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Subcommittee on Higher Education and Workforce Development

Hearing on

“Occupational Licensing: Reducing Barriers to Economic Mobility and Growth”

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Chairman Guthrie, Ranking Member Davis, and members of the Committee,

On behalf of the National Conference of State Legislatures (NCSL), thank you for inviting me to testify before you today. My name is Al Downs, I am an Employment Policy Specialist with NCSL, my area of specialty is occupational and professional licensing regulation policy in the states and territories. NCSL is a bipartisan membership organization established in 1975 to serve all members and staff of the legislatures in all states, territories, and commonwealths of the United States. Our mission is to improve the quality and effectiveness of legislatures, promote policy innovation and communication among states, and provide a unified voice for the interests of state legislatures at the federal level.

Occupational and professional licensure is a form of government regulation that requires a worker to hold a credential to practice or operate in a certain occupation. Regulation by licensure is intended to protect the health and safety of consumers by preventing the entry of potentially dangerous or otherwise unqualified individuals into an occupation or profession. Independent licensing boards or state regulatory agencies generally establish the requirements for licensure and are the final arbiter of market entry for a licensed profession – in many instances, state officials develop licensing rules in concert with boards or commissions led by industry participants.

Licensing has grown dramatically in the past several decades, from covering roughly five percent of the workforce in the 1950s to over 25 percent today.<sup>i</sup> Licensing is now the single largest labor market institution in the country – more people need licenses to work than are covered by the minimum wage or are members of unions. To obtain a license, individuals typically must meet state- and occupation-specific requirements, such as passing examinations, paying fees, completing minimum amounts of education or training, gaining minimum amounts of professional experience and establishing language proficiency. States vary not only in the share of workers with a license, but also in these requirements. In most cases, this variation is warranted by not only the differing policy goals of each state, but also the differences in workforce demand and consumer behavior.

Research suggests that, in some cases, licensing can benefit the public by limiting the risk of public health and safety hazards arising from the incompetent practice of a given occupation or profession. In many more cases, the risk of harm to public health and safety is not well established and research shows that consumer welfare is unchanged, or sometimes reduced, by licensing regulations. In all cases, economic data demonstrate that licensing can have negative consequences for job growth, overall employment and consumer prices.<sup>ii</sup> State policymakers have become increasingly aware of this body of research – particularly following the 2015 U.S. Supreme Court ruling in *North Carolina Board of Dental Examiners v. Federal Trade Commission* – and have begun to apply additional scrutiny to new and existing licensing proposals.

In 2018,<sup>iii</sup> two thirds of proposals to create new licenses or expand the scope of practice covered by an existing license were rejected by state legislatures – this represents a 12-percentage point increase over the average rate of rejection from the previous two years. Further, eleven states considered legislation to increase oversight of licensing boards and nine states considered legislation to require regulatory impact reviews of all new and existing licensing laws – currently, 31 states have nominal requirements for sunrise or sunset reviews of licensing regulations, 10 of which actively perform both sunrise and sunset reviews. In 2017, 61 pieces of legislation were enacted across 24 states to reduce licensing mandates, expand options for meeting licensing criteria, or create waivers for certain licensing requirements. In 2017 and 2018 alone, eight bills were enacted to delicense occupations in seven states – a recent report from the U.S. Bureau of Labor Statistics found that eight occupations had been delicensed from 1975 to 2015.<sup>iv</sup>

To assist state policymakers looking for solutions to these problems, NCSL, in partnership with the National Governors Association Center for Best Practices and the Council of State Governments, was

awarded \$7.5 million in grant funding from the U.S. Department of Labor’s Employment and Training Administration to launch a three-year project entitled Occupational Licensing: Assessing State Policy and Practice. The two primary objectives of the project are to, first, 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; and, second, improve the portability and reciprocity provisions for selected occupations across state lines. Further, the project is charged with researching the impact of licensing regulations on job markets for disproportionately impacted populations. Among the groups of those facing the steepest barriers to employment due to licensing are:

- Veterans and military spouses
- Individuals with criminal records
- Long-term unemployed persons
- Immigrants with work authorization

NCSL has advanced these objectives by providing research, publishing reports, and engaging state policy-makers through the 11-state Occupational Licensing Learning Consortium.

Each of the 11 states were selected through a competitive application process. Once admitted to the Consortium, a project team was assembled from each state – comprised of 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 conferences, in-state learning consortium meetings, targeted technical assistance, and support for policy action plan development and implementation.

