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POLICY + INSIGHTS

LICENSING REFORM IN ALASKA

THE LAST FRONTIER
SHOULD ASPIRE
TO BE FIRST
FOR WORKER
FREEDOM



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WHY DOES OCCUPATIONAL LICENSING MATTER IN THE LAST FRONTIER?

As far as official barometers of Alaska's labor market go, the state lags behind the national average. According to the Bureau of Labor Statistics, in December 2023 the unemployment rate in Alaska was 4.5 percent—well above the national average (3.7 percent).¹ The unemployment rate alone, however, doesn't tell the whole story.

Several recent news reports are shedding light on the skilled labor shortage in Alaska.² The Anchorage Economic Development Corporation released its three-year outlook report this summer. From 2013 to 2023, the working age population in Alaska fell from over 207,000 to 189,000—a reduction of nearly 10 percent.³ Governor Dunleavy has recognized this problem and already taken action to eliminate the college degree requirement for most state jobs.⁴ But more work remains to be done, and the action must come from state legislators this time.

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 facing more barriers to work, individuals may have a harder time obtaining employment or be discouraged from participating in the job market altogether.⁵

Occupational licensing has grown from affecting about 1 in 20 workers in the 1950s to more than 1 in 5 (21.3 percent) in 2023.⁶ Licensing results in wasted or misallocated resources and creates unnecessary barriers to employment and economic prosperity. A recent study estimates that more

than 18 percent of workers in Alaska are licensed and that licensing nationally results in nearly 2 million lost jobs and costs \$6 billion in economic activity per year.⁷

Proponents of occupational licensing claim that licensing improves the quality of service delivered to consumers or protects public safety. Although historically this may have been true, evidence from the present does not support this claim.⁸ A comprehensive report performed by the Obama White House found little evidence that

licensing enhances quality.⁹ In fact, recent evidence using online reviews suggests that licensing may reduce the quality of services delivered to consumers.¹⁰ 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.¹¹

A CLOSER LOOK AT OCCUPATIONAL LICENSING IN ALASKA

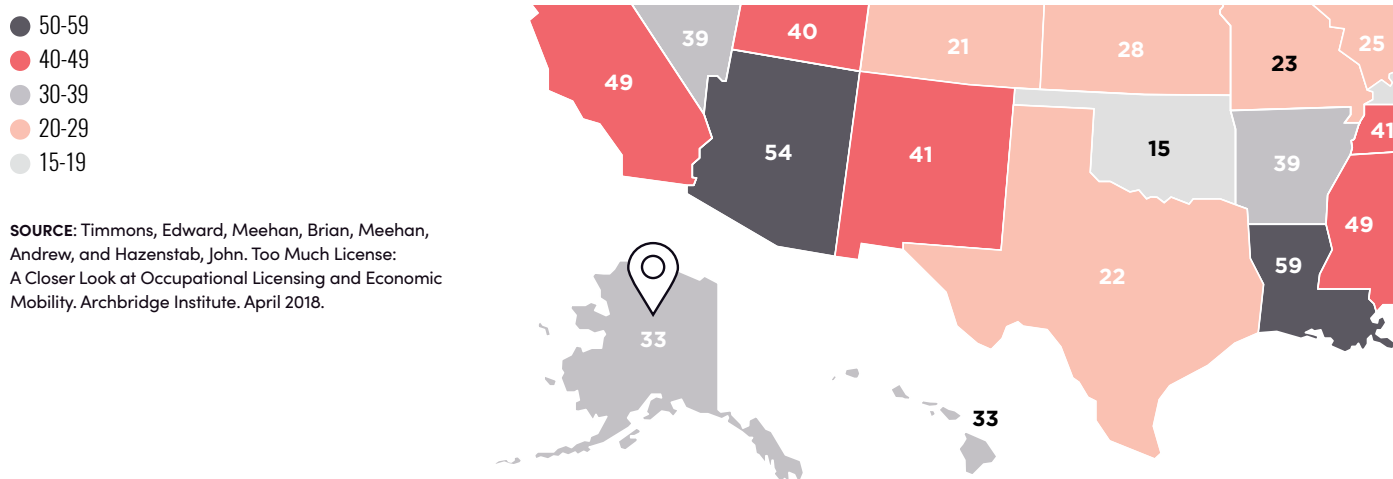
In a previous study published by the Archbridge Institute, we documented how occupational licensing in Alaska grew more for low- and moderate-income workers than in several other states.¹² Between 1993 and 2012, Alaska added licensing requirements for 33 low- and moderate-income occupations—two more than the national average of 31. In contrast, Oklahoma, the state adding the lowest number of licenses over this period, added just 15 such licenses—18 fewer than Alaska. All of these added licenses resulted in fewer opportunities for workers and potentially worsened the current worker shortage.

