OCCUPATIONAL LICENSING TASK FORCE REPORT

A STUDY OF OCCUPATIONAL LICENSING IN OKLAHOMA

THIS REPORT WAS PREPARED BY:

The Occupational Licensing Task Force and
the Oklahoma Department of Labor

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Letter from Commissioner Houston

Through my role serving the State of Oklahoma as Labor Commissioner, I was appointed by Governor Fallin to chair the Occupational Licensing Task Force.

As we began researching the issue of occupational licensing last December, we recognized that both sides of the political spectrum had issues with the state of occupational licensing. In 2017, the Trump administration directed the United States Department of Labor to make occupational licensing reform a priority, not long after the Obama administration released a white paper in 2015 on the same issue. After 25 years working in public policy, I recognize when the *right* and *left* both agree on tackling an issue, that is an area ripe for reform.

The Task Force's first meeting determined that we didn't want to spend all year creating recommendations that would just sit on a shelf, soon forgotten. Our focus became to develop useful tools that could be used objectively by both policymakers and the public. We collaborated with stakeholders to create a universal database of licensure in Oklahoma available for public use. The Task Force also developed a blueprint that policymakers can use to examine current and future licenses. We believe the blueprint is a paradigm shift in licensing analysis which could be a model for the rest of the country.

Throughout the development of these recommendations, a priority of the Task Force was to examine what the role of government should be in granting citizens a permission slip to work. 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. With this goal in mind, the Task Force's recommendations are aimed at occupational licensing overall in Oklahoma and not at any specific individual license.

We encountered many challenges outlined in this report, but overall succeeded in examining the state of occupational licensing in Oklahoma.

Thank you to the members of the Task Force, staff, and many others who worked diligently throughout this process and provided assistance and support to complete a comprehensive review of occupational licensing in Oklahoma. Special thanks to Jacob Krysiak and Megan Conner for the researching and drafting of this report. I've enjoyed the opportunity to serve alongside committed partners striving to improve the licensing framework to better serve Oklahoma's citizens.

Sincerely,

Melissa McLawhorn Houston
Commissioner of Labor

Executive Summary

In December 2016, Governor Mary Fallin issued an executive order to create the Occupational Licensing Task Force (the Task Force). The Governor ordered the Task Force to conduct a comprehensive review of occupational licensing in Oklahoma and provide recommendations to the Governor for the potential removal of license requirements that do not promote the health and/or safety of Oklahomans and are unreasonable barriers to workers' entry into the workforce.

The Task Force encountered several challenges throughout the year. These challenges impeded the original goals of the Task Force, but did present more opportunities to improve or remedy Oklahoma's current occupational licensing situation. The challenges form the basis for the recommendations set forth in this report, which include:

1. Forming an independent review commission to use the licensing blueprint created by the Task Force to review existing licenses for areas of reform or repeal;
2. Incorporating occupational license review by utilizing the blueprint in to existing sunset review processes;
3. Establishing a legislative committee with jurisdiction for license formation using the blueprint as a guideline;
4. Organizing the oversight and administration of occupational licensing in the state under a single agency;
5. Continue to add to and maintain the Task Force's database of occupational licensing;
6. Issuing an executive order to require state agencies to submit and maintain proper information for the database on an ongoing basis;
7. Restructuring existing boards so that the composition does not contain a controlling number of market participants;
8. Directing a second stage review of the status of occupational licensing to address particular issues in Oklahoma;
9. Granting reciprocity for certain licenses or individuals;
10. Allowing for different degrees of licenses when appropriate;
11. Expanding third-party certification as an alternative means for licensing; and
12. Requiring boards to reevaluate their policy and restrictions regarding prohibitions for licensing based on criminal records.

After considerable work and input from both Task Force members and the public, the Task Force created this report which will provide their findings and suggestions derived from their efforts over the past year.

Background

What is Occupational Licensing?

An occupational license is essentially permission from a governmental institution to work in a particular field. In the 1950's, about one in fifty professions required an occupational license. However, today nearly one in three workers require governmental approval to work in their chosen occupation. The growth of occupational licensing in the last 50 years is primarily attributable to lower- to middle-income occupations. Depending on the state, any particular license can include various forms of licensure barriers such as fees, tests, hours of training, hours of continuing education, and educational degrees. Additionally, the degree to which these different types of barriers impose a burden on an aspiring worker for a particular license differs from state to state.

Licensure is the process by which a state legislature grants some individual or board the power to enforce and maintain licensure requirements. A licensure board is typically made up of individuals from the profession who will accept and review applications or oversee the administration of certain requirements (such as exams). These powers and the organization of such licensure bodies are created by legislation.

What are the Pros and Cons to Occupational Licensing?

The debate as to whether occupational licensing is the appropriate means of occupational regulation has grown in correlation to the increasing use of such licensing in regulation. However, arguments for and against licensing can be generalized to a couple arguments each. These arguments and the details of each point are expressed below:

Benefits of Licensing

Promotes Public Health and Safety: One theory as to the demand of occupational licensing is that consumers demand such licensing in order to guarantee public health and safety. Many occupations, if performed incorrectly, bear a great risk of harm to the public. Licensure is a method which can ensure that only qualified individuals are performing certain technical, high risk jobs (such as surgeons, architects, etc.). This licensure would help to remedy market failures that exist in certain professions in the forms of asymmetrical information on quality (i.e. consumers do not know how to distinguish between good and bad professionals like the professionals themselves) and externalities (i.e. the effect that certain transactions may have on third parties).

Ensures Quality within the Profession: There is also an argument that licensure acts as an incentive for professionals to better themselves within the profession and this will contribute to the general welfare of the public, especially given the theory of asymmetrical information on quality. For certain professions who provide a more elastic service, if the market is saturated with poor quality professionals, the public may reject the service altogether to the point to where workers must drastically lower prices or chose a different profession.

Costs of Licensing

Inhibits Economic Liberty: Occupational licensing may unnecessarily harm many individuals who are aspiring to work in certain professions. Among the most affected are low-income people or those who have less resources or time to fulfill all the requirements of licensure. Younger workers, who are seeking to find their optimal occupation in society, may also be inhibited from readily switching jobs to find their best suit. High barriers to occupations, particularly low- to moderate-income occupations, may also create a poverty trap and force more people into relying on government assistance. As a result, some states have focused on reducing licensure barriers and have seen favorable results (people switching from relying on government assistance to private jobs) since beginning their efforts.

Decision-Maker Bias Leads to Protectionist Use for Established Enterprise: Professionals often demand licensing in order to decrease competition. Decreased competition would increase prices on consumers and, therefore, increase incomes for current professionals. Many critics of occupational licensing argue that these professionals are often the ones who sit on the boards who manage licensing for a specific profession so they can regulate in their best interest. Some licensing boards are even accused of using "grandfather clauses" to protect themselves from new more restrictive requirements but with which aspiring professionals must comply. Opponents to licensing believe that, in such cases, quality is not promoted and, even if it was, today's technology and availability of information allows consumers to make informed decisions before selecting services anyway.

What are the alternatives to Occupational Licensing?

It is important to note that many opponents to the state of occupational licensing in the United States acknowledge that many of the problems purportedly addressed by occupational licensing may exist, but that licensing may not be the best tool to address those problems. The issue is then how to determine when occupational licensing should be used within a profession.

There are alternatives to occupational licensing which may be able to accomplish the same goals of consumer health and safety, as well as quality control within a profession, while creating less restrictive burdens on economic liberty. A list of potential occupational regulations, from most to least restrictive, are as follows:

1. *Occupational licensing:* Under this type of regulation, practitioners must complete government-imposed requirements to work. This is the most restrictive form of occupational regulation and the fastest growing in the past 50 years.
2. *Voluntary Certification:* Under this type of regulation, practitioners complete requirements in order to be able to market themselves as certified. Many of the prerequisites of certification may be like that of occupational licensing, but it is not a requirement to work and practitioners choose whether the benefits of the certification outweigh the costs.
3. *Bonding/insurance:* Practitioners can also outsource risk management to private entities. These insurance policies may be used if the consumer is ultimately harmed and the practitioner is liable. Private entities providing the policies will evaluate and determine

whether they want to insure practitioners and being "insured" is what will be marketed and appeal to consumers.

4. *Inspections:* Experienced inspectors can determine if practitioners meet health and safety standards. State agencies, or designated private entities, can perform these inspections without a request, or individuals (like consumers) can request such inspections. If the inspector determines that any health or safety standards are violated, the business can receive penalties (like fines, suspension of operations, etc.).
5. *Deceptive Trade Practice Acts:* States can allow the Attorney General to prosecute fraud under the Uniform Deceptive Trades Practices Act (Oklahoma has adopted this Act). This act also gives the consumer right to sue and receive various remedies if provisions are violated.
6. *Private Civil Action in Court to Remedy Harm:* Consumers can choose to litigate if harmed. This means that there is no government involvement and private parties resolve disputes under the existing laws through the court system. Under the current legal market, this may only allow for remedies in more high risk and damage cases (i.e. no one sues for a bad haircut).
7. *Market Competition/No Government Regulation:* Consumers can also use available information to make choices. If a practitioner is unqualified or does not match the quality of others in the profession, this information can be made available to consumers through public reviews, word of mouth, etc. and consumers can choose a better recommended competitor in the market.

NC Dental Board Case

In 2014, the U.S. Supreme Court considered a case, *North Carolina State Board of Dental Examiners v. FTC* (*NC Dental*), regarding the application of state-action antitrust immunity to state agencies. The facts leading up to this case are as follows: The North Carolina State Board of Dental Examiners (the "Board") was an agency created by the North Carolina Dental Practice Act (the "Act"), and the Act delegated to the Board the power to regulate the practice of dentistry. The Act does not specify that teeth whitening is the practice of dentistry, but regardless, the Board issued at least 47 cease-and-desist letters to unlicensed dentists who were offering teeth whitening services after numerous dentists complained that nondentists were charging lower prices for the services than the dentists did. The Federal Trade Commission sued, alleging the Board's action was an anticompetitive and unfair method of competition under the Federal Trade Commission Act.

In the suit, the Board attempted to dismiss the action on the ground of state-action immunity. Lower courts ruled against the Board and the appeal went all the way to the Supreme Court. The Supreme Court's analysis focuses on the interpretation of a couple cases. First, in *Parker v Brown*, the Court held that Congress, in passing the Sherman Act, could not have intended to prohibit all state economic regulation that displaces competition, thus creating the state-action antitrust immunity doctrine. In *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.* (*Midcal*), the Court answered the question of whether private entities can be protected by this immunity. *Midcal* created a two-part test for private entities to be protected by this state immunity: (1) the entity's conduct is taken to advance a "clearly articulated and affirmatively expressed . . . state policy" and (2) the conduct is "actively supervised" by the State itself. In *NC Dental*, the

court held that the Board, although created by the state, consisted of a controlling number of active market participants, and therefore is subject to the *Midcal* two prong test. For example, if a dental board consist of a controlling number professionals who participate in any dental service, the conduct of the board must be supervised by the state. The Court determined that the Board was not "actively supervised" and therefore its conduct in preventing non-dentists from performing teeth whitening services was subject to the Sherman Act. Post-*NC Dental*, depending on the composition of state-created regulatory boards, actions by such boards may violate the Sherman Act if there is not active state supervision, creating a heightened need for state oversight.

What steps has Oklahoma already taken regarding occupational licensing?

In 2011, the Legislature passed Senate Bill 772 which established the Business and Professional License Facilitation Task Force to research license administration and facilitation. The report issued in January 2012 (included in the Appendix) recommended the creation of a one-stop shop for licensing and permitting in the State of Oklahoma.

In 2015, after the U.S. Supreme Court issued its ruling in *NC Dental*, Attorney General Pruitt wrote to Governor Fallin explaining the consequences of the case. In the letter, he expressed concerns that many of Oklahoma's regulatory boards and commissions may be subject to suit under federal antitrust laws since (1) they are controlled by active market participants and (2) it was unclear as to whether there is enough active supervision to "provide realistic assurance that the anticompetitive conduct promotes state policy." The Attorney General then suggested three options to the Office of the Governor to ensure that state agencies remain in compliance with federal antitrust laws: (1) remind all boards and commissions to not engage in conduct that cannot be justified by compelling public need, (2) consider working with the Legislature to reform Oklahoma's boards and commissions to provide for more public accountability, and/or (3) consider establishing an office or agency that actively supervises all boards and commissions.

Governor Fallin then issued Executive Order 2015-33 which required all state boards controlled by active market participants to implement the procedures within the order. While the Office of the Governor stated there was sufficient statutory safeguards to prevent possible suit on the rulemaking powers of such boards, other possible actions did not have these safeguards. Therefore, the Governor ordered that all non-rulemaking actions by a board controlled by active market participants be subject to a review and analysis by the Office of the Attorney General.

In order to continue to better understand the state of occupational licensing in Oklahoma, to identify any burdensome regulations, and to provide recommendations on licensing reform, Governor Fallin announced the formation of the Occupational Licensing Task Force at the end of 2016.

Reform Efforts Throughout the United States

Restoring Board Immunity Act

At the end of July of 2017, the Restoring Board Immunity Act (included in the Appendix) was introduced into the U.S. House of Representatives. This bill specifically excludes any board from antitrust action under the Sherman Act if the requirements of section 5 or 6 of the bill are satisfied.

Section 5 of the bill grants immunity if (1) the actions of the occupational licensing board or member, officer, or employee are authorized by a non-frivolous interpretation of the occupational licensing laws of the State, (2) the State adopts a policy of using less restrictive alternatives to occupational licensing to address real, substantial threats to public health, safety, or welfare, and (3) the State enacts legislation providing for active supervision of the actions of an occupational licensing board and any member, officer, or employee of such a board. In defining what constitutes "active supervision," the bill provides that an office must be formed to review the actions of state boards to ensure they comply with the purpose of the bill (which is to ensure that least restrictive means are used). This office will conduct certain functions including analysis of board actions and advisory reviews.

Section 6 of the bill grants immunity if (1) the actions of the occupational licensing board or member, officer, or employee are authorized by a non-frivolous interpretation of the occupational licensing laws of the State, (2) the State adopts a policy of using less restrictive alternatives to occupational licensing to address real, substantial threats to public health, safety, or welfare, and (3) the State enacts legislation providing for judicial review of occupational licensing laws. The judicial review mechanism must create a cause of action which an individual must use to challenge action by a state board. The State has an affirmative defense if it can establish that an occupational licensing law is substantially related to an important government interest (health, safety, and welfare) in light of less restrictive alternatives to licensing.

