



**2017**

# Occupational Licensing Review

PROGRESS AND BARRIERS TO CREATING  
MORE AND BETTER JOBS



**STRONG  
JOBS  
NEBRASKA**

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## Introduction

America is known as the land of opportunity and the land of the free. Likewise, Nebraska is known for offering everyone opportunities to live the Good Life. For many, these freedoms mean having the ability to pursue the vocation of their choice. We frequently ask young children, “What do you want to be when you grow up?” A child’s dreams may lead them to learn a skill or receive education in a particular field, and then find employment, or open their own business. Unfortunately, occupational licensing laws stand in the way of many people trying to follow their dreams and career aspirations.

In the 1950s, less than five percent of the workforce required a license. Today, almost 30 percent of jobs require a license nationally, and in Nebraska nearly 200 different jobs require a government license. There are 1,100 occupations that require a license in at least one state, but only 60 occupations are regulated in all 50 states. For example, while physicians are licensed nationwide, Louisiana is the only state that requires a government license for florists.

## The 50-State Small Business Regulation Index ranks Nebraska 44th worst in occupational licensing rules.

### Why Is Occupational Licensing an Issue?

Many of Nebraska’s licensing requirements are more burdensome than its neighboring states and the rest of the country, making it harder to create many higher-wage jobs in Nebraska. Nearly 25 percent of the jobs in Nebraska require a government license. Even if a particular worker does not need government permission to do their job, many of the services they depend on in their daily life may be more expensive or less accessible because of Nebraska’s unnecessary barriers for workers and entrepreneurs.

According to the 50-State Small Business Regulation Index, Nebraska is ranked 44th, or among the ten worst in the country, regarding occupational licensing rules. These burdensome regulations come at a cost. One cost is compliance. License holders must pay in time and money to obtain and retain the license. The other cost is the supply of professionals. Occupational licensing represents a barrier that prevents some people from entering a field. The lower supply, in turn, drives up the price of providing these services to consumers and businesses.

A wide variety of research organizations and industry groups have reached the conclusion that while in some cases licenses may be needed to protect the public, in many instances occupational licensing is a burden to both the licensee and the consumer. By determining who can enter a profession, trade, or business, these regulations benefit current license holders, limiting competition and driving prices up for consumers. Even the Obama Administration decided to look at the research surrounding occupational licensing, publishing a paper finding that licensing laws are costing millions of jobs and artificially raising the prices for Americans by over \$100 billion annually.

FIGURE 1: Trends in Occupational Licensing



## The 2017 Nebraska Legislature

Leading up to the 2017 session, the Platte Institute set the stage in Nebraska for removing barriers and cutting harmful red tape, especially in the area of occupational licensing. At the Platte Institute's 2016 Legislative Summit, Gallup CEO Jim Clifton, the author of *The Coming Jobs War*, spoke about how he considers the nation's birth/death rate of businesses to be a national economic crisis that threatens our ability to create more middle-class jobs. This crisis applies to Nebraska as well. Regulatory reform is first on Clifton's list for freeing entrepreneurs to create new startup businesses. Clifton writes on Gallup.com, "If they want to help, national, state and local governments should stop overwhelming small businesses with new rules and regulations."

At the same event, the Platte Institute honored Brandy McMorris, an Omaha small businesswoman. McMorris, a natural hair braider, successfully advocated for the passage of Legislative Bill 898 in the 2016 legislative session. The new state law makes it possible for Nebraskans to start a job or business offering natural hair braiding services without acquiring a costly state cosmetology license. At the time, Nebraska state law considered braiding hair for pay without a cosmetology license to be a felony. Acquiring the license takes over a year of training unrelated to hair braiding, and can cost up to \$20,000. While the passage of LB898 means hair braiders can now practice their profession freely as in over a dozen other states, these larger requirements for cosmetology are still on the books, leaving Nebraska as one of the hardest states in the country in which to receive a cosmetology license.

**FIGURE 2:** Brandy, a natural hair braider, braiding her daughter's hair.



**FIGURE 3:** Governor Ricketts introducing occupational licensing reform bills with sponsoring senators and supporters.

## Optimism

The convening of the 105th Nebraska Legislature began with a continuation of the momentum that started in 2016 with the exemption of hair braiding from the state's cosmetology license. Senators from all political parties sponsored bills to address issues with occupational licensing in the state. Some called for outright repeal of certain licenses, while others introduced legislation to amend licensure hours, scope of practice, or other specific requirements of licensing for workers.

