



*The Cost of Regulation in the
State of Nebraska*

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Executive Summary

Regulations are an ubiquitous feature of modern life. At every turn, individuals and firms must comply with increasingly burdensome regulations enacted by federal, state and local governments. The heavy hand of the regulatory state impinges upon every aspect of economic life, from housing codes to insurance rates to prevailing wage laws to occupational licensing and food labeling. Most of the attention goes to federal regulations. However, state and local governments also play a major role in regulating economic activity – often in ways that are more stringent than present in federal regulations. Empirical research on the costs of state and local regulations is often limited, if not difficult to obtain.

This report is an attempt to identify the scope and cost of regulations in the state of Nebraska and to do so in a manner more comprehensive than shows by the various business climate indices. By these measures, Nebraska’s record is mixed in terms of regulatory burden, depending on the measure used.¹ One prominent index ranks Nebraska fourth in the nation when it comes to business friendliness.² In contrast, the *Freedom in the 50 States* measure ranks Nebraska 25th in the overall index, a drop of 7 places since 2012. In the same index, Nebraska ranks eighth in regulatory burden (a drop of one spot), 22nd in economic freedom, a drop of six spots and 15th in occupational freedom (a drop of two spots).³

The *50 State Small Business Regulation Index* Ranks Nebraska 12th overall, tied with Utah. However, Nebraska’s ranking shows wide deviations within the sub-indexes. Nebraska does well in the Unemployment Insurance Programs (ranked 1st), “Regulations Impacting Other Business Costs,” (10th) in Tort Liability Environment (2nd). However, Nebraska needs

¹ See Appendix, Nebraska and Select Business Climate Indices; Various Indicators.

² CNBC.Com, “America’s Top States for Business 2014,” <http://www.cnbc.com/id/101758236>.

³ Freedom of the 50 States: Fourth Edition, Cato Institute, <https://www.freedominthe50states.org/about>.

improvement in the “Start-up and Annual Filing Buren,” (25th) and particularly in Occupational Licensing and Certification with a 44th ranking.⁴

The Beacon Hill Institute examined the Nebraska regulatory code to identify the costs of the rules imposed upon the private sector. After reviewing thousands of regulations placed upon the private sector, the Institute calculated three different cost burdens borne by the private sector:

- Fees, licenses and permits paid to the state,
- State expenses attributable to the regulation of businesses and professionals and
- private sector compliance costs.

The Institute found that the measurable economic costs of the current system were \$473.8 million annually. The estimate comprises \$302.3 million in payments made to Nebraska for permits, licenses and fees by households and businesses; \$63.3 million expended by the state to regulate businesses and households; and \$110.03 million in private sector compliance costs incurred by Nebraska’s businesses and households. We were unable to establish a basis for estimating the cost of the regulations for several agencies and titles in the administrative code. Moreover, we were unable to estimate the opportunity cost to the private economy of the resources dedicated to complying with the regulations.

These costs are significant and should be considered in the debates about reforming state government. Changing tastes and the introduction of new technologies often arrive in tandem with calls for regulatory reform or deregulation. While the federal government has successfully deregulated airline fares, trucking and telecommunications, no equivalent “broad strokes” reform have taken place at the state level outside a few industries such as auto insurance and electricity. Emphasis should be placed on *entry* controls (usually in the form of occupational licensing requirements) that determine who can enter a profession, trade or

⁴ Wayne Winegarden, The 50-State Small Business Regulation Index, Pacific Research Institute, July 2015
https://www.pacificresearch.org/fileadmin/images/Studies_2015/SmBusinessIndex_UpdatedVersion2_web.pdf.

business. These regulations benefit producers who have been able to benefit from “regulatory capture” by limiting competition.

Introduction

In addition to the power to tax, government (federal, state and local) has the power to regulate. Or to borrow a phrase, government can exercise “taxation by regulation.” The scope of regulation in the daily life of a citizen is extensive; almost everything we touch from dawn to dusk is regulated. This includes the electric lights that we turn on each day, the TV we watch, the food we eat – nearly everything. Government regulates the transportation we use, the pedigree of the health care professional we see and the qualifications of the tradesman who works on our homes.

Regulation exists because governments want a particular outcome: to control the price of milk or automobile insurance rates or the number of hospital beds, the level of wages, the right to smoke in public or the formal education of a plumber or cosmetologist. The basis for regulation originates in the long-standing concern about natural monopolies; others rest on notions of equity and concerns about information asymmetry (whereby the seller knows more than the buyer about the product being sold). A few regulations spell out job descriptions so as to set an industry standard. Recently, a court in the state of California ruled that Uber drivers were employees rather than the independent contractors essential to the rideshare company.⁵

⁵ Chris Kirham, Christine Mai-Duc and Andrew Khouri "Uber worker ruling highlights the legal troubles of a 'sharing economy'," *Los Angeles Times*, June 17, 2015, <http://www.latimes.com/business/technology/la-fi-tn-uber-driver-employee-labor-commission-20150617-story.html#page=1>

In each of these cases —and countless others —government is responding to perceived “market failure” by rectifying flawed outcomes in a fashion that it finds desirable.⁶ Since the late 1800s, federal regulation (often in tandem with state regulation) has grown to meet a demand for protection first in response to railroad monopolies and meatpacking sanitation and more than a century later toward ensuring a safe climate and Internet neutrality.