In more recent work, we analyzed and ranked states by the number of occupations licensed.¹³ Our analysis focused on 331 occupations—both low and high-income occupations. We ranked Alaska as having the 44th most

burdensome licensing requirements (with 1st being the most burdensome). Alaska licenses 162 of the 331 occupations we studied. Although this is below the national average, it is 15 more occupations than Kansas licenses—the state we ranked as having the least burdensome occupational licensing nationally.

Several of the 162 occupations that Alaska licenses are not licensed in most states. Alaska licenses body piercing artists, while 33 other states do not. Alaska is also just one of 21 states that license opticians and one of 17 states to issue a separate license for pyrotechnic operators.

FIGURE 1 | GROWTH IN LOW INCOME OCCUPATIONAL LICENSING, 1993-2012

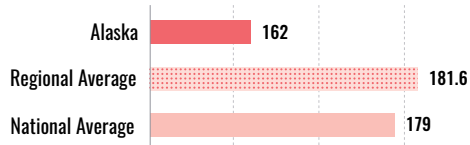


SOURCE: Timmons, Edward, Meehan, Brian, Meehan, Andrew, and Hazenstab, John. Too Much License: A Closer Look at Occupational Licensing and Economic Mobility. Archbridge Institute. April 2018.

BARRIER SCORE 2.31

(0=fewest barriers; 10=most barriers)

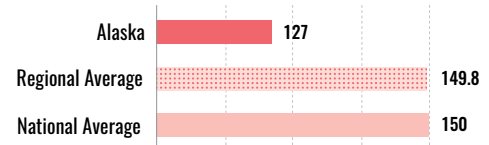
A barrier exists when the tasks associated with an occupational title are restricted by an occupational license to perform those tasks. The occupation itself may not have a specific license, but it is a crime to perform the associated tasks without meeting entry requirements.



LICENSE SCORE 1.27

(0=fewest licenses; 10=most licenses)

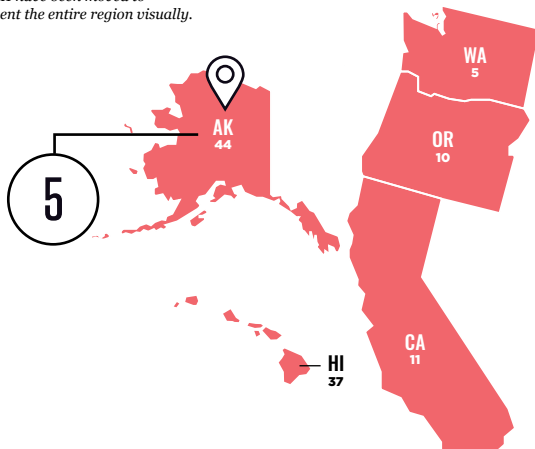
A licensing requirement is anything beyond a registration fee that is not voluntary for an occupational title. Licensing requirements include required education or degrees, exams, apprenticeships, experience or on-the-job training, and continuing education.



PACIFIC REGION

Alaska ranks 5th in the region. (1=worst; 5=best)

AK + HI have been moved to represent the entire region visually.



