



OCCUPATIONAL LICENSING ADVISORY COMMISSION

2019 REPORT & RECOMMENDATIONS

THIS REPORT WAS PREPARED BY:
The Occupational Licensing Advisory Commission

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Executive Summary

In 2018, the Occupational Licensing Advisory Commission was formed and set out to conduct a comprehensive review of Oklahoma's occupational licenses to provide recommendations to the Governor and Legislature. The Commission's review maintained that the state's role should be striving to achieve a balance between free market principles, protecting public safety, and reducing barriers to entry in the workforce.

The Commission examined 28 licenses under 15 different boards for the first set of recommendations, which include:

1. Licensing reform for military members and their spouses including exemptions, service hour recognition, and reciprocity;
2. Allowing criminal offenders to more easily obtain a license;
3. Consolidating comparable commissions;
4. Eliminating the Public Accountant license
5. Eliminating the Alarm, Locksmith, and Fire Sprinkler Manager and Salesperson license;
6. Continue studying the Home Inspector and Music Therapist license;
7. Continue examining license hierarchies in the areas of Cosmetology and Nursing;
8. Eliminate the Motor Vehicle and Used Motor Vehicle Salesperson license;

After considerable work and input from Commission members, various stakeholders, and the public, the Commission created this report which will provide their findings and suggestions derived from their efforts over the past few months.

Occupational Licensing Advisory Commission

Occupational Licensing Advisory Commission Membership

- Labor Commissioner Melissa Houston
- Senator Nathan Dahm
- Senator Kay Floyd
- Senator Adam Pugh
- Representative Mark McBride
- Representative Cyndi Munson
- Representative Mike Osburn
- Bo Reese, Chief Information Officer, OMES
- Matthew Burns, VP of Communications, UnitedHealth Group
- Paul Campbell, President & CEO, Enviro Systems
- Renee Porter, President & CEO, Cristo Rey High School
- Steven Shoemaker, VP of Sales and Marketing, Ideal Homes

Commission staff: Christina Foss, Director, Occupational Licensing Advisory Commission

Background

What is Occupational Licensing?

An occupational license is essentially permission from a governmental institution to work in a particular field. In the 1950's, about one in fifty professions required an occupational license. However, today nearly one in three workers require governmental approval to work in their chosen occupation. The growth of occupational licensing in the last 50 years is primarily attributable to lower- to middle-income occupations. Depending on the state, any particular license can include various forms of licensure barriers such as fees, tests, hours of training, hours of continuing education, and educational degrees. Additionally, the degree to which these different types of barriers impose a burden on an aspiring worker for a particular license differs from state to state.

Licensure is the process by which a state legislature grants some individual or board the power to enforce and maintain licensure requirements. A licensure board is typically made up of individuals from the profession who will accept and review applications or oversee the administration of certain requirements (such as exams). These powers and the organization of such licensure bodies are created by legislation.

Scope of Problem

A 2017 study by the Institute for Justice ranked Oklahoma as the 18th most burdensome licensing laws in the nation. (License to Work: A National Study of Burdens from Occupational Licensing 2nd Edition). Of the 102 lower-income occupations examined, Oklahoma licensed 41 of them; requiring on average \$234 in fees, 399 days of education and experience and around two exams.

Oklahoma has a significant problem in the lack of a centralized source of information, administration, or even tracking of occupational licenses the state issues. There are over 200 state agencies, boards and commissions, most of whom have jurisdiction over occupational licenses. As many boards generate their own revenue, in the form of licensing fees, the Legislature often does not review their budgets or operations and they are largely unaccountable.

The process of licensure has thus far lacked objective standards or guidelines. Additionally, there is not a continuing mechanism for either the objective review of a license prior to its creation or for an ongoing review as regulations evolve.

The Occupational Licensing Advisory Commission will for the first time provide a centralized source of occupational license information and an objective review of existing licenses.

Consequences of Excessive Licensing

In addition to violating the principles of economic liberty, excessive occupational licensing may unnecessarily harm many individuals who are aspiring to work including low income Oklahomans. High barriers to occupations may create a poverty trap and force more people into relying on government assistance.

Oklahoma is a small state with a per capita income lower than the national average at \$49,000 per year. Any barrier to entering the workforce is problematic and reduces the potential income for an employee. Oklahoma's poverty rate is 2.3 points above the national average; with 16.3 percent of Oklahoma's population with incomes below the poverty level (Source: United States Census Bureau, 2016 American Community Survey).