The market system has guided the United States to previously unimaginable levels of economic prosperity. However, the size of government has also grown alongside the economy in part to meet a demand for regulation.⁷ This has been abetted by special interest groups who are knowledgeable about the specifics of their industry or political objectives and are able to shift the cost to rationally ignorant voters. The complexity of the regulations snowballs with the growing ability of the groups benefiting from them to convince politicians that the regulations are in the public interest.

Estimates

BHI utilized a multi-step process to estimate the aggregate cost of state regulation in Nebraska. The process entailed reviewing the “Rules and Regulations” for the 72 Nebraska state agencies listed on the Secretary of State website. Under each agency heading, the site lists the Titles and Chapters that apply to that agency. Smaller agencies, such as the Electrical Board may only have one Title or Chapter that contain many rules or regulations.

The goal of the study was to estimate the cost of Nebraska regulations that apply to private sector businesses and households. Therefore, we excluded any regulations that apply to state or local government. We also excluded those titles that pertain to law enforcement and the

⁶ Susan Dudley, Jerry Brito, *Regulation: A Primer*, Mercatus Center at George Mason University, 2nd edition (August 2012):8, http://mercatus.org/sites/default/files/RegulatoryPrimer_DudleyBrito_0.pdf

⁷According to Dudley and Warran the latest regulatory budget “is growing at approximately the same pace as the overall budget.” They also note that agencies funded by fees on firms and individuals grow at a faster rate than those funded by Congress.

judiciary, on the grounds that these enforce state laws and not state regulations. Table 1 lists these agencies and titles.

Table 1: Nebraska Agencies and Titles that Apply to State Government

Agency	Titles
Administrative Services	7,8,9,10, 12, 273, 276
Accountability and Disclosure Commission	4
Attorney General	53 ⁸
Auditor of Public Accounts	41
Capital Commission	6
Correctional Services	68,69,71,72
Department of Education	92,93
Education Lands and Funds	97
Governor: Policy Research Office	178
Investment Council	213
Law Enforcement and Criminal Justice	74,75,76,77,78,79,80,81,83
Library Commission	236
Parole Board	270
Professional Practices Commission	95
Public Employees Retirement System	303
Public Advocacy Commission	70
State Treasurer	429

This leaves us with many administrative agencies and titles to review. Table 2 displays these agencies titles.

The agencies and titles listed in Table 2 also contain individual regulations that were repealed or establish departmental rules for governing the regulatory agency. For example, Titles 430 and 432: Secretary of State, sets out the rules that govern the workings of the Secretary of State and public records. We excluded the rules listed under these Titles and Chapters, leaving thousands to consider

⁸ This rule actually outlines “Model Procedures for Negotiated Rulemaking.”

Table 2: Nebraska Agencies and Titles that Apply to the Private Sector

Agency	Titles
Abstracters Board of Examiners	R.R.S. Neb. 1943
Department Aeronautics	17
Department of Agriculture	19, 21, 23, 25, 27, 29, 30, 31, 33, 36
Art Council	40
Athletic Commission	38
Department of Banking and Finance	45-50
Beef Industry Development Board	56
Beginning Farmer Board	91
Board of Baber Examiners	51
Board of Public Accountancy	288
Brand (cattle) Committee	54
Commission for the Blind and Visually Impaired	192
Commission for the Deaf and Hard of Hearing	96
Coordinating Commission for Postsecondary Education	281
Corn Board	37
Daily Industry Development Board	484
Dry Bean Commission	84
Department of Economic Development	85, 86, 87, 90
Electrical Board	100
Emergency Management	67
Energy Office	103, 105, 107, 109
Engineers and Architects	110
Department of Environmental Quality	115-120, 122-126, 128-133, 135, 194-200
Environmental Trust	137
Equal Opportunity Commission	138-144
Ethanol Board	152
State Fire Marshal	148,153-161
Foster Care Review Office	162
Game and Parks Commission	163
Board of Geologists	171
Grain and Sorghum Board	18
Health and Human Services System	5,172-181,183-186,202,206,207,390-392,395,400-402,404,405,462-477,479-482
Department of Insurance	210
Department of Labor	218-230
Land Surveyors Board of Examiners	234
Landscape Architects	231
Latino American Commission	Na
Liquor Control Commission	237
Motor Vehicle Industry Licensing Board	253
Department of Motor Vehicles	246-252
Department of Natural Resources	256-264,454-461
Oil and Gas Conservation Commission	267
Power Review Board	285
Public Service Commission	291
State Racing Commission	294
Real Estate Commission	299-302, 305
Real property Appraiser Board	297, 298
Department of Revenue	316, 350, 370
Department of Roads	407-411, 413-415, 425, 428
Secretary of State	430, 432-434, 436-440
State Energy Office	107
State Patrol	272
Tax Equalization and Review Commission	442
Department of Veteran Affairs	443
Wheat Board	483

Our next step was to review the individual rules and exclude those rules that:

- 1) apply to state or local government
- 2) implement a federal regulation
- 3) refer to an industry standard
- 4) govern the disbursement of public funds to private entities or the contracting of private entities with public entities
- 5) have a negligible cost or no cost to the private sector
- 6) are not amenable to cost estimate.