As of the writing of this report, the bill has so far only been introduced and referred to committee, but no further action has been taken.

Obama Administration

In 2015, the Obama Administration put out a set of best practices for state policy makers to enact reforms to reduce the prevalence of unnecessary burdens and licenses. In the following year, the Bureau of Labor Statistics published an extensive report on occupational licensing in the U.S., providing one of the most comprehensive looks at licensing in the U.S. to date. The Administration made it clear that the current state of licensing created inefficiencies and unfairness in the labor market, and efforts to collaborate with states and reduce licensing burdens have continued into the current administration

Trump Administration

Labor Secretary Alexander Acosta recently urged states to roll back burdensome occupational license measures. In the administration's view, much of today's occupational licensing structure represents government-created barriers for Americans looking for work. The Secretary made three major points when targeting reform: (1) If licenses are unnecessary, eliminate them, (2) If they are needed, streamline, (3) If they are honored in one state, considering honoring them in another. The administration sees removing barriers as a way to create jobs without spending a single dime.

Moreover, Republican Commissioner Maureen Ohlhausen, as the chair of the Federal Trade Commission, the agency charged with protecting consumers and enforcing the U.S. anti-trust laws, has pledged to push back against overly burdensome occupational licensing and has launched an Economic Liberty Task Force within the FTC this year to gather and disseminate information on the topic. Ohlhausen declared that limiting occupational licensing will be her top priority.

Reform Efforts from Other States

Since the Federal push to remedy issues with occupational licensing, states have responded with reform efforts of their own. Some have begun extensive research and analysis on the prevalence and effects of occupational licensing within their state. Other states have already taken some sort of legislative action. For example, Georgia, Illinois, and Kansas have passed laws which prohibit felony records from being used as a basis to deny a license unless the record is relevant to the license sought. Michigan passed a law which makes it easier for out-of-state firefighters to become licensed when they move into the state. And Vermont passed a bill strengthening a cost-benefit review process used when evaluating licenses which includes an assessment of whether the specific education and training required by the license in commensurate with protecting public interests.

The Council of State Governments (CSG), National Conference of State Legislatures (NCSL), and National Governors Association Center for Best Practices (NGA Center), with support from the U.S. Department of Labor will also be conducting an Occupational Licensing Policy Learning Consortium to assist participating states in improving their understanding of occupational licensure, its effects, and best practices and policies. This Consortium will continue until December 2019 and the first meeting took place in early December of 2017. Oklahoma is not a participating state.

Task Force Activities

February 10th Meeting:

The first meeting of the occupational licensing Task Force began with introduction of the members of the Task Force, a statement of the purpose of the Task Force, and what the goals of the Task Force for the state of Oklahoma were. The members of the Task Force were shown a licensing 101 presentation that explained the definitions of certification, registration, licensing and the role of government within those topics. Further, the information presented included the current role of occupational licensing in the state of Oklahoma. The group considered the *NC Dental* case and how its precedent could put a number of state boards at risk for lawsuits. Finally, the Task Force discussed a timeline and plan of action for completion of their work.

April 21st Meeting:

At this meeting, the Task Force analyzed several components of a proposed occupational licensing blueprint. The members looked at how to define a "compelling state interest." The conversation resulted in a determination of four areas where licensing is justified. Those areas include when the public health is at risk, when public safety is a concern, when a fundamental right is threatened, and when there is a fiduciary duty to the consumer.

June 28th Meeting:

At this meeting, the Task Force discussed the results of the surveys of state agencies, boards, and commissions and looked at a preliminary link to a license database. The members were disappointed with the quality and quantity of data provided. They discussed what edits should be made to the database, including removing certain permits that did not qualify as occupational licenses and making the website more accessible for searching. Further, the members also looked at an additional draft of the blueprint. The Task Force members also applied the blueprint to a number of occupational licenses currently in use in Oklahoma, including those licenses for funeral directors, cosmetologists, veterinary technicians, recreational therapists, and social work associates. Afterwards, they discussed how to refine the blueprint.

August 4th Meeting:

At this meeting, the Task Force discussed the specifications for the August 23rd public comment event. The Task Force members came to a consensus that the meeting would be held at the Capital and members of the public would be invited to speak. The group also assessed the fields of the database, deciding to edit the cost column to show a 5-year cost that included details such as renewal and frequency of renewal for each license. The Task Force also authorized posting a draft of the blueprint for public input.

August 23rd Meeting:

The Occupational Licensing Task Force held a public meeting where members from different industries and individuals from the public were invited to attend. The meeting was broken up into two sections, with the morning portion being solely for information on licensing, and the afternoon portion reserved for comments from members of the public who had requested to be heard. Additionally, the blueprint has been posted on the ODOL website for public comment since the first part of August. The Task Force received 18 written comments.

Morning Session: The first portion of the meeting included a lecture from Paul Avelar, a senior attorney with the Institute for Justice. Avelar focused on how occupational licensing has increased fivefold, and how much of the state's licenses are arbitrary. Following Avelar's lecture, a panel discussed how occupational licensing affects certain populations more than others, including military families, individuals in poverty, and those with a criminal record. The panel included, Courtney Cullison with the Oklahoma Policy Institute, Dr. Laura Pitman with the Oklahoma Department of Corrections, and Tom Newell of the Foundation for Government Accountability. Newell discussed how occupational licensing regulations can affect military families harshly because of their often frequent movement across state lines. Cullison touched on how the higher than average costs of licensing in the state of Oklahoma can be a burden on impoverished populations. Finally, Pitman covered how high fees, experience requirements, and prohibitions on obtaining licenses can make it difficult for those who are released from prison to acclimate back into society.

Afternoon Session: The second portion of the meeting included comments from a variety of industry members as well as policy groups. To start off the public comments, Jan Hill, who is the owner of three salons in Oklahoma City, stated that she feels licenses are important in certain industries like cosmetology because there is the risk of chemical burns, infections, and disfigurement. Next, Bryan Schlomach, Director of the 1889 Institute, suggested that the Task Force examine licensing requirement in other states, and determine if the lowest level of requirements could be instituted in Oklahoma. Other speakers, including locksmith Brad Collins, suggested that professions continue to be licensed for public safety reasons, but offered that regulation could be used instead of a required license. Additionally, Steven Brekel, President of the Oklahoma Burglar and Fire Alarm Association, pushed the occupational licenses were crucial for public safety, especially as applied to the alarm industry. Other members of the public added general comments, noting that it was clear there are industries that do not require the prerequisites that many occupational licenses currently mandate.

September 18th Meeting:

At this meeting, the Task Force considered all of the written and oral comments submitted at the public hearing in August. The members of the Task Force reviewed the blueprint once more to consider if any edits should be made. The group also discussed what the recommendations of the Task Force should be included in the report. The group also heard from the Office of Management and Enterprise Services (OMES) and the state's Chief Information Officer (CIO) on problems with collection of data on licensing and challenges with one-stop licensing platforms.

October 20th Meeting:

At this meeting, the Task Force discussed the outline of the report. Further, the members at the meeting considered the recommendations that the Task Force would ultimately be presenting to the state. The Task Force also reviewed the database with the CIO and discussed how to continue data collection in the future. They discussed the initial format of the database, examined websites from other states as examples, and ultimately formed recommendations on data collection and presentation.

November

A draft of the final Task Force Report and Recommendations were circulated among members of the Task Force for comment and review.

Reflections on Difficulties and Challenges

Accessibility of Data

One of the biggest challenges the Task Force faced was the lack of data on occupational licensing in Oklahoma. The data did not exist in a central place that listed all occupational licenses. The Governor conducted a survey through her Cabinet Secretaries but many agencies were not very responsive. Additional requests for licensing data were included as part of the Budget Works Program for agency budgets. The Task Force was disappointed with the quality and quantity of data that was received. All of this specifically posed challenges for the Task Force, OMES, and the public.

Challenges for the Task Force

It has been difficult to assess the impact of regulations because of the lack of centralized or aggregated data available on occupational licensing in the state of Oklahoma. Data collection is a vital component to understanding the current status of occupational licensing in the state because it allows officials or the public to quickly access data and conduct a comparative analysis to examine the effect of licensing. Before the Task Force could perform a large scale analysis on the burdens of licensure, the Task Force needed to create a database to compile all the relevant information regarding occupational licensing across the state.

Challenges for OMES/CIO

The Task Force utilized the services of OMES to request and compile data into a readily available form that is usable by the public. However, OMES confronted numerous challenges itself. Firstly, there was no current centralized authority which compelled disclosure of the relevant data. OMES needed to independently reach out and request all pertinent data from every individual authority, board, or commission, which manages each occupational license. OMES/CIO was sometimes flooded with information beyond that which was needed and would have to later sift through data only relevant to occupational licensing. Another impediment to data collection involved state-affiliated agencies either not being forthcoming with information, or only reporting partial components of requested data. This limited candor in data reporting has made it difficult to fully understand the impact of occupational licensing on certain industries.

Challenges for the Public

The challenge to the public is similar to the challenge which the Task Force faced. Without a database, intense research is required to find the costs and requirements of each license. However, while this difficulty impairs the ability of the Task Force to make informed policy decisions, this same difficulty makes it difficult for the public to comply with, or understand the consequences of compliance with, the requirements themselves.

Role of the Governor as CEO

The most efficient way to compel information and cooperation with groups like the Task Force directed by the Governor would be if the Governor herself could direct that cooperation. However, the current system of decentralized authority in occupational licensing, with many independent boards and commissions that regulate different industries, do not report directly to the Governor. The appointment of the members of the boards and commissions does not coincide with the Governor's term of office, making it difficult to compel the enactment of the Governor's direction and agenda.

Limited Expertise and Self-interest

Another challenge with policy making is that many individuals who wish to analyze occupational licenses (or the burdens of a particular license) may lack the proper expertise to determine whether a regulation is too burdensome. Experts in a particular field are often the best individuals suitable to inform decision makers as to the proper way to regulate a profession and the required education, training, etc., that should be required to adequately and safely perform their functions. However, policy makers can find themselves in a "catch 22" due to the fact that the experts informing them or making the informed decisions are often involved in the professions in which they regulate, having incentives to protect themselves from competition by erecting high barriers to entry. Hence, there is a high level of self-interest embedded in their professional judgment, which may be tainted by the desire for protectionism. This is the crux of the occupational licensing problem: states may find a hard time finding experts who do not participate in the market place or who can be objective. A particular state would need to invest time and money for disinterested people to become experts or try to mitigate self-interested behavior in ways such as comparing their licensure to similar licensure in other states.

Resistance due to Entrenchment

A general resistance to change is also an obstacle to addressing issues in occupational licensing. State boards or departments become entrenched in current policies or processes. New licensure policies are likely to disrupt old mechanisms, especially since they are seen to require more action and scrutiny by the state and their boards. The Task Force received calls and emails from boards or individuals who were concerned that their license would be eliminated. The State can expect boards or departments to push back for that reason alone.

Lack of Resources

Presently, Oklahoma has very little resources dedicated to the analysis or management of occupational licensing data. Likewise, research on the societal effects, particularly the economics, of licensure has not been conducted for Oklahoma specifically. Therefore, the Task Force consulted reports and advice from both governmental and non-governmental (NGO) sources to

gain insight into the implications of occupational licensing at the state level. Completing a more in depth analysis of licensing burdens will require additional dedicated resources.

Inability to Effectively Compare Oklahoma to Other States

As noted above, a useful tool in occupational licensure analysis would be to perform a comparative analysis between different states. However, like Oklahoma, many other states do not have readily available and centralized data, and there is not a concise database for all the states (although some NGOs have made some progress in select occupations). Furthermore, it takes enough effort to organize occupational licensing data for Oklahoma alone, but it is even more costly for a single state to organize that same data for all other states for the sake of a comparative analysis. It does appear that some entities, such as National Governors Association, may be addressing this issue over the next three years.

Does not Capture Local or Federal Level Regulation

While the Task Force concerned itself with organizing and analyzing State occupational licensing data, we acknowledge that the analysis does not capture all levels of occupational regulations. Members of the public may still be subject to federal or local regulations that may have an effect on the analysis of any given license especially regarding how burdensome any license may be. Additionally, information gathered regarding occupational licensing at the state level may not suffice for a member of the public who is researching or attempting to comply with all requirements if federal or local requirements also exist. There may also be some duplication of licensing at the local level depending upon the community.

Overwhelming Subjectivity of Licensure in Oklahoma

The process of licensure has thus far lacked objective standards or guidelines before licensure can be approved. As a result, licenses are often the product of a few expert opinions and board actions. Since there are not objective requirements, any data is merely persuasive and policy makers can more readily form new licenses. Additionally, there are fewer limits on the burdens of those licenses created. This higher degree of subjectivity does allow more flexibility so that decisions makers can respond to public need, but it simultaneously increases the risk of bias. Additionally, there is not a continuing mechanism for either the objective review of a license prior to its creation or for an ongoing review as regulations evolve.

Recommendations

1. Independent Commission

The State should consider the creation of an independent commission on occupational licensing. The commission would be tasked with using the Task Force created blueprint to comprehensively review all occupational licenses at the state level to determine the effectiveness and level of burdens for each license. The commission should make recommendations for changes to, or the elimination of, certain licenses (similar to the Tax Incentive Commission).

2. Legislative Sunset Review Committee

The Legislature should consider adding occupational license review to the existing sunset review process. The committee should review if the membership of different boards represents both consumer interests and whether the board encourages public participations in its decision-making process. Further, the lawmakers would identify consumer concerns about the operations of different licensing boards and whether there are opportunities for improving the management of those boards. Ultimately, the group will be utilizing the blueprint to determine whether the boards' licensing restrictions are administered to protect the public and not so to serve the self-interest of professionals in the industry.

The sunset review process would allow for the elimination of redundant and unneeded licenses or boards. By examining the boards' requirements, the quality and availability of services to consumers will be greatly increased. This process will better inform the public on where to go if they are injured by a licensed or unlicensed person in a particular field. Further, eliminating overly-restrictive requirements and eligibility standards will allow for more individuals to have the opportunity to make a living in licensed occupations. The sunset review process is critical to ensuring that licensing boards erect the fewest barriers necessary to protect public health and safety, while also protecting the right of individuals to work.

