



2023-2024 Nebraska Occupational Licensing Review

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Introduction

The Platte Institute began its work in occupational licensing policy in earnest in 2016. Our 2018 review highlighted the many reasons for improving the licensing environment for Nebraskans seeking employment.¹ In 2018, the Platte Institute celebrated the passage of LB299, the Occupational Board Reform Act (OBRA), which has since seen the review of every occupational license created under the Legislature's jurisdiction.

Our 2019-2020 Review discussed the changes made post-passage of LB299 in the legislative process and gave a brief history of occupational licensing in the U.S. We also looked at trends in occupational licensing around the country and provided some insight into what had happened during the first round of reviews in Nebraska, and what improvements in Nebraska's structure should still be made.²

After skipping the 2021-2022 review, this review provides an overview of what's happened in Nebraska—and around the country—concerning occupational licensing in recent years. We celebrate successes that we've had in Nebraska in recent years and suggest areas for continued efforts in the future.

A Brief History of Occupational Licensing

¹ <https://platteinstitute.org/the-2018-occupational-licensing-review/>

² <https://platteinstitute.org/2019-2020-nebraska-occupational-licensing-review/>

As noted in our previous reviews, classically liberal, conservative, and libertarian economists in the Adam Smith and Milton Friedman schools of thought have long argued that excessive occupational licensing is dangerous to labor markets. In the last half century, those discussions have continued, and during that same half-century, the number of workers in the workforce who had to be licensed by the state increased from roughly 5% to nearly 23% of the workforce.³

In 2015, the Obama administration released a study calling for reforms in occupational licensing.⁴ The publication of this report initiated a series of independent actions that resulted in organizations like the Council of State Governments (CSG) and the National Conference of State Legislatures (NCSL) to pay more attention to the issue. NCSL and several academic-based institutes, like the Kline Center for the Study of Occupational Regulation, now track occupational licensing legislation nationwide.

Licensing Changes Around the Country

Since 2020—motivated in part by workforce needs caused by the COVID-19 pandemic and in part by a need for states to remain competitive with other states—many legislatures and executives have taken action to reform licensing within their boundaries.

Among the changes that have been seen:

License Portability

In many states, including Nebraska, governors issued executive orders in 2020 and 2021 granting licensing recognition to most healthcare professions for individuals coming to Nebraska from another state. Sometimes referred to as “universal recognition” or “universal reciprocity,” these changes took the position that if a professional was licensed to practice in one state, we should expedite their licensure in Nebraska so that they could get to work here. Universal recognition acknowledges that licensed workers don’t lose their skills just because they move to another state and that the workforce and the larger economy are better served if relocating workers can get to work.

Another group that was targeted for increased portability was military spouses. Many states, following the lead of the Department of Defense⁵, have targeted military spouses for expanded recognition of out-of-state licenses, granting them temporary full licensure to

³ <https://hbr.org/2018/04/more-and-more-jobs-today-require-a-license-thats-good-for-some-workers-but-not-always-for-consumers>

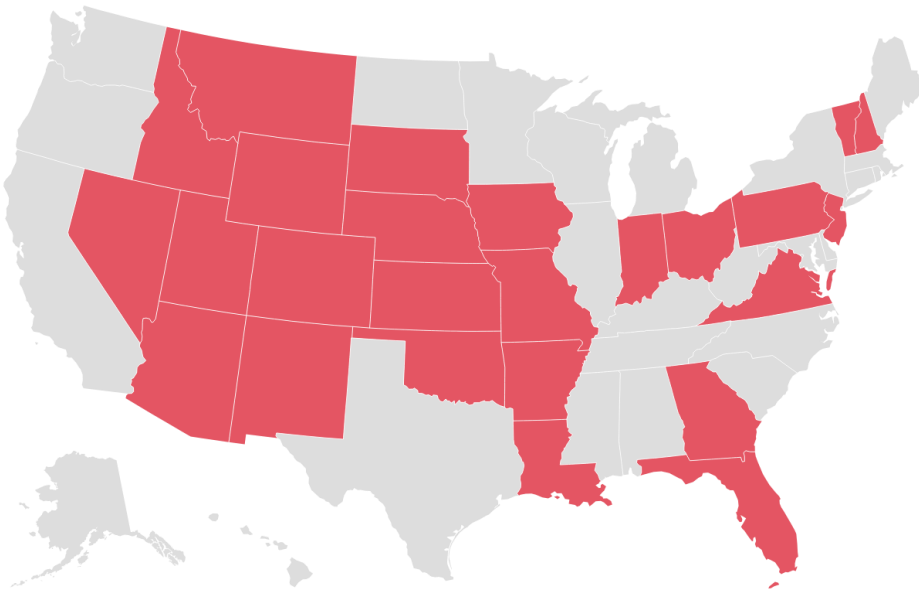
⁴ https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf

⁵ <https://www.dol.gov/sites/dolgov/files/VETS/files/Military-Spouse-License-Recognition-A-Guide-to-State-Legislation.pdf>

practice their profession in their spouse's duty station state for the tour of duty if they remain in good standing in their original state of licensure.

Arizona kicked off a broader “universal recognition” effort nationwide with the passage of HB2569 in 2019. Since then, 25 other states have enacted some version of universal recognition, making it easier for skilled workers to come to their state without jumping through new licensing hoops. Nebraska is perhaps the latest state to implement universal recognition, with the passage of LB16 in the 2024 legislative session.

Universal Recognition, 2024



Map: Created by the author from data provided by Knee Regulatory Research Center • Source: <https://csorwvu.com/policy-brief-survey-of-universal-licensing-reforms-in-the-united-states-2024/> • Created with Datawrapper

Second Chances

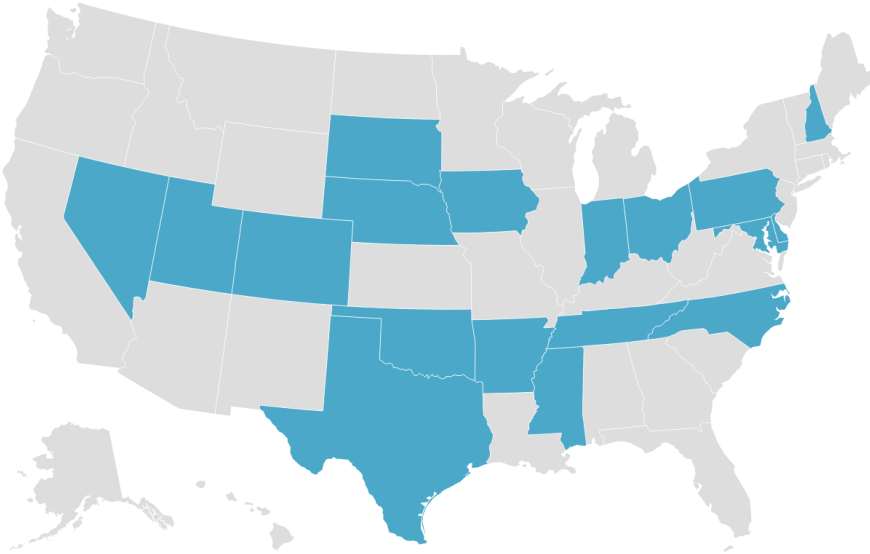
Another occupational licensing reform area that has seen some movement since 2015 is commonly referred to as “second chances” or “fair chance” legislation. This legislation is aimed at helping those who have a criminal record to train and get better employment post-incarceration. In many states, licensing statutes have either automatically excluded those with a criminal record or have provisions known as “moral turpitude” or “moral character” clauses, which allow licensing boards to prohibit someone with a record from being licensed in an occupation.

Reforms look different across the states. Some have provided for pre-determination of eligibility. Nebraska was an early adopter of that model in 2018 with the passage of LB299, which allowed those with criminal records to inquire whether anything in their current background would exclude them from being licensed before training or testing.

Other states have put time limits on how long a conviction could exclude one from licensing if the applicant has met all the other requirements

A few states have limited the time that a crime can be considered post-release and/or required that the conviction have a direct relationship to the position for which a license is being sought. This is the path that Nebraska chose in 2024 with the passage of LB16.