Excessive occupational licensing can also disproportionately affect former criminal offenders trying to reintegrate into society and those with criminal histories. Oklahoma consistently has one of the highest incarceration rates in the nation and 8.5% of the population has some form of criminal felony history (Source: Oklahoma Criminal Justice Resource Center).

Oklahoma is proudly home to a large military population with all five branches having a presence in Oklahoma. There are five major military installations including Tinker Air Force Base, headquarters of the Air Force Materiel Command Oklahoma City Air Logistics Center, Altus Air Force Base, Vance Air Force Base, Fort Sill Army Post, and McAlester Army Ammunition Plant. Members of the military and their spouses are greatly impacted by excessive occupational licenses and lack of reciprocity with other states.

History of Licensing Review in Oklahoma

Oklahoma began addressing the issue of occupational licensing by convening an Occupational Licensing Task Force in 2017 (Final Report can be found at labor.ok.gov) per Executive Order by Governor Fallin. What the Task Force found was a state of complete disarray in licensing review and administration. The Task Force recommended further analysis of licenses by an independent entity utilizing the Licensing Blueprint to review licensing regulations. (Blueprint attached).

As a result of the Task Force the Oklahoma Legislature enacted SB 1475, creating an Occupational Licensing Advisory Commission (effective July 1, 2018). This Commission is comprised of a broad representation of needed stakeholders including: legislators, industry members, information technology representatives, license holders, and others. It is tasked with conducting a review of all occupational licenses and making recommendations to the Legislature.

Work of the Commission

The Commission will utilize the Occupational Licensing Blueprint (attached) to conduct an analysis of all the occupational licenses in Oklahoma. Each year the Commission will review a portion of the occupational licenses issued in Oklahoma to make recommendations to the legislature and administrative agencies for reform. The review will be prioritized by critical occupations to Oklahoma. These recommendations will be made following a public meeting and vast input from stakeholders. The recommendations for reform will be made in December of each year, prior to the start of the legislative session.

The Commission will also compile data to determine all the licenses issued by Oklahoma's agencies, boards and commissions and update the online database created by the Task Force (licensing.ok.gov).

Timeline

The Commission held its first meeting on October 4th, 2018 to identify priority areas to begin analysis and prepare for upcoming meetings. A second meeting was held October 23rd and the license review list was culled down even further to reflect Oklahoma's critical occupations with a high economic potential index and some outlier licenses. The Blueprint was sent out to 15 boards for their input. The Commission held a Public Meeting on November 27th and invited licensing entities who were sent a Blueprint to present. Members asked questions and gathered needed information to form recommendations. Recommendations were discussed at the Commission's December 4th meeting and voted on at the December 13th meeting.

License Review Process

The Occupational Licensing Blueprint forms the basis for the Commission to analyze licensing requirements and make recommendations to the Legislature. The Blueprint, for the first time,

creates an objective practical tool to determine whether a license is needed or whether a lower form of regulation could be used so policy makers and boards can have guidelines rather than relying on a regulated industry to lobby them. It contains questions to determine whether there is a government interest in regulating (such as public safety, public health, a fiduciary duty or a fundamental right). It also questions whether a lesser form of regulation such as insurance, bonding, registration (as outlined in the Institute for Justice’s “Hierarchy of Occupational Regulation Options”) may be more appropriate. It also considers the composition of Oklahoma licensing boards. The Commission will utilize the Occupational Licensing Blueprint to conduct an analysis of all the occupational licenses in Oklahoma.

New licenses created will be reviewed by the Commission within 90 days of enactment. Licenses are to be reviewed every four years. Year one, the Commission examined some of Oklahoma’s critical occupations with a high economic potential indicator and licenses that appeared to be outliers. Year two will focus on the rest of Oklahoma’s critical occupations (list provided by Oklahoma Works) and the Occupational Licensing Policy Learning Consortium’s targeted occupations list. The following years will examine Oklahoma’s remaining licenses. Commission members can add licenses to the schedule with a majority vote.

Recommendations

Military Recommendations

Military Exemptions

While some of the licenses studied by the Commission granted reciprocity or an abbreviated path for military members, none offered an initial license fee exemption. The Commission recommends all agencies, boards, and commissions consider exempting military members and their spouses from an initial license fee if they hold a license in the same industry from another state.

