



FIELD OF BROKEN DREAMS: HOW LICENSING LIMITS OPPORTUNITY IN THE HAWKEYE STATE

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WHY DOES OCCUPATIONAL LICENSING MATTER IN THE HAWKEYE STATE?

As 2019 came to a close, the labor market nationally could not be in better shape. Conditions are even better in Iowa. In December of 2019 according to the Bureau of Labor Statistics, the unemployment rate in Iowa was 2.7 percent--0.8 percentage points lower than the national average (3.5 percent). Although most Iowans are able to fully benefit from this robust job market, some of the most vulnerable citizens of the state are blocked from receiving an invitation to the party.

Occupational licensing establishes laws that require aspiring workers to obtain a government permission slip to work. To obtain this permission slip, individuals must pass exams, pay fees to the government, complete minimum levels of education and training, and meet a

variety of other entry requirements. By making it harder for individuals to work, individuals may have a harder time obtaining employment or may be discouraged from participating in the job market altogether.

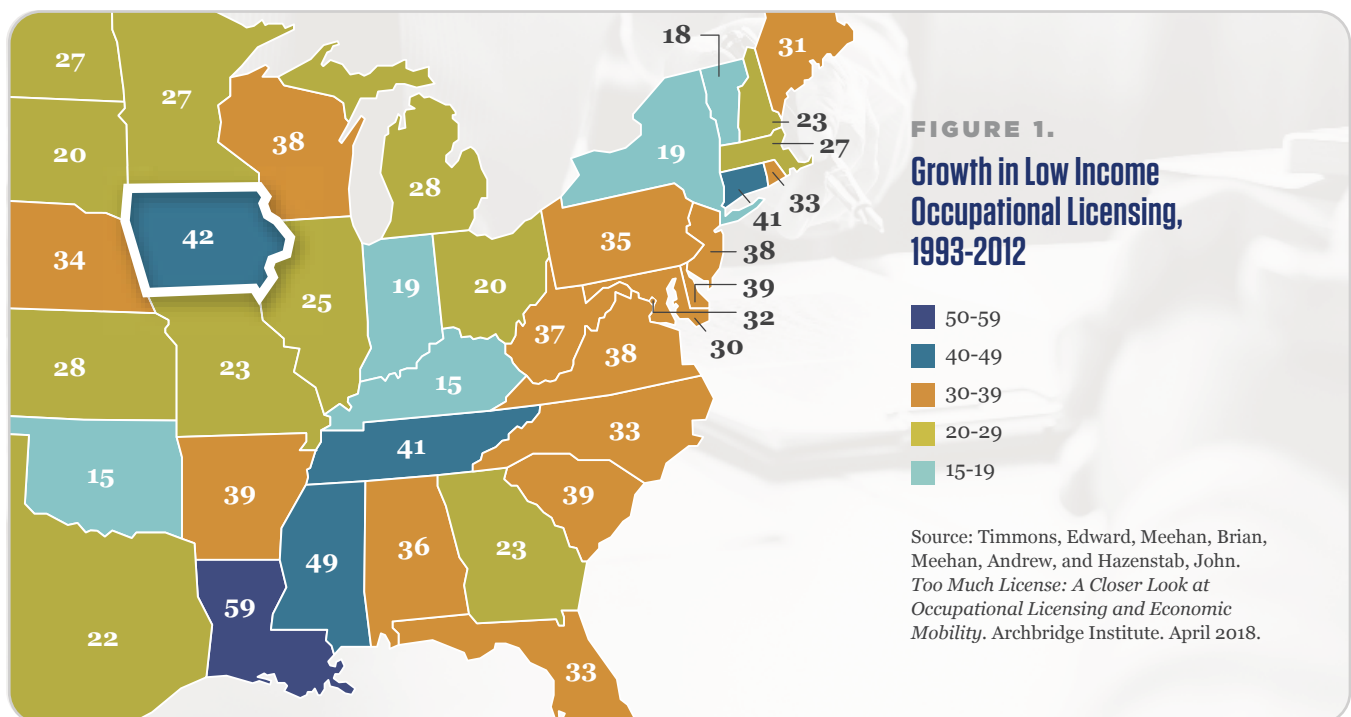
Occupational licensing has grown from affecting about 5 percent of workers in the 1950s to more than 1 in 5 (22.3 percent) in 2016.¹ Licensing results in wasted or misallocated resources and creates unnecessary barriers to employment and economic prosperity. A recent study estimates that more than 24% of workers in Iowa are licensed and that licensing costs the state more than 48,000 jobs and \$287 million per year.²

