

# OCCUPATIONAL LICENSING

ASSESSING STATE POLICY AND PRACTICE



For information on the Occupational Licensing project, please contact Suzanne Hultin at 303.856.1531 or [suzanne.hultin@ncsl.org](mailto:suzanne.hultin@ncsl.org).

Over the last 60 years, the number of jobs requiring an occupational license, or government approval to practice a profession, has grown from about one in 20 to more than one in four. When implemented properly, occupational licensing can help protect the health and safety of consumers by requiring practitioners to undergo a designated amount of training and education in their field. However, differences and disparities in occupational licensing laws across states can create barriers for those looking to enter the labor market and make it harder for workers to relocate across state lines. Certain populations—including military spouses and families, immigrants with work authorization, people with criminal records, and unemployed and dislocated workers—are affected disproportionately by the requirements and variances of occupational licensing.

## EMPLOYED WORKERS

25.5% HAVE A CERTIFICATION OR LICENSE

## UNEMPLOYMENT RATES

2.7% FOR LICENSED JOBSEEKERS  
6.1% FOR UNLICENSED JOBSEEKERS

To begin looking for solutions to these problems, the National Conference of State Legislatures, or NCSL, National Governors Association Center for Best Practices, NGA Center, and The Council of State Governments, or CSG, are launching a three-year project entitled *Occupational Licensing: Assessing State Policy and Practice*, with the goal of enhancing the portability of occupational licenses. This work is made possible through a grant from the U. S. Department of Labor's Employment and Training Administration.

## Primary Objectives of the Project

- » Identify licensing criteria to ensure that existing and new licensing requirements are not overly broad, burdensome or restrictive, and that they do not create unnecessary barriers to labor market entry;
- » Improve the portability and reciprocity provisions for selected occupations across state lines.

The *Occupational Licensing* project includes the following major activities:

## Research and Reports on the Current State Occupational Licensing Landscape

This project will identify and evaluate the licensing requirements for 34 occupations across all 55 states and territories. A comparison report will look at the criteria—including work experience requirements, fees and applications, personal background documentation, licensure portability and other requirements—for each of the 34 occupations. This research will result in the National Occupational Licensing Report, which will help inform the work of the project and broaden the understanding of the barriers, challenges and opportunities related to occupational licensing. Additional reports on special populations—military spouses and veterans, unemployed or dislocated workers, immigrants with work authorization and individuals with criminal records—will also be made available.

## Engage States through Occupational Licensing Policy Consortium

The *Occupational Licensing* project will engage a select group of states in a structured peer learning consortium with technical assistance support from the partner organizations. Through a competitive application process, up to 10 states will be selected to join the consortium. Participating states will become familiar with occupational licensing policy in their own state, learn about occupational licensing best practices in other states, and begin implementing actions to remove barriers to labor market entry and improve portability and reciprocity.

Each selected state will form a project team to include representation from relevant stakeholders involved in occupational licensing, including: state legislators, the governor's office, state workforce agencies, state regulatory or licensing boards, and state administrative agencies involved in occupational licensing.

## Consortium states will benefit from:

- » Multi-state team meetings
- » In-state learning consortium meetings
- » Targeted, state-specific technical assistance
- » Support for state action plan development and implementation

## PROJECT TIMELINE

|               |  |
|---------------|--|
| June 2017     | Request for Proposals from state teams opens   |
| August 2017   | Request for Proposals due from states  |
| August 2017   | Release of National Occupational Licensing Report  |
| December 2017 | First Multi-State Consortium featuring licensure experts and team time to develop state action plans   |
| March 2018    | Release of interstate licensure compact resources  |
| July 2018     | Release of four population-specific reports (military families, dislocated workers, immigrants with work authorizations and individuals with criminal records) |
| August 2018   | Second Multi-State Consortium Meeting  |
| June 2019     | Third Multi-State Consortium Meeting   |
| 2017–2019     | Ongoing webinar series on policy issues regarding occupational licensing   |
| 2018–2019     | Ongoing in-state technical assistance for consortium states  |
| 2017–2019     | Ongoing blogs, newsletters and magazine articles on the project and licensure policy issues  |
| December 2019 | Final report on lessons learned and state progress on action plans   |
| December 2019 | Process established to develop licensure compact   |