Second Chances in Licensing



Map: Created by the Author with data from • Source: <https://ccresourcecenter.org/2024/03/27/first-fair-chance-licensing-reforms-of-2024/> • Created with Datawrapper

“Sunrise/Sunset” Reviews

Before a new license is created, one might think that significant consideration is given to the value of the license. What are the benefits and potential harms to public safety and the larger economy if this license is (or isn’t) created? As the name implies, these questions are asked at “sunrise” or before the new regulation is implemented. Because the legislature authorizes licenses, the sunrise review is as rigorous as the committee of jurisdiction requires before deciding to advance it to the floor.

Likewise, “sunset” provisions are designed to provide an ongoing review of licensure and its continued need as the economy and other circumstances change.

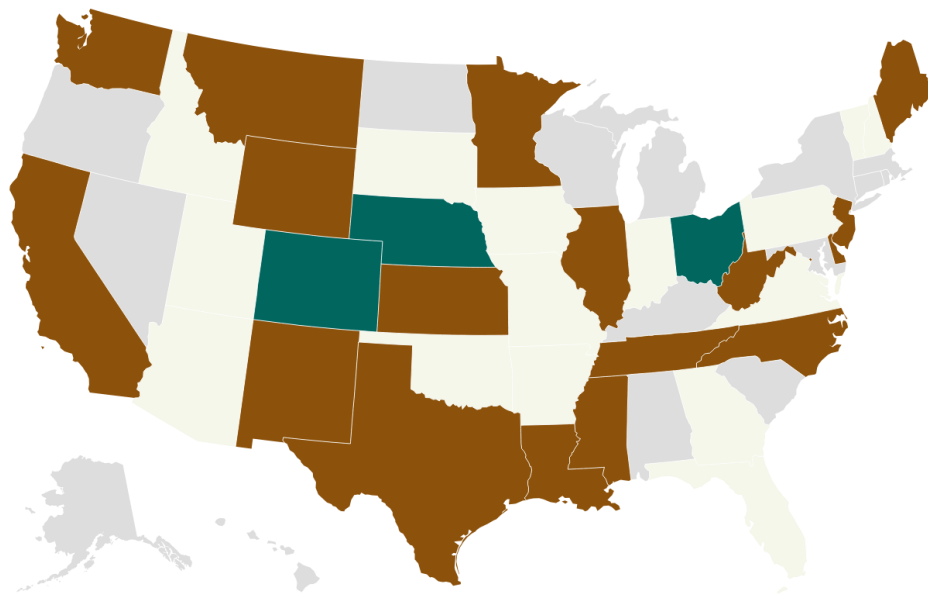
In 2018, Nebraska passed the Occupational Board Reform Act (LB299), which called for all occupational licenses to be reviewed by the legislative committees of jurisdiction on a five-year rotation. Again, the committee can request as stringent a review as it desires, from a brief statement from the licensing board to more detailed data.

Not all states have significant sunrise or sunset provisions, with elected officials mainly serving as a rubber stamp for the industry's desire to license.

A map of the United States where states are colored either green or light gray. Green states include Washington, Oregon, California, Nevada, Arizona, New Mexico, Texas, Colorado, Utah, Wyoming, Idaho, Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida. Light gray states include Washington, Oregon, California, Nevada, Arizona, New Mexico, Texas, Colorado, Utah, Wyoming, Idaho, Montana, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Missouri, Arkansas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Kentucky, Tennessee, Mississippi, Alabama, Georgia, and Florida.

Many states have worked to change their licensing structure over the last decade. The preceding sections indicate broad areas of reform, which cover many (or most) occupational licenses in a state. As can be seen below, the success of states in accomplishing more than one area of reform has been mixed, with only three states (including Nebraska) being able to lay claim to achieving the “trifecta” of occupational licensing reform since 2015.

Number of Significant Reforms



Map: Created by the Author using data from previous maps • Created with Datawrapper

Licensing Compacts

Another stream of occupational licensing activity has been the licensing compact. A compact is a legal and binding agreement between state licensing boards that allows licensed professionals to practice in multiple jurisdictions with minimal complication. Compacts address some of the portability issues discussed above but also have limitations.

First, licensing compacts typically create a national commission responsible for overseeing states' entry into the compact. That entry requires authorizing legislation and may require changes to existing state standards to be enacted to ensure consistency with the compact guidelines. This ensures that all states in the licensing compact have the same minimum licensure standard.

Second, compacts are most effective once approved by all or most states, and licensure is still based in the "home state." So, while it may benefit those who may be interested in doing "temp work" or practicing via something like telehealth, it may not necessarily benefit those who are moving permanently and seeking to transfer their licensure to a new home state.

