standards
- Date of last evaluation and the degree, if any, to which technology, economic conditions, or other factors have changed activity covered by the regulations since the last evaluation

- Other changes or developments since implementation that demonstrate no continued need for the rules

In 14 meetings, this committee reviewed 87 occupations licensed by Michigan. It issued a report in February 2012 making recommendations for legislators and regulators to reform the state's licensing regime. The general recommendations included setting the fee structure to cover the cost of regulating a profession, ensuring that continuing education and professional development mandates only be authorized by statute, and examining license reciprocity with other states. The committee also recommended that future licensing rules be "fair, efficient, and transparent, so as not to unreasonably diminish competition or exceed the minimum level of regulation necessary to protect the public, yet be conducive to business growth and job creation."⁶

The committee also specifically recommended that legislators delicense these occupations (those with an asterisk were eventually delicensed by the legislature; those with a plus sign are licensed in Arkansas):⁷

- Acupuncturists+
- Auctioneers*+
- Community planners*
- Dieticians and nutritionists*+
- Forensic polygraph examiners+
- Foresters+
- Immigration clerical assistants*
- Landscape architects+
- Leasing agents for residential property management+
- Ocularists*
- Personnel agents
- Private security guards+
- Professional employment organization employees

- Respiratory therapists+
- Sanitarians+
- Security alarm contractors+
- Speech pathologists+
- Underground storage tank qualified consultants+
- Vehicle protection product warrantors

In addition, the committee made recommendations for combining administrative functions, reviewing rules, eliminating requirements, and otherwise streamlining the state's occupational and business licensing operations.

The committee's 2012 report prompted legislators to introduce a variety of bills in the 2013–14 legislative session to implement its recommendations. During this session, both houses passed bills that eliminated licensing on auctioneers,⁸ community planners,⁹ dieticians and nutritionists,¹⁰ immigration clerical assistants,¹¹ ocularists,¹² and proprietary school solicitors.¹³ In addition, legislators reduced the mandated hours of training that barbers must complete to obtain a license from 2,000 to 1,800.¹⁴ Legislators also considered bills that would have delicensed elevator installers, foresters, landscape architects, and polygraph examiners. The bill to delicense foresters passed the house but failed in the senate, while none of the other bills passed either house.¹⁵

Michigan legislators succeeded in delicensing only six occupations. Many were occupations that had few licensees. Even so, some of the bills faced significant push-back by individuals in the licensed industries. Jarrett Skorup, who works on these issues for the free market Mackinac Center for Public Policy in Midland, Michigan, notes the heavy opposition of dieticians and nutritionists to the proposed repeal of a never-enforced state law:

In 2006, the Michigan Legislature created a new licensing requirement for dieticians and nutritionists. But because of legal concerns over the wording

of the law, this license was never actually established or enforced. Despite no one ever being issued a dietitian license, when the Michigan House first considered a bill to repeal this dead letter in 2013, a “standing room-only crowd,” mostly made up of practicing dietitians and nutritionists, filled three rooms in opposition.¹⁶

Even though the 6 delicensed occupations fell far short of the 87 recommended for delicensing by the Occupational Licensing Advisory Rules Committee, and even though many of the 6 occupations had few licensees, this effort by Michigan legislators represents a significant departure from the norm in occupational licensing. No other state has undertaken such a comprehensive legislative overhaul of its licensing regime and seen even a small portion of that overhaul enacted into law. The general trend has been for states to steadily add licensing requirements, not remove them.

The Michigan effort may have been aided by the small number of licensees in some of the occupations targeted for delicensing and by the lack of organized opposition to lobby legislators. As mentioned earlier, however, some delicensing bills did attract significant opposition. The legislation dealing with dietitians and nutritionists garnered organized opposition from nine groups, including the Michigan Academy of Pediatrics, the Michigan Academy of Family Physicians, and the Michigan State Medical Society.¹⁷

No delicensing bills have passed both houses of the legislature since 2013. In 2014, the legislature passed and the governor signed a bill that would grant the spouses of military service members a temporary occupational license if that person has an equivalent license in another state. This license would last for one year.¹⁸ The Michigan House passed legislation in 2017 that would exclude painters and decorators from licensing requirements, but the senate failed to act on it.¹⁹

Governor Snyder continues to support reform efforts, however. He sent a letter to legislators in 2015 noting that “being free to practice one’s chosen profession is

a fundamental aspect of the pursuit of happiness.”²⁰ In that letter, he outlined six principles he would follow in determining whether he would support legislation to enact new licensure requirements:²¹

- Unregulated practice must pose a substantial harm or danger to the public health, safety, or welfare that will be abated through licensure.
- Practicing the occupation must require highly specialized education or training.
- The cost to the state government of regulating the occupation must be revenue neutral.
- There must be no alternatives to state regulation of the occupation (such as national or third-party accreditations) that adequately protect the public.
- The scope of practice must be clearly distinguishable from that of other licensed, certified, and registered occupations.
- Regulation through registration or listing (as opposed to licensure) does little to protect public health and welfare, and is not an appropriate use of government resources.

Even in light of these principles, Governor Snyder has signed some bills into law that place new licensing burdens on workers. One of those bills created a new licensing mandate for applied behavior analysts and assistant behavior analysts.²² Another expanded the state’s vehicle seller licensing mandate to include dealers who sell mobility vehicles.²³

Arizona



Summary: Arizona's governor has championed licensing reform, using his executive power to order a review of state licensing policies. His leadership has helped push through a bill that gives state residents the power to challenge licensing rules. Legislators also passed a bill that would delicense a handful of occupations, which the governor signed. And judicial action by a public interest law firm has helped eliminate a licensing requirement for animal massagers.

Reforms:

- ▶ Five occupations delicensed
- ▶ Gubernatorial review required of licensing mandates
- ▶ Right to Earn a Living Act passed, creating a private cause of action to challenge licensing



According to a 2012 report by the Institute for Justice, there is significant potential for licensing reform in Arizona:

Arizona ranks as the most broadly and onerously licensed state for low- and moderate-income workers. It requires a license for 64 out of 102 occupations studied, more than all but Louisiana. Of the occupations licensed in Arizona, 26 are also licensed in fewer than half of the other states. On average, breaking into one of the 64 licensed occupations requires \$455 in fees, 599 days lost to education and experience—or about a year and a half—and two exams.²⁴

In 2016, Republican Governor Doug Ducey used his second State of the State address to call for licensure reform. “Arizona requires licenses for too many jobs—resulting in a maze of bureaucracy for small-business people looking to earn an honest living,” he said. “Believe it or not, the state of Arizona actually licenses talent agents. I say, let’s leave the job of finding new talent to Adam Levine and Gwen Stefani—not state government. The elites and special interests will tell you that these licenses are necessary. But often they have been designed to kill competition or keep out the little guy.”²⁵

After this delicensure call, legislators passed HB 2613 to exempt certain professions from licensing requirements. Governor Ducey fought for this bill when it was considered in committee. His lobbyist told legislators that “licensing should be the last option, not the first.”²⁶ As in other states considering similar proposals, many practitioners in the occupations slated for delicensing disagreed, however, and urged legislators to reject the bill. Only yoga instructors supported delicensing.²⁷

The bill, signed by the governor on May 19, 2016, eliminated the state’s licensure requirements for assayers, citrus fruit packers, fruit and vegetable packers, driving instructors, and yoga instructors. It also allows some trained geologists and cremationists to practice without a license.²⁸ None of these occupations is licensed in Arkansas.