During the review, we further prioritized those rules deemed amenable to a cost estimate as being a higher priority and secondary priority based on the ease at which we judged that a cost estimate was possible. We excluded all rules that fall into categories 1 through 6 above, focusing our efforts on those that are amenable to cost estimation. We further classify the rules “amenable to a cost estimate” into a first and second priority class to reflect the potential for obtaining cost estimates.

Title 294, Chapter 2, Section 001.08, which regulates the State Racing Commission provides an example of a regulation that has a negligible cost. It reads, “No person shall use improper, profane or indecent language to a racing official or any employee or representative of the Racing Commission.”⁹ We believe that this regulation codifies a practice that the private sector would have likely followed in the absence of the regulation.

Title 299, Chapter 2, section 003.01 under the Real Estate Commission is an example of a rule that is not amenable to a cost estimate. The rule concerns the advertising of requirements of an independent real estate broker, “Each broker who is operating as an independent broker or sole proprietorship, without being a corporation or limited liability company or filing a trade name, shall advertise in his or her name as recorded with the Commission and include the

⁹ Nebraska Rules and Regulation, Title 294, Chapter 2, Section 001.08, http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Racing_Commission_State/Title-294.pdf.

word(s) 'Broker' or 'Real Estate Broker', e.g. Sara Stone, Broker or Sara Stone, Real Estate Broker."¹⁰

We designate rules that require private-sector individuals or businesses to pay a fee, obtain a license or certification, pass an exam and undertake continuing education to keep one's license or certification as a priority. Not only are these fees and licenses the most amenable to a cost estimate, but Nebraska lags in this area according to the 50 State Small Business Regulation Index by ranking 44th in the Occupational Licensing and Certification sub-index.¹¹

After completing the review process, we began the cost-estimating process. First, we conducted a literature review of the best methodologies which yielded very few studies of state-level regulations. Second, we contacted industry and professional associations.

The representative from the Nebraska Restaurant Association noted a problem with the administration of the sales tax. When customers pay a restaurant bill by credit card, the credit card company charges a percentage processing fee for the whole bill, including the sales tax. The portion of the credit card fee that falls on the sales tax never makes it to the business, and the business owner must pay this portion of the fee out of his own pocket.

The state of Nebraska collected \$1.528 billion in sales tax revenue in fiscal year 2016.¹² According to Credit.com, 78% of all transactions that paid a sales tax and a processing fee of between 2% and 3% paid between \$23.8 million and \$35.8 million in card processing fees on sales tax in fiscal year 2016.¹³ This is a high cost for Nebraska businesses. Nevertheless, we

¹⁰ Nebraska Rules and Regulation, Title 299, Chapter 2, Section 003.01, [http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Real Estate Commission/Title-299/Chapter-2.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Real_Estate_Commission/Title-299/Chapter-2.pdf).

¹¹ Wayne Winegarden, The 50-State Small Business Regulation Index, Pacific Research Institute, July 2015 https://www.pacificresearch.org/fileadmin/images/Studies_2015/SmBusinessIndex_UpdatedVersion2_web.pdf.

¹² State of Nebraska Budgetary Report for the Year Ending June 30, 2016, Administrative Services, State Accounting Division, October 17, 2016, available at <http://das.nebraska.gov/accounting/budrept/buddoc16.pdf>,

¹³ Tamara Holmes, Payment Method Statistics, Credit Cards.Com, available at <http://www.creditcards.com/credit-card-news/payment-method-statistics-1276.php>.

consider this a tax code issue and not a regulatory issue and did not include it in our calculations.

The *Nebraska Comprehensive Annual Financial Report* for fiscal year 2016 provided cost information for fees, licenses and permits that the state collects. We requested and received a detailed breakout of fees by agency from the State Accounting Office. According to the report, Nebraska collected over \$323 million in licenses, fees and permits last fiscal year. However, this figure includes fees that do not meet our criteria of a regulatory cost. For example, the State Supreme Court collected \$17.7 million, the Attorney General office collected \$129,625 and the State Patrol collected \$2.5 million in fees. We consider these fees as law enforcement fees and not regulatory fees. As a result, we subtract these and other fees unrelated to the regulation of private households and businesses.¹⁴

Once we removed those fees associated with the state courts and law enforcement, we were left with \$302 million in fees. The State Treasurer has the largest portion of fees, at over \$85 million. Next is the Department of Health and Human Services with \$62 million. The lowest fee amounts are under the Board of Exam Land Survey.¹⁵ Table 3 displays the details for each state agency.