The 11 states chosen for the Consortium are:

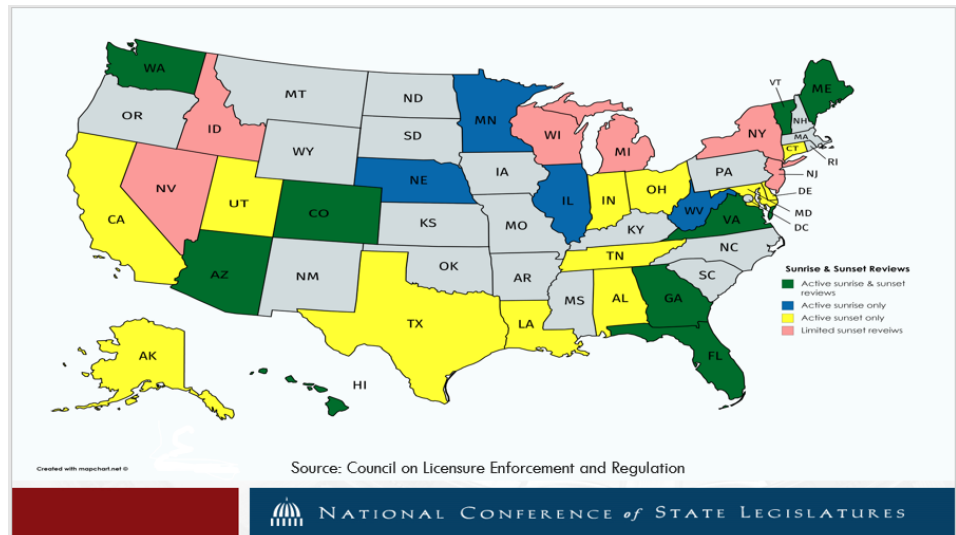
- |               |            |             |
|---------------|------------|-------------|
| - Arkansas    | - Illinois | - Nevada    |
| - Colorado    | - Indiana  | - Utah      |
| - Connecticut | - Kentucky | - Wisconsin |
| - Delaware    | - Maryland |             |

States in the Consortium represent the diversity of licensing structures and policy approaches seen across the country. One of the most significant differences seen between states is the degree of centralization in licensing issuance and enforcement. On one end of this spectrum are arrangements with a single agency or department – staffed by state employees – that handles the implementation of licensing rules and enforcement of such for all licensing occupations and professions in the state. On the other end of this spectrum are arrangements in which independent licensing boards or commissions have regulatory and enforcement authority over each individual licensed occupation or profession in a state. Keeping in mind that these differences across states exist on a spectrum, states like Colorado, Illinois, Utah and Wisconsin are representative of a more centralized structure for occupational and professional licensing, while states like Arkansas, Kentucky, and Nevada are representative of a decentralized structure. There are arguments for the advantages and disadvantages of more or less centralization, which are discussed in greater detail in a later portion of the written testimony. Again, the variation in licensing authority structure across states stands to reason, as no two states face identical workforce needs, political motivations, or government resources.

States with more centralized licensing regimes point to administrative efficiencies, often in the form of reduced overhead costs, as one advantage to the government, with consistency in accepted documents and timelines across occupations frequently cited as an advantage of centralization to those in the workforce. Another feature of centralization touted by proponents is the protection of the public interest in regulation – some will argue that while an independent licensing authority may be incentivized to engage in potentially anti-competitive behavior, state government officials do not face these same incentives. States

with more decentralized licensing systems often argue that self-funded and independent boards reduce state government expenses. It is unclear whether one structure is universally less costly to state budgets. Another advantage often claimed by proponents of decentralized systems is a more specialized knowledge of the licensed occupation in boards that are solely focused on one occupation or professional field and have the benefit of industry expertise in their membership.

Licensing structure can impact the policy approaches favored by state policymakers motivated to reduce the burdens of occupational and professional licensing on the workforce. However, there are three broad categories of policy change being undertaken in the past few years at the state level on occupational and professional licensing: occupation-specific, population-targeting, and structural.



First, policymakers with sufficient information to determine that the existing licensing laws for an occupation or profession are not in line with their state’s policy goals may work to adjust fees, alter training and education requirements, or eliminate the licensing mandate completely on an occupation-specific basis. One such example comes from policymakers in Connecticut, who, after identifying which of the existing licenses in the state did not require training or education, passed Public Act 17-75, which fully delicensed the identified occupations.

