

The Forum for America's Ideas

OCCUPATIONAL LICENSING: NATIONAL PERSPECTIVE

AL DOWNS



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Why ease burdens?

- In some cases, licensing has been shown to increase unemployment
 - Gius (2016) found licensing of veterinary technicians, teacher's assistants, taxi drivers, pharmacy technicians, opticians and some construction workers was significantly related to fewer per capita jobs
- Variation in requirements across state lines impedes labor fluidity
 - Kleiner (2015)
- Technologic and market evolution can leave established standards outmoded



Independent Approaches

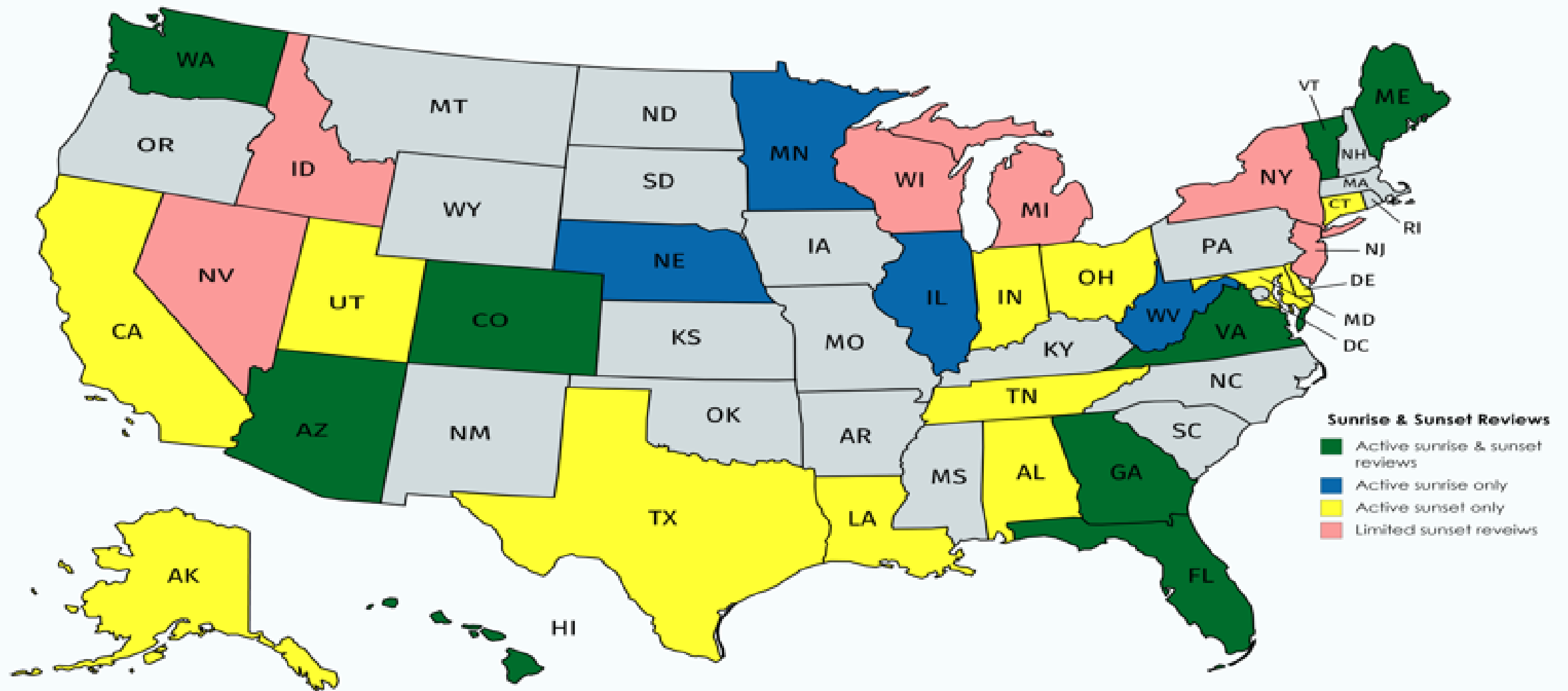
- Sunrise/Sunset procedures
 - Data-driven decisions
- Streamline
 - Centralize and digitize
- Altering requirements
 - Lower, exempt, delicense