The agencies with the highest total fees tend to be those that issue the most occupational licenses, such as the Department of Health and Human Services, which issues licenses or registrations for over 51 different occupations. Some of these licenses are for occupations that would not require advanced training, such as a purveyor of body art, a swimming pool operator or a paid dining

¹⁴Nebraska Department of Administrative Services, State Accounting, State of Nebraska Comprehensive Annual Financial Report: Fiscal Year ending June 30, 2016 <http://das.nebraska.gov/accounting/cafr/cafr2016.pdf>, 36.

¹⁵ Ibid, 6.

Table 3: Nebraska State Agencies with Revenue from Fees, Licenses and Permits

Agency Name	(\$)
Secretary of State	4,968,187
State Treasurer	85,555,698
Department of Education	702,964
Public Service Commission	529,232
Department of Revenue	839,123
Department of Aeronautics	15,716
Department of Agriculture	5,872,314
Department of Banking	29,824,054
State Fire Marshal	1,059,402
Department of Insurance	17,547,199
Department of Labor	2,060,827
Department of Motor Vehicles	21,465,970
Health and Human Services System	62,181,026
Department of Roads	9,885,162
Department Veterans Affairs	106,728
Department of Natural Resources	289,458
Nebraska Electrical Board	1,289,877
Board of Education, Lands & Funds	151,856
Game & Parks Commission	28,209,051
Liquor Control Commission	1,218,948
State Racing Commission	43,985
Workers Compensation Court	5,466,296
Nebraska Brand Committee	4,538,173
Motor Vehicle Industrial License Board	755,593
Real Estate Commission	1,562,245
Board of Barber Examiners	148,905
Post-Secondary Education Commission	13,550
Real Property Appraiser Board	324,989
State Historical Society	65,282
Oil & Gas Conservation Commission	67,834
St Board of Exam Engineer & Architects	633,870
Board of Geologists	28,178
Board of Exam Land Survey	2,585
Board Pub Accountancy	359,728
Board of Exam-Abstractors	74,575
Energy Agency	10,964
Landscape Architects	26,305
Commission Industrial Relations	2,600
Commission Law Enforcement	830,084
Blind/Visually Impaired Commission	47,806
Commission Deaf/Hard of Hearing	10,980
Environmental Quality	10,247,889
Ne Actability & Discipline Commission	181,508
Tax Equalization & Review	45,585
Commission on Public Advocacy	3,090,507
Total	302,352,805

assistant at a skilled nursing facility and cosmetologist.¹⁶ The Department of Labor licenses 15 different types of construction contractors, yet the fees are relatively modest at \$2.1 million.¹⁷ The Departments of Motor Vehicles, Banking, Insurance and the Game and Parks Commission also generate higher revenues from fees, permits and licenses at \$21.5 million, \$29.8 million \$17.6 and \$28.2 million respectfully.

Table 4: Agencies that Expenditures Exceed Fee, Permit and License Revenues

Agency Name	Amount (\$)
Public Service Commission	51,167,067
Department of Revenue	2,260,826
Department of Labor	854,393
Nebraska Electrical Board	297,643
State Racing Commission	521,192
Brand Committee	6,447
Real Property Appraiser Board	9,359
Oil & Gas Conservation Commission	593,197
Board of Exam Engineers & Architects	151,882
Board of Geologists	776
Board of Exam Land Survey	13,569
Board Public Accountancy	9,917
Department of ADM Services	132,511
Equal Opportunity Commission	1,903,175
Mexican/American Commission	205,206
Power Review Board	508,814
Environmental Quality	4,801,409
Total:	63,300,681

We also designate as a priority cost direct appropriations designated to fund state regulation as listed in the state budget documents. The Nebraska CAFR also designates expenses for the “Regulation of Businesses and Professionals,” which we also obtained details broken out by

¹⁶ Nebraska Department of Health and Human Services, Licensure Unit, http://dhhs.ne.gov/publichealth/Pages/crl_crlindex.aspx.

¹⁷ Nebraska Department of Labor, Contractors, Search Registered Contractors and Subcontractors, <https://dol.nebraska.gov/conreg/SearchContractors/SearchContractors>.

agency from the State Accounting Division of the Nebraska Department of Administrative Services.¹⁸ For some regulatory agencies, the fees collected do not cover the expenses incurred by the agency. For example, the budget appropriates \$51.2 million for Public Service Commission and \$4.8 million for the Department of Environmental Quality. The total for the agencies is \$63.3 million in FY 2016. Table 4 shows the details.¹⁹

Finally, we estimated the cost in time and resources that Nebraska businesses and households spend to comply with state regulations. The Methodology section contains the details of this process. Table 5 contains the results.