## OCCUPATIONS

Barbers  
Bus Driver (City/Transit)  
Bus Drivers, School or Special Client  
Construction Managers  
Construction and Building Inspectors  
Dental Hygienists  
Electricians  
Emergency Medical Technicians and Paramedics  
Hairdressers, Hairstylists and Cosmetologists  
Heating, Air Conditioning, and Refrigeration Mechanics and Installers  
Heavy and Tractor-Trailer Truck Drivers  
Insurance Sales Agents  
Licensed Practical and Licensed Vocational Nurses  
Manicurists and Pedicurists  
Massage Therapists  
Nursing Assistants  
Occupational Therapy Assistants  
Pharmacy Technicians  
Physical Therapy Assistants  
Pipefitters and Steamfitters  
Plumbers  
Preschool Teachers, Except Special Education  
Private Detectives and Investigators  
Radiologic Technologists  
Real Estate Appraisers  
Real Estate Sales Agents  
Respiratory Therapists  
Security and Fire Alarm Systems Installers  
Security Guards  
Skin care Specialists  
Teacher Assistants  
Veterinary Technologists and Technicians  
Vocational Education Teachers, Postsecondary  
Water and Wastewater Treatment Plant and System Operators

# National Governors Association

## Eleven States Chosen for Occupational Licensing Policy Study

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September 19, 2017

Share: |||

In a joint project with the National Conference of State Legislatures and the Council of State Governments, the National Governors Association helped to select 11 states to participate in a peer learning consortium focused on occupational licensing policy.

The 11 states (Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Nevada, Wisconsin and Utah, will become familiar with occupational licensing policy in their own state, learn about occupational licensing best practices in other states, and begin implementing actions to remove barriers to labor market entry and improve portability and reciprocity.

“We shouldn’t make it unnecessarily difficult for those who already have the necessary skills to obtain jobs,” said NGA Chair **Nevada Gov. Brian Sandoval**. “I’m glad Nevada is part of this group of states that will work to reduce unnecessary burdens and help strengthen the nation’s workforce.”

To view the press release on the project, click [here](#).

# NCSL LAUNCHES OCCUPATIONAL LICENSING LAWS DATABASE

1/23/2018

## Thirty-Four Licensed Occupations Are Covered



Denver— A new database aimed at better understanding how states tackle occupational licensing policy was launched today. The National Occupational Licensing Database focuses on over 30 licensed occupations identified by project partners [The National Conference of State Legislatures \(NCSL\)](#), [National Governors Association Center for Best Practices \(NGA Center\)](#), and [The Council of State Governments \(CSG\)](#).

The database is designed to capture professions that may be of key interest to policymakers across the country, and to provide a clear picture of the many discrepancies and variations in licensing requirements for more than 30 growing professions. Some of the professions include: barbers, electricians, nursing assistants, real estate sales agents, and private detectives.

This database displays 18 measures for each profession, including hours of training required for licensure, continuing education requirements and cost of initial licensure. The database also allows users to compare the licensing requirements of a particular occupation between two or more states. The project, entitled Occupational Licensing: Assessing State Policy and Practice, is in collaboration with NGA and CSG, and is well into the first year of a three-year process focused on researching licensing criteria, identifying those criteria that operate as barriers to market entry and exploring occupational licensing best practices with 11 states as part of the Occupational Licensing Policy Consortium.

[Access the National Occupational Licensing Database.](#)

[More information on the Occupational Licensing project.](#)

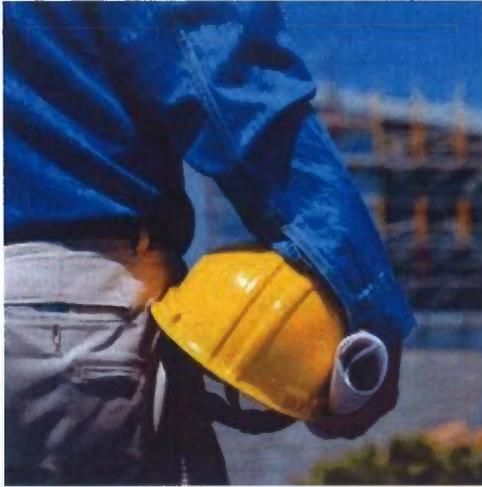
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*NCSL is a bipartisan organization that serves the legislators and staffs of the states, commonwealths and territories. It provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues and is an effective and respected advocate for the interests of the states in the American federal system.*

# THE NATIONAL OCCUPATIONAL LICENSING DATABASE

Suzanne Hultin 1/10/2018

## Executive Summary



Occupational licensing laws require workers to submit verification of training, testing and education—and often pay associated fees—before beginning a job in their chosen field. When implemented appropriately, the state-mandated testing, training and educational requirements of occupational licensure can mitigate potentially harmful health and safety risks for the public.