Third, compacts usually require a minimum number of states to be parties before they go into effect. Most compacts require at least seven states, but the compact is only valid in

states that have fully adopted it. Thus, a licensed professional with a compact license would be limited in where to use that license. The nature of the compact authorizing legislative process means that getting a critical mass of states to join the agreement can take many years.

Universal recognition eliminates the need for a compact for those seeking to move their occupation by recognizing valid licenses from other states for new state licensing; a licensing compact makes it easier for someone licensed in a member state to practice in another member state.

Figure 1 shows the flow of licensed occupations in and out of different state circumstances. Note that Universal Recognition and State Compacts can be in place, allowing licensing boards to welcome all existing licenses from around the country, regardless of whether the originating state is part of a compact (provided no statutory provisions prohibit that).

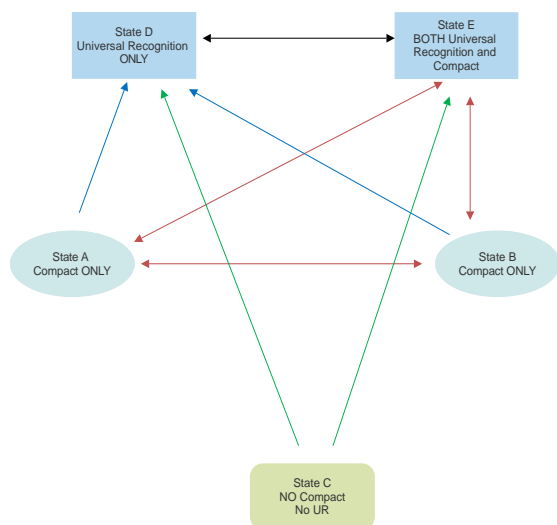


Figure 1

Although licensing compacts have expanded recently, most seem to be in healthcare-related fields. That may be because many healthcare fields already have national testing standards required in most states for licensure. In other words, there is broad consensus about what should be required for licensure in occupations directly related to public health and safety.

Next Steps in Occupational Licensing Reform

As other states continue to move toward a Nebraska-style licensing structure, Nebraska legislators should consider several areas of potential improvement in the coming years.

Membership of Licensing Boards

To avoid anti-trust questions, most state licensing boards have at least one “public member” on the board. That member, appointed by the governor, presumably has neither a financial nor a professional interest in the board’s regulations and has no one in their immediate family who does. Human nature being what it is, one member could be intimidated or pressured by professional colleagues, who outnumber them significantly.

In Arizona, SP1274, signed by Governor Doug Ducey in June of 2020, changed the membership of the licensing boards to **majority civilian or public members**. The Nebraska Legislature should consider similar action—especially for non-medical licensing boards—with the expectation that those not in the occupation may have a better sense of what actions must be taken for public health and safety than those who may stand to gain financially. Recent research on state cosmetology boards also suggests that states with licensing boards that have fewer members tend to impose greater licensing barriers for workers.

Sunrise Review

The Occupational Board Reform Act (OBRA/LB299 in 2018) included a comprehensive sunrise provision as introduced. It would have required before new licenses were created or new requirements for licensure added—that a thorough **review of the needs for the regulation or license is conducted** and analyzed compared to requirements in other states. Because a solution for how that review would be performed could not be agreed upon, that provision was dropped from the bill as passed.

Nebraska should consider creating some framework for conducting these reviews for all occupations. Virginia has developed a solid set of guidelines for agencies conducting economic analysis that might be adapted for these purposes.⁶

Hard Sunset

Nebraska's licensing review process in OBRA is functionally a soft sunset or a required regular review. **Sunset provisions of legislation typically specify circumstances under which a law or regulation will automatically expire if the governing body does not take affirmative action to renew.**

Some states, like Ohio, have enacted a review process similar to Nebraska's. However, under Ohio law, if the reviews are not completed and the legislature does not renew the licensing, the job license requirement disappears.

Nebraska legislators should look at ways to make the reviews less pro forma and more of a critical analysis of the need for continued licensing.

Interim Study Public Hearings to Promote Transparency of OBRA Review Process

The goal of reviewing occupational licenses should not be merely to check the box. The Legislature should actively seek information that will inform their views, not just from the licensing boards but from practitioners and consumers.