OVERALL U.S. RANKING

Alaska ranks 44th overall. (1=worst; 51=best)

- 42 Nevada
- 43 Montana
- 44 Alaska**
- 45 Illinois
- 46 Vermont

SOURCE: Trudeau, Noah, and Timmons, Edward. State Occupational Licensing Index 2023. Archbridge Institute. March 2023.



MOVING FORWARD: ROLLING REVIEWS, UNIVERSAL RECOGNITION, AND REDUCING THE BURDEN OF OCCUPATIONAL LICENSING

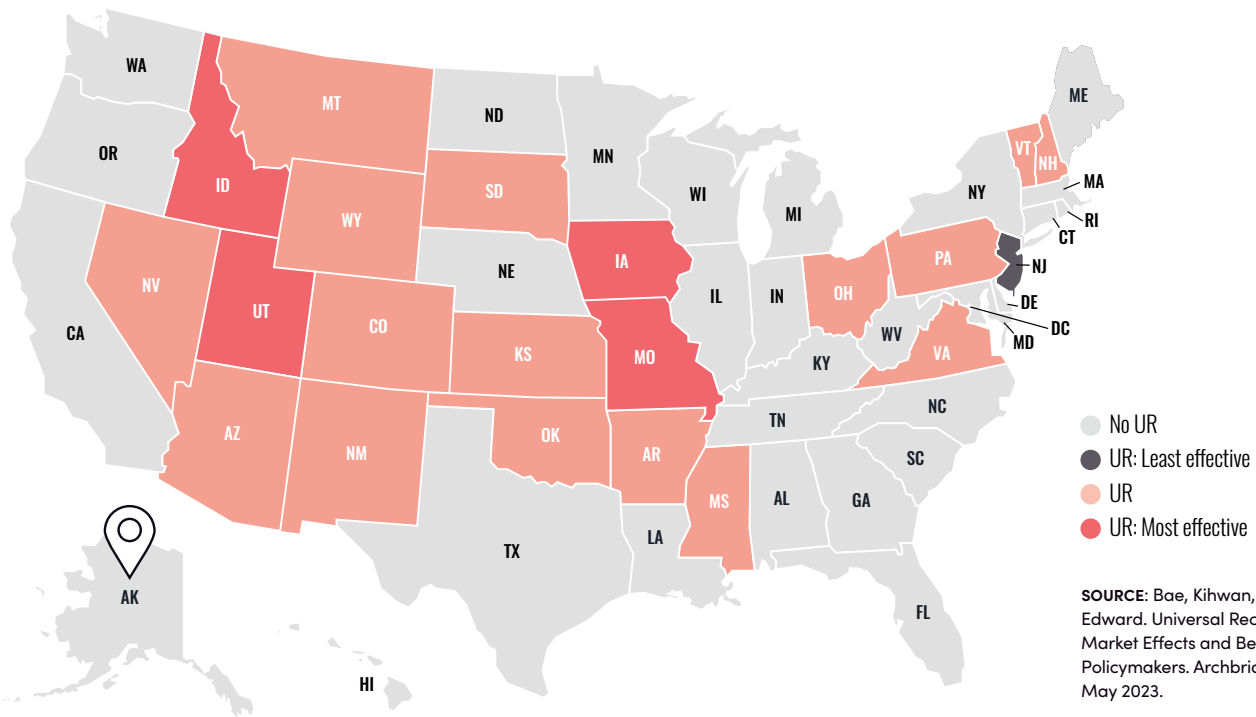
In 2017, the state of Mississippi emerged as a national leader in occupational licensing reform after passing a sunrise review for new licensing legislation. This was expanded in 2020, giving the review committee greater authority to review existing licensing—a sunset review. The state of Nebraska moved forward with comprehensive reform two years ago with passage of the Occupational Board Reform Act.¹⁴ The law subjects 20 percent 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 in 2019,¹⁵ and Utah created a new Office of Professional Licensure Review last year.¹⁶

This review 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 measured. 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 help maintain consumer safety. Less restrictive alternatives to licensing include government certification, registration, bonding, private certification, and market competition.