3. Legislative Committee with Jurisdiction for License Formation

The Legislature should consider assigning a specific committee with jurisdiction for license review. This could be in a new or existing committee. Having one specific committee would provide greater transparency in the licensing process. It will also allow consumers or practitioners a clear point of contact for addressing licensing concerns without having to go through the maze of the legislative process. This will also allow members of the public to go to an objective group with their licensing concerns rather than a self-interested board. The committee should utilize the blueprint to determine whether a new license should be created.

4. Centralized Jurisdiction Under One Agency

The Task Force recommends that the future oversight of occupational licensing in the state should be under a single agency. One agency should be tasked with continuing the work of the Task Force and using the blueprint to further examine the effects of occupational licensing. One of the responsibilities of this agency would be to ensure that the occupational licensing database stays

updated and accessible to the public. The Task Force believes that the Department of Labor is best suited for this responsibility. For example South Carolina has created a Division of Professional and Occupational Licensing under its Department of Labor. On the other hand, Colorado has organized an Office of Economic Development and International Trade under the Colorado Governor's Office.

5. Continuance of the Database

Oklahoma should continue to build upon the efforts this Task Force to continue the licensing database. Oklahoma licensing requirements should be published in a publicly accessible location so that individuals and lawmakers alike can better understand the licensing regime of the state. For example, Colorado has published an occupational licensing database online which allows for the public to search for any license offered and be directed to a page containing all relevant information regarding that license (see link in the "Recommended Readings" section of the Appendix).

6. Executive Order

The Governor, acting as CEO of the state, should use their executive power to require state agencies and boards to report their full schedule of fees and educational requirements for licenses they issue. This order should confer the responsibility to maintain accurate and complete information on the database on an ongoing basis. The Governor has a Chief Information Officer, so there is already a mechanism in place to facilitate the compellation of information. Having the information more readily available on one site will also assist the Legislature in the budget making process.

7. Board Composition

Given that the U.S. Supreme Court held that boards may be subject to greater scrutiny and would require active state supervision if they are composed of a controlling number of market participants, the Task Force recommends that the state review the composition of these boards and require increased membership by those who are not market participants, including perhaps lay people or retirees.

8. Second Stage Review

The work of the Task Force should be continued into a second stage of review either by creating an independent commission or by continuing the Task Force. This phase should include the utilization of the licensing database to conduct analysis and compare individual licenses. This analysis should make use of the blueprint and consider several inquiries, such as:

1. Are fees too excessive or overly burdensome?
2. How do fees relate to the anticipated income level of the occupation?
3. Is the training too lax or too intensive between different licenses?
4. Are the requirements on the potential license holder too burdensome?

This second stage of review should also examine licensing practices from other states and what occupations Oklahoma licenses that other states do not. This analysis would help provide legislators with the sufficient information for licensing reform, such as whether certain training requirements are consistent or not, or if Oklahoma is licensing occupations that other states are not.

9. Reciprocity Issues

A common issue in occupational licensing across states is the lack of reciprocity when an individual becomes licensed to work in another state or for an organization and, after they relocate, they are required to complete all the requirements for a particular license again in their new state. Legislators should consider passing new legislation for the following parties who are particularly affected:

1. Military: the government spends a considerable amount of time and money training military personnel in a wide variety of skills and services. However, after becoming a competent expert within the military, veterans must apply and pay to be licensed in the areas which our military already deemed them competent. Title 59, Section 4100 et. seq. of the Oklahoma Statutes prescribes authority for agencies and educational institutions to grant credit for training veterans obtain during their service, but it is unclear as to whether this credit is commonly granted.
2. Military Spouses: spouses of military members are particularly affected since they relocate often to remain with their spouse. Depending on the frequency of their relocation, lack of reciprocity can be overly burdensome or may bar them from a particular profession altogether if the financial and temporal cost of reapplying for a license are too great. Again, there are some protections for military spouses in Title 59, Section 4100 et. seq. of the Oklahoma Statutes, but the economic realities of this protection are uncertain.
3. High Priority or Low Risk: some licenses pose very low risk as compared to the cost that workers would incur to be relicensed in a new state, or have great priority to the state of Oklahoma. The Legislature may consider creating expedited licenses or waiver of some requirements for low risk or highly needed occupations.

10. Degrees of Licensing

When appropriate, licensing boards should allow for different degrees of licensing within a certain field for scope of practice purposes. For example, there are typically many different types of nursing licenses which require different prerequisites and authorize different activities by the nurses who hold those licenses. This division of authorized activities can be done for many licenses and would allow those who cannot commit or invest in the most expensive or burdensome license to still apply for a lower license and be able to assist consumers with a more limited range of work.

11. Third Party Certification

The Task Force recommends that the State expand third-party certification as an alternative means to prevent fraud. This is a less restrictive means, but would also provide the public protection that

concerns policy makers. For example, the Society for Human Resource Management facilitates education and exams so that people can get certified as human resource managers.

12. Criminal Justice Reform

Finally, the Task Force suggests that boards examine their prohibitions on criminal offenses, specifically felonies. If someone with a criminal record is unable to seek work, it can often lead to the perpetuation of poverty or criminal activity. Other than banning people with criminal records from a particular occupation altogether, boards may consider alternative options such as modified licenses (which restrict the activities of the person only to the extent that they have a nexus to the person's criminal record) or narrowly tailoring prohibitions for certain felonies (i.e. prohibiting rapists and burglars from becoming licensed locksmiths).

Occupational Licensing Blueprint

Roadmap for Occupational Licensing

- Is there a compelling public interest that needs to be protected?
    - If yes, then continue
    - If no, then no regulation is required
    - Types public interests
        - Public health
        - Public safety
        - Fundamental rights
        - Substantial fiduciary interest
- Is the least restrictive means that would sufficiently protect the public interest used?
    - If yes, then continue
    - If no, then use a less restrictive means
    - Regulation options from least restrictive to most restrictive
        - Market Competition
        - Third-party or consumer created ratings and reviews
        - Private certification
        - Specific private civil cause of action or alternative dispute resolution
        - Deceptive trade practice act
        - Regulation of the process of providing specific goods or services to consumers
        - Public inspection
        - Mandatory bonding or insurance
        - Registration
        - Government certification
        - Business License
        - Specialty occupational license for medial reimbursement
        - Occupational license
- If occupational licensing is used, does the board in charge of such licensure have a controlling number of board members as market participants?
    - If yes, continue (board does not have antitrust immunity yet)
    - If no, stop (board has antitrust immunity)
- Is there active supervision of the board's actions by the state?
    - If yes, then board has antitrust immunity
    - If no, then board is subject to antitrust litigation

Occupational Regulation Blueprint

License Details

What is the license? _____

_____

What does the license cover? _____

_____

What Board regulates the license? _____

_____

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? _____

_____

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)?

_____

Least Restrictive Means

What means is used to protect the public interest? _____

_____

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? _____

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? _____

How many of them are active market participants (see Annex, item 5)? _____

Is the board controlled by these active market participants (see Annex, item 6)? _____

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? _____

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

Annex

1. *Definition of a compelling public interest.* A compelling public interest must be one of the following interests: public health, public safety, fundamental rights, or a substantial fiduciary interest.

2. *Definition of a demonstrated, significant, and probable harm.* A harm is demonstrated when it has occurred in the past. A harm is significant when it could cause damage that merits action by lawmakers. A harm is probable when its propensity to occur merits action by lawmakers. When determining whether a harm is significant and probable, lawmakers may analyze various sources of information, including whether similar activities are licensed or regulated in other states. If, in other states, a lack of licensing does not cause significant harms, the harm is not demonstrated, real, or probable.

3. *List of means from least to most restrictive.*
   Private Governance Options
   - Market Competition
   - Third-party or consumer created ratings and reviews
   - Private certification
   - Specific private civil cause of action or alternative dispute resolution

   Public Regulation
   - Deceptive trade practice act
   - Regulation of the process of providing specific goods or services to consumers
   - Public inspection
   - Mandatory bonding or insurance

   Command and Control
   - Registration
   - Government certification
   - Business license
   - Specialty occupational license for medical reimbursement
   - Occupational license

4. *Definition of sufficient protection.* A regulation sufficiently protects an interest if the regulation adequately remedies the harm or possible harm to the legitimate public interest so that the likelihood of such harm is appropriate considering the degree of damages which the harm may cause. "Sufficient" has not been uniformly defined by courts, but there should be some limitation on the choice to use a high standard of protection (like a guarantee) to justify the most restrictive mean every time.

5. *Definition of an active market participant.* The Court has found that active market participants possess strong private interests in a matter and pose a risk of self-dealing. A conservative interpretation of a "market participant" is any practitioner who works in the general industry, which is affected by the types regulations addressed by their respective boards. One could persuasively argue that these individuals possess strong interests and pose a threat of self-dealing.

6. *Definition of a controlling number.* Justice Alito, in his dissent in *NC Dental*, raises concerns that the Court did not define a "controlling number" on the board. He mentions how it could be a majority, a number required for a veto power, or even an obstructionist minority. To be safe, the State should consider all of these options to be a "controlling number," especially since simpler terms like a "majority"—which clearly indicate a specific standard—are not used by the Court.

7. *Definition of active state supervision.* Active state supervision constitutes more than simply authorizing and enforcing decisions made by the board. States need to establish, review, or monitor decisions to ensure they are clearly articulated and firmly expressed as state policy. Therefore, a state must be reasonably informed to the decisions of a board, and then ratify the board's conduct as proper state policy. The Court has made it clear that a "state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their violation is lawful . .

Sample Blueprint

License Details

What is the license? Veterinary Technician License

What does the license cover? Authority to perform certain veterinary work

What Board regulates the license? Veterinary Board

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? Compelling interest in the health of pets

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)?

Possibly

Least Restrictive Means

What means is used to protect the public interest? An occupational license

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? No

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? 6

How many of them are active market participants (see Annex, item 5)? 5

Is the board controlled by these active market participants (see Annex, item 6)? Yes

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? Possibly

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

Compelling Public Interest

There is a compelling public interest in licensing individuals who provide medical services to animals.

Least Restrictive Means

Currently, the Oklahoma Veterinary Board requires applicants for a veterinary technician license to pay a fee of $135 and attend a two-year program of veterinary technology.[1] Further, in order to renew their license annually, veterinary technicians must pay another fee each year of $45.[2] Even with a license veterinary technicians may only work under a licensed veterinarian.[3]

The fees and amount of education are likely not the least restrictive means. Many states do not require an education or training for this career. An alternative, and less restive, means of protecting the public health interest would be to require applicants to pass a series of exams.

Controlling Number of Market Participants on the Board

The State Board of Veterinary Medical Examiners consists of six members appointed by the Governor.[4] The Board is to consist of five licensed veterinarians members and one member from the general public.[5] Five members of this board have private economic interests in the workings of the group, and thus a court would likely find that market participants control the board.[6]

Active Supervision of the Board

Active supervision of the board requires some level of state involvement in the decisions of the board. If a state is reasonably informed as to the decisions of the board and ratifies the board's actions as state policy then there is likely active supervision. There is little evidence that the State Board of Veterinary Medicine is being actively supervised by the state, other than that the Governor appoints the members of the board.

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[1] 59 Okla. Stat. § 698.22 (2005).
[2] *Id.*
[3] *Id.*
[4] *Id*. at 698.3(a).
[5] *Id.*
[6] *Id.*

Sample Blueprint

License Details
What is the license? Hair Braiding Technician

What does the license cover? Hairbraiding

What Board regulates the license? State Board of Cosmetology

Compelling Public Interest
What is the compelling public interest (see Annex, item 1)? No compelling public interest

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)?

n/a

Least Restrictive Means
What means is used to protect the public interest? An occupational license

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? No

If the answer to the above question is "No" then do not use that type of regulation to protect the public interest.

----------*Continue only if Occupational Licensing was Used*----------

Controlling Number of Market Participants on the Board
How many members are on the regulatory board? 9

How many of them are active market participants (see Annex, item 5)? 6 (possibly 8)

Is the board controlled by these active market participants (see Annex, item 6)? Yes

----------*Continue only if the Board is Controlled by Market Participants*----------

Active Supervision of the Board
Is there active state supervision of the board (see Annex, item 7)? Not likely

If the answer to the above question is "No" then board's conduct may violate the Sherman Act and the board's actions are not protected by state immunity.

Compelling Public Interest

There does not appear to be a compelling public interest that would necessitate the licensure of hair braiding.

Least Restrictive Means

Even with a compelling interest, the State Board of Cosmetology does not appear to have used the least restrictive means. Hair braiding in Oklahoma currently requires a "Hairbraiding Technician" license.[7] This license requires a hair braider to complete either 600 study/credit hours or an apprenticeship lasting 1,200 hours.[8] Further, anyone seeking a hair-braiding license must also be over the age of sixteen and pass a written and practical exam.[9] These requirements are highly burdensome for a field that does not appear to pose any risk to public health or safety.

Controlling Number of Market Participants on the Board

The Board is composed of nine members appointed by the Governor to four year staggered terms.[10] Six members are appointed, one from each of six congressional districts of the state. These six are typically cosmetologists.[11] There is also one member appointed to represent public schools, one to represent privately owned schools, and one is appointed as a lay/public member.[12] A court would likely find that controlling number of market participants sit on the Board.

Active Supervision of the Board

Active supervision of the board requires some level of state involvement in the decisions of the board. If a state is reasonably informed as to the decisions of the board and ratifies the board's actions as state policy then there is likely active supervision. There is little evidence of active state supervision of the State Board of Cosmetology. The only evidence of supervision is the attendance occasionally of state officials at board meetings.

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[7] 59 Okla. Stat. Ann. § 199.3(B)(5).
[8] Okla. Admin. Code §§ 175:1-1-2; 175:10-3-43; 175:10-9-2(a).
[9] *Id*.
[10] 59 Okla. Stat. Ann. § 175:1-3-1
[11] *Id.*
[12] *Id.*

Appendix

Oklahoma Executive Order (2016-39)

FILED

DEC 03 2016

OKLAHOMA SECRETARY OF STATE

Mary Fallin
Governor

EXECUTIVE DEPARTMENT
EXECUTIVE ORDER 2016-39

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution hereby order the formation of the Oklahoma Occupational Licensing Task Force (Task Force).