As one can see in the table, private sector compliance costs, at \$110 million, are smaller than the costs of fees, permits and licenses. The Department of Health and Human Services has the highest private sector costs that we found, at \$60.1 million dollars. The Department of Motor Vehicles has the second highest costs, at \$26.2 million, followed by the Game and Parks Commission, at \$6.4 million.

Nebraska voters recently approved a two-step increase in the state minimum wage that raised it above the federal minimum wage rate of \$7.25 per hour. As of January 1, 2015, the minimum wage increased to \$8.00 per hour and as of January 1, 2016, the wage increased to \$9.00 per hour.²⁰

¹⁸ CAFR, p. 21.

¹⁹ The Figures in Tables 3 and 4 may differ from the information provided by the Nebraska Budget Portal. The Nebraska Comprehensive Annual Financial Report follows General Accepted Accounting Principles (GAAP), while the Budget Portal may reflect cash accounting.

²⁰ Janice Podsada, "Nebraska Minimum Wage holds at \$9.00; Bill to raise wage stalls in Omaha," *Omaha World-Herald*, April 5, 2016, http://www.omaha.com/money/nebraska-minimum-wage-holds-at-bill-to-raise-wage-stalls/article_0da7ec0b-5b3c-5513-89a5-11bbc8cc2fb4.html.

Table 5: Private Sector Compliance Costs of Nebraska Regulations

Department	Private Cost (\$)
Abstractors Board of Examiners	16,405
Board of Barber Examiners	119,450
Athletic Commission	4,903
Secretary of State	79,070
Racing Commission	4,588
Department of Health and Human Services	60,134,680
Commission for the Deaf and Hard of Hearing	3,612
Division of Motor Vehicles	26,233,610
Department of Education	625,065
Department of Agriculture	1,241,461
Nebraska Game and Parks	6,375,611
Department of Labor	2,508,810
Locksmith	524
Electrical Contractor	48,935
Real Estate Salesperson & Broker	38,959
Cathodic Protection Tester	1,465
Engineer	74,041
Geologist	13,412
Land Surveyor	63,996
Landscaping Architect	164,533
Public Accountant	10,472,197
Minimum Wage	1,800,000
Total	110,025,326

BHI used data from the U.S. Bureau of Labor Statistics to estimate the cost of the minimum wage increase.²¹ Assuming all Nebraskan workers who earned the minimum wage in 2014 received the wage increase and ignoring job losses attributable to the wage increase, the wage bill increased by \$1.8 million over the two-year period. This wage increase would flow to workers

²¹ U.S. Department of Labor, Bureau of Labor Statistics, "Characteristics of Minimum Wage Workers, 2014, Tables 3 and 9," April 2015, <https://www.bls.gov/opub/reports/minimum-wage/archive/characteristics-of-minimum-wage-workers-2014.pdf>, 6,12.

and federal and state income tax collections and come out of the profits of businesses that pay the minimum wage and higher consumer prices.

Economic theory shows that minimum wage increases unemployment rates, especially for those workers with lower skill sets. However, the Nebraska unemployment rate remains quite low at 3.2%. While there was an uptick in initial claims for unemployment insurance in December 2016 and January 2017 and layoffs at retailer and restaurants in Nebraska, there is simply not enough data to make a connect them to the minimum wage increase. Nevertheless, employment trends bear watching.

In total, the regulations for which we were able to obtain a cost estimate come to \$473.8 million in 2016, which comprise of \$302.3 million in fees, \$63.3 million in appropriations and \$110.03 million in compliance costs. However, after reviewing the Nebraska Administrative Code, we believe our figure represents a fraction of the total cost to the private sector.

One important factor that is not considered in our calculations is the impact regulations have on the private economy. The regulations impact the private economy through several channels. First, the money households and businesses spend on fees could be used to finance household consumption and saving. Also, the resources in time and effort that households and businesses employ to comply with the regulations could be redirected to producing goods and services. These represent the opportunity costs of regulations in Nebraska.

Nebraska requires an occupational license to enter over 200 vocations in the state. While the resources that practitioners must employ to obtain and retain the license represent compliance costs of the regulations, these regulations have another cost. Occupational licensing represent barriers that prevent some people from entering the field, and, as a result, they restrict the supply of practitioners in these fields. The lower supply, in turn, drives up the price of providing these services to consumers and businesses.

Conclusion

“No arbitrary regulation, no act of the legislature, can add anything to the capital of the country; it can only force it into artificial channels.”

-J.R. McCulloch, *Principles of Political Economy*.

The financial crisis of 2008 and the ensuing Great Recession engendered policy preferences for stronger regulation at the state as well as the national level. But stronger regulations can impose immediate costs and often — though not always — uncertain benefits. Certainly, market failures spur calls to action. But the costs of government failure must be weighed against the benefits of correcting for market failure.