In February 2017, Arizona's licensing rules came to wider public attention when the state cosmetology board began investigating a cosmetology student, Juan Montesdeoca, who was giving free haircuts to the homeless in Tucson. According to Donna Aune, the board's executive director, an unlicensed person giving haircuts to the homeless poses a "real risk."²⁹ Governor Ducey disagreed, sending a letter to the board blasting its actions:

*I find this outrageous, and I call on you to end your investigation, save Mr. Montesdeoca the inconvenience of having to travel to Phoenix to appear before your body, and waive any fees or penalties the cosmetology board is considering against him.*³⁰

Because of the way the cosmetology board is composed, the governor's power over the board's decisions is limited to speaking out against their actions. However, he does have more power over other licensing agencies. In March 2017, Governor Ducey issued an executive order requiring a review of the state's licensing mandates, saying that "onerous licensing requirements and excessive fees can create unnecessary barriers for Arizonans who want to enter the job market."³¹ Among other things, that order required regulatory boards to do the following:³²

- Review their licensing requirements, including training requirements, continuing education standards, and initial and renewal fees.
- Determine the number of states that also license these occupations and the national average for training requirements, continuing education, and fees.
- Provide a justification if Arizona's requirements exceed national standards.
- Explain the potential harm to individuals that justifies Arizona's licensure requirement if fewer than 24 states license an occupation.

- Explain whether someone's criminal history can be used as a complete or partial barrier to licensure.

Legislators were also active in 2017 on this issue. Senator Nancy Barto introduced SB 1437, the Right to Earn a Living Act. The idea for this bill originated with the Goldwater Institute, a free market think tank in Phoenix where scholars had been writing about occupational licensing. Clint Bolick, who worked for the Goldwater Institute at the time and is now a state supreme court justice, developed model right-to-earn-a-living legislation in 2016. The legislative version of this proposal made its way through both houses of the legislature, and Governor Ducey signed it into law on April 5, 2017.

Some licensed professionals opposed this legislation, especially architects. Melissa Cornelius, executive director of the Arizona Board of Technical Registration, which represents architects, spoke out about it. "To remove necessary registrations endangers the public's health and safety," she said. "We want to trust [that] the government has vetted our builders, to ensure that their buildings aren't going to fall down in 20 years."³³

Under this bill, an agency may only issue an occupational licensure rule if it is specifically designed to protect public health, safety, or welfare. If someone is harmed by an occupational regulation, that person may petition the agency to repeal or modify the regulation. The agency can then act accordingly (or recommend legislative action, if necessary). An individual may also apply to a circuit court to overturn an occupational regulation. The court can stop enforcement of the regulation if it determines by the preponderance of the evidence that such a rule does impose a barrier to someone entering or participating in the occupation and if the state does not prove that such a license is necessary to protect health, safety, or welfare.³⁴

While anyone had been able to go to court to challenge such rules in the past, SB 1437 shifted the burden of proof to the government to justify such regulations.

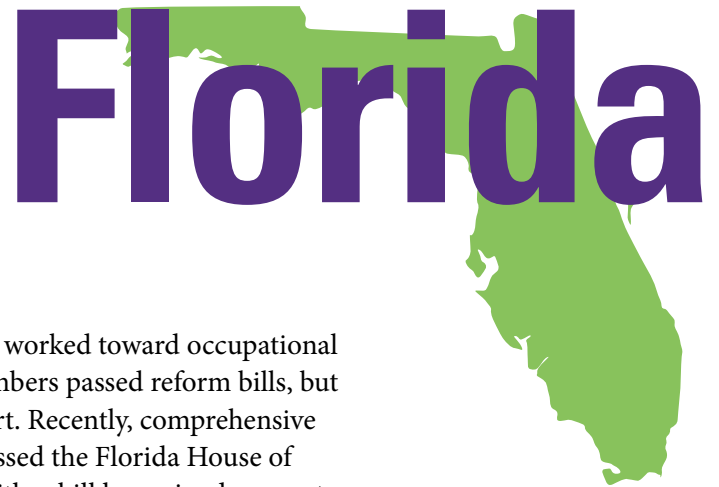
In effect, it made it much easier for individuals who are denied work because of Arizona's occupational licensing laws to seek legal action to invalidate such rules. A similar bill had passed the house but died in the senate in 2016.³⁵

In September 2017, the Arizona Board of Behavioral Health Examiners considered a petition from Annette Stanley under this law's provision. Stanley had moved to Arizona from Kansas in 2014 and was seeking a professional counselor's license. For the purposes of meeting the state's mandatory hour requirements for independent licensure, Arizona rules did not recognize her hours as a counselor in Kansas.³⁶ In November, the board allowed her to practice in Arizona and also decided to modify the rule in question.³⁷

That year, legislators also included another licensing reform measure in a bill aimed at encouraging work that made various changes to the state's Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF). This bill, HB 2372, required state agencies to waive the fee for anyone making an initial application for an occupational license if that person had a family income below 200 percent of the federal poverty level.³⁸

In addition to the legislative and executive branch actions on licensure, Arizona has also seen judicial engagement on this issue. In 2014, three animal massage practitioners sued the state over regulatory requirements that they must receive a veterinary license to practice their trade. The Arizona State Veterinary Medical Examining Board contended that anyone massaging animals should be required to attend veterinary school and obtain a veterinary license. The women who sued pointed out that veterinary school does not teach animal massage, so this requirement was irrational. After a three-year legal battle, the board agreed to no longer enforce its rule against animal massage practitioners.³⁹

Florida



Summary: Since 2011, Florida legislators have worked toward occupational licensing reform. That year, both legislative chambers passed reform bills, but disagreement on the bills' details killed that effort. Recently, comprehensive occupational licensing reform legislation has passed the Florida House of Representatives two years in a row. However, neither bill has gained support in the senate. House leadership has a far greater commitment to reform than senate leadership, which may explain why reform efforts in the senate do not gain traction. The only reform measure to pass the legislature was a bill that exempted military members and their spouses from some licensing fees and requirements. Republican Governor Rick Scott has generally remained silent on licensing reform.

Reforms:

- ▶ Military personnel, their families, and lower-income Floridians exempted from licensing fees



According to the Institute for Justice, “Florida is one of the worst states in the nation for occupational licensing.” In 2017, the organization concluded that the state’s laws ranked as the fifth most burdensome in the nation, but “because it licenses fewer occupations than states with similarly high burdens, Florida ranks as the 21st most widely and onerously licensed state.”⁴⁰

Legislators are taking steps to reduce licensing mandates, however. In 2011, they considered deregulating a number of businesses in the state and delicensing the following professions (occupations with a plus sign are licensed by Arkansas):⁴¹

- Athlete agents
- Auctioneers+
- Barbers+
- Sellers of business opportunities
- Professional solicitors and fundraisers
- Community association managers
- Hair braiders
- Hair wrappers
- Body wrappers+
- Manicurists+
- Pedicurists+
- Nail extension specialists
- Professional geologists+
- Home inspectors+
- Interior designers+
- Movers
- Landscape architects+
- Mold assessors
- Mold remediators
- Sellers of travel
- Surveyors and mappers

- Talent agents
- Telemarketers
- Yacht and ship brokers and salespeople

This legislation faced significant opposition, especially by interior designers. A professor of interior design asked legislators, “Do you know the color schemes that affect your salivation, your autonomic nervous system?” One licensed interior designer justified licensing on public safety grounds, saying, “Part of my job is to ensure the finishes that I select cannot be made into weapons.” Another accused lawmakers of contributing to tens of thousands of deaths by even considering delicensing their profession, claiming that “by not allowing interior designers to be specialists and focus on the things they do, what you’re basically doing is contributing to 88,000 deaths every year.”⁴²

This legislation passed both the house and senate, but the two chambers could not work out their differences in conference committee. The bills died when legislators adjourned the 2011 session.