Proponents of occupational licensing claim that licensing improves the quality of service delivered to consumers or protects public safety. Unfortunately, evidence does not support this claim. A comprehensive report performed by the Obama White House found little evidence that licensing enhances quality.³ In fact, recent evidence using Yelp reviews suggests that licensing may reduce the quality of services delivered to consumers.⁴ In an online platform for consumers seeking residential home improvement and maintenance services, consumers seemed more interested in the prices and ratings of professionals than their licensing status.⁵

LICENSING MAKES THE AMERICAN DREAM BECOME A NIGHTMARE

In recently published research by the Archbridge Institute, we document how occupational licensing may be ending the dreams of citizens in Iowa of entering a new career and climbing the economic ladder.⁶ Between 1993 and 2012, Iowa added licensing requirements for 42 low- and moderate-income occupations—11 more than the national average of 31. Relative to this average, we estimate that growth in occupational licensing in Iowa is associated with a 4.7 percent reduction in economic mobility and a 10.9 percent increase in income inequality. Growth in occupational licensing is associated with fewer opportunities for workers to earn more than their parents and a widening of the gap between the rich and poor. Occupational licensing limits opportunities for employment and prevents hard working Iowa residents from achieving the American Dream.

Although the labor market in Iowa is strong, it is worth pondering how much better things would be with a more sensible occupational licensing regime. The significant growth in occupational licensing occurring over this 20-year period has no doubt created a stumbling block for entrepreneurs. Licensing was added for professions like manicurists, massage therapists, and taxidermists.



Aspiring entrepreneurs may have been discouraged from entering these trades and opening new small businesses. The unemployment rate does not tell the full story of workers that find themselves discouraged and desperate and drop out of the labor force.

The bordering state of Nebraska moved forward with comprehensive reform two years ago with passage of the Occupational Board Reform Act.⁷ The law subjects 20% of occupational regulations to annual review and sets forth guidelines to determine if occupational licensing is the appropriate form of regulation. Ohio passed a similar law last year and several states are considering a similar law this year.⁸ A similar bill was introduced last year in Iowa.⁹

MOVING FORWARD: THE OCCUPATIONAL LICENSING CONSUMER CHOICE ACT AND ROLLING REVIEWS

This proposed version of the Consumer Choice Act is designed to reduce the barriers to enter the labor market and expand consumer choice. Professionals in many currently licensed occupations will be able to offer their services without obtaining a license to practice in the state, provided that they notify potential customers. Customers will be able to choose a service provider whose price and ability match their needs, irrespective of their licensure status. In effect, the law turns licenses into a form of voluntary certification. Professionals are able to signal their quality, education, and experience by obtaining a license, while competition will be increased with the addition of low cost providers.

Professionals and consumers both benefit from this legislation. It allows lower skilled and educated workers to begin practicing, helping ease their entry into the labor market and allowing them to build up their skills to have a successful career. The law also encourages interstate mobility. Workers can move to Iowa and begin practicing immediately, rather than wasting time and money retraining, reeducating, and retesting.

By requiring the notification of licensure status, the law continues to inform consumers of the quality of the professional. Increasing the number of professionals will increase competition, helping to lower the prices that consumers pay for their services. Finally, Iowans benefit

by shifting the focus of regulators to health and safety rather than enforcing licensing requirements.

Another proposed reform is a rolling review of licensed occupations. This is designed to ensure that licensing restrictions that are no longer necessary are removed and overly burdensome restrictions are reduced to the appropriate level once the effects of the regulations can be evaluated. Under a rolling review, a portion of the bodies that oversee the licensure of an occupation must conduct a review to justify the existing regulations. The bodies that oversee licensing must release an annual report recommending eliminating, modifying, or maintaining licensing restrictions. The legislation contains language encouraging the least restrictive form of regulation that would maintain consumer safety. The less restrictive alternatives to licensing include government certification, registration, bonding, private certification, and market competition.

Again, both consumers and professionals stand to benefit from this legislation. Reducing licensing requirements for occupations that pose a lower safety risk will increase competition, help to increase the number of professionals consumers may choose from, and help to lower prices. The legislation still maintains protection against potential harm to the consumer, but does so by targeting regulation to the specific safety or quality issue. Meanwhile, professionals will benefit from the reduced barriers to entry for occupations that are now rarely licensed outside of Iowa. By matching the regulation to the risk posed by the industry, new entrants are saved from needless or irrelevant training which makes it more difficult to enter new fields or to move from other states.

For too long, occupational licensing has been restricting opportunities for people in Iowa. Common sense reform should be implemented to improve the lives of the citizens of Iowa and help restore the American Dream of prosperity.