Second, some demographic groups have been found to be disproportionately affected by occupational and professional licensing laws. To address this, state lawmakers have developed waiver programs and other mechanisms of expedited licensing consideration to target the disproportionately burdened population groups. One examples is military spouses, for whom interstate moves are far more common than the general population – in the absence of an interstate compact or reciprocity agreement for their chosen occupation or profession, military spouses who have been legally licensed to work in one state are forced out of the job market when they move to meet the demands of military service. Similarly, veterans often face re-training requirements when their military training in substantively similar work is not accepted by licensing regulations. A recent example of such action comes from Wisconsin Act 319, signed into law in April of this year, which reduces initial licensure fees by 90 percent for both military veterans and individuals with income below 180 percent of the federal poverty line.

While the impact on military families and veterans is incidental, some populations face intentional burdens from occupational licensing laws that some state lawmakers are revisiting. An example is individuals with criminal records, who are often outright banned from obtaining a license, regardless of the relevancy of their crime or their other qualifications to safely perform in the licensed occupation or profession. Since 2017, Connecticut, Delaware, Illinois, Kentucky and others have enacted legislation to expand job opportunities in licensing occupations and professions for those with criminal records.

Lastly, when systemic concerns exist about the efficacy of licensure, the balancing of workforce development goals with public safety risks, or the incentives faced by those charged with administering licensing regulations, state policymakers may be interested in broad reforms designed to affect all or most licensed occupations and professions. Generally, these reforms can be thought of as moving a state towards either more or less centralization. Most common structural reforms are instituting active supervision over decentralized licensing boards, establishing guidelines for the creation or continuance of licensing laws, and instituting a review of existing licensing laws to inform future decision-making. Earlier this year, Kentucky provided an example of this approach in House Bill 465, authored by State Representative Adam Koenig. This proposal would have created a single department of the state government responsible for overseeing all licensing board actions and report the economic impact of such to the public, created a statutory checklist of justifications for new licensing rules, and restructured the composition of licensing boards.

More information can be found in NCSL’s “State of Occupational Licensing” report, which is included with my testimony. We have also developed a national database of licensing requirements for over 30 occupations in all 50 states that is now available online and we will be releasing a series of reports on populations disproportionately disadvantaged in the labor market by licensing regulation next month. We also regularly publish issue briefs and articles on our website covering licensing policy, and are glad to be a resource on this topic at any time. Thank you again for your time, I look forward to your questions.

<p><b>Further examples</b></p> <p><i>Reduction in licensing fees</i>  Costs associated with paperwork processing, background checks, and coursework required for licensure can often be high for those hoping to enter the workforce. States are reducing these costs directly through limiting what can be charged, or indirectly by streamlining the administration of licensing to reduce budgetary demands.</p> <ul style="list-style-type: none"> <li>• Example: In 2018, Nebraska eliminated the fee for motor vehicle sales licensure.<sup>v</sup></li> </ul> <p><i>Reduction in licensing requirements</i>  Education and training requirements of licensing can vary greatly by state. Reducing or eliminating certain requirements that aren’t contributing to public health or safety is one means of improving labor market engagement on which states are focusing.</p> <ul style="list-style-type: none"> <li>• Example: In 2017, a bill introduced in the Montana legislature reduce the number of hours needed to obtain a cosmetology license from 2,000 to 1,500.<sup>vi</sup></li> </ul> <p><i>Institution of active supervision over boards</i>  Licensing boards that are dominated by active industry participants may be incentivized to restrict entry into the occupation from competition beyond levels intended in the legislative mandate.<sup>vii</sup> This can run afoul of federal anti-trust laws by behaving in an anticompetitive manner. Active supervision of an independent board installs executive or legislative branch officials as final arbiters of board decisions. Oversight from state officials is a way states are addressing concerns over anti-competitive behavior, and protect the public from discriminatory licensing rules.</p> <ul style="list-style-type: none"> <li>• Example: In 2017, Mississippi enacted legislation to ensure that all licensing boards were using the regulatory power granted to them by the legislature to achieve public health and safety goals by installing an active supervision requirement.<sup>viii</sup></li> </ul> <p><i>Entering interstate compacts or reciprocity agreements</i>  An interstate licensing compact is one type of reciprocity agreement states are pursuing. It involves multiple states forming an agreement, often in conjunction with a national trade association, whereby requirements are made uniform and multi-state licenses are issued by the states within the compact.</p>
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The multi-state licenses are valid in each compact state on the basis that all states involved share the same policy goals for licensure. Alternative reciprocity arrangements are mutual or lateral recognition standards. Driver's licenses operate under the mutual recognition standard across the nation. States with already-similar licensing requirements or shared geography may enter into an agreement of mutual recognition whereby the license issued in another state is accepted as a proxy for completion of all non-state-specific licensure requirements. Individuals who have received a license in one state could benefit from compacts and reciprocity agreements if looking for work after moving to a new state.