In some professions, improper practice can result in serious harm to the public. Occupational licensing can reduce the number of unqualified individuals offering their services in that profession, increasing overall public safety and welfare.

However, because licensing laws are established independently by each state government, significant differences and disparities in licensing requirements often exist across states.

In some cases, occupational licensing requirements are established directly by state legislatures in the statute authorizing the creation of the license. Other states delegate the power to determine licensure requirements to state agencies or state-sponsored independent boards. Often, licensing requirements are set by a combination of statute and regulation, the latter being written by a state government agency or an independent licensing board usually comprised of industry representatives appointed by the state's governor.

Over the last 60 years, the number of jobs requiring an occupational license, or government approval to practice a profession, has grown from about 1-in-20 to almost 1-in-4. Licensing laws are implemented with the intention of protecting the health and safety of consumers by creating barriers to employment—through testing, training, and fees—in professions determined to be sufficiently dangerous. Excessively onerous requirements, however, can create barriers to employment for individuals who may not actually pose a serious risk. In recognition of this fact, some states have recently moved to remove licensure requirements determined to be overly burdensome.

Among certain populations—like immigrants with work authorization and people with criminal records—individuals who are otherwise well-equipped to safely practice a chosen profession can be limited by licensing requirements that prohibit these individuals from practicing based on their nontraditional education or language proficiency, and do not accurately reflect the actual risks of practicing that profession. Furthermore, the wide variation in occupational licensing laws across states can impede the ability of workers to relocate across state lines. This variation disproportionately impacts employment opportunities for individuals that move from the job market in one state to another—like long-term unemployed and otherwise dislocated workers seeking new opportunities, or

members of the military and their families who are regularly moved to new places in their service to the country.

The National Occupational Licensing Database was produced by the National Conference of State Legislatures (NCSL), the National Governors Association Center for Best Practices (NGA Center) and The Council of State Governments (CSG), with grant support from the United States Department of Labor, Employment and Training Administration, to contribute to the understanding of the variation in occupational licensing burdens across the country and particularly among professions for which these laws may pose unnecessary barriers to employment.

## Database

Click on the image to access the database.