The Task Force shall conduct a comprehensive review of occupational licensing in Oklahoma and provide recommendations to the Governor for the potential removal of license requirements that do not promote the health and/or safety of Oklahomans and are unreasonable barriers to Oklahoma workers' workforce entry.

Specifically, the Task Force shall, at a minimum:

1. Identify all occupational licenses (licenses) required in Oklahoma;
2. Identify all state agencies, boards, and commissions involved with the administration of licenses;
3. Determine how each license is administered, including a review of information technology platforms that are or could be utilized and the fee structure for obtaining licenses;
4. Review the necessity and appropriateness of training levels and other requirements required to obtain licenses; and
5. Evaluate whether the public health and safety goals and concerns addressed by license requirements outweigh the barriers to workforce entry they place on Oklahoma workers.

The Labor Commissioner shall serve as the Chairperson of the Task Force. The members of the Task Force shall be appointed by and serve at the pleasure of the Chairperson, and shall include: two members of the Oklahoma State Senate; two members of the Oklahoma House of Representatives; the Attorney General, or designee; the President of the Oklahoma State Chamber, or designee; one member of the Oklahoma Justice Reform Task Force; two members of organizations focused on workforce and economic development; and a member of an organization focused on poverty reduction.

The Task Force shall meet at such times and places as the Chairperson deems appropriate. Members shall serve without compensation. Administrative support for the Task Force, including personnel necessary to ensure the proper performance of its duties and responsibilities, shall be provided by the Oklahoma Department of Labor.

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All Executive departments, officers, agencies and employees of this State shall cooperate with the Task Force in carrying out its duties and responsibilities, including providing any information, records and reports as may be requested by the Chairperson.

The Task Force shall prepare and submit a final report containing a detailed statement of the findings and policy recommendations of the Task Force to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 31, 2017. This Task Force shall sunset upon issuance of the final report, unless otherwise extended by further executive order.

This Executive Order shall be distributed to the Secretary of State and Labor Commissioner.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 3rd day of December, 2016.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

MARY FALLIN

ATTEST:

Acting Assistant

MIKE HUNTER, SECRETARY OF STATE

015364

Executive Order 2016-39 Page 2 of 2

Editorials

Journal Record
The Oklahoman
Tulsa World

Editorial: Reducing an occupational burden

By: Journal Record Staff August 14, 2017

In the 1950s, one in 50 occupations required a license. Today it's one in three.

Those 60 years didn't give us a glut of jobs that put the public at risk; they gave us a government that had to find ways to stay afloat without calling something a tax.

With the help of a Task Force headed by Labor Commissioner Melissa McLawhorn Houston, Oklahoma might be coming to its senses. Two smart initiatives have already come from the Task Force's work that will be included in the final report: a centralized licensure database and a questionnaire that will help determine whether a particular occupation really needs to be licensed at all.

The database will provide information about which occupations require a license, how much it costs, and which agency is responsible for issuing the license. That will immediately eliminate a lot of the confusion and frustration people face when they're trying to work in a licensed job.

The questionnaire will help lawmakers, boards and agencies drill down on specific occupations to decide whether a license is really necessary.

Public safety is a good reason for some occupational licenses. But there are plenty of occupations that don't pose much of a threat to the public, hair braiding technician being one. And in a state that wants to brag about being business-friendly, pro-free market, in favor of small government and fostering job creation, forcing people to pay for the privilege of having a $10-per-hour job is inexcusable. That's especially important to people trying to work their way out of poverty; a hair braiding technician, for example, would spend about $85 to get a license and have to pay for 600 hours of training. The payoff would be a job that pays about $20,000 per year.

When the BLS studied occupational de-licensing, it found that several states have successfully reduced the occupational burden. But the report also offered a warning: "In nearly every instance that we analyzed, de-licensing and de-licensing attempts have been met not only with stiff resistance but also usually (when successful) with a movement to

reinstitute licensing. Clearly, these results reflect the lobbying power of the occupations in question and their professional associations."

We support Commissioner Houston's plan and plead that any de-licensing be done in a manner that is not easily reversed. Teeth whiteners and hair braiders need that money even more than an Oklahoma state agency

Signs of progress on licensing reform in Oklahoma

by The Oklahoman Editorial Board Published: October 23, 2017 12:00 AM CDT

WE have written many times of the need to reform state occupational licensing laws to ensure regulations don't unnecessarily reduce market competition by driving up the cost of entering a profession. Progress on this front may be slow, but there are encouraging signs.

A state Occupational Licensing Task Force, created by Gov. Mary Fallin and chaired by Labor Commissioner Melissa McLawhorn Houston, has been researching licensing issues for several months. Among other things, the group has released a draft blueprint for evaluating whether government licensing of an occupation is necessary. The framework it proposes would be a step in the right direction.

The blueprint starts by asking a simple question of every licensing regulation: Is there a compelling public interest that needs to be protected? From there, the proposal calls for using the "least restrictive means that would sufficiently protect the public interest." The blueprint lists 13 possible ways to protect the public interest, ranked from the least restrictive (market competition) to the most restrictive (occupational licensing).

In many instances, market competition alone may suffice to regulate professions instead of onerous licensing requirements.

The Task Force also is developing a database of every license the state issues. Users of that database can compare the requirements for all licenses, which will further highlight discrepancies. Some obvious examples of overregulation have already been identified.

In a recent blog, Courtney Cullison, a policy analyst with the Oklahoma Policy Institute, noted that Oklahomans wanting to get a license in cosmetology must first complete 1,500 hours of education and training. At the same time, emergency medical technicians need to complete only 252 hours of education and training.

That example comes from simply comparing Oklahoma regulations for one industry with state regulations for another. Once you compare Oklahoma requirements with the

regulations imposed for identical professions in other states, other disparities become obvious.

“For example, a makeup artist needs 140 days of training in Oklahoma to be licensed, but this profession does not require a license at all in 14 states,” Cullison writes. “Are makeup artists in Oklahoma less likely to cause injury or harm than those in unlicensed states? A school bus driver needs a recommended 20 hours of training in Oklahoma, but a full year or more in 19 states. Are school children safer in those states that require more extensive training?”

If other states are surviving with far lower levels of regulation than what is imposed for any profession in Oklahoma, that alone suggests our regulations could stand to be overhauled or repealed.

Failure to reduce red tape has negative economic consequences, particularly for those at the lower rungs of the income ladder. When licensing fees and associated costs are significant, it becomes much more difficult for low-income Oklahomans to enter those professions and increase their earning power.

If there are valid, defensible reasons for occupational licensing requirements, that's one thing. But Oklahoma can't afford to preserve excessive regulation of industries that mostly serve as a barrier to gainful employment for many citizens. The state has enough economic challenges without adding self-inflicted wounds to the mix.

Tulsa World editorial: State should reconsider licensing requirements

It should reconsider when it is interfering with the marketplace

By World's Editorial Writers Aug 19, 201

The state of Oklahoma limits who can enter an incredible number of occupations through licensing requirements.

How many? No one really knows for sure; but at last count, the number was close to 1,000 occupations that require licensing by various arms of the state bureaucracy.

In some cases, that makes obvious sense. We like the idea that doctors have met certain state-controlled standards before they start treating patients.

But hair-braiders?

State Labor Commissioner Melissa Houston and the Occupational Licensing Task Force have proposed a reconsideration of state licensing based on the need to protect the public's health, safety, fundamental rights and fiduciary interests.

All of those are legitimate reasons for government licensing, but limiting competition in the marketplace is not; and we suspect an awful lot of the state's licensing rules are designed to do just that.

The first step is to get a handle on just how many occupations the state bureaucracy is controlling and what standards it is using in that process.

The Task Force is also suggesting that state laws mandating licenses be subject to legislative review periodically — a sunset provision — and that a standard blueprint be used to make sure licensing is the least restrictive way to meet the state's interest.

The Task Force will take public comment on the idea from 8:30 a.m. to 4:30 p.m. Wednesday in the Senate Assembly Room of the Capitol. More information is available on Labor Department's website: ok.gov/odol.

The Task Force's proposal sounds like a rational approach to reconsidering when and how the state should be using its licensing power. The public expects reasonable protection, but not artificial barriers to the free market.

Model Legislation

NC Dental-Sunrise-Sunset-Criminal Record Reviews:
Occupational Licensing Board Reform Act.

21st Century Consumer Protection & Private Certification Act

NC Dental-Sunrise-Sunset-Criminal Record Reviews. Occupational Licensing Board Reform Act.

Model Legislation

August 21, 2017

A bill for an act

relating to occupational regulations; establishing the state policy for the regulation of occupations, specifying criteria for government regulation to increase opportunities, promote competition, encourage innovation, protect consumers, comply with federal and state antitrust laws; creating a process to review criminal history to reduce offenders' disqualifications from state recognition; and proposing coding for new law as _____, chapter ____.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

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

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

2. Occupational regulations shall be construed and applied to increase economic opportunities, promote competition, and encourage innovation.

3. 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.

4. An occupational regulation may be enforced only to the extent an individual sells goods and services that are included explicitly in the statute that defines the occupation's scope of practice.

5. The governor will establish an office of active supervision of occupational boards. The office is responsible for actively supervising the state's occupational boards.

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

100.02 Definitions.

Subdivision 1. **Scope.** For the purposes of this chapter, the words defined in this section have the meaning given.

Subd. 2. **Certification.** "Certification" is a voluntary program in which (a) a private organization or (b) the state government grants nontransferable recognition to an individual who meets personal qualifications established by (a) the private organization or (b) the legislature. Upon approval, the individual may use "certified" as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "certified."

Subd. 3. **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.

Subd. 4. **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,[13]
7. mandatory disclosure of attributes of the specific good or service,[14]
8. regulation of the process of providing the specific good or service,
9. inspection,[15]
10. bonding,[16]
11. insurance,[17]
12. registration,[18]
13. government certification,[19]
14. specialty occupational license for medical reimbursement,[20] and
15. occupational license.[21]

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[13] Deceptive trade practices acts are an effective means to protect consumers from fraud.
[14] Mandatory disclosures may reduce misleading or confusing attributes. Disclosures that favor certain goods or services, such as a country-of-origin label, should not be used.
[15] Periodic inspections protect consumers from unsanitary facilities.
[16] Requiring bonding protects against a provider's failure to fulfill contractual obligations.
[17] Requiring insurance protects against a provider's damaging a consumer or third party.
[18] Registering with the secretary of state or other agency protects against fly-by-night providers.
[19] Certification is a voluntary signal that addresses the concern of asymmetrical information.
[20] Specialty licenses allows for medical reimbursement without disputes over scope of practice.
[21] Only occupational licensing exposes board members to antitrust litigation. The 12 alternatives to licensing do not include that risk.

Subd. 5. **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.

Subd. 6. **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 registration, 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.

Subd. 7. **Personal qualifications.** "Personal qualifications" are criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history and completion of continuing education.

Subd. 8. **Registration.** "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. "Registration" does not include personal qualifications but may require a bond or insurance. Upon the government's receipt of notice, the individual may use "registered" as a designated title. A non-registered individual may not perform the occupation for compensation or use "registered" as a designated title. "Registration" is not transferable.

Subd. 9. **Specialty occupational license for medical reimbursement**. "Specialty occupational license 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 medical services based on meeting personal qualifications established by the legislature. A private company may recognize this credential. Notwithstanding this specialty license, 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 license to provide the identified medical services for compensation but the non-licensed individual shall not qualify for payment or reimbursement from a government agency.

100.03 Office of Active Supervision of Occupational Boards

Subdivision 1. **Antitrust law.** By establishing and executing the policies in section 100.01, the state intends to ensure that occupational boards and board members will avoid liability under federal antitrust laws.

Subd. 2. **Active Supervision.** To help execute the policies, the governor will establish the Office of Active Supervision of Occupational Boards.

Subd. 3. **Responsibility.** The office is responsible for the active supervision of the state's occupational boards to ensure compliance with section 100.01, 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 benefit consumers and not serve private interests of providers of goods and services who the boards regulate.[22]

Subd. 4. **Approval.** The office will exercise control over boards' processes and substantive actions to ensure they are consistent with section 100.01, the applicable licensing statutes, and federal and state antitrust laws.[23] 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 shall not be deemed approval.

Subd. 5. **Personnel.** The office personnel must be independent of boards. A government or private attorney who provides general counsel to a board shall not also serve in the office.

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[22] *FTC v. Ticor Title Ins. Co*., 504 U.S. 621, 634–635 (1992) (stating the purpose of active supervision is to determine "whether the State has played a substantial role in determining the specifics of the . . . policy" and that the policy was "established as a product of deliberate state intervention, not simply by agreement among private parties"). *See Hallie v. Eau Claire*, 471 U.S. 34, 47 (1985) ("Where a private party is engaging in the anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the state.") and *Goldfarb v. Va. State Bar*, 421 U.S. 773, 791–792 (1975) (denying immunity to a state agency that "joined in what is essentially a private anticompetitive activity" for "the benefit of its members").

[23] *N.C. State Bd. of Dental Exam'rs v. FTC*, 135 S. Ct. 1101, 1112 (2015) (holding active supervision "require[s] the State to review and approve interstitial policies made by the entity claiming immunity" to provide "realistic assurance that a private party's anticompetitive conduct promotes state policy . . . .") (quoting *Patrick*, 486 U.S. at 101). *Patrick v. Burget*, 486 U.S. 94, 101 (1988) ("The active supervision prong of the Midcal test requires that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.").

Subd. 6. **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.

100.04 Sunrise and Sunset Reviews of Occupational Regulations

Subdivision 1. **Analysis of occupational regulations.** The Speaker of the House of Representatives and the President of the Senate will assign to the _____ staff (hereafter "staff") the responsibility to analyze occupational regulations.

(*See footnote [24] for a discussion of the legislature giving the responsibility to analyze occupational licenses to a staff in the legislative or executive branch*.)

Subd. 2. **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 100.01.

(b) The staff will require proponents to submit evidence of present, significant and substantiated harms to consumers in the state. The staff also may require information from others knowledgeable of the occupation, labor-market economics or other factors.

(c) The staff will determine if the proposed regulation meets the state's policy in section 100.01(3) of using the least restrictive regulation necessary to protect consumers from present, significant and empirically substantiated harms.

(d) The staff's analysis in (c) will employ a rebuttable presumption that market competition and private remedies are sufficient to protect consumers.