The state of Nebraska enjoys a decent reputation for a business-friendly climate. But public policy should work steadily toward keeping a light touch and expanding consumer choices. As noted in several studies, including this one, regulatory agency budgets are a good indication of how expansive regulations might be. This is important because of the economic effects of regulation. Empirical evidence suggests that regulations — notably those that pose barriers to entry — impede productivity growth.²²

Charles Murray of the American Enterprise Institute, the social critic and author, recently highlighted the need for a rational regulatory approach that strikes a balance between what works and is demanded (i.e. worker, food and drug safety) and that which promotes economic liberty (leaving employers to set hours for workers). Murray takes particular aim at the kind of licensing and workplace regulatory excess found in most states and examined in this report.

Identifying precisely which regulations are pointless, stupid or tyrannical will be a lengthy process, but categories that should come

²² Brink Lindsey, *Low-Hanging Fruit Guarded by Dragons: Reforming Regressive Regulation to Boost U.S. Economic Growth*, Cato Institute (June 2015):6.

http://object.cato.org/sites/cato.org/files/pubs/pdf/20150622_lindsey_wp_lowhangingfruit.pdf.pdf.

under strict scrutiny include regulations that prescribe best practice for a craft or profession; restrict access to an occupation; prohibit owners of property from using it as they wish; prescribe hiring, firing and working conditions; and prevent people from taking voluntary risks.²³

Murray's framework would be a good start for any state looking to improve market efficiency. The Institute estimates that Nebraska spent more than \$473.8 million in 2016. On the surface, this may be a small amount compared to the state's \$80.1 billion economy. But expansive regulation not only diminishes productivity but further entrenches the special pleaders who seek to secure their advantages at the expense of consumer welfare.

The authors wish to acknowledge the contribution of Xhulia Kanani, BHI Research Assistant.

²³ Charles Murray, "Regulation Run Amok— And How to Fight Back," *Wall Street Journal* (May 11, 2015):C1. <http://www.wsj.com/articles/regulation-run-amokand-how-to-fight-back-1431099256>.

Methodology

Our private sector cost primarily focuses on the time that individuals spend to acquire the government license or permit. Nebraska requires citizens spend time:

- filling out forms or applications,
- paying fees,
- taking classes,
- taking exams, and
- undergoing continuing education.

The time and resources Nebraskans spend to obtain and maintain licenses and permits represents the private sector compliance costs.

In addition to the direct costs accrued from fees that individuals pay, there are indirect costs. These include both the costs that individuals incur while seeking permission to practice these trades, as well as the costs sustained while trying to continue practicing these trades. Firstly, many of the licensing boards require a test to prove proficiency, for which a passing score must be included in the application. Preparing for these tests, as well as taking the test itself requires time that could have been spent in other pursuits, including earning income.

To determine this opportunity cost we first calculated how many new licenses were granted each year. This is a conservative base for the cost, as it does not consider individuals who took the test but never passed, as well as individuals who took the test multiple times. Based on surveys of various boards, we found that approximately 4.7% of active licensees were new, meaning they had passed the test in the prior year. We multiply this rate by the number of active licenses for each occupation that requires a license to determine the number of individuals that studied for and took the test. BHI obtained the number of active license

holders from the state agency, or, for some occupations, we used total employment figures from the U.S. Bureau of Labor Statistics.

Next, we contacted the individual licensing boards to ask how long the tests took and how long a typical successful applicant should expect to study. In the majority of the cases the tests were one hour long but some, such as Swimming Pool Operator, had tests four or more hours in length. Similarly, most boards that administered tests said that the expected amount of study time to pass was one hour. Others estimated much longer study periods. For example, instructors at barber schools were expected to study 18 hours to pass. In the absence of any guidance, we assume that the applicant would need to study one hour for each hour of the test.

Many boards require that in addition to a passing score on a test, the applicant must submit a specified number of hours spent in training. For example, an individual wishing to receive permission to become a drug and alcohol counselor in Nebraska must have 270 class hours. Multiplying the number of new licensees for each board times the number of hours they would be expected to study plus the time to take the test and the required hours spent training, results in the number of hours that the individual is required to invest to be granted a license.

Next, we multiplied these hours by the mean annual wage that individuals in this industry earn.²⁴ The average wage represents the opportunity cost of an individual taking the test. In other words, the individual could have spent the time working and earning the average wage, but instead, they had to spend this time to meet the license requirements.

In addition to the time that individuals must spend to demonstrate proficiency; many licensing boards also require that individuals submit proof upon renewal of their license that they have completed a specific number of continuing education credits. For example, to be reaccredited

²⁴ Bureau of Labor Statistics. May 2016 Occupational Employment and Wage Estimates Nebraska. http://www.bls.gov/oes/current/oes_nc.htm.

as a radon measurement specialist, individuals must partake in six DHHS approved educational hours per re-credentialing period.²⁵ We calculate the cost of continuing education requirements as the number of licensees times the number of continuing education hours times the mean annual wage.