| State   | Job Name   | Job   | Description  |
|---|--|---|--|
| <input type="checkbox"/> Select All           | <input type="checkbox"/> Dental Hygienist                                  | Dental Hygienist                                  | Clean teeth, examine patients for signs of oral diseases and provide other preventive dental care.   |
| <input type="checkbox"/> Alabama              | <input type="checkbox"/> Drinking Water Treatment Plant Operator (Grade 1) | Drinking Water Treatment Plant Operator (Grade 1) | Water and wastewater treatment plant and system operators manage a system of machines, on control boards, to transfer or treat water or wastewater.  |
| <input type="checkbox"/> Alaska               | <input type="checkbox"/> Electrician                                       | Electrician                                       | Install, maintain, and repair electrical wiring, equipment, and fixtures. Ensure that work is in accordance with codes. May install or service street lights, infusion systems, or electrical control systems.   |
| <input type="checkbox"/> Arizona              | <input type="checkbox"/> Emergency Medical Technician (EMT)                | Emergency Medical Technician (EMT)                | Emergency medical technicians (EMTs) and paramedics care for the sick or injured in emergency situations. People's lives often depend on the quick reaction and competent care provided by these workers.  |
| <input type="checkbox"/> Arkansas             | <input type="checkbox"/> General Contractor                                | General Contractor                                | Plan, direct, coordinate activities concerned with construction and maintenance of structures, facilities, equipment, and heavy machinery. Includes activities such as planning, budgeting, estimating, cost estimating, and scheduling.   |
| <input type="checkbox"/> California           | <input type="checkbox"/> Heavy Tractor Trailer Truck Drivers               | Heavy Tractor Trailer Truck Drivers               | Heavy and tractor-trailer truck drivers transport goods from one location to another. Most tractor-trailer truck drivers transport goods with a gross vehicle weight (GVW) capacity—that is, the weight of the vehicle, passengers, and cargo—exceeding 26,000 pounds. These drivers deliver goods over long distances, often spanning several states. |
| <input type="checkbox"/> Colorado             | <input type="checkbox"/> Home Inspector                                    | Home Inspector                                    | Home inspectors typically inspect newly built or previously owned homes, condominiums, town dwellings. Prospective home buyers often hire home inspectors to check and report on a home's condition. Sometimes, homeowners hire a home inspector to evaluate their home's condition before market.   |
| <input type="checkbox"/> Connecticut          | <input type="checkbox"/> HVAC Contractor                                   | HVAC Contractor                                   | Heating, air conditioning, and refrigeration mechanics and installers—often called heating, vent, and refrigeration (HVACR) technicians—work on heating, ventilation, cooling, and refrigeration systems to maintain indoor air quality in buildings.  |
| <input type="checkbox"/> Delaware             | <input type="checkbox"/> Insurance Sales Agent                             | Insurance Sales Agent                             | Insurance sales agents help insurance companies generate new business by contacting potential customers or members of the public. Insurance sales agents contact various insurance policies and products.  |
| <input type="checkbox"/> District of Columbia | <input type="checkbox"/> Licensed Practical Nurse                          | Licensed Practical Nurse                          | Perform nursing duties under the supervision of a registered nurse or physician. Duties include monitoring vital signs, administering medications, and providing patient care.   |
| <input type="checkbox"/> Florida              | <input type="checkbox"/> Manicurist/Pedicurist                             | Manicurist/Pedicurist                             | Perform manicure and pedicure services for clients. May also provide nail art and other cosmetic services.   |
| <input type="checkbox"/> Georgia              | <input type="checkbox"/> Massage Therapist                                 | Massage Therapist                                 | Perform massage therapy services for clients. May also provide other bodywork services.  |
| <input type="checkbox"/> Hawaii               | <input type="checkbox"/> Occupational Therapist                            | Occupational Therapist                            | Assess and treat patients with physical, cognitive, or emotional disabilities to help them perform daily activities.   |
| <input type="checkbox"/> Idaho                | <input type="checkbox"/> Pharmacy Technician                               | Pharmacy Technician                               | Prepare and dispense medications under the supervision of a pharmacist. May also provide customer service and inventory management.  |
| <input type="checkbox"/> Illinois             | <input type="checkbox"/> Pipe Fitter                                       | Pipe Fitter                                       | Install, maintain, and repair pipes and machinery. May also perform welding and brazing.   |
| <input type="checkbox"/> Indiana              | <input type="checkbox"/> Plumber (Journeyman)                              | Plumber (Journeyman)                              | Install, maintain, and repair water supply, drainage, and waste disposal systems. May also perform pipefitting and welding.  |

| Job Name         | State    | Licensed | Education Requirement   | Hours of Training Required | Amount of Experience | Professional Exam                                      | Licensing Fee | Continuing Education Requirement | Additional Required Exams | Cost of Initial Licensing | Cost of License Renewal | Reciprocity or Endorsement                                    |
|------------------|----------|----------|---|----------------------------|----------------------|--|---------------|----------------------------------|---------------------------|---------------------------|-------------------------|---|
| Dental Hygienist | Alabama  | Licensed | An associate degree is required (from an accredited academic institution or similarly recognized institution) | 2, y                       | 24, m                | Yes, individuals must take an exam to attain licensure | 1             | 24/2                             | No additional exams       | 1173                      | 75                      | State does not have an reciprocity or endorsement agreements. |
| Dental Hygienist | Alaska   | Licensed | An associate degree is required (from an accredited academic institution or similarly recognized institution) | Accredited                 | 0                    | Yes, individuals must take an exam to attain licensure | 2             | 20                               |                           | 1600                      | 150                     | State does not have an reciprocity or endorsement agreements. |
| Dental Hygienist | Arizona  | Licensed | An associate degree is required (from an accredited academic institution or similarly recognized institution) | Accredited                 | 0                    | Yes, individuals must take an exam to attain licensure | 3             | 54                               |                           | 2400                      | 300                     | State does not have an reciprocity or endorsement agreements. |
| Dental Hygienist | Arkansas | Licensed | An associate degree is required (from an accredited academic institution or similarly recognized institution) | Accredited                 | 0                    | Yes, individuals must take an exam to attain licensure | 2             | 40                               |                           | 1600                      | 100                     | State has either reciprocity or endorsement agreements.       |

## Occupations

The scope of the database was narrowed from all licensed occupations in the United States to 34 identified by analysts at NCSL, the NGA Center, and CSG. These 34 were chosen based on the following criteria:

- License required in 30 or more states.
- Licensure does not require a four-year degree education, per U.S. Bureau of Labor Statistics (BLS) education designation.
- Above-average projected growth in employment over the next 10 years, as determined by BLS.
- Total national current employment of 10,000 or more.