(e) The presumption in (d) may be rebutted if the staff finds credible empirical evidence of a systematic problem that warrants enactment of a government regulation to protect consumers. If such a problem is present in the state, the staff will recommend the least restrictive government regulation that addresses the problem. The staff will use the following guideline

[24] There are many places in state government for legislative leaders to place the responsibility to perform the analysis needed for Sunrise and Sunset reviews. It could be given to a subcommittee of the legislature or the legislature's non-partisan staff. Another possibility is to give the responsibility to an agency or department in the executive branch. For example, Colorado is recognized for doing these reviews well. The state puts the responsibility to perform both reviews in the executive branch. Specifically, the responsibility is with the Colorado Office of Policy, Research & Regulatory Reform (COPRRR) in the Department of Regulatory Agencies (DORA). The key features are (1) the analysts doing the analysis are insulated to the greatest extent possible from lobbying and political pressure by industry advocates and (2) the agency or staff must issue its recommendations prior to the initial committee in the legislature voting on the proposed legislation.

to form its recommendation:

i. if the need is to protect consumers against fraud, the staff's presumptive recommendation will be to strengthen powers under the state's deceptive trade practices acts or require disclosures that will reduce misleading attributes of the specific good or service;

ii. if the need is to protect consumers against uncleanly facilities or to promote general health and safety, the staff's presumptive recommendation will be to require periodic inspections of the provider's facility;

iii. if the need is to protect consumers against potential damages from a provider's failure to complete a contract fully or to standards, the staff's presumptive recommendation will be to require the provider is bonded;

iv. if the need is to protect a person who is not party to a contract between the provider and consumer (externalities), the staff's presumptive recommendation will be to require the provider have insurance;

v. if the need is to protect consumers against potential damages by a transient or fly-by-night provider, the staff's presumptive recommendation will be to require the provider register the provider's business with the secretary of state;

vi. if the need is to protect consumers against a shortfall or imbalance of knowledge about the good or service relative to the seller's knowledge (asymmetrical information), the staff's presumptive recommendation will be to enact voluntary private or government certification; and

vii. if the need is to qualify providers of new or highly-specialized medical services for reimbursement by the state, the staff's presumptive recommendation will be to enact a specialty license for medical reimbursement.

(f) 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.

(g) 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.

(h) The staff will report its findings to the initial and subsequent committees that will hear the legislation.

Subd. 3. **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 in subdivision 2 prior to voting on the legislation.

Subd. 4. **Sunset reviews.** Starting on January 1, 20_ _, the staff will use the criteria in paragraphs 2(b)-(g) to review annually approximately 20 percent of the state's occupational regulations. The staff will review all occupational regulations over a period of five years.

Subd. 5. **Sunset reports**. Starting on January 1, 20_ _, the staff will report annually the findings of its reviews to the Speaker of the House of Representatives, the President of the Senate, the Governor and the Attorney General. In its report, the staff will recommend the legislature enact new legislation that (a) repeals the occupational regulations, (b) converts the occupational regulations to less restrictive regulations in section 100.02 subdivision 4, (c) instructs the relevant licensing board or agency to promulgate revised regulations reflecting the legislature's decision to use a less restrictive regulation or (d) reflects other recommendations to the legislature. The staff also may recommend that no new legislation be enacted.

100.05 Petition for Review of a Criminal Record

Subdivision 1. The right of an individual to pursue an occupation is a fundamental right.

Subd. 2. The fundamental right of an individual to pursue an occupation includes (a) the right of an individual with a criminal record to petition the state to obtain a certification, occupational license, specialty occupational license for medical reimbursement or other state recognition of the individual's personal qualifications (hereafter "state recognition") and (b) the state not using a criminal record as an automatic or mandatory permanent bar to an individual's receiving state recognition.

Subd. 3. An individual with a criminal record may petition a licensing board, agency, department or other state or local issuer of occupational licenses (hereafter "board") at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 4. The individual shall include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

Subd. 5. The individual may include additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history and employment aspirations.

Subd. 6. The board is authorized to determine whether the individual's criminal record disqualifies the individual from obtaining state recognition.

Subd. 7. Notwithstanding any other statute or rule, the board may find the individual's criminal record disqualifies the individual from obtaining state recognition only if:

(a) the individual's criminal record includes a conviction for a felony or violent misdemeanor; and

(b) the board concludes the state has an important interest in protecting public safety that is superior to the individual's right. The board may make this conclusion only if it determines, by clear and convincing evidence at the time of the petition, that:

(1) the specific offense for which the individual was convicted is substantially related to the state's interest;

(2) the individual, based on the nature of the specific offense for which the individual was convicted and the individual's current circumstances in subdivision 5, is more likely to reoffend by virtue of having the license than if the individual did not have the license; and

(3) a re-offense will cause greater harm than it would if the individual did not have the license.

Subd. 8. The board shall issue its determination within 90 days after the board receives the petition. The determination shall be in writing and include the criminal record, findings of fact and conclusions of law.

Subd. 9. If the board determines the state's interest is superior to the individual's right, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition reflecting the completion of the remedies at any time after 90 days following the board's judgment.

Subd. 10. The individual may appeal the board's determination in subdivision 8 as provided for in the state's administrative procedure act.

Subd. 11. The individual may submit a new petition to the board at any time after two years following a final judgment in the initial petition.

Subd. 12 The board may rescind its determination at any time if the individual is convicted of an additional offense that the Board determines meets the elements in subdivision 7.

Subd. 13. The board may charge a fee to recoup its costs not to exceed $100 for each petition.

Subd. 14. The Department of _____ will establish an annual reporting requirement of the (a) number of applicants petitioning each board, (b) the numbers of each board's

approvals and denials, (c) the type of offenses for which each board approved or denied the petitions and (d) other data the Department determines. The Department will compile and publish annually a report on a searchable public website.

100.06 Effective date. This chapter is effective on _____.

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21st Century Consumer Protection & Private Certification Act

Summary

Occupational licensing (1) increases unemployment; (2) reduces innovation; (3) increases costs to consumers; (4) transfers income from the population at large to licensed professionals; and (5) costs the economy over $200 billion each year in lost economic activity. Unfortunately, there is little evidence that occupational licensing increases consumer protection. Nevertheless, many state legislators have difficulty conceiving how consumers can be protected without state-enacted occupational licensing.

The answer is private certification that does not replace traditional occupational licenses. This legislation allows for the registration of private certifying organizations that would operate in addition to state-run licensing boards. Specifically, this legislation proposes a voluntary system where private certifying organizations (1) may register with the state, (2) privately certify individuals to practice a profession, and (3) employ modern technology, including consumer-rating systems using smartphone applications, to protect consumers. The privately-certified individual will then be free to work in the state regardless of other occupational regulations.

Model Legislation

{Title, Enacting clause, etc.}

Section 1. {Definitions}

(1) "Government" means the State of _____ and its political subdivisions.

(2) "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that is not itself illegal irrespective of an occupational regulation.

(3) "Occupational regulation" means a statute, ordinance, rule or other requirement in law that requires an individual to possess certain personal qualifications to work in a lawful occupation.

(4) "Personal qualifications" means criteria related to an individual's personal background, including completion of an approved educational program, satisfactory performance on an examination, work experience, criminal history, moral standing and completion of continuing education.

(5) "Private certification" means recognition that an individual possesses personal qualifications that a private certifying organization determines are required to perform

a lawful occupation. The recognition may also be based on consumer comments, ratings, and other factors determined by the private certifying organization. The recognition is non-transferable.

(6) "Private certifying organization" means a nongovernmental organization that allows any individual to apply for private certification regardless of the individual's race, creed, color, ethnicity, national origin, religion, sex, sexual orientation or marital status.

(7) "Privately certified" means a designated title that an individual may use if the individual is certified by a private certifying organization.

Section 2. {Private certifying organizations; bond}

(A) A private certifying organization may voluntarily participate and register with the government under this section.

(B) To participate, a private certification organization shall register with the Secretary of State. It shall provide the Secretary with the organization's name, address, officers, and the names of individuals initially privately certified. The Secretary may impose a registration fee to recoup its costs and promulgate rules and forms to facilitate registration.

(C) A participating private certifying organization shall:

(1) Publish on a publicly accessible website all of the following:

(a) The scope of practice for each lawful occupation that the organization certifies;

(b) The personal qualifications that an individual must possess to become certified by the private certifying organization;

(c) Other factors the private certifying organization uses to certify individuals, which may include consumer comments, rankings and other consumer-initiated elements;

(d) The names, business addresses and websites of all privately certified individuals; and

(e) The states in which the private certifying organization is registered.

(2) Require personal qualifications that are related to the lawful occupation for which an individual is certified.

(3) Verify an individual's personal qualifications before certification and periodically verify that the certified individual remains eligible for certification.

(4) Require a privately certified individual to prominently display the private certification and to make available materials about the personal qualifications and other factors required for the private certification on request.

(5) Have at least fifty (50) privately certified individuals in active practice in the United States after one year applying for registration with the Secretary.

(D) A participating private certifying organization may require individuals it certifies to obtain and maintain a bond for liability that is related to the practice of the individual's privately-certified lawful occupation.

(E) A participating private certification organization may require a privately certified individual to pay initial and ongoing fees.

Section 3. {Right to engage in a lawful occupation}

(A) An individual who is certified by a participating private certifying organization may engage in the lawful occupation for which that individual is privately certified regardless of any occupational regulation enacted by the government.

(B) The government shall not prohibit or impose a penalty, fine or fee on an individual who is certified by a participating private certifying organization for engaging in a lawful occupation in compliance with this chapter.

Section 4. {Sign; violation; classification}

(A) An individual who is certified by a participating private certifying organization and who engages in a lawful occupation for which the government has enacted an occupational regulation must prominently display a sign with lettering that is at least one inch in height stating that the individual is not licensed or otherwise occupationally regulated by the government.

(B) An individual who is certified by a participating private certifying organization and who is not licensed, registered or certified by the government shall not use the term "licensed," "certified" or "registered" to describe the individual's credential or any words, titles, abbreviations or letters which would induce a reasonably knowledgeable consumer of such services to believe the privately certified individual using them is occupationally regulated by the government.

(C) An individual who is certified by a participating private certifying organization may use the term “privately certified” to describe the individual’s credentials or as part of a title or designation.

Section 5. {False claim; violation; classification}

An individual who knowingly and falsely claims to be privately certified pursuant to this chapter is guilty of fraud and subject to penalties under the state's deceptive trade practices act.[25]

Section 6. {Enforcement}

(A) The Secretary shall enforce this chapter and has the authority to terminate the government's registration of the participating private certifying organization for failure to continue to meet the requirements in section 2 (C).

(B) The participating private certifying organization that continues to operate 90 days after failing to meet the requirements in section 2 (C) is guilty of fraud and subject to a fine under the state's deceptive trade practices act.

(C) Except to the extent that the laws require a privately certified individual to possess personal qualifications established by the government to perform a lawful occupation, this chapter does not limit the government's authority to enact and enforce laws relating to:

(1) A business license or permit, facility license, building permit or land use regulation; and

(2) Public health, safety and environmental regulations, including the sale and use of substances that endanger public health and safety if mishandled or improperly dispensed, including chemicals, explosives and pharmaceuticals.

(D) Nothing in this chapter shall be construed to:

(1) Change the government's sole authority to require an individual to obtain and maintain a government-issued driver's license and related insurance for personal or commercial vehicle use;

(2) Limit damages in a private civil action against an individual who is privately certified or who knowingly and falsely claims to be privately certified;

[25] Alternatively, this clause could be phrased "An individual who knowingly and falsely claims to be privately certified pursuant to this chapter is guilty of fraud under state law and is subject to a fine of up to an amount equal to the last twelve months of the individual's revenue from the lawful occupation or $_____, whichever is greater.

(3) Create a right of action against a private party or the government requiring either to do business with an individual who is not licensed, certified or registered with the government;

(4) Allow for private certification of occupations regulated by the federal government or required by federal law to be occupationally licensed by the government;[26]

(5) Require a private certification organization to participate and register with the government under this chapter; or

(6) Increase the authority of the government to regulate non-participating private certification organizations.

Section 7. {Exemptions.}

Section 8. {Severability clause.}

Section 9. {Repealer clause.}

Section 10. {Effective date.}

[26] This would address occupational licensing of professionals in the insurance industry, home appraisal industry, and doctors and other medical professionals who are reimbursed by the federal government.

Congressional Bill

115th CONGRESS
1st Session

H. R. 3446

To help States combat abuse of occupational licensing laws by economic incumbents, to promote competition, to encourage innovation, to protect consumers, and to facilitate the restoration of antitrust immunity to State occupational boards, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES
July 27, 2017

Mr. Issa introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To help States combat abuse of occupational licensing laws by economic incumbents, to promote competition, to encourage innovation, to protect consumers, and to facilitate the restoration of antitrust immunity to State occupational boards, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the "Restoring Board Immunity Act of 2017" or the "RBI Act".

SEC. 2. Statement of findings and purpose.

Congress finds the following:

(1) The prevalence of occupational licensing has increased dramatically in recent decades, in part because private interests have sought licensing in order to limit competition.

(2) Occupational licensing often limits opportunities for workers, frustrates entrepreneurs seeking to introduce new business models, and raises prices paid by consumers.

(3) Licensing should be imposed only to combat real, substantial threats to public health, safety, or welfare and only where other less restrictive regulatory alternatives are insufficient to protect consumers and serve the public interest.

(4) Regulators should consider a range of less restrictive alternatives before enacting an occupational licensing regime, which may include inspections, bonding or insurance requirements, registration, and voluntary certification.

(5) Voluntary certification provides a particularly significant alternative to licensure, as it allows market participants to signal to consumers the attainment of personal qualifications without limiting entry into the marketplace.

(6) The failure of State governments to adopt less restrictive alternatives to licensing, and less burdensome requirements in those areas where licensing is deemed necessary, has resulted in significant costs to consumers and the broader economy.

(7) The United States Supreme Court responded to these concerns in North Carolina Board of Dental Examiners v. FTC, 135 S. Ct. 1101 (2015), holding that self-interested licensing boards may be subject to liability under the antitrust laws, but that decision has also created significant uncertainty for the States and their licensing boards.