Recognition of Military Training, Education and Experience

For many veterans who are qualified to perform a job and have done so in the military for years, a civilian career in the same field can be out of reach. This is because licensing regulations have been written to accept only specific types of non-military education and training. The Commission recommends that licensing boards recognize equivalent military training, education and experience toward the requirements for licensure.

Example: Rhode Island requires each member of a licensing board to “accept education, training or service completed by an individual as a member of the Armed Forces or Reserves of the United States [or] the National Guard of any state...toward the qualifications to receive the license or certification (R.I. Gen. Laws §5-87-1).

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Ways to implement:

Licensure by Endorsement:

If state licensing boards determine that there is full equivalency between military preparation and civilian preparation, veterans can be licensed by endorsement without additional training or exams. This is most appropriate for occupations for which there are recognized national certification exams.

Licensure by Exam.

Boards could waive the requirement for veterans to complete an approved civilian training program as a condition to sit for a state licensure exam and grant permission to sit for the exam based on military training and experience alone. In that case, states can use the exam to demonstrate that the candidate has sufficient knowledge to practice competently.

Example: Wisconsin’s Law Enforcement Accelerated Development Program allows veterans who have separated within the past three years and who have at least one year of experience as a military police officer to take a certification exam with no additional civilian training.

Reciprocity

The Commission also recommends license reciprocity for military spouses. The lack of license portability is a significant concern for our military members and their spouses who move an average of once every three years. Some best practices include: license endorsements from previous jurisdiction, providing a temporary or provisional license, and expedited application precedes.

Examples:

- Montana allows boards to approve an application (for an endorsement or temporary license) based on an affidavit stating that the information provided is true and accurate and that the necessary documentation is forthcoming. Boards review the documentation upon receipt and can take disciplinary action if there are discrepancies.
- Utah HB 384 allows their occupational boards to approve the use of out-of-state licenses for “the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, provided:
 - (i) the spouse holds a valid license to practice a regulated occupation or profession issued by any other state or jurisdiction recognized by the division; and
 - (ii) the license is current and the spouse is in good standing in the state of licensure.”

Criminal Justice Recommendations

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HB 2168, signed in 2015, mandated that boards cannot bar all felony convictions, just those relating to the practice that pose a reasonable threat.

Definitions used:

"Substantially relates" means the nature of criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation; and

"Poses a reasonable threat" means the nature of criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.

This provision only relates to:

State Architectural and Registered Interior Designers Act
Oklahoma Cosmetology and Barbering Act
Engineering and Land Surveying
Oklahoma Athletic Trainers Act
Oklahoma Certified Real Estate Appraisers Act
Physical Therapy Practice Act
Occupational Therapy Practice Act
Psychologists Licensing Act
Oklahoma Pawnshop Act
Speech Language Pathology and Audiology Licensing Act
Licensed Professional Counselors Act

Marital and Family Therapist Licensure Act
Licensed Behavioral Practitioner Act

The Commission recommends extending this provision to other regulatory boards.

Consolidation Recommendations

Oklahoma Motor Vehicle Commission and Used Motor Vehicle and Parts Commission

Both the Oklahoma Motor Vehicle Commission and the Used Motor Vehicle and Parts Commission are in the business of regulating the motor vehicle industry. While the Used Motor Vehicle and Parts Commission has a slightly broader scope regulating manufactured home dealers and installers, the Commission recommends consolidating the two entities.

Board of Licensed Social Workers

The Commission will study further the issue of consolidating the Board of Licensed Social Workers with another board of a similar scope. Originally, the Commission discussed consolidating this board with the Board of Behavioral Health, but upon further study determined the Boards' purview may not be compatible.

License Recommendations *Organized by regulatory agency or board.*

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Accountancy Board – Certified Public Accountant, Public Accountant license

The Commission agrees that there is a fiduciary public concern regarding the Certified Public Accountant (CPA) license and recommends no changes. Taking in to account the decline of Public Accountants (PA) and the lack of applications for that license, the Commission recommends removing the PA license.

The Accountancy Board regulates Certified Public Accountants and Public Accountants. While CPA's can perform audits, PA's cannot and are typically employed as accountants. Many states do not have a Public Accountant license and the Board has not seen any applicants for the license in several years. Accountants can be employed without a license as well, making the license obsolete.

Alarm and Locksmith Board – Manager, Salesperson license

The Commission recommends to keep the technician license and remove the salesperson and manager licenses.