These criteria were designed to capture professions that may be of key interest to policymakers across the country, and to provide a clear picture of the many discrepancies and variations in licensing requirements for more than 30 growing professions.

Two-thirds of all jobs in the U.S. are within occupations designated by BLS as not needing post-secondary education. Further, limiting the scope of the database to only those professions that do not require four-year college degrees focuses this research on employment opportunities available to individuals without higher education, who face the highest unemployment rate in the nation. These workers are therefore more likely to encounter the undue barriers to work that policymakers may wish to address.

Lastly, not only does basing the selection of occupations on projected growth potential extend the relevancy of these data in the constantly changing labor market, it also is meant to ensure that data are provided for sectors of the economy in which discussions of workforce development may already be a focus for policymakers.

The database provides data on the occupations shown in Table 1.

|                                    |  |   |   |  |                            |
|------------------------------------|--|---|---|--|----------------------------|
| Barber                             | Bus Driver<br>(City/Transit)                   | Bus Driver,<br>School or<br>Special Client        | General<br>Contractor                       | Home Inspector                             | Dental<br>Hygienist        |
| Electrician                        | Emergency<br>Medical Technician<br>& Paramedic | Hairdressers,<br>Hairstylists &<br>Cosmetologists | Heating, AC, &<br>Refrigeration<br>Mechanic | Heavy, Tractor-<br>Trailer Truck<br>Driver | Insurance<br>Sales Agent   |
| Practical &<br>Vocational<br>Nurse | Manicurist<br>& Pedicurist                     | Massage<br>Therapist                              | Nursing Assistant                           | Occupational<br>Therapy<br>Assistant       | Pharmacy<br>Technician     |
| Physical<br>Therapy<br>Assistant   | Pipefitter &<br>Steamfitter                    | Plumber   | Preschool<br>Teacher*                       | Private<br>Detective                       | Radiologic<br>Technologist |
| Real Estate<br>Appraiser           | Real Estate Sales<br>Agent                     | Respiratory<br>Therapist                          | Security, Fire<br>Alarm System<br>Installer | Security Guard                             | Skin Care<br>Specialist    |
| Teacher<br>Assistant*              | Veterinary<br>Technician                       | Vocational<br>Education<br>Teacher*               | Water Treatment<br>System Operator          |  |                            |

**TABLE 1. OCCUPATIONS SELECTED FOR RESEARCH**

\* data collection ongoing

## Data

For all 34 occupations, available data relating to occupational licensing laws and requirements were collected at the state level. The resulting dataset provides details on the prevalence and levels of initial and continuing education requirements, the number and frequency of examinations, amount of occupational or professional experience or other required job training, and the monetary fees associated with receiving an occupational license across all states.

The dataset also provides information about the legal structures of the boards or government agencies that issue licenses for each occupation in all states. Data are sorted by occupation and can be viewed to compare the requirements for a selected occupation across states.

For each occupation and across all states, where available, the dataset includes the following numerical variables:

- Level of educational attainment needed to fulfill the licensure requirement.
- Number of hours/units of training needed to fulfill the licensure requirement.
- Number of weeks of experience required to fulfill the licensure requirement.
- Number of examinations taken to fulfill licensure requirement.
- Number of years before renewal is required for an occupational license.
- Number of hours/units of continuing education required to maintain or renew licensure.
- Maximum dollar amount charged for initial licensure.
- Maximum dollar amount charged for renewal of licensure.
- Minimum age needed to fulfill licensure requirement.
- Number of active practitioners sitting on licensing board.

Categorical variables are created to describe varying state licensing policies such as:

- Requirement for maintenance of “good moral character.” (Determination of moral turpitude made by licensing authority, often with broad statutory discretion)
- Restrictions imposed on individuals with criminal records.
  - For example: blanket bans, consideration of rehabilitation, or probationary licensure.
- Reciprocity agreements allowing interstate license recognition.
- Degree of independence of board, measured by funding mechanisms.