Reform efforts resumed in 2017 when, on April 26, the Florida House of Representatives passed a broad-based reform bill that made significant changes to the state’s occupational licensing regime. Among its provisions, HB 7047 would have eliminated licensing for the following occupations:⁴³

- Hair braiders
- Hair wrappers
- Body wrappers
- Boxing announcers
- Boxing timekeepers

The bill would have also reduced the hours of mandatory training for the following professions:

- Barber – from 1,200 hours to 600 hours
- Nail specialist – from 240 hours to 150 hours
- Face specialist – from 260 hours to 165 hours
- Full beauty specialist – from 500 hours to 300 hours

When this legislation reached the Florida Senate, senators amended the bill to include provisions that regulated fantasy sport contests. The senate then passed the amended legislation, but the house of representatives refused to concur with the amendments. The bill died when the senate and house could not agree on a compromise version.

Representative Halsey Beshears once again reintroduced the bill for consideration in the 2018 session. In mid-January 2018, Florida House members passed HB 15, which would have delicensed the same occupations and reduced the same number of mandated hours as the house version of HB 7047 from 2017.⁴⁴ Upon reaching the senate, this bill died in committee, likely because senate leadership did not prioritize licensing reform during the legislative session.

Besides more comprehensive licensure reform efforts such as HB 7047 and HB 15, legislators also worked on piecemeal changes to Florida's licensure regime. One bill they passed in 2017 was HB 615.⁴⁵ This legislation exempted the following individuals from paying the state fee to apply for an occupational license:

- Active duty members of the armed forces
- Spouses of members of the armed forces
- Surviving spouses of deceased members of the armed forces
- Floridians who have incomes below 130 percent of the federal poverty level

The bill also required the state to issue an occupational license without a fee and without the applicant's passage of initial statutory requirements if that person met the following qualifications:

- Is an active duty military member, an honorably discharged active duty military member, is married to an active duty military member, or was married to an active duty military member at the time that member died
- Has a valid license for that occupation from another state
- Has the required bonding or insurance
- Provides fingerprints

HB 615 passed both houses of the legislature unanimously, and Governor Rick Scott signed it into law in June 2017.

Local governments throughout Florida also impose a business tax on individuals in a variety of occupations. In 2017, Senator Greg Steube introduced SB 330.⁴⁶ In its original form, this bill would have prohibited local governments from levying a new local business tax and capped existing taxes. In an interview, Senator Steube explained why he was pushing this proposal, “which prohibits local governments from charging excessive annual fees for the ‘privilege’ to work.”

This is a widespread problem in Florida. For example, lawn maintenance workers in Jacksonville have to pay \$200 a year to work, Tampa photographers must pay \$174 just to earn money by taking pictures, and interior decorators are required pay \$402 in Palm Beach. Beyond protecting property rights from local government overreach, it is also critical that we do not allow excessive fees to stand in the way of someone’s right to earn a living.⁴⁷

During the committee process, the bill was amended. Along the lines of HB 615, the amended bill exempted certain categories of people from paying the tax. The exemptions under this bill would apply to active duty military members and their

spouses as well as to individuals receiving public assistance and those with low incomes. This legislation never made it out of the senate, however.

The senate's reluctance to act has been one of the more important reasons why licensing reform legislation has so far failed to become law in Florida. House leadership appears more committed to reform measures, while senate leadership has different priorities. Opposition to reform from groups representing licensed professionals has also played a key role.

Sal Nuzzo, vice president of the free market James Madison Institute in Tallahassee, testified in favor of HB 7047 in 2017 and HB 15 in 2018. According to his analysis, interest groups were instrumental in killing these bills:

*With any truly transformational policy like reform of our occupational licensing system, there are large elements of the existing structure that prefer the status quo. These forces can at times be powerful and entrenched. They also recognize the threat that reform can have to them, and this makes them very active.*⁴⁸

He pointed to his experience:

*When we testify in committee in favor of reform proposals, we generally tend to see many special interest groups openly advocating for why state-issued licensing is necessary. They'll bring up hypothetical worst-case scenarios attempting to scare policymakers. In one rather extraordinary example, concerning interior design licensing, an advocacy group attempted to make the case that eliminating state-issued licensing would result in more homes catching fire from bad window dressings.*⁴⁹

The House Commerce Committee hearing on HB 15 provided some examples of special interest group lobbying.⁵⁰ The testimony primarily concerned the proposal to

reduce mandated hours for barber training from 1,200 hours to 600 hours. Numerous speakers from the industry decried this hour reduction. One held up pictures of skin damage. Another raised the specter of HIV and how it could be spread if a barber accidentally cut someone. The general theme was that someone would be unqualified with only 600 hours of training, so anyone hiring a new employee with only that training would be exposing the public to harm. One salon owner said, “Trying to train someone with 600 hours will not work. We will shut down. We will be sued.”

HB 15’s committee testimony also focused on the idea that reducing mandatory training would harm job seekers. The president of the American Institute of Beauty’s Florida schools said that cutting the mandatory hours would “render the individuals [in the training program] unemployable. They will not be able to get jobs in salons. . . . We will not be creating jobs, we will be removing jobs because they will not be able to get jobs.” This sentiment was echoed by other people testifying. A few business owners acknowledged that they could train workers themselves, but said that doing so would impose a financial hardship on them.

Someone representing the Florida Academy, a beauty school, advocated increasing the mandatory training hours, saying, “While I applaud the bill’s intent to decrease regulations and relax roadblocks on some industries, I think there are some industries like barbering, skin care and nails, where—as counterintuitive as it may seem—actually, if we want to spur job growth, we need to increase hours, not decrease hours.”

This idea that deregulation is good in general, just not for the barbering profession, was also put forward by a representative from the Aveda Institute, who said, “Although I support removing any barriers to any profession, I would propose to you that this actually does the opposite for people who want to get into it. . . . Reducing the hours is going to limit their employability to minimum wage support positions while they spend years trying to develop the experience to get back into it.”

At the end of the hearing, Representative Beshears pointed out that under this bill, “Every business has the opportunity to train its employees.” HB 15 only eliminated the mandatory hours necessary to obtain a state license; it did not cap the number of hours that schools could offer or that employers could require to obtain jobs in their establishments.

The push for licensing reform in Florida, unlike other states profiled in this report, is coming primarily from legislators, not the governor. Governor Scott has not been hostile to licensing reform, but neither has he championed it. His position could account for the difficulty in moving reform through both houses of the legislature since leadership in only one house has been strongly pushing reform legislation.

Tennessee

Summary: Tennessee legislators considered a sweeping Right to Earn a Living Act during their 2016 session. Because of lobbying by Governor Bill Haslam and executive branch agencies, this legislation was significantly modified before passage. The final bill provides for legislative review of new licensing rules. After lawsuits from a free market think tank, legislators also passed bills in 2017 that delicensed hair shampooing and animal massage. In 2018, legislators passed a bill to ease occupational licensing restrictions on Tennesseans with a criminal conviction.