In addition to individual bills filed, Governor Pete Ricketts, along with numerous state senators, unveiled a legislative package of eight bills early in session that was intended to break down barriers to expand job opportunities across a wide variety of licenses. "Occupational licensing reform helps make state government more effective, efficient, and customer focused," said Governor Ricketts. "Working with my agencies, we were able to identify areas where Nebraska's licensing requirements were onerous or out-of-step with other states. Unnecessary licensing restrictions are a barrier to Nebraskans seeking careers in licensed professions, and especially to those who may be looking for a career change or upward mobility. Removing restrictions will grow job opportunities for Nebraska."

It was clear from the attention given to the issue that occupational licensing was a legislative priority for many. The media reported favorably on the concept, highlighting stories of Nebraskans that had been negatively affected by some of the more onerous regulations. For the first time in Nebraska's 150 year history, occupational licensing reform was being debated in a methodical way with a strong chance for the state to see serious changes and opportunities.

## Successful Reform in 2017

With the help of Nebraska State Senators across political parties, lawmakers passed five occupational licensing and regulatory reform bills that reduced red tape to getting a job or starting a business in Nebraska, all of which passed unanimously. The bills that passed reduced barriers to entry, licensing compliance, expanded the scope of practice, or recognition of out-of-state licenses for various occupations.

### **Real Estate**

LB16 changed the provisions within the Nebraska Real Estate License Act to streamline the procedures and processes for the license applications.

### **Dental Hygienists**

Dental hygienists received an expanded scope of practice thanks to LB18. A new license for dental assistants was also created. While this new license may potentially increase occupational barriers instead of removing them, the legislation at least included a reciprocal agreement for those dental assistants coming from other states.

### **Nurses, Physicians, Audiologists, Military Spouses**

Two health care professions are now facing fewer licensing barriers with the passage of LB88. Previously, audiologists needed to have two licenses; one to practice audiology and another to dispense a hearing aid. Now, these hearing professionals can provide hearing aids under their existing professional license. Military spouses, who frequently relocate, will also receive an expedited temporary license if they arrive in Nebraska with a nursing license from another state. This legislation also adopted the Enhanced Nurse Licensure Compact and Interstate Medical Licensure Compact allowing nurses and physicians to practice in both their home state and other compact states. By being passed as an emergency measure with the full support of the Legislature and governor, these changes took effect immediately.

### **Executive Bank Officers and Loan Officers**

LB140, also passed as an emergency measure, contained provisions to make licensing optional for executive officers at state-chartered banks and loan officers at credit unions. Various types of bank employees who have a responsibility for signing off on transactions are counted as executive officers. One inconsistent aspect of this licensing requirement was that it only applied to banks from Nebraska, meaning two banks on the same street corner could have different requirements to follow.

### **Motor Vehicle Salespeople**

Nebraska's licensing requirement for motor vehicle salespeople will be eliminated later this year with the approval of LB346. In addition to salespeople who work at car dealerships, the annual licensing requirement applies to trailer and motorcycle salespeople. With most states not requiring a license for this job, and car dealerships already holding a separate license, the bill was easily approved by the Legislature.

### **Other Advancements**

Three other licensing reform bills, affecting title examiners, school bus drivers, and horse massage therapists were advanced from committee but were not scheduled for legislative debate in 2017.

## Obstacles to Reform

While Nebraska saw successes in reform for some occupations in 2017, there were other occupations that faced significant obstacles to reform. For most policy issues, the normal obstacles tend to be political parties, yet occupational licensing does not fall into this category. The arguments for and against licensure falls into three groups: (1) those that find the regulations to be unreasonable, (2) those that believe the regulations are necessary to ensure safety and quality for the public, or (3) those that put their personal and/or business interests ahead of the public interest, such as industry members, boards, or current licensees that don't want more competition.

### Legislation That Failed and Why

In 2017, there were a few bills that failed for a number of reasons, including lobbying groups and industry leaders.

*LB 343 – Change credentialing and regulation of cosmetology, nail technology, audiology, massage therapy, and barbers*

This bill's focus was to make Nebraska's regulation of personal care professions consistent with the national mainstream, or at least with neighboring states. A hearing