Table 2 shows the national average number of exams required, national average amount of initial licensing fees, and the proportion of states that include “good moral character” standards for the occupations researched.

| <b>OCCUPATION / PROFESSION</b> | <b>AVERAGE INITIAL LICENSING (IN DOLLARS)</b> | <b>PERCENT OF STATES WITH "GOOD MORAL CHARACTER" REQUIREMENT</b> | <b>AVERAGE NUMBER OF EXAMS</b> |
|--------------------------------|---|--|--------------------------------|
| Licensed practical nurse       | \$301.25                                      | 37.3%  | 1.04                           |
| Manicurist/Pedicurist          | \$180.64                                      | 27.5%  | 1.90                           |
| Massage Therapist              | \$363.91                                      | 49.0%  | 1.17                           |
| Occupational Therapy Assistant | 673.49  | 56.9%  | 1.14                           |
| Pharmacy Technician            | \$69.80                                       | 41.2%  | 1.55                           |
| Physical Therapy Assistant     | \$554.86                                      | 58.8%  | 1.59                           |
| Pipefitter                     | \$167.87                                      | 7.8%   | 1.09                           |
| Plumber                        | \$173.98                                      | 9.8%   | 1.11                           |
| Private Detective              | \$363.87                                      | 68.6%  | 1.00                           |
| Radiologic Technologists       | \$259.38                                      | 80.4%  | 1.98                           |
| Real Estate Appraiser          | \$432.58                                      | 98.0%  | 1.04                           |
| Respiratory Therapist          | \$326.27                                      | 33.3%  | 1.00                           |
| School Bus Driver              | \$96.23                                       | 21.6%  | 1.80                           |
| Security Alarm Technician      | \$214.27                                      | 17.6%  | 1.06                           |
| Security Guard                 | \$120.88                                      | 45.1%  | 1.00                           |
| Esthetician                    | \$175.24                                      | 27.5%  | 1.92                           |
| City Bus Driver                | \$52.42                                       | 37.3%  | 2.04                           |
| Veterinary Technician          | \$400.28                                      | 39.2%  | 1.51                           |

| OCCUPATION / PROFESSION        | AVERAGE INITIAL LICENSING (IN DOLLARS) | PERCENT OF STATES WITH "GOOD MORAL CHARACTER" REQUIREMENT | AVERAGE NUMBER OF EXAMS |
|--------------------------------|--|---|-------------------------|
| Dental Hygenist                | \$1,600.67                             | 64.7%   | 2.61                    |
| Water Treatment Plant Operator | \$176.07                               | 2.0%  | 1.00                    |
| Electrician                    | \$137.34                               | 0.0%  | 1.00                    |
| Emergency Medical Technician   | \$121.40                               | 47.1%   | 1.94                    |
| General Contractor             | \$355.97                               | 25.5%   | 2.05                    |
| Tractor Trailer Truck Driver   | \$49.16                                | 3.9%  | 2.04                    |
| Home Inspector                 | \$468.34                               | 21.6%   | 1.18                    |
| HVAC Contractor                | \$332.34                               | 9.8%  | 1.39                    |
| Insurance Sales Agent          | \$86.02                                | 0.0%  | 1.00                    |

**TABLE 2: SELECTED SUMMARY STATISTICS FROM DATASET**

Data were collected by staff at NCSL, the NGA Center, and CSG through a review of state code and statute from July-September 2017. The data then underwent a comprehensive cleaning process to ensure accuracy and reliability across each of the 34 occupations and all 50 states and the District of Columbia.

## Occupational Licensing Project

[Learn more about the Occupational Licensing Project.](#)

Cosmetologists - <http://www.ncsl.org/research/labor-and-employment/occupational-licensing-statute-database.aspx>

Manicurist/Pedicurist

## The Council of State Governments (CSG)

### Connecticut Collaborating on Best Practices for Occupational Licensing

By

Ray Williams

Thursday, April 12, 2018 at 11:06 AM

Connecticut held a meeting on March 2, 2018 on occupational licensure with assistance from The Council of State Governments, or CSG, the National Conference of State Legislatures, or NCSL and the National Governor's Association, or NGA.

CSG launched an occupation licensing technical assistance project in August 2017 in partnership NCSL and NGA, through a \$7.5 million grant from the U.S. Department of Labor, or DOL. The 11 state consortium includes Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Nevada, Utah and Wisconsin. Each state focused on specific occupations and target populations in an attempt to identify known and unknown barriers of occupational licensing.