Reforms:

- ▶ Legislative review required for new licensing rules
- ▶ Shampooists delicensed
- ▶ Temporary moratorium imposed on license requirement for animal massagers
- ▶ Fresh Start Act passed to reduce barriers to obtaining a license for Tennesseans with criminal convictions



Licensing reform advocates were hard at work in Tennessee in 2016. In that year's legislative session, Senator Mark Green introduced a bill, SB 2469, that in its original form was similar to the Right to Earn a Living Act that Arizona passed in 2017. This bill would have limited "entry regulations," such as occupational licensing, to those "demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives." Every year, state agencies would have been required to review such regulations and report why they are necessary to achieve these objectives. If the agency were to have found the regulations unnecessary, they would have been required to repeal them or recommend their repeal to the legislature.

The bill would have given individuals the right to petition an agency for repeal on these grounds, with the right to take that repeal petition to court. Once in court, a judge would have been able to overturn the regulation if a preponderance of the evidence showed that such a regulation burdened the entry to a profession but was not necessary to protect public health, safety, or welfare. The bill would have also preempted any local government from imposing occupational licenses that are inconsistent with state law.⁵¹

The bill encountered opposition from Republican Governor Bill Haslam and executive branch agencies. The governor opposed creating a private cause of action that would engender lawsuits against the state. This proposition was difficult for Republican legislators to accept too.

In response to the governor's concerns, legislators significantly changed the bill as it moved through the legislative process. The bill passed both houses, and the governor signed it into law on April 28, 2016. The enacted legislation does not have the private cause of action pertaining to state licensing. It retains the regulatory review, but in a vastly altered form.

Under this law, agencies must submit their existing and proposed licensing regulations to the chairs of the legislative chamber's government-operations committees.

Those committees must produce a report that evaluates these regulations on the criteria below.

- Whether the rules are required by state or federal law
- Whether they are necessary to protect the public's health, safety, or welfare
- Whether the rules' purpose is to inhibit competition or entry into an occupation
- Whether less restrictive means could achieve the regulations' purpose
- Whether the regulations are beyond the licensing agency's jurisdiction

The committees are then allowed, though not mandated, to hold hearings on these rules. The committee chairs may also request that future licensing rules be presented for their review. The committees may vote to express their disapproval of the proposed rule considered at the hearing. If the licensing authority ignores a committee's vote of disapproval, the committee may request that the legislature vote to suspend the authority's rulemaking power in this area.⁵²

While this law does give legislators more power to overturn some licensing rules, it imposes no mandatory review process. It merely gives legislators on the government-operations committees the power to act if they choose to do so. Agencies still retain significant power to ignore legislators' views since the only recourse legislators have is to convince the entire general assembly to suspend the agency's rulemaking authority. Tennessee also has a sunset review law that requires a regular review of licensing boards where the committee reports on these boards' regulations can be used.

In 2017, legislators also passed two licensing reform bills, one repealing the licensing requirement to shampoo hair and the other placing a temporary moratorium on a state rule requiring a veterinary license to massage animals. Both of these legislative actions came after lawsuits filed by the Beacon Center of Tennessee, a free market think tank based in Nashville. The Beacon Center had challenged both licensing requirements in court and engaged in a public education campaign on these issues.⁵³

The reform efforts continued in the 2018 legislative session. In late March and early April, both houses of the general assembly passed SB 2465, the Fresh Start Act. This bill prohibits licensing authorities from denying a license based on a criminal conviction that does not directly relate to the occupation for which the person is seeking a license.

The bill also allows an individual with a criminal conviction to request that the licensing board tell him or her prior to seeking a license whether that criminal conviction would disqualify the applicant. The board must respond, giving specific reasons someone would be denied a license based on his or her criminal conviction. This provision will eliminate instances in which individuals with criminal convictions invest time and money in schooling or other actions to meet licensure requirements and then are turned down after applying. Further, anyone turned down for a license based on a criminal conviction has the ability under this bill to appeal that decision to the state's courts, and the licensing board must defend its decision through a preponderance of the evidence.⁵⁴

Mississippi



Summary: While legislators have not delicensed any occupations in Mississippi, they have passed legislation that makes a major reform to how the state's licensing system operates. In compliance with a US Supreme Court decision, Mississippi enacted a bill that gives the governor and elected officials an active role in supervising licensing boards. These officials must also approve new licensing rules before the rules take effect.

Reforms:

- ▶ Licensing agencies brought under control of the Occupational Licensing Review Commission



Mississippi lawmakers have not undertaken comprehensive or even partial de-licensing as other states have. Instead, the legislative efforts in this state have focused on bringing its licensing regime into compliance with the US Supreme Court decision *North Carolina State Board of Dental Examiners v. Federal Trade Commission*.

This court case involved a board of licensed dentists who were sending cease-and-desist letters to teeth whitening operators in that state. The board claimed that state law allowed only licensed dentists to whiten teeth, although no language in the law said this. Strong evidence existed that dentists were concerned that teeth whitening operators were providing this service at lower prices than those offered by dentists. The Federal Trade Commission brought suit against the board for violating federal antitrust laws.

In a 6-3 vote, the Supreme Court decided that the board was indeed violating antitrust laws because the board's members were "active market participants" with a vested interest in the service being regulated. Since the board's members were not actively supervised by state officials, the board members did not enjoy the immunity that state governments receive when regulating professions.

Writing for the majority, Justice Anthony Kennedy noted the problems inherent in the government's turning industry regulation over to market participants:

*Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest.*⁵⁵

He went on to conclude:

*The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision.*⁵⁶

In 2017, Republican Governor Phil Bryant asked legislators to pass a bill that provided the active supervision over licensing boards required by the *North Carolina State Board of Dental Examiners* decision. As introduced, HB 1425 would have made the following changes to the state's licensing boards that are controlled by active participants in the markets they regulate:⁵⁷

- Boards must use the least restrictive regulations possible to protect the public from significant and substantiated harm.
- The governor must actively supervise the boards.
- The boards must submit their proposed regulations and enforcement mechanisms to the governor, who can then approve, nullify, or veto them.
- The governor must review existing occupational licenses and regulations to see whether they comply with state policy and recommend any statutory changes to the legislature.

The bill also listed what types of regulation boards should consider to fulfill the requirement for “least restrictive” regulations:⁵⁸

- Market competition
- Third-party reviews
- Private certification
- A private cause of action in civil court

- Regulation of the process
- Bonding or insurance
- Registration
- Government certification
- Occupational licensing

According to the law, boards should consider these steps, starting with the least restrictive, when looking at new rules for occupations. Only if none of the alternatives would protect the public from significant and substantiated harm could the boards impose a new licensing mandate.