Sunrise/Sunset: Theory and Mechanics

- At the federal level, regulatory bodies have been required by every President since Jimmy Carter to review the cost and benefits of regulatory alternatives before issuing rules
 - Also required in many states, for licensing and other rulemaking
- Ex-ante or “lookback” regulatory impact analysis can improve enforcement, expand public input, and reduce mission creep
- When and by whom reviews are executed matters
 - Independent agency or commission, self-review, legislative body





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Source: Council on Licensure Enforcement and Regulation



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Sunrise/Sunset: In Practice

Washington Sunrise Act of 1986

“The legislature's intent is that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry. In addition, changes of existing licensed practitioner's scope of practice should benefit the public. Enhancement of professional status alone is not justification for regulation.”

Texas Sunset Act of 1977

“The Sunset Advisory Commission reviews all agencies scheduled for termination in a particular year by gathering self-evaluation reports from the agencies, conducting public hearings, and preparing reports to the legislature with recommendations to continue or abolish the agencies. If the commission recommends continuing an agency, it must also provide draft legislation that...corrects any problems identified during the review.”



Streamlining: Theory and Mechanics

- Reducing time burden while maintaining same regulatory requirements
 - Moving systems online, “one stop” licensing, intrastate reciprocity
- Most streamlining activity can be done administratively
- Centralization of licensing is exception and generally requires legislation



Streamlining: In Practice

Maryland SB 262 - 2017

“Requiring a county health department to issue a mobile reciprocity license...prohibiting a county from requiring that a mobile food service facility be inspected before a county health department issues a mobile reciprocity license if the mobile food service facility has been inspected by the county of origin.”

Kansas Board of Pharmacy - eLicensing

“[The] web-enabled licensing and renewal system will improve Board experience, ease of access, and renewal process.”



Altering Requirements: Theory and Mechanics

- Following Sunrise/Sunset review, existing requirements may be found to exceed necessary levels to achieve policy goals
 - Changing demographics, technology
- Alternative mechanisms for demonstrating qualifications to the state may arise or become newly recognized
 - Military training, virtual classrooms, lateral recognition
- Occupations and professions found to put the public at limited risk relative to the labor market burden of licensing can be delicensed
 - State certification or consolidation



Altering Requirements: In Practice

Ohio HB 189 - 2017

- ☐ Eliminate high school education req. for boutique services providers
- ☐ Convert the natural hair stylist and independent contractor license to registry
- ☐ Allow distance education to be used to meet education and continuing education requirements
- ☐ Reduce required hours of instruction for a cosmetology license from 1,500 to 1,000

Nebraska LB 140e - 2017

- ☐ Eliminated mandatory licensing for commercial banking and credit union loan officers



Anti-Trust Concerns

In [North Carolina State Board of Dental Examiners v. FTC](#), the U.S. Supreme Court held that if the majority of state occupational licensing board members are active market participants, the licensing board is subject to federal antitrust laws. Since this ruling, state authority to regulate via occupational licensing has been limited by federal anti-trust laws.

- Why the Court ruled in this way and what can be done at the federal and state level to prevent future regulatory decisions from being illegally anti-competitive.
- The case has sparked action across states and has prompted further lawsuits against state boards in [Texas](#) and [elsewhere](#).



Licensing: veterans and military spouses

- Governors and state legislatures have shown a commitment to easing transitions into employment for veterans and their spouses.
- Challenges for veterans: cost, applicability of training, and less than honorable discharge.
- Challenges for spouses: cost, interstate variation, vague language.
- Examples: Wisconsin Act 319, Utah SB 227



Licensing: individuals with criminal records

- Individuals with criminal records face many barriers to licensure including both those codified in federal and state law and those that are unwritten.
- Challenges for individuals with criminal records: cost, blanket bans, “good moral character” clauses, and applicability of training.
- Examples: Illinois HB 5973, Utah HB 37



Limitations and challenges of independent reforms

- Personnel and budget constraints
- May not address interstate mobility
 - Could even undermine interstate agreements
- Political considerations



11-State Occupational Licensing Learning Consortium

- Members: Arkansas, Colorado, Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Nevada, Utah, and Wisconsin.
- In-state meetings
- Conference



NCSL Resources

- Most recent report: [The State of Occupational Licensing](#)
- [National Database](#)
- [Legislative Tracker](#)
- Upcoming reports



Thank you

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