- Example: In 2018, the National Council of State Boards of Nursing created the Enhanced Nurse Licensure Compact (eNLC) which has been passed into law in 29 states.<sup>ix</sup>
- Example: Florida offers mutual recognition of real estate broker licenses issued by any of the seven states with which it has an agreement. License holders from a recognized state need only complete a test on Florida law and are then subject to the same continuing education requirements as any other license holder.<sup>x</sup>

#### *Sunrise and sunset reviews*

Many states have created a process by which licensing requirements are reviewed or analyzed by an independent entity before implementation (sunrise review) or attaching an end date to a regulation unless the legislature votes to retain the regulation (sunset review). A sunrise review requires a regulatory impact analysis when new rules are proposed, which often includes the examination of proposed costs and benefits of the new regulation. A sunset review can result in modifications of existing regulations or even elimination of them altogether if the legislature fails to act. These reviews are good for determining the effectiveness of implementation, establishing a baseline performance record with which to compare future outcomes, and providing more opportunity for formal public comment. A sunset review process would mean examination of licensing rules that specifically disadvantage certain members of the workforce. Similarly, under sunrise review, the disproportionate impact of certain licensing regulations would have to be considered before implementation.

- Example: The Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is responsible for performing both sunrise and sunset reviews of state regulations and agencies, as directed by the legislature.<sup>xi</sup>

#### *De-licensing of specific occupations*

Some states have chosen to eliminate certain mandatory licenses altogether. This option reduces administrative costs and ensures that local and transplanted professionals face the same regulatory standards. However, if imperfect information has created a market failure in the given occupation, delicensing may exacerbate the problem. Individuals in the workforce could potentially benefit from the de-licensing of an occupation for which they are qualified if they were unable to pay fees, afford state-mandated classes, or meet other standards – this could also create more opportunities for entrepreneurship in these occupations.

- Example: In 2016, Arizona eliminated the licensing requirement for fruit packers, cremationists, and yoga instructors.<sup>xii</sup>

<sup>i</sup> U.S. Department of Treasury Office of Economic Policy, Council of Economic Advisers and Department of Labor. *Occupational Licensing: A Framework for Policymakers* (Washington, D.C.: The White House, 2015), p. 7,

[https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing\\_report\\_final\\_nonembargo.pdf](https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf).

<sup>ii</sup> Kleiner, Morris, M. 2015. *Guild-Ridden Labor Markets: The Curious Case of Occupational Licensing*. Kalamazoo, MI: W.E. Upjohn Institute for Employment Research. <https://doi.org/10.17848/9780880995023>.

<sup>iii</sup> National Conference of State Legislatures "Occupational Licensing Legislation Database" <http://www.ncsl.org/research/labor-and-employment/occupational-licensing636476435.aspx>

<sup>iv</sup> Thornton, Robert J. and Edward J. Timmons, "The de-licensing of occupations in the United States," Bureau of Labor Statistics, May 2015, p. 3, <https://www.bls.gov/opub/mlr/2015/article/pdf/the-de-licensing-of-occupations-in-the-united-states.pdf>

<sup>v</sup> Nebraska 2017 Legislature Bill 346

<sup>vi</sup> Montana 2017 House Bill 393

<sup>vii</sup> *North Carolina State Board of Dental Examiners, Petitioner v. Federal Trade Commission*. 135 US Supreme Court 1101 (2015)

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<sup>viii</sup> Mississippi 2017 House Bill 1425

<sup>ix</sup> “eNLC Implementation.” Enhanced Nurse Licensure Compact, National Council of State Boards of Nursing, [www.ncsbn.org/enhanced-nlc-implementation.htm](http://www.ncsbn.org/enhanced-nlc-implementation.htm)

<sup>x</sup> State of Florida, Real Estate Commission. [www.myfloridalicense.com/dbpr/re/documents/mutrecal07.pdf](http://www.myfloridalicense.com/dbpr/re/documents/mutrecal07.pdf)

<sup>xi</sup> State of Colorado, Office of Policy, Research and Regulatory Reform. “Colorado's 2017 Sunrise and Sunset Reviews Released.” *Colorado's 2017 Sunrise and Sunset Reviews Released*, 13 Oct. 2017. [www.colorado.gov/pacific/dora/news/colorados-2017-sunrise-and-sunset-reviews-released](http://www.colorado.gov/pacific/dora/news/colorados-2017-sunrise-and-sunset-reviews-released)

<sup>xii</sup> Arizona 2016 House Bill 2613