The DOL project scope identified the key populations for each state as military spouses and children, immigrants with work authorization, people with criminal records and unemployed and dislocated workers. The DOL identified 34 occupations for evaluation, allowing each state to select specific occupations based on their individual needs. The overall objective of the project is to examine occupational licensing requirements, identifying potential barriers and to improve portability across state lines.

The consortium met last November in Tucson Arizona, giving state leaders an opportunity to work on action planning with licensing stakeholders, while collaboratively collecting data. Since the November meeting, 7 states have held in state meetings including Arkansas, Colorado, Connecticut, Delaware, Illinois, Maryland and Nevada. The remaining 4 states, including Indiana, Kentucky, Utah and Wisconsin have in state meetings planned in the coming weeks.

Throughout these meetings, reciprocity is one of the emerging themes and states are looking to neighboring states, as well as consortium states, to ease occupational licensing portability between state lines.

Connecticut's Department of Public Health Section Chief Christian Anderson said during the 2017 consortium meeting, "We have always assumed that Connecticut's reciprocity agreements have been a selling point for the state but we really didn't know until we met with consortium states."

During Connecticut's in-state meeting, April 2018, Director of Policy Bill Wlez said, "it is imperative that Connecticut review and expand reciprocity agreements with consortium states, as well as neighboring states, to stay competitive and continuing to protect public safety."

Over the course of the project, consortium states are relying on current and active interstate compacts as a means to solve problems that span state boundaries. CSG's National Center for Interstate Compacts, or NCIC, is a policy program developed by CSG to assist states in developing interstate compacts, which are contracts between states. Currently, the NCIC manages more than 200 active interstate compacts helping states facilitate consensus on national issues.

CSG, NCSL and NGA provided a throughout review of state requirements and reciprocity agreements on occupational licenses. The collected data will allow all states to ensure consistency throughout testing procedures, education requirements and any necessary training requirements across all 50 states and 5 territories.

In addition to reciprocity agreements, consortium states are also using shared data to examine best practice methods for background check requirements, apprenticeship programs, transferability of military skills, overcoming legislative obstacles and lessons learned approaches to occupational licensing barriers.

"It is an opportunity for all states to learn from one another, as well as hopefully ease barriers in portability, all while advancing economic development," Connecticut's DOL Executive Director Kathleen Marioni said during a status meeting.

For the remainder of 2018, CSG, NGA and NCSL will visit each consortium state, providing technical assistance and best practice methodologies from other states. All 11 consortium states will meet in November of 2018 to review and share their progress with stakeholders.

# THE OCCUPATIONAL LICENSING DEFENSE ACT

DECEMBER 8, 2017

**Summary:** The purpose of this Act is to ensure that an individual may pursue a lawful profession free from unnecessary occupational regulations and protect those against the misuse of occupational regulations that reduce competition and increase prices to consumers. The government should use the least restrictive means of furthering important government interests in the name of public safety and not substantially burden a individual from seeking a lawful occupation.

## Model Policy

{Title, enacting clause, etc.} Section 1. {Purpose}

This Act's purpose is to:

(A) Ensure that an individual may pursue a lawful occupation free from unnecessary occupational regulations, and

(B) Protect against the misuse of occupational regulations to reduce competition and increase prices to consumers.

Section 2. {Definitions} The following definitions apply in this Act:

(A) "Business license" means a permit, registration, certification, franchise or other approval required by law for a sole proprietorship, partnership or corporate entity to do business.

(B) "Certification" is a voluntary program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a legislative body. Upon approval, the individual may use "certified" as a designated title or as part of a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "certified." "Certification" is not intended to be synonymous with an "occupational license" in this Act or to prohibit the use of private certification.

(C) “Certified” is a designated title an individual may use if the individual meets the personal qualifications for certification established by the government or a private certifying organization.

(D) “Court” means any court, administrative tribunal or other government agency acting in a judicial or quasi-judicial capacity.

(E) “Government” means the government of this state or any of its political subdivisions.

(F) “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.

(G) “Least restrictive means of furthering an important governmental interest” 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) A provision for private civil action in small-claims or district court to remedy consumer harm,
- (6) Deceptive trade practice act,
- (7) Mandatory disclosure of attributes of the specific good or service,
- (8) Regulation of the process of providing the specific good or service,
- (9) Inspection,
- (10) Bonding,
- (11) Insurance,
- (12) Registration,
- (13) Certification,
- (14) Specialty occupational license for medical reimbursement or
- (15) Occupational license.