(8) Some States have responded to the decision in North Carolina Board of Dental Examiners by establishing a layer of bureaucratic oversight that merely monitors board actions for consistency with State licensing laws. This response is a missed opportunity for reform, as it does not address the specific competition concern raised in North Carolina Board of Dental Examiners or the underlying problems with over-reliance on occupational licensure as a regulatory approach and with overly broad enforcement of licensing laws as a means to regulate commercial activities outside an occupation's scope of practice.

(9) Legislation is necessary to clarify the requirements of active supervision, both to offer States a clear and certain mechanism to immunize their occupational boards and to make clear that mere bureaucratic oversight to ensure consistency with State licensing laws does not suffice to confer immunity.

(10) This Act is intended to offer States a choice between two alternative routes to achieve immunity for their occupational licensing boards—either establishing a mechanism for meaningful active supervision of licensing boards by State officials or establishing a mechanism for meaningful judicial review of board actions in the State courts.

SEC. 3. Definitions.

In this Act:

(1) CERTIFICATION.—The term "certification" means a voluntary program under which—

(A) a private organization (in the case of private certification) or the government of a State (in the case of government certification) authorizes an individual who meets certain personal qualifications to use "certified" as a designated title with respect to the performance of a lawful occupation; and

(B) a non-certified individual may perform the lawful occupation for compensation but may not use the title "certified".

(2) GOOD FAITH.—The term "good faith", with respect to performance—

(A) means diligent performance that is directed towards achieving the policies set forth in this Act;

(B) does not include performance that is—

(i) designed to subvert or evade the policies set forth in this Act; or

(ii) carried out in a manner that has the systematic effect of subverting or evading the policies set forth in this Act; and

(C) refers to an objective, rather than subjective, standard.

(3) LAWFUL OCCUPATION.—The term "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 the goods or services is subject to occupational licensing laws.

(4) LEAST RESTRICTIVE REGULATION.—The term "least restrictive regulation" means, from least to most restrictive:

(A) One or more of the following, each of which shall be considered equally restrictive:

(i) Market competition.

(ii) Industry or consumer-related ratings and reviews.

(iii) Private certification.

(iv) A specific private civil cause of action to remedy consumer harm.

(v) A deceptive trade practice act.

(vi) A regulation of the process of providing the specific goods or services to consumers.

(vii) Inspections.

(viii) Bonding or insurance.

(ix) Registration.

(x) Government certification.

(B) Specialty occupational license for medical reimbursement.

(C) Occupational license.

(5) LESS RESTRICTIVE ALTERNATIVES TO OCCUPATIONAL LICENSING.—The term "less restrictive alternatives to occupational licensing"—

(A) means regulations that achieve the public health or safety goals asserted by the government to justify licensing while imposing a less onerous restriction on entry into the marketplace; and

(B) includes the alternative forms of regulation described in paragraph (4)(A).

(6) MEMBER, OFFICER, OR EMPLOYEE.—The term "member, officer, or employee", with respect to an occupational licensing board, means an individual appointed by a State to the board.

(7) OCCUPATIONAL LICENSE.—The term "occupational license" means a nontransferable authorization under law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by the State government.

(8) OCCUPATIONAL LICENSING BOARD.—The term "occupational licensing board" or "board" means an entity established under State law—

(A) the express purpose of which is to regulate the personal qualifications required to engage in or practice a particular lawful occupation;

(B) that has authority conferred by State law to interpret or enforce the occupational licensing laws of the State; and

(C) not less than ⅔ of the members of which are appointed by an elected official of the State.

(9) OCCUPATIONAL LICENSING LAW.—The term "occupational licensing law"—

(A) means a State statute that allows an individual to work in a lawful occupation and use an occupational title; and

(B) does not include a business license, facility license, building permit, or zoning and land use regulation, except to the extent that the law regulates an individual's personal qualifications to engage in or practice a lawful occupation.

(10) OCCUPATIONAL REGULATION.—The term "occupational regulation"—

(A) means a statute, rule, practice, policy, or other law that substantially burdens an individual's ability to work in a lawful occupation;

(B) includes a regulation requiring registration, certification, or an occupational license; and

(C) does not include a business license, facility license, building permit, or zoning and land use regulation except to the extent that such a requirement or restriction substantially burdens an individual's ability to work in a lawful occupation.

(11) PERSONAL QUALIFICATIONS.—The term "personal qualifications" means criteria related to an individual's personal background and characteristics, including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal history, and completion of continuing education.

(12) REGISTRATION.—The term "registration" means a requirement that an individual give notice to the government of a State that may include—

(A) the individual's name and address;

(B) the individual's agent for service of process;

(C) the location of the activity to be performed; and

(D) a description of the service the individual provides.

(13) SPECIALTY OCCUPATIONAL LICENSE FOR MEDICAL REIMBURSEMENT.—The term "specialty occupational license 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 medical services based on meeting personal qualifications established by the State legislature.

(14) STATE.—The term “State” means—

(A) each of the several States; and

(B) the District of Columbia.

SEC. 4. Antitrust immunity.

(a) In general.—Subject to subsection (b), the Sherman Act (15 U.S.C. 1 et seq.) shall not apply to any action of an occupational licensing board of a State, or any action of a member, officer, or employee of the board acting in the official capacity of that member, officer, or employee, if—

(1) the requirements under section 5 of this Act are satisfied; or

(2) the requirements under section 6 of this Act are satisfied.

(b) Requirement of good faith.—The immunity provided under subsection (a) shall not apply to any action of an occupational licensing board of a State, or any action of a member, officer, or employee of the board acting in the official capacity of that member, officer, or employee, unless the State acts in good faith to perform the applicable requirements under section 5 or 6.

(c) Existing entities or procedures.—The fact that a State governmental entity or procedure was established before the date of enactment of this Act shall not prevent an occupational licensing board of the State, or a member, officer, or employee of that board, from qualifying for immunity under subsection (a) if the State governmental entity or procedure satisfies the applicable requirements under section 5 or 6.

(d) Savings clause.—The immunity provided under subsection (a) shall not apply to an action unrelated to regulating the personal qualifications required to engage in or practice a lawful occupation, such as rules of an occupational licensing board governing minimum prices or residency requirements.

SEC. 5. Active supervision.

(a) In general.—The immunity under section 4(a) shall apply to any action of an occupational licensing board of a State, or any action of a member, officer, or employee of that board acting in the official capacity of that member, officer, or employee, if—

(1) the actions of the occupational licensing board or member, officer, or employee are authorized by a non-frivolous interpretation of the occupational licensing laws of the State;

(2) the State adopts a policy of using less restrictive alternatives to occupational licensing to address real, substantial threats to public health, safety, or welfare, in accordance with subsection (b) of this section; and

(3) the State enacts legislation providing for active supervision of the actions of an occupational licensing board and any member, officer, or employee of such a board, in accordance with subsection (c) of this section.

(b) Policy.—The State shall adopt a policy providing that—

(1) occupational licensing laws should be construed and applied to—

(A) protect public health, safety, and welfare; and

(B) increase economic opportunity, promote competition, and encourage innovation;

(2) regulators should displace competition through occupational licensing laws only if less restrictive alternatives to occupational licensing will not suffice to protect consumers from real, substantial threats to public health, safety, or welfare; and

(3) an occupational licensing law should be enforced against an individual only to the extent the individual sells goods or services that are included explicitly in the statute or regulation that defines the occupation's scope of practice.

(c) Active supervision.—

(1) IN GENERAL.—The legislation enacted under subsection (a)(3) shall satisfy each of the requirements under this subsection.

(2) DAY-TO-DAY SUPERVISION.—

(A) ESTABLISHMENT OF OFFICE OF SUPERVISION OF OCCUPATIONAL BOARDS.—The State shall establish an Office of Supervision of Occupational Boards (referred to in this subsection as the "Office") to review the actions of occupational licensing boards to ensure compliance with the policy adopted under subsection (b).

(B) DUTIES.—The Office shall—

(i) review and explicitly approve or reject in writing any occupational regulation proposed by a board before the board may adopt or implement the occupational regulation;

(ii) play a substantial role in the development of a board's rules and policies to ensure they benefit consumers and do not serve the private interests of providers of goods and services regulated by the board;

(iii) disapprove in writing the use of any board rule or policy relating to an occupational regulation and terminate any enforcement action, including any such action pending on the date of enactment of this Act, that is inconsistent with the policy adopted under subsection (b);

(iv) exercise control over each board by reviewing and affirmatively approving in writing only occupational regulations that are consistent with the policy adopted under subsection (b);

(v) use the analysis conducted under paragraph (5) and conduct reasonable investigations to gain additional information, including about less restrictive regulatory approaches, to promote compliance with subsection (b);

(vi) (I) be staffed by not less than 1 attorney; and

(II) prohibit attorneys working in the Office from providing general counsel to any board; and

(vii) (I) approve board actions explicitly in writing, rather than implicitly; and

(II) clearly establish that silence or inaction does not constitute approval.

(3) INTERNAL REVIEW.—

(A) COMPLAINT.—The State shall establish a mechanism under which a person who is a resident of or has a license to operate a business in the State may file a complaint with the Office about an occupational regulation of an occupational licensing board in the State that the person believes is inconsistent with the policy adopted under subsection (b).

(B) OFFICE RESPONSE.—Not later than 90 days after the date on which a person files a complaint under subparagraph (A), the Office shall—

(i) investigate the complaint;

(ii) identify remedies and instruct the board to take action, where appropriate; and

(iii) respond in writing to the complainant.

(C) REVIEW.—The State shall establish a mechanism for review of a determination made by the Office under subparagraph (B), under which a complainant may appeal the determination to the general division of the trial court of the State if the challenged occupational regulation would substantially burden the complainant's ability to—

(i) engage in a lawful occupation; or

(ii) employ or contract other individuals for the performance of a lawful occupation.

(4) RIGHT TO RAISE DEFENSE.—

(A) IN GENERAL.—The State shall authorize an individual to assert as a defense, in any administrative or judicial proceeding to enforce an occupational regulation, that the regulation does not comply with the policy adopted under subsection (b).

(B) PROCEDURES.—In a proceeding described in subparagraph (A)—

(i) an individual who asserts a defense under this paragraph has the initial burden of proof that the occupational regulation being enforced substantially burdens the individual's ability to engage in a lawful occupation;

(ii) if an individual meets the burden of proof under clause (i), the State shall be required to demonstrate by clear and convincing evidence that the occupational regulation—

(I) advances an important government interest in protecting against real, substantial threats to public health, safety, or welfare; and

(II) is substantially related to achievement of the important government interest described in subclause (I), in light of the availability of less restrictive alternatives to occupational licensing; and

(iii) in reviewing an alleged violation of the policy adopted under subsection (b), an administrative agency or a court—

(I) shall make its own findings of fact and conclusions of law;

(II) may not rely on a legislative finding of fact presented in admissible form to the agency or court; and

(III) may not grant any presumption to a legislative determination—

(aa) of harm to public health, safety, or welfare; or

(bb) that the occupational regulation is substantially related to achievement of the important government interest described in clause (ii)(I).

(5) PERIODIC ADVISORY REVIEW.—

(A) IN GENERAL.—The State shall establish a mechanism for periodic non-binding review of existing occupational regulations, and non-binding review of new proposed

occupational regulations, to ensure that the occupational regulations comply with the policy adopted under subsection (b).

(B) SCOPE OF REVIEW.—The entity conducting the review under subparagraph (A)—

(i) shall publish an annual written report encompassing approximately 20 percent of the occupations subject to occupational regulations within the State, such that the entity will review all occupational regulations within the State during each 5-year period; and

(ii) shall publish a written report assessing any proposed occupational licensing law, or other proposed law that would expand the authority of an occupational licensing board to impose occupational regulations, before the proposed law is submitted to a vote by the State legislature.

(C) REQUIREMENTS FOR ANALYSIS.—In conducting the review required under subparagraph (A), the entity shall—

(i) determine whether the law or other regulation satisfies the policy adopted under subsection (b) of using the least restrictive regulation necessary to protect consumers from real, substantial threats to public health, safety, or welfare;

(ii) evaluate the effects of the law or other regulation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs, and other effects;

(iii) compare the law or other regulation to whether and how other States regulate the applicable occupation; and

(iv) if the applicable occupation is subject to an occupational licensing law, evaluate—

(I) the feasibility of entering into reciprocity compacts with one or more other States to improve worker mobility and labor market flexibility; and

(II) the advisability of endorsing occupational licenses granted by other States to spouses of active service military members as if those occupational licenses were granted by the State conducting the review.

SEC. 6. Judicial review.

(a) In general.—The immunity under section 4(a) shall apply to any action of an occupational licensing board of a State, or any action of a member, officer, or employee of that board acting in the official capacity of that member, officer, or employee, if—

(1) the actions of the occupational licensing board or member, officer, or employee are authorized by a non-frivolous interpretation of the occupational licensing laws of the State;

(2) the State adopts a policy of using less restrictive alternatives to occupational licensing to address real, substantial threats to public health, safety, or welfare, in accordance with section 5(b); and

(3) the State enacts legislation providing for judicial review of occupational licensing laws, in accordance with subsection (b) of this section.

(b) Judicial review legislation.—Legislation enacted by a State under subsection (a)(3)—

(1) shall—

(A) prohibit the State and any occupational licensing board from imposing an occupational licensing law unless the State—

(i) identifies an important government interest in protecting against real, substantial threats to public health, safety, or welfare; and

(ii) demonstrates that the occupational licensing law is substantially related to achievement of the important government interest described in clause (i), in light of the availability of less restrictive alternatives to occupational licensing;

(B) provide an affirmative defense against enforcement of any occupational licensing law of the State under which the State shall be required to demonstrate that the standard under subparagraph (A) has been met;

(C) establish a cause of action under which—

(i) a person may bring an action for injunctive relief against enforcement of an occupational licensing law of the State;

(ii) the plaintiff bears the initial burden to prove that the challenged occupational licensing law substantially burdens the plaintiff's ability to engage in a lawful occupation; and

(iii) once the plaintiff makes the initial showing under clause (ii), the State is required to demonstrate that the standard under subparagraph (A) has been met;

(D) provide for an award of reasonable costs and attorney fees to a person who successfully challenges the application of an occupational licensing law of the State by—

(i) raising an affirmative defense under subparagraph (B); or

(ii) bringing an action under subparagraph (C); and

(E) provide for independent judicial review of the occupational licensing laws of the State to ensure that the standard set forth in subparagraph (A) has been met; and

(2) may not authorize a court to—

(A) uphold enforcement of an occupational licensing law of the State simply because the court believes the law is rationally related to a legitimate governmental purpose;

(B) rely on hypothetical risks to public safety, not substantiated by evidence in the record, to uphold enforcement of an occupational licensing law of the State;

(C) defer to factual or legal conclusions of another person or entity, rather than exercising independent review; or

(D) rely on a post hoc justification for the action of an occupational licensing board that was not put forward by the board at the time of the challenged action.