²⁵ 21 NCAC 68.0208. <http://reports.oah.state.nc.us/ncac/title%2021%20-%20occupational%20licensing%20boards%20and%20commissions/chapter%2068%20-%20substance%20abuse%20professional%20practice%20board/21%20ncac%2068%20.0208.pdf>

Appendix

The table below shows Nebraska's ranking for several business climate indices and sub-indices within the overall index.

Nebraska and Select Business Climate Indices; Various Indicators		
Index	Variable	Rank
Economic Freedom of North America (Fraser Institute)	State & Local Labor Market Freedom	17
2014 Freedom in the 50 States (Ruger-Sorens) (Fiscal Policy)	Gov't Spending	32
2014 Freedom in the 50 States (Regulatory Policy)	Liability Systems	1
2013 Freedom in the 50 States (Regulatory Policy)	Real Property Rights	23
2014 Freedom in the 50 States (Regulatory Policy)	Health Insurance	40
2014 Freedom in the 50 States (Regulatory Policy)	Labor Market	16
2013 Freedom in the 50 States (Regulatory Policy)	Occupational Freedom	15
2014 Freedom in the 50 States (Regulatory Policy)	Miscellaneous Regulations	18
2014 Freedom in the 50 States (Regulatory Policy)	Cable and Telecom	23
2014 Freedom in the 50 States (Ruger-Sorens) (Overall)	Overall Ranking	25
	Average Rent for a 2-Bedroom Apartment	24
2014 BHI's State Competitiveness Index (Infrastructure)	Apartment	24
2015 BHI's State Competitiveness Index	Overall Ranking	6
2007 Milken Institute's Cost of Doing Business Index	Overall Ranking	31
2011 Small Business Survival Index	Overall Ranking	37
The 50 State Small Business Index	Overall Ranking	12
Workers' Compensation	\$1.78 per \$100 of Payroll	21
Unemployment Insurance	0.36% Percent of Total Wages	1
Short-term Disability Insurance	Not Required	1
Minimum Wage Regulations	\$8.00 per Hour*	29
Family Leave Regulations	Nebraska Abides by FLMA	1
Right-to-Work State	Nebraska Is a Right-to-Work State	1
	24.6% of Workforce Is Licensed; 8.3% of Workforce Is Certified; 96 Job Categories Require Licenses	44
Occupational Licensing Rules	Categories Require Licenses	44
Land Use Regulations	WLURI Land Use Score: -0.68	14
	PRI's "50-State Index of Energy Regulations" Ranking	15
State Energy Regulations	ILR's "2012 State Liability Systems Survey" Ranking	2
Tort Liability System	No Regulatory Flexibility	50
Regulatory Flexibility	Implemented Some Deregulations	30
Telecommunication Regulations	Implemented Some Deregulations	30
Start-up & Filing Costs	Moderate Start-up & Filing Costs	25
Alcohol Control State	Nebraska Is Not an Alcohol Control State	1

Bibliography

Barnett, Randy. 2009. Is the Constitution Libertarian? *Supreme Court Review* (9). Cato Institute http://object.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2009/9/simonlecture-barnett_0.pdf

Becker, Gary S. 1976. "Comment" (on Peltzman, 1976), *Journal of Law and Economics* 19. <http://wikisum.com/w/Peltzman: Toward a more general theory of regulation>

Carroll Sidney L. and Robert J. Gaston. 1981. "Occupational Restrictions and the Quality of Service Received: Some Evidence." *Southern Economic Journal* 47 (4): 959-976
Southern Economic Association <http://www.jstor.org/stable/1058155>.

Crain, Mark W. and Nicole V. Crain. 2014. "The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business," National Association of Manufacturers.

Farrow, Scott, Gary Marchant, Andrew Perraut, Richard Williams and Henry Wary. 2009. "21st Century Regulation; Discovering Better Solutions for Enduring Problems," Mercatus Center; George Mason University.

Gellhorn, Walter. 1976. "The Abuse of Occupational Licensing," *The University of Chicago Law Review* 44(1). <http://www.jstor.org/stable/1599259>

Graddy, Elizabeth and Michael B. Nichol. 1989. "Public Members on Occupational Licensing Boards: Effects on Legislative Regulatory Reforms," *Southern Economic Journal* 55(3). <http://www.jstor.org/stable/1059577>

Ippolito, Richard A. and Robert T. Masson 1978. "The Social Cost of Government Regulation of Milk," *Journal of Law and Economics* 21. <https://masson.economics.cornell.edu/docs/03Ippolito-Masson-SocCostMilkReg.pdf>

Keeler, Theodore E. 1984. "Theories of Regulation and Deregulation Movement," *Public Choice* 44(1). http://link.springer.com/article/10.1007%2F978-0-306-41248-2_44.

Leffler, Keith B. 1978. "Physician Licensure: Competition and Monopoly in American Medicine," *Journal of Law and Economics* 21. http://www.jstor.org/stable/725145?seq=1#page_scan_tab_contents.