APPENDIX A: THE OCCUPATIONAL LICENSING CONSUMER CHOICE ACT

SUMMARY

The Occupational Licensing Consumer Choice Act (“the Act”) is model legislation that provides consumers with the right to choose a worker who best serves their needs irrespective of whether that person holds an occupational license from the state of [STATE]. It provides that business owners, entrepreneurs, and workers in professions otherwise licensed by the state of [STATE] may operate without an occupational license if they disclose that fact to prospective consumers. Workers and entrepreneurs subject to regulatory enforcement may assert such disclosure as a defense to action related to enforcement of occupational licensing laws and regulations.

SECTION 1

Purpose

The Purpose of the Act is to:

- A. Protect workers from unnecessary and burdensome licensing regulations that do not address a legitimate, evidence-based, health and safety issue in the least burdensome way.
- B. Increase market competition by allowing consumers to make informed decisions in hiring the workers they choose;
- C. Empower industry groups, trade organizations, and similar private associations to self-regulate without the participation of government; and
- D. Make regulators more efficient by shifting resources away from enforcing occupational licensure to better focus on regulating for the purposes of protecting health and safety.

SECTION 2

Definitions

The following definitions apply in this Act:

- A. “Lawful occupation” means a service, profession, or line of work in the sale of goods or services that is not otherwise illegal irrespective of whether the occupation requires an occupational license in order to operate.
- B. “Occupational license” means any requirement under a state authority to obtain a license, permit, registration, certificate, or other evidence of state authority in order to work in a lawful occupation.
- C. “State authority” means any state agency, department, board, commission, or other governing body with state authority, and includes executive and administrative officers of such bodies.
- D. “Licensing regulation” means any statute, rule, ordinance, policy, enforcement practice or action, or any other action by a state authority to require a license in order to work in a lawful occupation.
- E. “Agreement for service” means a verbal or written contract to provide the services of a lawful occupation for consideration.
- F. “Non-license disclosure” means a disclosure that a person is working in a lawful occupation without an occupational license. A non-license disclosure must include the following elements:
 - 1. A conspicuous statement that the person is not licensed by a state authority;
 - 2. The physical address and phone number where the person may be contacted;
 - 3. The printed name and dated signature of the person engaged in the lawful occupation; and
 - 4. The printed name and dated signature of the consumer entering the agreement for service.

A non-license disclosure may include the name of any industry group, trade organization, or association to which the individual belongs, along with a statement that the person is certified, recognized, or otherwise issued a qualification by such a group, trade organization, or association.

SECTION 3

The Freedom to Work Without a State-Issued Occupational License

- A. A person otherwise required to hold an occupational license issued by a state authority has a right to operate in the state of [STATE] without an occupational license if that person provides a non-license disclosure to consumers before entering an agreement for service.
- B. A person otherwise subject to an occupational license requirement may not be denied, and is entitled to, any benefit provided to a person who holds an occupational license so long as the person makes a non-license disclosure to a consumer before entering an agreement for service.
- C. A state authority must disclose on its internet website and all written or digital and online application forms for occupational licenses that a person has a right to operate in the state of [STATE] without an occupational license otherwise required if a non-license disclosure is made to potential consumers before entering an agreement for service.
- D. This Act shall not be construed to impose any requirement on workers engaged in a lawful occupation that is not the subject of licensing regulation by a state authority.

SECTION 4

Defense and Relief

- A. It is a defense to any licensing regulation, civil or criminal, by a state authority for the purpose of enforcing an occupational license requirement on a person engaged in a lawful occupation if the person properly made a non-license disclosure in the agreement for service that is the subject of such enforcement.
- B. Production of a non-license disclosure signed by both parties shall require immediate dismissal with prejudice of any licensing regulation, civil or criminal, by a state authority for the purpose of enforcing an occupational license requirement on a person engaged in a lawful occupation.
- C. A person that prevails in asserting a defense under Section 4(A) shall be entitled to reasonable costs and attorney's fees incurred in asserting such a defense.

SECTION 5

Exemptions

SECTION 6

Supremacy Clause

The provisions of this Act supersede all other statutory provisions of the state of [STATE].

APPENDIX B: OCCUPATIONAL LICENSING REVIEW ACT

SUMMARY

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

nontransferable 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.
- 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 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.

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.

(OPTIONAL)

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].

ENDNOTES

- ¹ Kleiner, Morris. “Reforming Occupational Licensing Policies,” Hamilton Project, Brookings Institution, January 2015, http://www.hamiltonproject.org/papers/reforming_occupational_licensing_policies; Data on certifications and licenses, Bureau of Labor Statistics, February 2018, <https://www.bls.gov/cps/aa2016/cpsaat49.htm>
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