Both consumers and professionals stand to benefit from this legislation. Reducing licensing requirements for occupations that pose a lower safety risk will increase competition, giving consumers more professionals to choose from and lowering prices. The legislation still maintains protection against potential harm to the consumer, but it 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 Alaska. 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.

FIGURE 3 | MOST AND LEAST EFFECTIVE UNIVERSAL RECOGNITION LAWS



NOTES: States that are shaded gray have not enacted universal recognition laws as of April 14, 2023. States in light coral, coral, and dark gray have adopted universal recognition laws with varying levels of effectiveness. The most and least effective laws are defined based on the policy's employment effect estimates by groups of states that adopted universal recognition in the same calendar year. See our new working paper for more details about the analysis.

FIGURE 4 | BEST PRACTICES FOR UNIVERSAL RECOGNITION

| DO NOT | DO |
|--|---|
| <ul style="list-style-type: none"> ○ Require substantially equivalent licenses. | <ul style="list-style-type: none"> ○ Require a quick response to applications. |
| <ul style="list-style-type: none"> ○ Require state residency. | <ul style="list-style-type: none"> ○ Monitor and ensure compliance. |
| <ul style="list-style-type: none"> ○ Exclude individuals that can use reciprocity agreements or interstate compacts from universal recognition. | <ul style="list-style-type: none"> ○ Evaluate the policy for effectiveness and further reform. |
| <ul style="list-style-type: none"> ○ Exempt licensed occupations from universal recognition. | |

SOURCE: Bae, Kihwan, and Timmons, Edward. *Universal Recognition: Labor Market Effects and Best Practices for Policymakers*. Archbridge Institute. May 2023.

Another possible reform is universal recognition of out-of-state licenses. Since 2013, 21 states have adopted some form of this important policy.¹⁷ The purpose of universal recognition laws is to reduce the barriers to geographic mobility caused by state-level licensing laws. States typically do not recognize licenses granted by another state, even when the requirements are the same or greater. Under universal recognition, licensed professionals moving between states are able to practice without going through the licensing process again. In effect, occupational licenses would act like driver’s licenses, being granted by one state but still legal to use in others. Professionals still must demonstrate their skills and abilities, but once they do, they are allowed to practice them wherever they move.

Universal recognition varies to some degree across the 21 states that have made the reform. Some states exclude certain occupations from the reform or require that licensees meet “substantially similar” requirements in their home state—regardless of how long they have been working. Other states require workers to be residents before they can take advantage of the reform. We recommend that for universal recognition to be fully effective, the reform must include as many licensed professions as possible without imposing residency or mandating that licensing requirements be “substantially similar.” Overall, our research finds that passage of universal recognition increases employment by nearly a full percentage point and conservatively has added 67,000 new jobs across the United States.¹⁸

Universal recognition is a simple reform that helps professionals moving into the state and the consumers who now have more professionals to choose from. It gives professionals the flexibility to relocate to a new state, encouraging interstate mobility. Workers can move to Alaska and begin practicing immediately, rather than wasting time and money retraining, reeducating, and retesting. Our research shows that universal recognition increased in-migration into states adopting the policy by 50 percent among those holding low-portability licenses. Existing residents that are out of the labor force or underemployed can also benefit. Universal recognition can allow these residents to take their valid out-of-state license, work experience, or private certification and use it toward obtaining a license in Alaska. It is important to note that the positive effects are found to be larger when universal recognition is not limited by additional requirements.

By accepting professionals who are already licensed and in good standing, proponents of licensing can still use the credential to discern the quality of the professional. Additionally, increasing the number of professionals will increase competition, helping to lower the prices that consumers pay for their services and increasing the convenience of service.

For too long, occupational licensing has been restricting opportunities for people in Alaska. Common sense reform should be implemented to improve the lives of Alaska’s citizens and help alleviate persistent worker shortages.