The Alarm, Locksmith, and Fire Sprinkler Board issues licenses for burglar alarm, fire alarm, fire sprinkler, and locksmith managers, technicians, and salespeople. The manager license is for the manager of a company who oversees technicians and salespeople, both of whom are currently licensed. While technicians enter the home, install, and often design security systems, managers run the business and therefore should not need a separate license that includes several years of experience and passing an exam. If a manager is also working in the home, a technician license would remain appropriate.

The salesperson does often sell systems door to door. To protect public safety, salespeople should remain registered and pass a background check, however should not need to pass a test and pay for a license through the state.

Architects, Landscape Architects, and Registered Interior Designers, Board of – Architect license

No recommended changes to Architect license.

The Commission appreciates the model used by the Board of Architects. Architects do not need to be licensed when working under a principle or firm that is licensed. (59 OS §46.21) Therefore, a state mandated license is not necessary for an architect to be employed.

Behavioral Health, Board of - Licensed Professional Counselor license

No recommended changes to the Licensed Professional Counselor license.

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Construction Industries Board – Electrician, Home Inspector, HVAC, Plumbing license

The Commission recommends to keep all licenses examined (Electrician, Plumbing, HVAC) and continue studying the possibility of changing the Home Inspector license to a registration and insurance requirement.

Commission members will continue studying the Home Inspector license from diverse industry perspectives.

Cosmetology, Board of – Barber, Cosmetician license

The Commission analyzed the Cosmetician and Barber license, though other information was presented such as a future shampooing certification. The Board of Cosmetology made positive changes in the 2018 legislative session to remove barriers to becoming a hair braider. Hair braiders now have the option of taking a health and safety test and registering if needed for an employer. The Commission recommends this same process in place of a shampooing certification which would require 140 hours of training.

The Commission recognizes the Board of Cosmetology regulates an industry with public health concerns at the higher level licenses. Therefore, the Commission recommends studying the hierarchy of licenses further and removing barriers to the licenses with less public health concerns.

Department of Health – Emergency Medical Technician license

No recommended changes to the Emergency Medical Technician license.

Medical Licensure and Supervision, Board of – Music Therapist license

The Commission will not make a recommendation at this time, but will continue studying the Music Therapist license from different industry perspectives.

Nursing, Board of

No recommended changes in this report. Nursing is one of Oklahoma’s critical occupations and is experiencing a significant worker shortage, so the Commission will continue studying the hierarchy of nursing licenses to determine if there are barriers at the bottom that need to be evaluated.

Oklahoma Motor Vehicle Commission – Salesperson license

The Commission recommends eliminating the Motor Vehicle Salesperson license. It is also recommended that the Oklahoma Motor Vehicle Commission and the Used Motor Vehicle and Parts Commission be consolidated.

The motor vehicle salesperson license permits the individual to sell new motor vehicles to the public from a licensed dealership. Half of the states in the country do not license motor vehicle salespeople. Salespeople are not required to have a background check or pass a competency test proving there is no public safety concern. The license is simply a \$25 fee allowing a person to work. The license does not transfer from dealership to dealership, so an individual must pay for a new license if working at another dealership.

Professional Engineers – Civil, Environmental, Electrical, Petroleum Engineer licenses

No recommended changes to Professional Engineer license.

Social Workers, Board of Licensed

No recommended changes to the Social Worker licenses.

Used Motor Vehicle and Parts Commission – Used Motor Vehicle Salesperson, Manufactured Home Salesperson licenses

The Commission recommends eliminating the Used Motor Vehicle and Manufactured Home Salesperson license. It is also recommended that the Oklahoma Motor Vehicle Commission and the Used Motor Vehicle and Parts Commission be consolidated.

Used motor vehicle and manufactured home salespeople are required to get a background check and pay a \$50 license fee. Again, many states do not license vehicle salespeople and the license is not transferable. The Commission endorses that employers be responsible for a salesperson's accountability and fitness, not the state.

Veterinary Board – Veterinary Technician license

No recommended changes to the veterinary technician license.