(c) Rule of construction.—Nothing in subsection (b) shall be construed to require legislation enacted by a State under subsection (a)(3) to provide a right to recover monetary damages, other than reasonable costs and attorney fees as provided under subsection (b)(1)(D).

Business & Professional License Facilitation Task Force Report Created by Senate Bill 772

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Business and Professional License Facilitation Task Force

TASK FORCE MEMBERS:

Senate Appointees:
Senator David Fuller Holt
Senator Charlie Laster
Senator Dan Newberry

House Appointees:
Representative Joe Dorman
Representative Jason Murphey
Representative Aaron Stiles

Governor's Appointees and Other Members:
Carlos E. Johnson (Chairman)
Jimmy Bruza (Vice-Chairman)
Preston Doerflinger, Director of Office of State Finance and Secretary of Finance and Revenue
James Hasenbeck
Timothy Ince
Dave Lopez, Secretary of Commerce
Alex Pettit, Chief Information Officer
Dan Ramsey
Cliff Stout

Appointee and Member Designees:
Chris Sherman, for Secretary Doerflinger
Vikki Dearing, for Secretary Lopez
Lisa McKeithan, for Chief Information Officer Pettit

OSF Task Force Staff
Brandy Manek
C.J. Co

Task Force Meeting Dates & Location:

October 1, 2011, Task Force appointed and formalized by the Governor

October 17, 2011, 1:30 pm to 3:00 pm, 9417 N. Kelley, Oklahoma City

October 25,2011,4:30 pm to 3:00pm, Subcommittee Teleconference Call

November 1, 2011, 1:30pm to 3:00pm, 9417 N. Kelley, Oklahoma City

November 1, 2011, Subcommittee appointed to draft report

- Subcommittee of three met on various dates to draft the report

January 13,2012, 1:30pm to 3:00pm, 9417 N. Kelley, Oklahoma City, Task Force met to review the draft report and voted to finalize the report with amendments

Introduction

The TASK FORCE was instituted by SB772 and was organized to meet Governor Fallin's stated objectives of

- business and citizen friendly customer service,
- implementation of a One-Stop-Shop approach to business and professional licensing,
- licensing entities that are self-supporting (i.e. do not receive state appropriations), and
- limiting the growth of state government.

These objectives also meet those stated by the legislature.

SB772 Key Points

"The task force shall study the existing governmental models of Florida, Ohio and other states that have established a central contact point or agency for the facilitation of the majority of business and professional licenses and applications. The task force shall additionally evaluate the feasibility of establishing a similar governmental model in this state including, but not limited to:

1. Identify the infrastructure design and key agency authority which would be required to establish a central point administration for the majority of business and professional licenses in this state;

2. Identify potential areas of consolidation and modifications to existing agency authority which would be required to create a more centralized business and professional license contact point in this state;

3. Analyze and identify the fiscal impact and any potential expense or cost savings which may be incurred should this state reconfigure agencies or their existing authority to create a centralized business and professional license contact point;

4. Analyze the most business and citizen friendly manner, whether by phase in method or complete reconfiguration, which would be most beneficial to this state and its citizens in creating a more centralized business and professional license contact point;

5. Specify the modifications and amendments to existing law and the agencies and governmental functions which would be necessary to implement a centralized governmental model in this state within the next two (2) years."

Task Force Findings

Study of the existing governmental models of Florida, Ohio, and other states that have established a central contact point or agency for the facilitation of the majority of business and professional license and applications

The Task Force examined the existing governmental models of the states of Utah, Florida, and Ohio. The Task Force determined Utah's government model as the most business and citizen friendly model which would be most beneficial to the State of Oklahoma and its citizens in creating a more centralized business and professional license contact point. Utah's "one-stop-shop" is summarized in Figure 1 below:

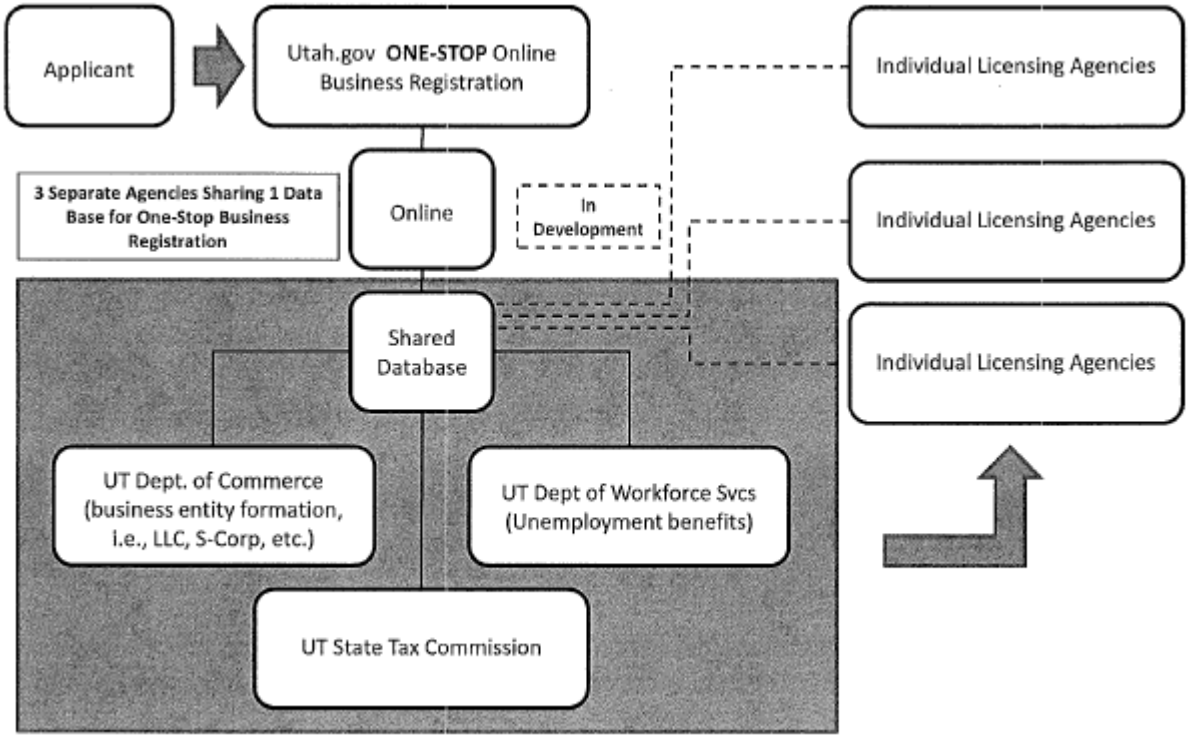

Fig.I, Utah's one-stop-shop model. *An applicant may visit Utah.gov online and enter his individual or business information one time. The shared database of 3 separate agencies (Department of Commerce for business entity formation, Department of Workforce Services for unemployment benefits, and State Tax Commission) provides the registrant with the specific information unique to his business needs. If the applicant is required to obtain an individual license for his industry, the customer is provided the contact information of a specific licensing agency. The next phase of the Utah one-stop-shop model is the incorporation of the individual licensing agencies' information into the current database. Therefore, all the applicant's needs would truly be provided in a "one-stop- shop."*

Utah

Key Features of the Utah Model:

1. Utah's model is a dynamic application process where applicants are presented only the questions that pertain to the type and nature of the business being registered. After responding to ce1tain questions regarding the nature of the applicant's business, the applicant only receives questions specific to them. For instance, if the applicant does not indicate there will be any employees, the applicant will not be presented with any employer/employee related questions. **If** the applicant is a sole proprietorship, there will be no questions pertaining to corporations.

2. As a one-stop approach, applicants are not burdened to submit the same information over and over to various participating agencies and cities where the applicant will do business. The information collected in the application is downloaded to all participating government entities assuring the same identifying information are used for the same applicant.

3. The online system operates 24x7 allowing the applicant to submit their applications at the time most convenient to them, even after normal business hours, on weekends, holidays, etc.

4. The application will hold the information submitted for up to 120 days, allowing applicants to gather information necessary to register, even if not readily available when beginning the process. A check list of information needed is provided at the beginning of the online application session.

5. Applicants cannot submit incomplete applications. Each required field must contain an entry or the application cannot be submitted. This minimizes the need to reject applications due to missing information and allows the registration process to be completed as quickly as possible.

6. The application can determine the appropriate local city jurisdiction for any local business license needs based on address information entered by the applicant and validating it using the state's geographic referencing web service. This avoids confusion as to the proper city where the applicant will also need to register. **It** also helps ensure that the applicant obtains applicable city license(s).

Benefits Realized -Businesses

1. Answers submitted on the applications are legible and complete and there is little to no risk of having an application rejected because of missing or illegible information.

2. As an online application, Utah government offices are essentially open for business to register applicants at any time of the day and on any day of the year.

3. Since the applicant can register for multiple agencies and cities without the need to travel to each individual entity, there is a great savings in time, traffic congestion and frustration, and parking and gasoline costs.

4. Businesses expect government services to be provided via the web and to be easy to use. One- stop business registration helps to meet that expectation and removes one of the most common traditional barriers to doing business with government – filling out a lot of paper forms and traveling from government office to government office.

Benefits Realized – State and Local Governments

1. Participating state and local governments actually receive many of the same benefits accruing to businesses using the system and in the same form.

2. Each participating governmental entity has realized reduced processing costs with the electronically submitted information versus information submitted on paper based forms. Each has seen an increase in the accuracy and speed in processing license applications.

3. Applicant data can be introduced into the data systems faster than with tradition paper forms that must be manually entered. Faster processing means fewer telephone calls and e-mails requesting the status of individual applications. Lost or delayed forms are no longer a problem for applicants using the online service.

4. Cities have seen an increase in the number of business applicants at their level. Many business applicants are aware of state licensing requirements but often overlook their local licensing requirements, or they may not even be aware of them. The cities appreciate getting business license information at the same time the state agencies receive this data.

Desired Enhancements

1. Utah would like to see more local governments become participating members. This would allow more businesses to receive a greater value of a one stop application, especially when they are operating in multiple cities in the state.

2. Utah would like to have a more predictable funding source, especially to pay for the costs of upgrades and version changes. They have looked at several models – partner assessment based on size of the entity, partner assessment based on the number of transactions processed, a fee to the applicant, etc. Complicating the issue is that state statutes prohibit the charging of a fee to certain agency participants. Also, the different city partners have a variety of budget and funding requirements, and upgrade costs are often not known

in time to meet the budget deadlines of the partners. Currently, the three major state agencies (Department of Commerce, Department of Workforce Services, and State Tax Commission) cover the bulk of the costs, and they ask the cities to contribute an amount, and the agencies do the best they can with limited resources.

Based on the limited time available, the Task Force determined that among the states that have established a central contact point or agency for the facilitation of the majority of business and professional licenses and applications, Utah's efficient and user-friendly features of its one-stop-shop, shared-database model made it the best model for the State of Oklahoma.

Florida

The Task Force closely examined the Florida one-stop-shop model and determined that it would not benefit the State of Oklahoma as well as Utah's more efficient and more user-friendly model. Although Florida's official state website (www.myflorida.com) serves as a portal for business and professional licensing, applicants are burdened to submit the same information multiple times to various participating agencies and cities where they will do business. Florida's model is summarized in Figure 2 below:

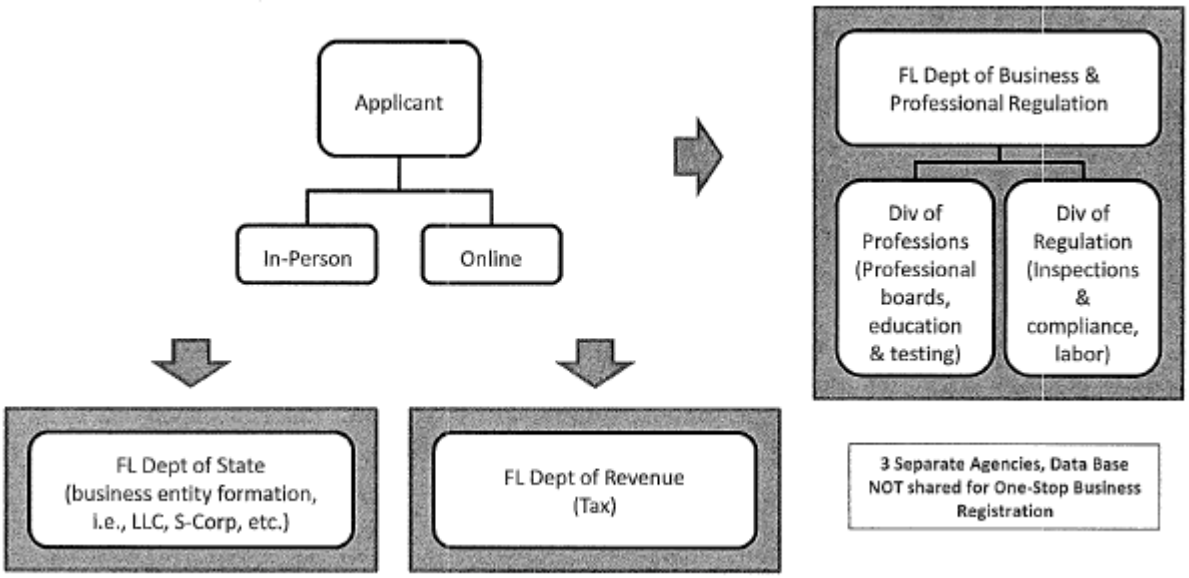

Fig.2, Florida's model. *An applicant may visit myflorida.com online or visit individual state agencies to apply. Links are provided online for separate websites where an applicant may obtain required applications and registrations from the Department of State for business entity formation (LLC, S- Carp, etc.), the Department of Revenue for tax filing, and the Department of Business and Professional Regulation (DBPR) for professional licensing. The various licensing boards are housed under the Florida DBPR. The three agencies mentioned do not have a shared database for applicant information. Therefore, an applicant must deal with each agency separately.*

The Florida Department of State, Division of Corporations, is the agency where an applicant files a "Fictitious Name" registration. Owners conducting business under a name other than their own must file, even if the name seems very similar. Corporations, partnerships, limited liability companies and trademarked names do not have to file.