The Universal Recognition of Occupational Licenses Act is model legislation that causes a state to recognize an out-of-state license if the worker (1) is currently licensed by another state and (2) has been licensed for at least one year. A worker does not lose his or her skills just by moving across state lines, yet this is how licensing laws often treat workers when moving between states. By adopting such a policy, states can better promote labor mobility and legally recognize that a worker retains his or her skills when moving from one state to another.

SECTION 1

Definitions

The words defined in this section have the meanings given them for purposes of this chapter unless the context clearly requires otherwise.

- A. “Board” means a government agency, board, department or other government entity that regulates a lawful occupation and issues an occupational license or government certification to an individual.
 - B. “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.
 - C. “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 license.
 - D. “Military” means the Armed Forces of the United States including the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, National Guard, and all reserve components and auxiliaries. It also includes the military reserves and militia of any United States territory or state.
 - E. “Occupational license” is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation based on meeting personal qualifications. It includes a military occupational specialty. 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.
 - F. “Other state” or “another state” means any territory, or state other than this state in the United States. It also means any branch or unit of the military.
 - G. “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 the designated title of “certified,” as permitted by the private organization.
 - H. “Scope of practice” means the procedures, actions, processes and work that a person may perform under an occupational license or government certification issued in this state.
- a. Do NOT insert a residency requirement. It is not relevant where the person lives. This bill’s purpose is to promote portability and efficiencies in labor markets. Legislators have other means to promote residency.
 - b. Do NOT insert a requirement that the personal qualifications be “substantially similar.” The one year of work experience covers any differences in qualifications between states. It only is important there was an examination, education, training or experience standards. It is unimportant what exactly those details were.

SECTION 2

Recognition of Another Occupational License or Government Certification

- A. Notwithstanding any other law, the board shall issue an occupational license or government certification to a person upon application, if all the following apply:^a
1. The person holds a current and valid occupational license or government certification in another state in a lawful occupation with a similar scope of practice, as determined by the board in this state;
 2. The person has held the occupational license or government certification in the other state for at least one year;
 3. The board in the other state required the person pass an examination, or to meet education, training or experience standards;^a
 4. The board in the other state holds the person in good standing;
 5. The person does not have a disqualifying criminal record as determined by the board in this state under state law;
 6. No board in another state revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation;
 7. The person did not surrender an occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation in another state;
 8. The person does not have a complaint, allegation or investigation pending before a board in another state which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation or investigation pending, the board in this state shall not issue or deny an occupational license or government certification to the person until the complaint, allegation or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of the board in this state; and
 9. The person pays all applicable fees in this state.
- B. If another state issued the person a government certification but this state requires an occupational license to work, the board in this state shall issue an occupational license to the person if the person otherwise satisfies subdivision A.

SECTION 3

Recognition of Work Experience

Notwithstanding any other law, the board shall issue an occupational license or government certification to a person upon application based on work experience in another state, if all the following apply:

1. The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board;
2. The person worked for at least three years in the lawful occupation; and
3. The person satisfies section 2 subdivision A, 5-9.

SECTION 4

Recognition of Private Certification

Notwithstanding any other law, the board shall issue an occupational license or government certification to a person based on holding a private certification and work experience in another state, if all the following apply:

1. The person holds a private certification and worked in a state that does not use an occupational license or government certification to regulate a lawful occupation, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board;

2. The person worked for at least two years in the lawful occupation;
3. The person holds a current and valid private certification in the lawful occupation;
4. The private certification organization holds the person in good standing; and
5. The person satisfies section 2 subdivision A, 5-9.

SECTION 5

State Law Examination

A board may require a person to pass a jurisprudential examination specific to relevant state laws that regulate the occupation if an occupational license or government certification in this state requires a person to pass a jurisprudential examination specific to relevant state statutes and administrative rules that regulate the occupation.

SECTION 6

Decision

The board will provide the person with a written decision regarding the application within 30 days after receiving a complete application.