Occupational Licensing Blueprint

Roadmap for Occupational Licensing

- Is there a compelling public interest that needs to be protected?
 - If yes, then continue
 - If no, then no regulation is required
 - Types public interests
 - Public health
 - Public safety
 - Fundamental rights
 - Substantial fiduciary interest
- Is the least restrictive means that would sufficiently protect the public interest used?
 - If yes, then continue
 - If no, then use a less restrictive means
 - Regulation options from least restrictive to most restrictive
 - Market Competition
 - Third-party or consumer created ratings and reviews
 - Private certification
 - Specific private civil cause of action or alternative dispute resolution
 - Deceptive trade practice act
 - Regulation of the process of providing specific goods or services to consumers
 - Public inspection
 - Mandatory bonding or insurance
 - Registration
 - Government certification
 - Business License
 - Specialty occupational license for medial reimbursement
 - Occupational license
- If occupational licensing is used, does the board in charge of such licensure have a controlling number of board members as market participants?
 - If yes, continue (board does not have antitrust immunity yet)
 - If no, stop (board has antitrust immunity)
- Is there active supervision of the board's actions by the state?
 - If yes, then board has antitrust immunity
 - If no, then board is subject to antitrust litigation

Occupational Regulation Blueprint

License Details

What is the license? _____

What does the license cover? _____

What Board regulates the license? _____

Compelling Public Interest

What is the compelling public interest (see Annex, item 1)? _____

Is this public interest a demonstrated, real, significant, and probable harm (see Annex, item 2)? _____

Least Restrictive Means

What means is used to protect the public interest? _____

Is it the least restrictive means (see Annex, item 3), which sufficiently protects the interest (see Annex, item 4)? _____

If the answer to the above question is “No” then do not use that type of regulation to protect the public interest.

-----*Continue only if Occupational Licensing was Used*-----

Controlling Number of Market Participants on the Board

How many members are on the regulatory board? _____

How many of them are active market participants (see Annex, item 5)? _____

Is the board controlled by these active market participants (see Annex, item 6)? _____

-----*Continue only if the Board is Controlled by Market Participants*-----

Active Supervision of the Board

Is there active state supervision of the board (see Annex, item 7)? _____

If the answer to the above question is “No” then board’s conduct may violate the Sherman Act and the board’s actions are not protected by state immunity.

Annex

1. *Definition of a compelling public interest.* A compelling public interest must be one of the following interests: public health, public safety, fundamental rights, or a substantial fiduciary interest.
2. *Definition of a demonstrated, significant, and probable harm.* A harm is demonstrated when it has occurred in the past. A harm is significant when it could cause damage that merits action by lawmakers. A harm is probable when its propensity to occur merits action by lawmakers. When determining whether a harm is significant and probable, lawmakers may analyze various sources of information, including whether similar activities are licensed or regulated in other states. If, in other states, a lack of licensing does not cause significant harms, the harm is not demonstrated, real, or probable.
3. *List of means from least to most restrictive.*
 - Private Governance Options
 - Market Competition
 - Third-party or consumer created ratings and reviews
 - Private certification
 - Specific private civil cause of action or alternative dispute resolution
 - Public Regulation
 - Deceptive trade practice act
 - Regulation of the process of providing specific goods or services to consumers
 - Public inspection
 - Mandatory bonding or insurance
 - Command and Control
 - Registration
 - Government certification
 - Business license
 - Specialty occupational license for medical reimbursement
 - Occupational license
4. *Definition of sufficient protection.* A regulation sufficiently protects an interest if the regulation adequately remedies the harm or possible harm to the legitimate public interest so that the likelihood of such harm is appropriate considering the degree of damages which the harm may cause. “Sufficient” has not been uniformly defined by courts, but there should be some limitation on the choice to use a high standard of protection (like a guarantee) to justify the most restrictive mean every time.
5. *Definition of an active market participant.* The Court has found that active market participants possess strong private interests in a matter and pose a risk of self-dealing. A conservative interpretation of a “market participant” is any practitioner who works in the general industry, which is affected by the types regulations addressed by their respective boards. One could persuasively argue that these individuals possess strong interests and pose a threat of self-dealing.
6. *Definition of a controlling number.* Justice Alito, in his dissent in *NC Dental*, raises concerns that the Court did not define a “controlling number” on the board. He mentions how it could be a majority, a number required for a veto power, or even an obstructionist minority. To be safe, the State should consider all of these options to be a “controlling number,” especially since simpler terms like a “majority”—which clearly indicate a specific standard—are not used by the Court.
7. *Definition of active state supervision.* Active state supervision constitutes more than simply authorizing and enforcing decisions made by the board. States need to establish, review, or monitor decisions to ensure they are clearly articulated and firmly expressed as state policy. Therefore, a state must be reasonably informed to the decisions of a board, and then ratify the board’s conduct as proper state policy. The Court has made it clear that a “state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their violation is lawful . . .