(H) “Occupational license” is a nontransferable authorization in law for an individual to perform a lawful occupation for compensation based on meeting personal qualifications established by a legislative body. It is illegal for an individual who does not possess an occupational license to perform the occupation for compensation. Occupational licensing is the most restrictive form of occupational regulation.

(I) “Occupational regulation” means a statute, ordinance, rule, practice, policy or other requirement in law that an individual possess certain personal qualification to work in a lawful occupation. It excludes a business license and zoning and land use regulations except to the extent those laws regulate an individual’s personal qualifications to perform a lawful occupation.

(J) “Personal qualifications” are criteria established by a legislative body 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.

(K) “Registered” is a designated title an individual may use if the individual meets the requirements for registration established by the government or a private registration organization.

(L) “Registration” means a requirement established by a legislative body in which an individual gives 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 approval, the individual may use “registered” as a designated title or as part of 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. It is not intended to be synonymous with an “occupational license” in this Act or to prohibit the use of private registration.

(M) “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.

(N) “Substantial burden” means a requirement in an occupational regulation that imposes significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation. A substantial burden is a burden that is more than incidental.

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

(A) An individual has a fundamental right to engage in a lawful occupation free from any substantial burden in an occupational regulation unless the government demonstrates

(1) It has an important interest in protecting against present and recognizable harm to the public health or safety, and

(2) The occupational regulation is the least restrictive means of furthering that important interest.

(B) Defense and Relief

(1) An individual may assert as a defense the right to engage in a lawful occupation in any judicial or administrative proceeding brought by the government to enforce an occupational regulation that violates Section 3, Subsection (A) which is.

(a) In law at the effective date of this Act; or

(b) Enacted, adopted or amended after the effective date of this Act and does not include in state statute an explicit exemption from this Act.

(2) An individual who asserts a defense under this section has the initial burden of proof that an occupational regulation substantially burdens the individual's right to engage in a lawful occupation.

(3) If the individual meets the burden of proof under Subsection (2), the government must demonstrate by clear and convincing evidence that the government has an important interest in protecting against present and recognizable harm to the public health or safety, and the occupational regulation is the least restrictive means for furthering that important governmental interest.

(C) A court shall liberally construe this Act to protect the right established in Subsection (A) of this section. In construing occupational regulations, including occupational licensing statutes, rules, policies or practices, the

following canons of interpretation are to govern, unless their observance would involve a construction inconsistent with the manifest intent of the legislature, or repugnant to the context of the statute:

(1) Occupational regulations shall be construed and applied to increase economic opportunities, promote competition and encourage innovation;

(2) Any ambiguities in occupational regulations shall be construed in favor of workers and aspiring workers; and

(3) The scope of practice in occupational regulations shall be construed narrowly so as to limit its application to individuals who would be burdened by regulatory requirements only partially related to the goods and services they provide.

(D) A court shall make its own findings of fact and conclusions of law. It shall not grant any presumption to legislative or administrative determinations of harm to the public health or safety, or that the regulation is the least restrictive means of furthering an important governmental interest.

(E) Nothing in this section shall be construed (1) to create a right of action against the government or a private party or (2) to require the government or a private party to do business with an individual who is not licensed, certified or registered with the government.

Section 4. {Federal law's use of state occupational regulations}

(A) Nothing in this Act shall be construed to create a right of action against the federal government for its use of a state occupational regulation in federal law.

Section 5. {Exemption} [Optional]. This Act does not apply to an occupational regulation of an individual who is a [insert type of occupation to be exempted].

Section 6. {Severability Clause} Section 7. {Repealer Clause} Section 8. {Effective Date}

Adopted by the Commerce, Insurance and Economic Development Task Force at the Spring Task Force Summit on May 11, 2012. Amended by the

**American Legislative Exchange Council (ALEC)**

**<https://www.alec.org/model-policy/the-occupational-licensing-defense-act-2/>**

Commerce, Insurance and Economic Development Task Force at the Annual Meeting, August 8, 2013.

Approved by the ALEC Board of Directors on July 3, 2012. Approved by the ALEC Board of Directors October 2013.

Amended and reapproved by the Commerce, Insurance and Economic Development Task Force at the States and Nation Policy Summit, December 8, 2017.