SECTION 7

Appeal

- A. The person may appeal the board's decision to a court of general jurisdiction.
- B. The person may appeal the board's:
 1. denial of an occupational license or government certification;
 2. determination of the occupation;

3. determination of the similarity of the scope of practice of the occupational license or government certification issued; or
4. other determinations under this chapter.

SECTION 8

State Laws and Jurisdiction

A person who obtains an occupational license or government certification pursuant to this chapter is subject to:

1. the laws regulating the occupation in this state; and
2. the jurisdiction of the board in this state.

SECTION 9

Exception

This chapter does not apply to an occupation regulated by the state supreme court.

SECTION 10

Limitations

- A. Nothing in this chapter shall be construed to prohibit a person from applying for an occupational license or government certification under another statute or rule in state law.
- B. An occupational license or government certification issued pursuant to this chapter is valid only in this state. It does not make the person eligible to be work in another state under an interstate compact or reciprocity agreement unless otherwise provided in law.
- C. Nothing in this chapter shall be construed to prevent this state from entering into a licensing compact or reciprocity agreement with another state, foreign province or foreign country.
- D. Nothing in this chapter shall be construed to prevent this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization or other entity.
- E. Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

SECTION 11

Cost

The board may charge a fee to the person to recoup its costs not to exceed \$100 for each application.

SECTION 13

Emergency Powers

- A. During a declared emergency, the governor may order the recognition of an occupational license from another state or foreign country as if the license is issued in this state.
- B. The governor may expand any license's scope of practice and may authorize any licensee to provide services in this state in person, telephonically or by other means for the duration of the emergency.

SECTION 12

Preemption

This chapter preempts laws by township, municipal, county and other governments in the state which regulate occupational licenses and government certification.

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

SECTION 1

Policy

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

- A. The right of an individual to pursue a lawful occupation is a fundamental right.
- B. Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety.
- C. Legislative leaders will assign the responsibility to review legislation and laws related to occupational regulations.
- D. (OPTIONAL) The governor will establish an office of antitrust and active supervision of occupational boards. The office is responsible for actively supervising the state's occupational boards.

SECTION 2

Definitions

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

- A. Government certification. "Government certification" means a voluntary, government-granted, and non-transferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not synonymous with "occupational license." It also is not intended to include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.
 - B. Government registration. "Government registration" means a requirement to give notice to the government that may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. "Government registration" does not include personal qualifications and is not transferable but it may require a bond or insurance.
 - 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
- 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.

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

SECTION 3

Sunrise Review of Occupational Regulations

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

new occupational regulations or (2) modify existing occupational regulations.

B. Sunrise reviews.

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

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

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

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

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

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

1. contractual disputes, including pricing disputes, staff may recommend enacting a specific civil cause of action in small-claims court or district court to remedy consumer harm. This cause of action may provide for reimbursement of the attorney's fees or court costs, if a consumer's claim is successful;
2. fraud, staff may recommend strengthening powers under the state's deceptive trade practices acts or requiring disclosures that will reduce misleading attributes of the specific good or service;
3. general health and safety risks, staff may recommend enacting a regulation on the related process or requiring a facility license;
4. unclean facilities, staff may recommend requiring periodic facility inspections;

5. a provider's failure to complete a contract fully or to standards, staff may recommend requiring the provider to be bonded;
6. a lack of protection for a person who is not a party to a contract between providers and consumers, staff may recommend requiring the provider have insurance;
7. transactions with transient, out-of-state, or fly-by-night providers, staff may recommend requiring the provider register its business with the secretary of state;
8. a shortfall or imbalance in the consumer's knowledge about the good or service relative to the provider's knowledge (asymmetrical information), staff may recommend enacting government certification;
9. an inability to qualify providers of new or highly-specialized medical services for reimbursement by the state, staff may recommend enacting a specialty certification solely for medical reimbursement;
10. a systematic information shortfall in which a reasonable consumer of the service is permanently unable to distinguish between the quality of providers and there is an absence of institutions that provide guidance to consumers, staff may recommend enacting an occupational license; and
11. the need to address multiple types of harm, staff may recommend a combination of regulations. This may include a government regulation combined with a private remedy including third-party or consumer-created ratings and reviews, or private certification.