While some committees have introduced their reviews as interim studies, we recommend that each committee include its OBRA reviews in a committee interim study hearing to solicit public input from interested parties.

[SEPARATE BOX]

Top Five Considerations for Policymakers When Considering Occupational Licensing

- 1) What is the problem that needs to be solved? If there's no real and demonstrated problem, maybe it's not necessary to regulate.

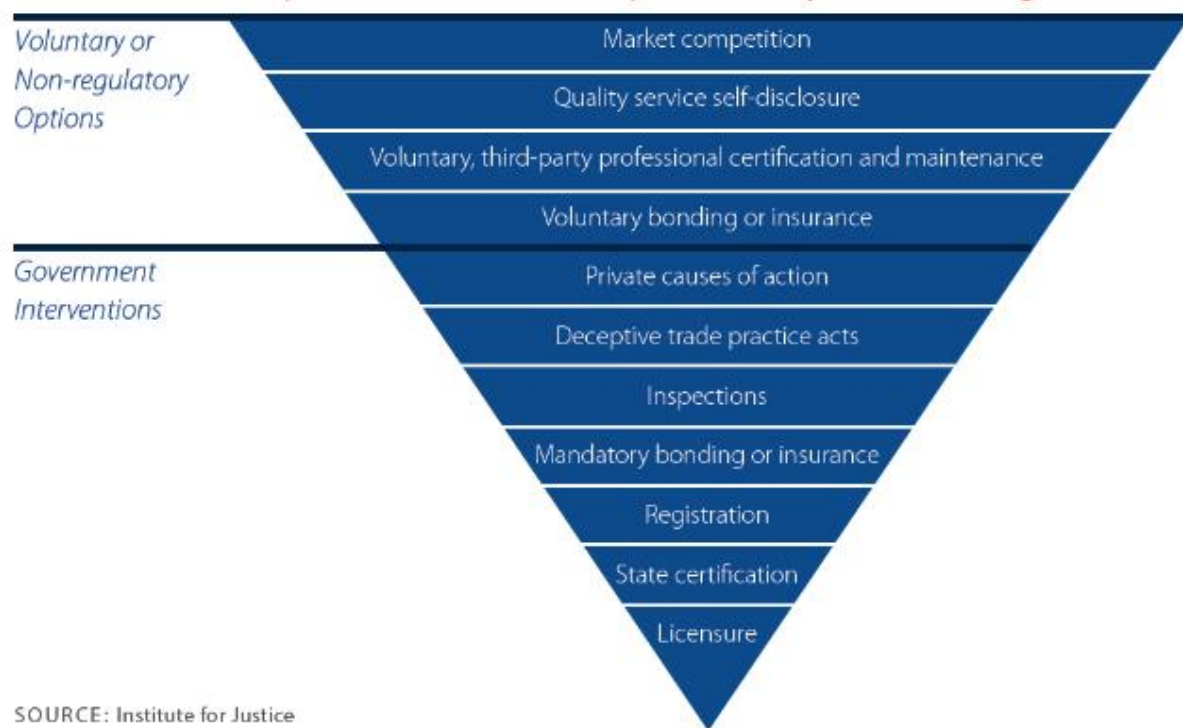
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https://townhall.virginia.gov/UM/Coord_Resources/ORM%20Regulatory%20Economic%20Analysis%20Manual.pdf

- 2) If the problem is external to government action, or there is no guarantee that it would solve it, consider other non-legislative options—like bonding or insurance requirements.
- 3) State regulation/licensure shouldn't necessarily be the first step to solving a problem (see the “inverted pyramid”).
- 4) Consider whether the consumer of the service can assess the quality of the services without state regulation through independent means, such as private certification, online reviews, and personal experience—and whether their inability to assess poses a high risk to health or safety.
- 5) The focus when considering licensing should be on PUBLIC safety and health, not on occupational desires. Who benefits from new regulations? The public who is made safer, or practitioners whose competition is limited by limiting the free market?

*For more information, see the Platte Institute's “Job Licensing: Questions You Should Ask”⁷

The Inverted Pyramid: A Hierarchy of Occupational Regulation



⁷ <https://platteinstitute.org/job-licensing-questions-you-should-ask/>