The Florida **DBPR** is the agency charged with licensing and regulating businesses and professionals in the State of Florida, such as cosmetologists, veterinarians, real estate agent and pari-mutuel wagering facilities. DBPR includes the Division of Professions and Division of Regulation.

The DBPR Division of Professions is responsible for licensing nearly half a million professionals. The Division administers 12 professional boards, five Department-regulated professions and one council. Each board office is responsible for the administrative functions of its board and for coordinating support functions provided by the Department, including establishing meeting dates and locations, compiling and preparing agendas, noticing meetings in the Florida Administrative Weekly and ensuring the effective operation of board meetings and board business. After a board meeting, staff is responsible for notifying the Bureau of Education and Testing and the Central Intake Unit of all application approvals and denials, preparing executive summaries and meeting minutes.

The DBPR Division of Professional Regulation is responsible for licensing and regulating individual professional licenses primarily through regulatory boards administratively housed within the Department. This side of the agency is responsible for licensing a diverse group of professions, including real estate appraisers, brokers and sales associates, certified public accountants, boxers, community association managers, construction and electrical contractors, child and farm labor contractors, cosmetologists, geologists and veterinarians. The Deputy Secretary of Professional Regulation administers these agency divisions.

After close examination of the Florida model, the Task Force determined that Florida created new agencies such as the DBPR and consolidated office services. The labor force did not appear to be reduced; agencies were simply reorganized and personnel relocated. In addition, an applicant is still not provided a true one-stop-shop experience for business and professional licensing which is inefficient.

Ohio

Research by the Task Force staff determined that the Ohio model is similar to Oklahoma's model through the Department of Commerce web portal. "Ohio.gov" simply serves as a web portal with frequently asked questions and links to other websites for business entity filing (LLC, S-Corps, etc.), tax, unemployment, and professional licensing. The Ohio model's similarity to Oklahoma's current model does not bring added value to the goal of the Task Force.

Identification of the infrastructure design and key agency authority which would be required to establish a central point administration for the majority of business and professional licenses in Oklahoma

The diversity of license types and organizations administering the licenses would require an in depth study to make correlations between operations and types of licenses to make an informed recommendation for consolidation. Professional licensing is very different than trade type of licenses and permits. A number of other types of licensing requirements and licensing functions were discussed or information provided to the Task Force that would necessitate a broadening of the scope and time available to this Task Force before a valid recommendation could be made regarding consolidation of agencies. Time and resource constraints did not allow the Task Force to study this further.

Analysis and identification of the fiscal impact and any potential expense or cost savings which may be incurred should this state reconfigure agencies or their existing authority to create a centralized business and professional license contact point

Due to time and resource constraints, the Task Force was unable to analyze and identify the fiscal impact and any potential expense or cost savings which may be incurred should this state reconfigure agencies or their existing authority to create a centralized business and professional license contact point.

Specification of modifications and amendments to existing law and the agencies and governmental functions which would be necessary to implement a centralized governmental model in this state within the next two (2) years

Due to time and resource constraints, the Task Force was unable to specify the modifications and amendments to existing law and the agencies and governmental functions which would be necessary to implement a centralized governmental model in this state within the next two (2) years.

Task Force Recommendations

Task Force recommendation and evaluation of the feasibility of establishing a similar governmental model in the State of Oklahoma.

The sixty-day time frame and non-budgeted endeavor to hire professional consultants only allowed the Task Force to evaluate the feasibility of establishing a similar governmental model in Oklahoma similar to the State of Utah. The Task Force was unable to identify the infrastructure design and key agency authority which would be required to establish a central point administration for the majority of business and professional licenses in this state. However, the Task Force's examination of the Utah model suggests that it is the best design to serve the State of Oklahoma. The Task Force suggests a model similar to Utah's one-stop-shop as shown in Figure 3 below:

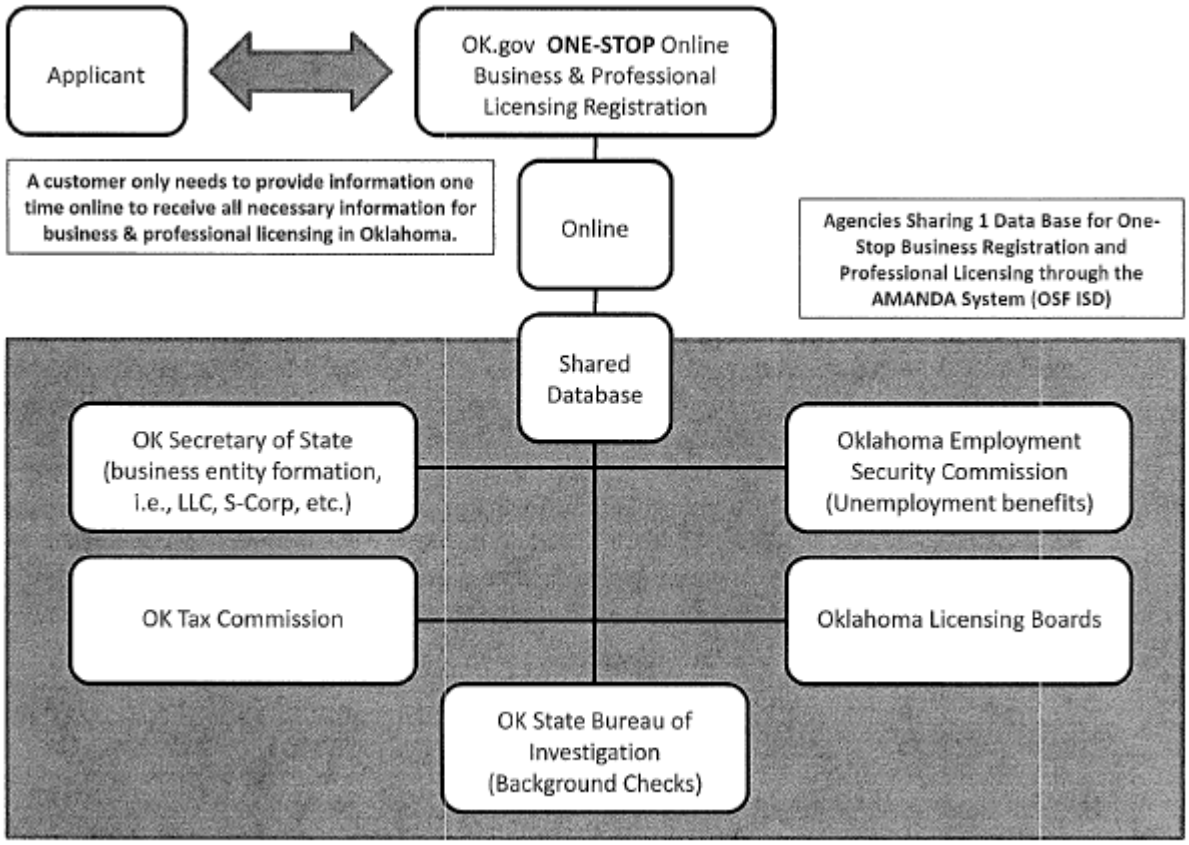

Fig.3, Oklahoma's proposed one-stop-shop model. *An applicant may visit OKgov online and enter individual or business information one time. The shared database of multiple agencies (Secretary of State for business entity formation, Tax Commission, Oklahoma Employment Security Commission for unemployment benefits, State Bureau of Investigation for background checks, and the individual Oklahoma licensing boards for business and professional licensing) provides the applicant with specific information unique to business and licensing needs. The applicant will only need to provide information one time. Therefore, all the customer's needs would truly be provided in a "one-stop-shop.*

The Task Force expects that the Oklahoma model will be implemented utilizing a phased approach that consists of:

1. Establish One-Stop-Shop functionality where applicants can determine licensing/permitting requirements for a specified business area. The Task Force would expect the same realized benefits that Utah has attained for individuals, businesses, and both state and local governments in the State of Oklahoma. The key to the Oklahoma model would be a shared database among the following key agencies for business and professional licensing accessible through OK.gov:

   Oklahoma Secretary of State -business entity formation
   Oklahoma Tax Commission (OTC)-state tax requirements
   Oklahoma Employment Security Commission (OESC)- unemployment benefits

   Following the Utah model, applicants on "OK.gov" would be presented only the questions that pertain to the type and nature of the business they are registering. After responding to certain questions regarding the nature of their business, they only receive questions specific to them. For instance, if the applicant does not indicate they will have any employees, they will not be presented with any employer/employee related questions. If they are a sole proprietorship, they will not receive any questions pertaining to corporations.

2. Integrate the One-Stop-Shop with the licensing system. For those agencies already exposed through the State's portal, the applicable business and professional licenses will be integrated with the one-stop-shop solution.

   Applicants would not be burdened to submit the same information over and over to various participating agencies and cities where they will do business. The information collected in the application would be downloaded to all participating government entities assuring the same identifying information are used for the same applicant.

The online system would operate 24x7 allowing the user to submit their applications at the time most convenient to them, including after normal business hours, on weekends, holidays, etc.

The application will hold the information submitted for a yet to be determined number of days, allowing applicants to gather information necessary to register, even if not readily available when they begin the process. A check list of information needed is provided at the beginning of the online application session.

Users cannot submit incomplete applications. Each required field must contain an entry or the application cannot be submitted. This minimizes the need to reject applications due to missing information and allows the registration process to be completed as quickly as possible.

3. Implement the enterprise licensing solution (AMANDA). The Office of State Finance will develop an implementation strategy for the roll-out of the enterp1ise licensing solution starting with those agencies that do not have a current (online) system or who have been granted exemptions and then working with those agencies that need to retire legacy systems.

   The implementation of the enterprise licensing system will provide additional integrations with the following key entities to streamline the licensing process:

   Oklahoma State Bureau of Investigation (OSBI)-required background checks Various Oklahoma Licensing Boards-individual business and professional licensing Office of State Finance, Information Services Division (ISD)- AMANDA

4. Roll-out the One-Stop-Shop and enterprise licensing product to local municipalities. Once implemented at the state level, we should assess the interest in rolling out the product to local governments. This would allow cities and counties to include its licensing requirements on the State portal and allow the applicant to see local licensing and pe1mitting requirements.

Additional Task Force Recommendations

The Task Force recommends identifying the importance of having a funding stream that will support the on-going system costs. A portion of the fees collected by licensing, pe1mitting and registration agencies should be set aside for the implementation, maintenance and upgrade of the common database system.

The Task Force recommends limiting the growth of government through:

- The use of a common business registration and licensing system and infrastructure to be administered by the Office of State Finance. This will eliminate redundant processing and focus state resources as well as provide a common look-and-feel and user-friendly interface for the customer.

- The utilization of shared services for common administrative functions i.e. accounts payable, payroll, information technology.

The Task Force recommends that professional licensing and enforcement issues continue to be managed by existing licensing boards.

Recommended Readings

Institute for Justice (IJ): "License to Work" Study (IJ analysis on occupational licensing and specific state data)
http://ij.org/report/license-to-work/

Obama Whitehouse: Strategic Research cited by the Obama Whitehouse Council of Economic Advisors, Department of the Treasury and Department of Labor
https://obamawhitehouse.archives.gov/the-press-office/2016/06/17/fact-sheet-new-steps-reduce-unnecessary-occupation-licenses-are-limiting

Obama Whitehouse: New Data Show that Roughly One-Quarter of U.S. Workers Hold an Occupational License (provides data on the increase in the number of licenses over time and how licensure correlates to education, migration, income, etc.) https://obamawhitehouse.archives.gov/blog/2016/06/17/new-data-show-roughly-one-quarter-us-workers-hold-occupational-license

Foundation for Government Accountability: Freedom to Prosper Research Program (provides numerous resources including suggested legislation, data and interviews from other state actions, and suggested policies to reduce licensure burdens)
https://thefga.org/solution/freedom-to-prosper/

Heritage Foundation: Understanding the Data on Occupational Licensing (provides background information on various licenses, particularly their frequency, across the nation)
http://www.heritage.org/jobs-and-labor/report/understanding-the-data-occupational-licensing

Brookings: Occupational Licensing and American Workers (a comprehensive report on occupational licensing and its general consequences on aspects like wages, unemployment, and migration)
https://www.brookings.edu/wp-content/uploads/2016/07/occupational_licensing_and_the_american_worker.pdf

Little Hoover Commission: Jobs for Californians: Strategies to Ease Occupational Licensing Barriers (CA Commission detailed report on occupational licensing, including its effects, particularly on special groups, alternatives to licensing, and proposed solutions)
http://www.lhc.ca.gov/report/jobs-californians-strategies-ease-occupational-licensing-barriers

Federal Trade Commission: The Cost and Benefits of Occupational Regulation (a report discussing the economic theories behind the cost and benefits of occupational regulation and the alternatives to licensing)
https://www.ftc.gov/system/files/documents/reports/costs-benefits-occupational-regulation/cox_foster_-_occupational_licensing.pdf

Supreme Court of the United States: North Carolina State Board of Dental Examiners v Federal Trade Commission (case holding against state immunity for board decisions made without adequate state supervision if a controlling number of the board are market participants)
https://www.supremecourt.gov/opinions/14pdf/13-534_19m2.pdf

Harvard Law Review: North Carolina State Board of Dental Examiners v FTC (case summary and analysis on legal consequences)
http://harvardlawreview.org/2015/11/north-carolina-state-board-of-dental-examiners-v-ftc-2/

CBS Money Watch: FTC: Occupational Licenses are Out of Control (reporting on how the new acting chair of the FTC plans to push back against the recent increase in occupational licensing)
http://www.cbsnews.com/news/the-ftc-says-occupational-licenses-are-out-of-control/

Trump's Labor Secretary Targets Occupational Licensing for Reform (explaining the position the new administration takes on occupational licensing)
http://dailycaller.com/2017/07/21/trumps-labor-secretary-targets-occupational-licensing-for-elimination/

Colorado's Occupational Licensing Database
https://choosecolorado.com/occupational-license-database/

Occupational Licensing Policy Learning Consortium Homepage
http://www.ncsl.org/research/labor-and-employment/request-for-applications.aspx