(g) The staff's analysis of the need for regulation in

(e) will include the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects.

(h) The staff's analysis of the need for regulation in

(e) also will compare the legislation to whether and how other states regulate the occupation, including the occupation's scope of practice that other states use, and the personal qualifications other states require.

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

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

(j) The staff also may comment on whether and how much responsibility the legislation delegates to a licensing board to promulgate administrative rules, particularly rules relating to establishing (a) the occupation's scope of practice or (b) the personal qualifications required to work in the occupation. The comment may make legislators aware of exposure to antitrust litigation that the legislation may cause because of excessive or ambiguous delegation of authority to licensing boards to engage in administrative rulemaking.

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

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

- C. Rule. The House of Representatives and the Senate will each adopt a rule requiring a committee considering legislation to enact or modify an occupational regulation to receive the staff's analysis and recommendations in subdivision 2 prior to voting on the legislation.
- D. Limitations. Nothing in Section 3 shall be construed (1) to preempt federal regulation or (2) to require a private certification organization to grant or deny private certification to any individual.

SECTION 4

Sunset Review of Occupational Licenses

A. Sunset analysis of existing occupational licenses

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

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

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

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

C. Sunset reports.

(a) Starting [DATE], the staff will report annually the findings of its reviews to the Speaker of the House of Representatives, the President of the Senate, Chairs of each relevant committee, the Governor, and the

Attorney General. In its report, the staff will recommend the legislature enact new legislation that:

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

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

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

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

SECTION 5

Interpretation of Statutes and Rules

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

1. Occupational regulations will be construed and applied to increase economic opportunities, promote competition, and encourage innovation;
2. Any ambiguities in occupational regulations will be

construed in favor of workers and aspiring workers to work; and

3. The scope of practice in occupational regulations is to be construed narrowly to avoid burdening individuals with regulatory requirements that only have an attenuated relationship to the goods and services they provide.

SECTION 6

A Review of a Criminal Record

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

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

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

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

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

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

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

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

F. Rule of lenity.

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

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

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

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

1. the age of the individual when the individual committed the offense;
2. the time since the offense;
3. the completion of the criminal sentence;
4. a certificate of rehabilitation or good conduct;
5. completion of, or active participation in, rehabilitative drug or alcohol treatment;
6. testimonials and recommendations including a progress report from the individual’s probation or parole officer;
7. other evidence of rehabilitation;
8. education and training;
9. employment history;
10. employment aspirations;

11. the individual's current family responsibilities;
 12. whether the individual will be bonded in the occupation; and
 13. other information that the individual submitted to the board.
- H. Hearing. The board will hold a public hearing, should the individual request one, pursuant to section _____ of the state's administrative procedure act.
- I. Totality of the circumstances test. (a) The board may deny, diminish, suspend, revoke, withhold or otherwise limit state recognition only if the board determines:
1. the state has an important interest in the regulation of a lawful occupation that is directly, substantially and adversely impaired by the individual's non-excluded criminal record as mitigated by the individual's current circumstances in subdivision G, and
 2. the state's interest outweighs the individual's fundamental right to pursue a lawful occupation.
 - (b) The board has the burden of making its decision by clear and convincing evidence.
- J. Appeal. The individual may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.

SECTION 7

Petition for Board Determination Prior to Obtaining Personal Qualifications _____