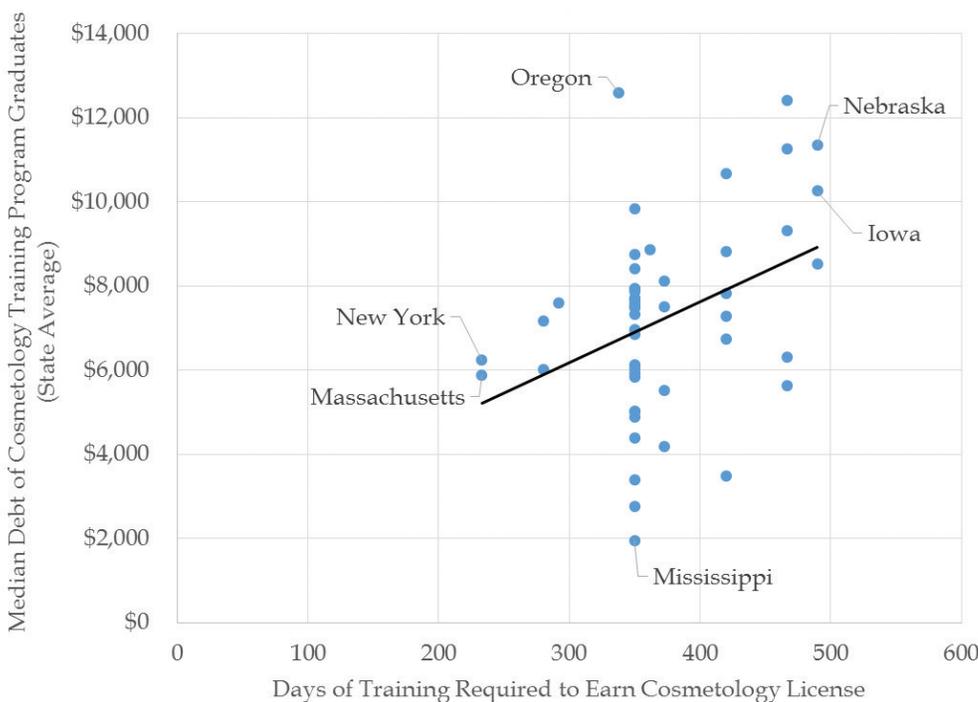
on the comprehensive reform bill showed that many wishing to enter these fields were the most supportive of the measure. Audiologists were supportive of their reform, and that provision was eventually rolled into another piece of legislation.

The primary opponents were from the cosmetology and massage therapy industries, mainly the commercial schools and colleges that provide training, such as Capitol School in Omaha. They felt if the required hours were reduced, then they would have to also lower their program hours, which would ultimately hurt them because they would be collecting less tuition. The national average for training to earn a cosmetology or barbering license is around 1,500 hours. Nebraska requires 2,100 hours, which is the most hours required in the country. Nebraska's cosmetology students carry more debt than those in other states.

Some cosmetology business owners didn't want to lower the required hours fearing there would be more competition. This show of force by an industry made enough Health and Human Services Committee members reluctant to advance the bill to a full debate.

Instead, many of these professions' licenses will now be the subject of interim studies. During this time, more debate

FIGURE 4: Cosmetologists' Training Requirements Versus Debt Burdens, by State



Calculations based on data from the Institute for Justice and the U.S. Dept. of Education. The coefficient on the regression line is 14.4; meaning one day of additional training requirements is associated with \$14.40 more in debt. The R-squared value is 0.14.

and research will be done into each profession, and we can expect to see some new occupational licensing reform bills filed in 2018 to address these licenses, possibly individually.

*LB 348 – Eliminate licensing, an excise tax, and other provisions of the Nebraska Potato Development Act*

Following recommendations from the Department of Agriculture, this bill was aimed at eliminating a license that only one other state, Michigan, has on the books. Nebraska potato shippers are required to obtain a license in order to assess and collect an excise tax of one cent per 100 pounds of potatoes produced, packaged, or shipped.

While the Department and other government officials saw no need for the license, some potato producers and shippers thought otherwise and came to the State Capitol to testify against the legislation. In this case, it wasn't the license that was the main issue, but the state excise tax. The farmers that testified against the legislation said the tax is necessary to help fund research and promote the Nebraska potato industry.