This legislation passed in amended form. The final version retained the language to require boards to use the least restrictive regulations possible, but the governor's role was changed significantly. The law established the Occupational Licensing Review Commission consisting of the governor, secretary of state, and attorney general. This commission would actively supervise the licensing boards controlled by active market participants. Licensing boards would submit their proposed regulations to the commission before the regulations went into effect. Final actions of the commission would require a majority vote for approval.⁵⁹

State Reactions to the *Dental Examiners* Decision

Mississippi was not the only state to pass legislation or take other action in response to the *Dental Examiners* decision, although its legislation may have been the most comprehensive. Here is how other states responded to the ruling:

Alabama: Governor Robert Bentley issued an executive order establishing the Alabama Office for Regulatory Oversight of Boards and Commissions, appointed by the governor, to ensure that licensing actions are based on clear state policy.⁶⁰

Arkansas: This state enacted a law in 2015 that gave legislative oversight to board rules and regulations.⁶¹

Connecticut: This state enacted legislation that gave the Department of Consumer Protection authority over licensing boards to reject decisions that may restrain trade.⁶²

Delaware: By executive order, Governor Jack Markell established the Occupational Licensing Review Committee to analyze licensing regulations with the goal of removing unnecessary rules that prevent Delawareans from entering occupations. The committee is also tasked with recommending ways to comply with the *Dental Examiners* decision.⁶³

Louisiana: The state enacted legislation in 2018 that brought licensing agencies under the control of the Occupational Licensing Review Commission.

Maryland: Governor Larry Hogan signed legislation that brought health care occupations under the direct supervision of the Office of Administrative Hearings, which would disapprove any rules that impose unreasonable anticompetitive actions or do not advance a clearly articulated state policy. This legislation also directs

the heads of state departments to have active review over occupational regulation under their jurisdiction.⁶⁴

Massachusetts: Governor Charlie Baker signed an executive order empowering the director of professional licensure or the commissioner of public health to disapprove licensing actions if they have an anticompetitive effect and do not further important policy goals.⁶⁵

Montana: The commissioner of labor now supervises professional and occupational licensing boards, and he or she may disapprove any rules that potentially restrain competition.⁶⁶

Ohio: Legislation created the Common Sense Initiative Office within the governor's office to supervise licensing board actions that would be subject to antitrust law if they were undertaken by private parties. Review by this office is triggered upon request by someone affected by a licensing board's action. The office may disapprove the board's action if it does not further a specific state policy goal but is instead a pretext for anticompetitive actions.⁶⁷

Oklahoma: Governor Mary Fallin issued an executive order to bring agencies into compliance with the decision.

Tennessee: Legislation made the heads of administrative departments the active supervisors over any licensing boards within their jurisdiction.⁶⁸ These department heads have the power to disapprove rules that may be an unreasonable restraint on trade and that are not consistent with clearly articulated state policy.

Utah

Summary: Utah legislators passed modest licensure reform in 2017. They expanded the ability of a state commission to review licensure laws and recommend changes to the legislature. They also reduced requirements for apprentice electricians, plumbers, and contractors. However, they killed a bill that would have made it easier for out-of-state licensees to obtain a Utah license. Republican Governor Gary Herbert has supported the bills passed by the legislature, but he has not been a vocal champion of licensure reform.

Reforms:

- ▶ Licensing agencies required to present the least restrictive alternative when considering a new license
- ▶ Review required for all licensed occupations every 10 years
- ▶ Licensure requirements reduced for electricians, plumbers, and contractors



In 2017, Utah legislators considered several bills that would have affected occupational licensing in the state. One of those bills, SB 212, passed both houses of the legislature, and Governor Herbert signed it into law on March 22, 2017.

This legislation expanded the duties of the existing Occupational and Professional Licensure Review Committee. Before SB 212's enactment, this committee reviewed newly proposed occupational licenses. Its membership consists of the following:

- Three members of the state house of representatives
- Three members of the state senate
- Three public members appointed jointly by senate and house leadership. One member has to be a former member of a licensing advisory board and one has to be from the general public and not hold any state occupational license.⁶⁹

If a government agency in Utah or the representative of an unlicensed profession that seeks to become licensed proposes a new license, they must submit an application to the committee for review and pay \$500. Under SB 212, that application now must describe why licensing or other regulation is necessary to protect against a “present, recognizable, and significant harm to the health or safety of the public” and why licensing or other regulation is the least restrictive means of providing that protection.⁷⁰ SB 212 also gave the committee the power to review existing licenses, and every licensed occupation must be reviewed every 10 years.

This committee must recommend to the legislature whether an occupation should become licensed (for newly proposed licenses) or remain licensed (for existing occupations). It should consider whether state regulation is necessary to protect the public safety or health from “present, recognizable, and significant harm.” If

regulation is necessary, then the committee must consider whether there is a less restrictive alternative to licensing, such as certification or state registration. The committee should recommend to the legislature ways to narrowly tailor state regulations to achieve these goals, but it must also take into account how its recommendations would affect members of the profession (including how regulation affects reciprocity with other states).⁷¹

Utah legislators also passed HB 313 in 2017, which reduced the licensure requirements for apprentice electricians, plumbers, and contractors. These apprentices may now begin work after taking a 25-hour course. Previously, they had to complete a two-year work requirement and pass a test. This bill passed with overwhelming support in both the house and senate, and Governor Herbert signed it into law on March 25, 2017.

Another 2017 licensing reform bill did not fare as well in the legislature. HB 331 would have allowed an out-of-state licensee with one year of experience to obtain reciprocity, as long as the potential licensee “has the education, experience, and skills necessary to demonstrate competency in the occupation or profession for which licensure is sought.”⁷² This legislation passed the house of representatives without opposition, but senate leadership never scheduled it for a vote.

Oklahoma

Summary: Republican Governor Mary Fallin has actively used her executive powers to address concerns about occupational licensing in Oklahoma. In 2015, she issued an order in response to a US Supreme Court decision to ensure that the state was in compliance. In 2016, she formed a task force to study the state's licensing regime and to recommend areas for reform. This task force released its report in 2018, making 12 recommendations and issuing a blueprint for reviewing existing and future licensing requirements. While a licensing reform bill has been introduced in the legislature, it has not passed.

Reforms:

- ▶ Licensure agency rulemaking actions brought under the attorney general's control
- ▶ Task force established to review licensure



Legislative efforts to enact licensing reform in Oklahoma have failed. The 2017 session considered a Right to Engage in Lawful Occupations bill similar to that introduced in other states. This legislation did not pass, however, and was held over to be considered in the 2018 session.

While there has been no action in the legislature, Governor Mary Fallin has acted on this issue through an executive order. Upon prompting from the attorney general, Governor Fallin issued an executive order in 2015 in response to the *North Carolina Dental Examiners* case discussed earlier. This executive order directed all licensure boards controlled by market participants to subject their nonrulemaking actions to approval by the attorney general.

In December 2016, she established a task force to study the state's licensing system, examine the "necessity and appropriateness" of the requirements to obtain a license, and evaluate whether the barriers to work created by a license are outweighed by a public health and safety goal.⁷³ The task force, chaired by Commissioner of Labor Melissa McLawhorn-Houston, released its final report in January 2018. Introducing the report, the commissioner said:

*The ability of a person to work, earn a living, and support their family is fundamental to their dignity and purpose. If the government is involved in this highest level of regulation, there needs to be a clear public interest. The state's role should be striving to achieve a balance between free market principles, protecting public safety, and reducing barriers to escape poverty.*⁷⁴

In this vein, the task force released 12 recommendations to reform Oklahoma's licensure system:⁷⁵

- Form an independent commission to use the task force's recommendations to review the state's licensing laws, looking for areas to reform or repeal.