- A. Petition. An individual with a criminal record may petition a board at any time, including before obtaining any required personal qualifications, for a decision whether the individual's criminal record will disqualify the individual from obtaining state recognition.
- B. Content. The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.
- C. Determination. The board will make its decision using the criteria and process in Section 3.
- D. Decision. The board will issue its decision no later than 60 days after the board receives the petition or no later than 90 days after the board receives the petition if a hearing is held. The decision will be in writing and include the criminal record, findings of fact and conclusions of law.
- E. Binding effect. A decision concluding that state recognition should be granted or granted under certain conditions is binding on the board in any later ruling on state recognition of the petitioner unless there is a relevant, material and adverse change in the petitioner's criminal record.
- F. Alternative advisory decision. If the board decides that state recognition should not be granted, the board may advise the petitioners of actions the petitioner may take to remedy the disqualification.
- G. Reapplication. The petitioner may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisor decision.
- H. Appeal. The petitioner may appeal the board's decision as provided for in section _____ of the state's administrative procedure act.
- I. Reapply. The petitioner may submit a new petition to the board not before one year following a final judgment on the initial petition or upon obtaining the required personal qualifications, whichever is earlier.
- J. Cost. The board may charge a fee to the petitioner to recoup its costs not to exceed \$100 for each petition.

SECTION 8

Reporting

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

1. number of times that each board acted to deny, diminish, suspend, revoke, withhold or otherwise limit state recognition from a licensed individual because of a criminal conviction;
2. offenses for which each board acted in subparagraph 1;
3. number of applicants petitioning each board under Section 4,

4. numbers of each board's approvals and denials under Section 4,
5. offenses for which each board approved or denied petitions under Section 4, and
6. other data the Department determines.

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

SECTION 9

Limitations

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

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

SECTION 10

Office of Antitrust and Active Supervision of Occupational Boards

- A. Antitrust law. By establishing and executing the policies in Section 1, the state intends to ensure that occupational boards and board members will avoid liability under federal antitrust laws.
- B. Active Supervision. To help execute the policies, the governor will establish the Office of Antitrust and Active Supervision of Occupational Boards.
- C. Responsibility. The office is responsible for the active supervision of the state's occupational boards to ensure compliance with Section 1, the applicable licensing statutes, and federal and state antitrust laws. Active supervision requires the office to play a substantial role in the development of boards' rules and policies to ensure they (a) benefit predominantly consumers and (b) do not benefit unreasonably or serve merely private interests of providers who the boards regulate.

- D. Approval. The office will exercise control over boards' processes and substantive actions to ensure they are consistent with Section 1, the applicable licensing statutes, and federal and state antitrust laws. The office must review, and approve or reject any proposed board rule, policy, enforcement, or other regulatory action prior to it being adopted or implemented. The office's approval must be explicit; silence or failure to act will not be deemed approval.
- E. Personnel. The office personnel must be independent of boards. A government or private attorney who provides general counsel to a board will not also serve in the office.
- F. Cost Allocation. The office may assess its costs on each board for the services of active supervision. Each board may recoup the assessment by increasing the fees paid by license holders.

SECTION 11

Effective Date

This chapter is effective on [DATE].

ENDNOTES

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- ³ <https://aedcweb.com/wp-content/uploads/2023/08/3-Year-Outlook-Report-Edited-8.16.23.pdf>
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- ¹² Timmons, Edward, Brian Meehan, Andrew Meehan, and John Hazenstab. “Too Much License: A Closer Look at Occupational Licensing and Economic Mobility,” Archbridge Institute, April 2018, <https://www.archbridgeinstitute.org/too-much-license/>
- ¹³ Noah Trudeau and Edward Timmons. State Occupational Licensing Index 2023. Archbridge Institute, <https://www.archbridgeinstitute.org/state-occupational-licensing-index-2023/>, March 20, 2023.
- ¹⁴ <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB299.pdf>
- ¹⁵ <https://www.forbes.com/sites/nicksibilla/2019/01/09/new-ohio-law-takes-aim-at-occupational-licenses-which-cost-state-6-billion/>
- ¹⁶ <https://www.forbes.com/sites/nicksibilla/2022/03/28/utah-passes-new-law-to-prevent-new-occupational-licenses/?sh=292b255a4263>
- ¹⁷ Kihwan Bae and Edward Timmons. Universal Recognition: Labor Market Effects and Best Practices for Policymakers. Archbridge Institute, <https://www.archbridgeinstitute.org/universal-recognition-best-practices/> May 23, 2023.
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