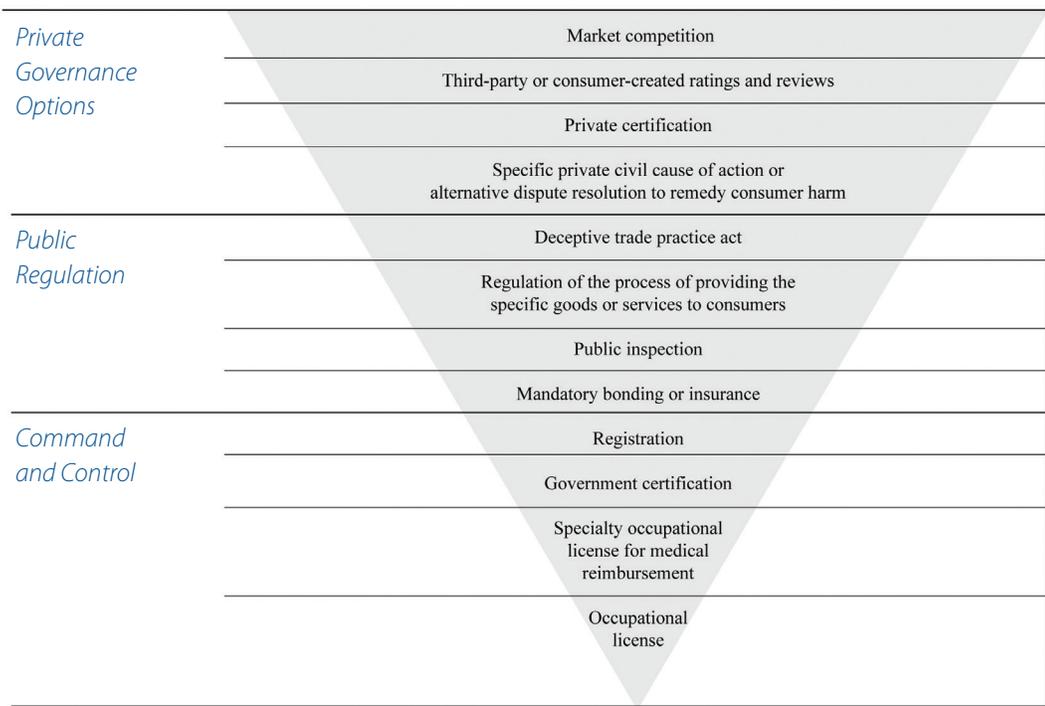
Because many from within the industry that are subject to the tax and license asked to keep it, the committee felt the bill was unnecessary and they decided to indefinitely postpone the legislation.

## Looking Ahead

There is still more work to be done. While some bills passed the Unicameral this session, others are still sitting on the docket to be discussed in the short session. Lawmakers have also decided to continue the conversation with study committees that will take place during the interim of the 2017 and 2018 legislative sessions.

A range of occupations will be discussed in interim study committees this year including farm labor contractors, massage therapy, body art, cosmetology, and others. However, legislation that looks at occupational licensing from a comprehensive approach has still not been advanced. A piecemeal approach is not sufficient when nearly 200 occupations require a license in Nebraska. Legislative Bill 299, the Occupational Board Reform Act, is an example of a comprehensive evaluation to determine which current and future licenses are truly needed to protect the public, or if less restrictive regulatory alternatives may be appropriate. For example, using the inverted pyramid of the least restrictive regulations, certification or registration may be sufficient to demonstrate that a minimum level of competency has been achieved in order to obtain an entry-level position in a given field. While LB299 did not receive the same level of support as other occupational license bills in the 2017 session, this comprehensive approach will

FIGURE 5: Hierarchy of Occupational Regulation Options



Working from the top of the pyramid, state policymakers should consider the least restrictive form of regulation as an alternative to licensing.

be needed if the state wants to be more competitive with regional neighbors and keep individuals from leaving in search of work elsewhere.

The Federal Trade Commission (FTC) sent a letter to senators about occupational licensing reform in March 2017. The letter states the burden of occupational licensing falls hardest on economically disadvantaged citizens, that special interests often use the policies to protect their turf and limit entry to professions, and that Nebraska's lawmakers should create a framework for scrutinizing, reducing, and when possible, eliminating these licensing requirements. A copy of the FTC's letter can be found at [PlatteInstitute.org/Jobs](http://PlatteInstitute.org/Jobs). The American Civil Liberties Union (ACLU) also believes excessive occupational licensing is hurting Nebraska's economy and communities by putting job opportunities out of reach. From the ACLU's perspective, Nebraska's burdensome professional licensing structure has kept people with a conviction of history from contributing to our economy even after serving their time.

Occupational licensing reform is not isolated to Nebraska, with a national movement growing in states over the last decade. In 2017, there were 19 states that either introduced or enacted some sort of occupational licensing reform. Three states, including Nebraska, filed bills to eliminate licensing barriers for ex-offenders, helping those with a criminal record enter the labor force. Other states, including Arizona, California, Florida, Maine, Tennessee, and Utah have also introduced and enacted legislation to reform their occupational licensing laws.