- Add occupational licenses to the state's existing sunset review process that evaluates current laws.
- Establish a committee in the legislature to oversee licensing with the committee's recommendations in mind.
- Establish a single executive branch agency to oversee the state's licensing regime.
- Maintain and update the task force's database on licensing information.
- Require state agencies to provide up-to-date information for this database.
- Restructure licensure boards so they are not controlled by a majority of members that have a market interest in regulation.
- Direct a second review of licensure to address issues of fees, the different training requirements between licenses, and how Oklahoma compares to other states in terms of the occupations it licenses.
- Provide reciprocity for some licenses obtained by individuals in other states, especially for licensees who are in the military, who are spouses of military members, or who are in occupations that pose low risk to the public or that are highly needed.
- Allow the state to grant differing degrees of licenses if appropriate.
- Expand the use of third parties to certify workers rather than license them.

- Require boards to reexamine prohibitions on granting licenses to individuals with criminal convictions to determine whether these prohibitions are necessary.

The task force also developed an “occupational licensing blueprint” that it recommended for use by legislators and in future task force deliberations. This blueprint sets forth the questions to be asked before instituting a new license:⁷⁶

- Is there a compelling public interest that this license would protect?
- Is the recommendation the least restrictive means to protect the public interest?
- If a license is the least restrictive means, is the licensing board controlled by market participants?
- Does the state actively supervise the licensing board?

The task force’s members suggest employing this blueprint for licensing regulation going forward as well as for retroactive reviews of existing licensing mandates.

Wisconsin



Summary: Republican Governor Scott Walker's 2017 budget included language that will result in a comprehensive study of the state's occupational licensure laws by the end of 2018. The study aims to recommend the elimination of some licensure requirements. Also in 2017, legislators passed two bills that made modest changes to the licensing requirements of some professions.

Reforms:

- ▶ Study mandated for state's licensing requirements
- ▶ Legislation passed easing licensing mandates on barbers, cosmetologists, aestheticians, electrologists, and manicurists



Governor Scott Walker's 2017 budget proposal to the legislature included a section that called on the Department of Safety and Professional Services to complete a study that would recommend the elimination of occupational licensing using the following criteria for each state license requirement:⁷⁷

- Whether an unregulated profession can clearly harm the health, safety, and welfare of the public in a way that is recognizable, not speculative
- Whether the public benefits from the occupation's being licensed
- Whether the public can be protected in ways other than an occupational license
- Whether this licensing requirement exists in other states
- How many individuals are affected by the licensure requirement
- The total financial burdens imposed by the licensure requirement
- Any statement or analysis given by the agency that regulates the profession
- An evaluation of the tangible and intangible barriers faced by individuals attempting to obtain a license

The legislature passed the governor's budget in September 2017 and retained the language mandating the study's completion. The department must complete it by December 31, 2018, and present a copy to the governor and legislators.

It remains to be seen what this department will recommend for eliminating occupational licenses and what the fate of such recommendations will be in the

legislature. Even though this study may ultimately inaugurate substantial changes to the state's licensing system, there has been movement in Madison to make modest changes before the report is done. In November 2017, Governor Walker signed two bills, SB 108 and SB 109,⁷⁸ which eased some restrictions on barbers, cosmetologists, aestheticians, electrologists, and manicurists.

These bills eliminated continuing-education requirements, made it easier for workers in these professions who hold an out-of-state license to obtain a reciprocal license in Wisconsin, ended the separate licensing requirement for barbers and cosmetologists who want to become managers, allowed licensed barbers and cosmetologists to provide a wider array of services outside salons and barber shops, and allowed these workers to provide instruction in their fields of expertise without obtaining a separate license.

Nebraska

Summary: In 2016, legislators passed a bill that delicensed natural hair braiders. They passed more sweeping legislation in 2018 that mandates an annual legislative review of licensing rules aimed at revising them to the least restrictive means to protect the public. This legislation, sponsored by the state's lone Libertarian senator, was passed with nearly unanimous support by other legislators, both Democratic and Republican.

Reforms:

- ▶ Mandate removed for natural hair braiders to obtain a cosmetology license
- ▶ Annual review mandated for 20 percent of the state's licensed occupations
- ▶ Report mandated on whether these licenses should be ended, modified, or retained, using the criterion of least restrictive alternative to protect the public



According to the Platte Institute, a free market think tank in Omaha, “There are nearly 200 occupational licenses in Nebraska, which means about 1 out of every 4 workers in Nebraska must have a license to work.”⁷⁹ The institute also notes, “It is evident that overburdensome occupational licensure and the associated fees represent significant opportunity costs for Nebraskans.”⁸⁰

Licensing reform efforts began in 2016. In that year’s legislative session, senators passed LB 898, which Republican Governor Pete Ricketts signed into law on March 9.⁸¹ That bill removed the requirement that natural hair braiders obtain a cosmetology license. Prior to enacting this law, natural hair braiders could only legally practice their profession if they completed more than a year of cosmetology training. This training had nothing to do with natural hair braiding, however.

In 2018, Nebraska legislators passed two occupational licensing bills that Governor Ricketts signed. One bill enacted a major change to the state’s licensing system, while another delicensed a single profession.

The major licensing reform was embodied in LB 299,⁸² which Governor Ricketts signed into law on April 23. This law mandates that legislative committees annually review 20 percent of the occupational regulations governing the areas under their jurisdiction. By December of each year, these committees shall issue a report that recommends ending, modifying, or maintaining these regulations. This review must include information on the number of licenses issued or denied by the board being reviewed, an examination of the basic assumptions underlying the board’s powers, and a comparison of what other states do in licensing similar occupations.

The law explains that it is a fundamental right in Nebraska to pursue work in a lawful occupation, that the state should use the least restrictive means to protect the public when regulating an occupation, and that these regulations should be

designed to increase competition and opportunity. State agencies should only use their powers to regulate occupations that are explicitly included in statutes.

The statute directs legislators to consider regulations in light of these policies. When these regulations are aimed at protecting the public, the law recommends certain actions to deal with specific needs:

- To protect against fraud: require stronger disclosures and strengthen the Uniform Deceptive Trade Practices Act
- To protect against unclean facilities or protect health: require inspections
- To protect consumers against someone's failure to complete work: require bonding
- To protect a third party who is not part of the contract: require insurance
- To protect consumers from transient providers: require state registration
- To protect consumers who may have less knowledge about a service than the provider: require certification
- To protect consumers when an imbalance of knowledge exists and there is no other way to evaluate the quality of providers: require licensing

For example, if the justification for a certain profession's occupational license was that the public needed to be protected from a worker's failing to complete a job, then the legislature could recommend that this occupation be subject to a mandatory bonding requirement instead of a state license.

If legislators find a need to change a regulation, the law says that they shall recommend the least restrictive methods possible to protect the public interest. The statute defines what methods should be considered, starting with the least restrictive and ending with the most restrictive:

- Market competition
- Third-party rating or reviews
- Private certification
- Private civil action
- Prosecution under the Uniform Deceptive Trade Practices Act
- Mandatory disclosure
- Regulation of the process to provide goods or services
- Inspection
- Bonding or insurance
- Registration
- Government certification
- Occupational licensing

The law also has provisions similar to Tennessee's Fresh Start Act. Individuals who have a criminal conviction may apply to a licensing board for a predetermination of whether that conviction would lead to the board to reject the individual's future application for a license. If the board issues a preliminary application that states it would indeed deny that person a license based on a criminal conviction, the individual may appeal. The law also states, "The fundamental right of an individual to pursue an occupation includes the right of an individual with a criminal history to obtain an occupational license, government certification, or state recognition of the individual's personal qualifications."