Lemieux, Pierre. 2014-2015. "A Slow-Motion Collapse; Why Hasn't Regulation Crashed the American Economy," *Regulation*. Cato Institute 37(4).

Lindsey, Brink. 2015. "Low-Hanging Fruit Guarded by Dragons: Reforming Regressive Regulation to Boost U.S. Economic Growth," *Cato Institute* (June 2015):6. http://object.cato.org/sites/cato.org/files/pubs/pdf/20150622_lindsey_wp_lowhangingfruit.pdf.

Maurizi, Alex. 1974. "Occupational Licensing and the Public Interest," *Journal of Political Economy* 82(2). <http://www.jstor.org/stable/1831186>

McQuillan, Lawrence J., Michael T. Maloney, Eric Daniels, and Brent M. Eastwood. 2008. *U.S. Economic Freedom Index*. Pacific Research Institute.

Murray, Charles. 2015. "Regulation Run Amok—And How to Fight Back." *Wall Street Journal* (May 11). <http://www.wsj.com/articles/regulation-run-amokand-how-to-fight-back-1431099256>

Olsen, Mancur, Jr. 1965. *The Logic of Collective Action*, Cambridge, MA: Harvard University Press. <http://www.hup.harvard.edu/catalog.php?isbn=9780674537514>.

Paul, Chris W., II. 1982. "Competition in the Medical Profession: An Application of the Economic Theory of Regulation," *Southern Economic Journal* 48(3). http://www.jstor.org/stable/1058650?seq=1#page_scan_tab_contents.

Peltzman, Sam. 1976. "Towards a More General Theory of Regulation?" *Journal of Law and Economics* 19. [http://wikisum.com/w/Peltman: Toward a more general theory of regulation](http://wikisum.com/w/Peltzman:_Toward_a_more_general_theory_of_regulation).

Posner, Richard A. 1993. "What Do Judges Maximize? (The Same Thing Everyone Else Does)," *Supreme Court Economic Review*. <http://wenku.baidu.com/view/b5fced4afe04a1b071deb4.html>.

Primeaux, Walter J., John E. Filer, Robert S. Herren, and Daniel R. Hollas 1984. "Determinants of Regulatory Policies toward Competition in the Electricity Utility Industry," *Public Choice* 43(2). <http://link.springer.com/article/10.1007%2F00140831>.

Ruger, William P. and Jason Sorens. 2013. *Freedom in the States*. Mercatus Center at George Mason University. <http://ebot.gmu.edu/bitstream/handle/1920/8135/print-edition.pdf?sequence=1&isAllowed=y>.

Shepherd, Lawrence. 1978. "Licensing Restrictions and the Cost of Dental Care," *Journal of Law and Economics* 21. http://www.jstor.org/stable/725146?seq=1#page_scan_tab_contents.

Simmons, Randy T. 2011. *Beyond Politics: The Roots of Government Failure*. Independent Institute, Oakland, California.

Stansel Dean, Jose Torra, and Fred McMahon. 2014. "Economic Freedom of North America," Fraser Institute. <http://www.fraserinstitute.org/uploadedFiles/fraser-ca/Content/research-news/research/publications/economic-freedom-of-north-america-2014.pdf>.

Stigler, George J. 1965. "The Economist and the State" *The American Economic Review* 55: ½. (March): 1-18, <http://www.jstor.org/stable/1816174>.

_____. 1971. "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2. <http://www.jstor.org/stable/3003160>

Sweeney, James L. "Review of Varshney/Tootelian Report 'Cost of AB 32 on California Small Business – Summary of Report Findings.'" <http://web.stanford.edu/group/peec/cgi-bin/docs/policy/research/Sweeney%20Review%20of%20Varshney.pdf>.

Varshney, Sanjay B. and Dennis H. Tootelian. 2009. "Cost of State Regulations on California; Small Business Study," Varshney Associates.

Viscusi, W. Kip, Joseph E. Harrington, Jr. John M. Vernon. 2005. *Economics of Regulation and Antitrust*. MIT Press, Cambridge.

White, William D. 1978. "The Impact of Occupational Licensure of Clinical Laboratory Personnel," *The Journal of Human Resources* 13(1). <http://www.jstor.org/stable/145303>

Wilson, Molly J. Walker. 2011. "Cultural Understandings of Risk and the Tyranny of the Experts," *Oregon Law Review* 90. <http://ssrn.com/abstract=1880926>

Young, David S. 1988. "The Economic Theory of Regulation: Evidence from the Uniform CPA Examination," *The Accounting Review* 63(2). <http://www.jstor.org/stable/248106>

Wilson, Molly J. Walker, "Cultural Understandings of Risk and the Tyranny of the Experts." 2011. *Oregon Law Review* 90. Saint Louis University Legal Studies Research Paper. No. 2011-13. Available at SSRN: <http://ssrn.com/abstract=1880926>

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