## Conclusion

Nebraska has started the conversation, and has already enacted some meaningful reforms to aid in some professions, but there is more work to be done. The scheduled interim studies must result in meaningful legislation that takes aim at the overburdensome requirements for many of the professions licensed under the Department of Health and Human Services. Lawmakers must also see that a comprehensive review of all occupational licenses is needed and that the state cannot address this problem in a piecemeal fashion. Creating jobs, boosting entrepreneurial opportunities, reducing prices, and growing people's incomes are all positive results of occupational licensing reform. By building upon this year's good start, 2018 can be an even more promising year for hardworking Nebraskans.

## End Notes

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### OUR MISSION

To advance policies that remove barriers to growth and opportunity in Nebraska.

*A non-profit foundation, the Platte Institute relies on the resources and innovative thinking of individuals who share a commitment to liberty and the best possible quality of life for Nebraskans.*

## Occupational Licensing Reform Bills Filed in the 2017 Session

Number	Sponsor	Topic	Current Status
<b>LB16</b>	Craighead	Changed provisions within the Nebraska Real Estate License Act	Signed into law
<b>LB18</b>	Kolterman	Expanded the scope of practice for dental hygienists and created a new license for dental assistants	Signed into law
<b>LB36</b>	Harr	Agencies review all rules and regs about issuance of occupational licensing	Govt., Military & Vet Affairs Committee
<b>LB61</b>	Kolterman	Creates the Interstate Medical Licensure Compact	Amended into LB 140
<b>LB88</b>	Blood	Military spouses to obtain temporary licenses. Creates the Interstate Medical Licensure Compact Commission and adopts Nurse Licensure Compact. Allows licensed Audiologists to dispense hearing aids without a dispensing license.	Signed into law
<b>LB109</b>	Blood	Military spouses to obtain a temporary teaching certificate	Education Committee
<b>LB140</b>	Williams	Banks and credit unions to be exempt from the department's license	Signed into law
<b>LB283</b>	Riepe	Licensed practical nurses	Indefinitely postponed; portions amended into LB88
<b>LB299</b>	Ebke	Create an Occupational Board Reform Act and change procedures for rules and regulations	Govt., Military & Vet Affairs Committee
<b>LB341</b>	Lindstrom	Executive bank officer license revocation and suspension	Indefinitely postponed; amended into LB140
<b>LB342</b>	Erdman	Adopt the Nurse Licensure Compact and allow temporary nursing license for military spouses	Indefinitely postponed; portions amended into LB88
<b>LB343</b>	Riepe	Change credentialing and regulation of cosmetology, nail technology, audiology, massage therapy, and barbers	Indefinitely postponed; audiology amended into LB88; others in interim study cmtes
<b>LB344</b>	Albrecht	Change credentialing and regulation of mental health substance abuse centers	Health & Human Services Committee
<b>LB345</b>	Craighead	Abstracters	Placed on General File
<b>LB346</b>	Lowe	Motor vehicle, motorcycle, or trailer salesperson license	Signed into law
<b>LB347</b>	Geist	School bus permits and qualifications	Placed on General File
<b>LB348</b>	Larson	Nebraska Potato Development Act	Indefinitely postponed
<b>LB364</b>	Walz	Professional Landscape Architects Act	Govt., Military & Vet Affairs Committee
<b>LB425</b>	Crawford	Nurse Practioner Practice Act	Indefinitely postponed; portions amended into LB88
<b>LB454</b>	Lindstrom	Allow credit unions to opt out of licensing loan officers	Indefinitely postponed; portions amended into LB140
<b>LB507</b>	Albrecht	Eliminate the Farm Labor Contractors Act	Placed in interim study
<b>LB588</b>	Crawford	Exempt reflexology from the Massage Therapy Practice Act	Health & Human Services Committee
<b>LB596</b>	Groene	Exempt equine massage therapy	Placed on General File

## Occupational Licensing Reform Legislative Resolutions for the 2017 Interim

Number	Sponsor	Topic
<b>LR185</b>	Albrecht	Interim study to examine the Farm Labor Contractors Act
<b>LR226</b>	HHS	Interim study to examine the electrology license in Nebraska
<b>LR227</b>	HHS	Interim study to examine the nail technology license in Nebraska
<b>LR228</b>	HHS	Interim study to examine the massage therapy license in Nebraska
<b>LR229</b>	HHS	Interim study to examine the barbering license in Nebraska
<b>LR230</b>	HHS	Interim study to examine the esthetics license in Nebraska
<b>LR231</b>	HHS	Interim study to examine the license to practice body art in Nebraska
<b>LR232</b>	HHS	Interim study to examine the cosmetology license in Nebraska
<b>LB341</b>	Lindstrom	Executive bank officer license revocation and suspension
<b>LB342</b>	Erdman	Adopt the Nurse Licensure Compact and allow temporary nursing license for military spouses