As has been the case in other states, this legislation received support from free market organizations. It also received the backing of other groups across the ideological spectrum, such as the state chapter of the American Civil Liberties Union,

the state association of Goodwill Industries, and the state association that represents Tennessee counties.⁸³ Danielle Conrad, executive director of the ACLU of Nebraska, explained why her organization was supporting this bill:

*Nebraska's system of mass incarceration, combined with our burdensome licensing structure, hurts Nebraska's workforce and our economy, particularly communities of color and low-income Nebraskans. For someone with a criminal conviction to be a productive member of our community, they need to be able to fully participate in our economy and workforce. Nebraska's existing professional licensing structure is full of potential barriers for those who have paid their debt to society. Removing those barriers will help more Nebraskans secure good jobs, which not only helps them and their families, but supports our economy while reducing recidivism.*⁸⁴

Legislators also passed another licensing reform bill during this year's session: LB 345, which delicensed abstractors. Previously, Nebraska was one of only six states to mandate a license for this occupation. It was also the only state to require abstractors to have one year of title-related experience.⁸⁵

Indiana



Summary: Before Republican Mike Pence was vice president, he was governor of Indiana. During his tenure, he championed occupational licensure reform. The initial bill he backed in 2013 would have delicensed a number of occupations, but it failed to pass the legislature. His idea for a licensing review commission did become law two years later, and the commission is conducting a multiyear review of the state's licensing agencies. In both 2017 and 2018, legislators enacted modest reductions in the state's licensing requirements. These reductions include removing the mandate for licensing hair braiders and making it easier for state residents with criminal convictions to obtain licenses.

Reforms:

- ▶ Jobs Creation Committee established to review state licensing agencies
- ▶ Hair braiding exempted from state licensing regulations
- ▶ Local government licensing rules preempted for state-licensed occupations
- ▶ “Dreamers” allowed to obtain occupational licenses



In 2013, Governor Pence's office summed up the growth of licensing in that state:

*Over the last ten years, licensing has exploded in Indiana. In 2004 approximately 340,000 Hoosiers held a professional license. Today there are more than 470,000, representing a 38 percent increase. Indiana's population has increased seven percent in that same time period.*⁸⁶

To address this growth in licensing, the governor supported SB 520, which would have created the Eliminate, Reduce, and Streamline Employee Regulation (ERASER) Committee. This committee would have evaluated each of the state's regulated occupations and recommended whether the state should change the way the occupation is licensed.

This bill also tasked the committee with evaluating the following licenses in its first year: dietitians, professional geologists, home inspectors, interior designers, and land surveyors. SB 520 set these licenses for elimination unless the legislature acted to preserve them in 2015. The bill scheduled the massage therapist license for review and elimination the following year, unless the legislature acted to preserve it. In 2017, it sunset the licenses for professional soil scientists, beauty culture practitioners, and auctioneers, unless the legislature preserved them. The licenses for real estate brokers and salespersons, certified surgical technologists, and behavior analysts were slated for the same review and elimination process in 2018.⁸⁷

SB 520 passed the senate in February 2013 by a vote of 39 to 13. It did not receive a vote in the house of representatives. While the governor's key licensing reform bill did not become law that year, he did veto legislation in 2013 that would have created state licenses for diabetes educators, anesthesiologist assistants, and dietitians and that would have imposed state certification for music therapists.⁸⁸

In 2014, legislators passed SB 421. Among other things, it established criteria for the newly formed Jobs Creation Committee (JCC) to review state licensing agencies.⁸⁹ This new committee has many of the same duties as in Governor Pence’s ERASER Committee proposal. SB 421 tasks the JCC with evaluating the professional licenses issued by the various boards under the umbrella of the Indiana Professional Licensing Agency. Among other things, the JCC is supposed to assess “the necessity, burden, and alternatives to the licenses issued” and the fees charged for these licenses. The JCC shall submit a yearly report that contains an “assessment of the effect of the regulated occupation on the state’s economy, including consumers and businesses,” and shall make recommendations about the future of the license under evaluation, including whether it should be eliminated.⁹⁰

As part of its initial report, the JCC opined on why its members thought that occupational licensing laws tend to grow and why it is so difficult to reduce them:

The growth in licensing regimes—and the inability to remove regulatory, licensing structures once enacted by the General Assembly—appears to be related to four main factors: (1) the absence of a formal set of standards to determine whether an occupation should be licensed, fully weighing the economic principles of public safety and consumer choice, (2) political organizations, i.e. trade associations, who lobby for increased protections of their industries in order to insulate their professions from free market principles, (3) the unwillingness of the General Assembly to reduce regulations in licensed professions given the considerable financial investment made by education providers and practitioners to meet state requirements and obtain a license, and (4) the previous lack of regulatory oversight in Indiana following the elimination of the Indiana Sunset Evaluation Commission (“ISEC”).⁹¹

This last point is an especially important one. The ISEC existed from 1979 until the mid-1980s and was charged with reviewing licensing regulations. After its demise,

the state required licenses for 80 new occupations.⁹² The JCC, in its three years of review, has recommended eliminating only two licenses: those for funeral director interns and student hearing aid dealers.

Licensing reform efforts resumed in the 2017 legislative session with the passage of HB 1243. This legislation exempted hair braiding from state beauty regulation. Prior to this bill's enactment, the state mandated that hair braiders meet all state rules for beauty professionals (such as cosmetologists or barbers).⁹³

In 2018, legislators passed two bills that also reduced licensing barriers. HB 1245 prevents local governments from imposing licensure requirements on state-licensed professions. The bill also limits the use of a criminal conviction to disqualify someone from receiving a license. Under this legislation, any disqualifying crime must be listed by the state or local government issuing the license, and the crime must relate directly to the duties of the occupation being licensed. Also, except in a few circumstances, the conviction must have occurred within the previous five years. The bill provides a right for a person with a conviction to petition a board before seeking a license in order to determine whether that conviction would be disqualifying.⁹⁴

Indiana legislators also passed SB 419, which allows individuals who are covered by the Deferred Action on Childhood Arrivals act ("Dreamers," who are individuals brought to the United States illegally as children) and authorized to work in the United States to obtain occupational licenses.⁹⁵

Louisiana



Summary: Governor John Bel Edwards, a Democrat, has vocally supported licensing reform. Legislative efforts to achieve reform have been largely stymied, however. Strong legislation to restructure the state's licensing regime was watered down significantly before its passage in 2018, although that bill did move licensing agencies under a state commission's control. Other bills to delicense occupations such as florists (which are not licensed in any other state) have failed.

Reforms:

- ▶ State licensing agencies brought under control of Occupational Licensing Commission
- ▶ Gubernatorial review mandated for 20 percent of licensed occupations per year



As 2018 began, Governor Edwards made licensing reform a top priority. He singled out florist licensing for special criticism, saying that he did not know why Louisiana was the only state to license florists. However, according to Louisiana Agriculture and Forestry Commissioner Mike Strain, “[Without licensing] you’re going to set up a situation where anybody can open a floral shop and there’s no method to regulate the industry and protect the public.”⁹⁶

HB 372, passed unanimously in both houses in late May, created the Occupational Licensing Review Commission, made up of the governor, the secretary of state, the commissioner of agriculture, the commissioner of insurance, and the treasurer (or their designees). This commission will oversee licensing boards controlled by active market participants, which brings Louisiana in line with the *Dental Examiners* decision. This bill goes beyond mere supervision, however, by requiring state policy on occupational licensing to provide for “the increase of economic opportunities for all of [Louisiana’s] citizens by promoting competition.”⁹⁷

To meet these requirements, this statute requires that licensing agencies use the “least restrictive regulation necessary to protect consumers from present or potential harm that threatens public health, welfare, or safety.” The statute then lays out the methods, from least restrictive to most restrictive:⁹⁸

- Market competition
- Third-party ratings and reviews
- Private suits to remedy harm
- State regulation
- Inspection
- Bonding or insurance
- Registration
- Occupational licensing

The second licensing reform bill passed by legislators in 2018 was HB 748, which passed unanimously in the house and by a vote of 25 to 4 in the senate. The new law requires the governor to review 20 percent of all state licensing regulations every year. The original bill would have established an office to supervise licensing boards within the governor's office that would complete such a review. This review would then have made recommendations to the legislature about whether the licensing rules should be abolished or converted to less restrictive regulations.

The original bill would also have made the right to pursue a lawful occupation a fundamental right in Louisiana. Accordingly, the state would not have been able to use a criminal conviction as an automatic or mandatory permanent bar to employment. Anyone who was denied a license because of a criminal record would have been able to petition the state to reconsider its denial. In addition, the original bill would have required occupational licensing statutes to be interpreted and applied in a way that increased competition and required any ambiguity in the law be decided in favor of those working or seeking work.⁹⁹

While these two bills passed the legislature, other licensing reform efforts failed in 2018. A bill to end the state's florist license passed the house but failed in the senate. There were also versions of Arizona's Right to Earn a Living Act introduced in each legislative house, but neither made it out of committee. Bills to delicense hair braiding and interior design also failed. The failure of the hair-braiding delicensure bill was a repeat of a similar failure in 2017.

Lessons for Arkansas

As this report illustrates, there has been substantial activity in state capitals aimed at reforming occupational licensure. As Arkansas policy makers consider what to do next on licensing reform, they should look at what has happened in these other states and consider what lessons their experience can provide.

Political Leadership

The factor that appears to be most important for licensing reform, as illustrated by Michigan and Arizona, is strong leadership from the governor on the issue. Governor Rick Snyder came into office and made licensing reform in Michigan a priority during his first term. Similarly, Governor Doug Ducey has used his political capital to advance this issue in Arizona during his time in office. Both have spoken out on the issue, using their positions to educate the public on why they think reform is necessary. Both governors have members of their party controlling the legislative branch. The governors' strong positions on this issue have made it a legislative priority, and both states have seen delicensing legislation succeed.

Other states, such as Oklahoma, illustrate the governor's power to act unilaterally. Governor Fallin has not persuaded legislators to pass licensure reform, but she has used executive orders to mandate compliance with the *North Carolina Dental Examiners* Supreme Court decision as well as to establish a task force to look at reforming licensure. Governor Scott Walker of Wisconsin did not act unilaterally, but he did include language in his 2017 budget that mandated a licensing reform study. Legislators supported the governor on this issue and passed his budget with the study language intact.

In Florida, by contrast, Governor Rick Scott has not engaged on this issue. Instead, leaders in the state house of representatives have been the primary champions of reform efforts. The result has been legislation that has quickly passed that chamber but has stalled in the senate. With no buy-in from senate leadership and no pressure from above by the governor, large-scale legislative reform efforts in Florida have not succeeded.

Tennessee Governor Bill Haslam played an active role in altering that state's Right to Earn a Living Act. His office and executive branch agencies lobbied legislators to remove the ability of private citizens to sue the state to overturn licensing rules. This lobbying succeeded, and a much weaker reform bill was enacted.

At times, however, a governor's leadership on this issue is not enough to pass legislation. The then governor Mike Pence of Indiana made licensing reform a top priority in 2013. The legislation he backed to establish a licensing review committee and delicense a handful of occupations did pass the senate but floundered in the house of representatives. Two years later, he achieved partial success through passage of a bill that set up a review committee, but the delicensing portion remained dead.

Commissions

Governor Snyder instigated reform in Michigan as one of his early acts in office. He appointed a commission that studied the state's occupational licensing regime and developed recommendations that legislators used as a blueprint for reform. Advocates for reform in Michigan have cited this commission as being essential to convincing legislators that delicensing was a good idea.

Numerous interest groups will advocate against licensing reform. Having a report from a commission that has studied the issue thoroughly gives legislators a way to evaluate what advocates say during hearings. It also provides information that

legislators may not be able to obtain in the rush of work during the relatively short legislative session.

The Oklahoma task force's 2018 recommendations are a good example of how these commissions can provide a clear picture of what the state's current licensing regime is and what the state could do to reform it. It remains to be seen what legislators will do with the task force's strong call to restructure how Oklahoma licenses workers.

Clear criteria for what these commissions should study are important for them to be effective. Indiana's Jobs Creation Committee (JCC) has completed thorough reviews of dozens of licensing agencies, but has recommended eliminating licenses for only two minor occupations and has recommended a handful of other small administrative changes. The Indiana JCC's criteria for evaluation are far more nebulous than the criteria used in states such as Oklahoma, and that lack of clarity likely accounts for the lack of reform recommendations from this committee.

Outside Groups

As experience around the nation has shown, whenever legislation is introduced to delicense occupations or reduce mandatory training and experience hours, interest groups will organize against it. These groups, which will likely be made up of industry professionals, are invested in maintaining the status quo, and they will be a presence at any hearings on these bills. Legislators tend to defer to the views of individuals in the occupations being discussed simply because these workers have more knowledge of the subject than do legislators.

In states with successful licensing reform, nonindustry groups have laid the groundwork for changing the licensing regime. Both Michigan and Arizona have active free market think tanks that have been making the case for licensing reform

in studies, op-eds, and testimony. These think tanks were doing this work for years before achieving any success in the legislature.

The Beacon Center in Tennessee has also engaged in public education on the need for reform. Its legal efforts may have had more success, however. The center filed two lawsuits against aspects of Tennessee's licensing laws: the requirement for a hair shampooing license and the requirement that animal massage could only be done by licensed veterinarians. After these lawsuits were filed, the governor and legislators responded by supporting bills that made changes in these areas.

Conclusion

Licensing reform is an increasingly popular topic for legislative discussion in states across the nation. That popularity does not necessarily translate into legislative action, however. The interest groups representing licensees speak out loudly to preserve their licensing regimes and often advocate even stricter requirements. Successful reform efforts have generally occurred where there has been a strong push from governors, where commissions or task forces have laid the groundwork for reform through a thorough review of the issue, and where outside groups (such as think tanks) have educated legislators and the public on the case for reform.

Endnotes

Introduction

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Biography

Marc Kilmer began his career in public policy as a legislative assistant to US Senator Larry Craig (R-ID). After leaving Craig's office, Kilmer served for three years as executive director and CEO of a national trade association of nonprofits that provide services to people with disabilities. Since 2006, he has worked with a variety of state-level think tanks. Currently a senior fellow with the Maryland Public Policy Institute and a policy analyst with the Advance Arkansas Institute, he has also worked with the Mackinac Center for Public Policy in Michigan, the Buckeye Institute in Ohio, the Idaho Freedom Foundation, and the Yankee Institute for Public Policy in Connecticut.

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