

Office of Policy Planning  
Bureau of Competition  
Bureau of Economics

March 15, 2017

Hon. Senator Brett Lindstrom  
District 18  
State Capitol  
P.O. Box 94604  
Lincoln, Nebraska 68509-4604

Dear Senator Lindstrom:

We welcome the opportunity to share our views regarding a number of proposed bills that would loosen or eliminate certain occupational licensing requirements in Nebraska.<sup>1</sup>

In the 1950s, less than five percent of jobs in the United States required a license.<sup>2</sup> Estimates today place that figure between 25 and 30 percent nationally.<sup>3</sup> Nebraska falls

is too difficult for patients to evaluate the doctor's training and skills. There is what an economist would call a large "information asymmetry" between the patient and the doctor and an unqualified doctor might do great harm to the public. In light of these concerns, the state uses licensing to ensure the doctor achieves and sustains a minimum level of competence.

Unlike physician licensing, occupational licensing in many other occupations does not provide clear public benefits. For example, some states require interior decorators to get a special license from the state. The state requires a license for this occupation even though the normal operation of market forces already fully and reliably protects the public from harm. If interior decorators are not good at their jobs, people will simply refuse to buy their services. There is no discernable risk to the public from allowing an incompetent interior decorator to fail, and the public can easily evaluate the merits of interior decorators without any special assistance from the government.

The simple fact is that many more occupations resemble the interior decorator example than the medical doctor example. Yet many occupations often are subject to licensing requirements that are unmoored from legitimate health, safety, or similar public policy objectives. Unnecessary licensing imposes compliance costs on anyone wishing to enter a licensed occupation. Even modest licensing requirements can and do deter people from entering fields they might otherwise wish to pursue. In effect, excessive licensing acts as a state-created barrier for people seeking work.

These dynamics often are not lost on the current, licensed workers in a particular



## **II. Competition, Occupational Licensing, and the Federal Trade Commission**

Competition is a core organizing principle of America's economy.<sup>10</sup> It gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation.<sup>11</sup> The FTC works to promote competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers

### III. Competitive Considerations Regarding Occupational Licensing

All occupational licensing restrains competition to at least some degree, because it limits the number of people who can provide certain services.<sup>21</sup> Occupational licensing rules typically specify entry conditions, define the various practices that constitute a licensed occupation, and legally authorize such practices. Without a license, a worker in a given field usually cannot compete to provide services, regardless of his or her skills and qualifications. Unlicensed practice is prohibited by statute and may be subject to civil or criminal penalties.

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<sup>16</sup> FTC Staff Comment to the Hon. Jean Silver Concerning Washington Administrative Code 4-25-710 to Require Additional Academic Credits for Certified Public Accountants (1996), [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-honorable-jean-silver-concerning-washington-administrative-code-4-25-710-require/v960006.pdf](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-honorable-jean-silver-concerning-washington-administrative-code-4-25-710-require/v960006.pdf); FTC Staff Comment to the Hon. Jim Hill Concerning Oregon H.B. 2785 to Propose Certain Restrictions on Competition Among Accountants (1989), [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-hon-jim-hill-concerning-oregon-h.b.2785-propose-certain-restrictions-competition-among-accountants/v890073.pdf](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-hon-jim-hill-concerning-oregon-h.b.2785-propose-certain-restrictions-competition-among-accountants/v890073.pdf).

<sup>17</sup> FTC Staff Letter to NC Representative Stephen LaRoque Concerning NC House Bill 698 and the Regulation of Dental Service Organizations and the Business Organization of Dental Practices (2012), [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-letter-nc-representative-stephen-laroque-concerning-nc-house-bill-698-and-regulation/1205ncdental.pdf](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-letter-nc-representative-stephen-laroque-concerning-nc-house-bill-698-and-regulation/1205ncdental.pdf); FTC Staff Comment Before the Maine Board of Dental Examiners Concerning Proposed Rules to Allow Independent Practice Dental Hygienists to Take X-Rays in Underserved Areas (2011), [http://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-maine-board-dental-examiners-concerning-proposed-rules-allow-independent-practice/111125mainedental.pdf](http://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-maine-board-dental-examiners-concerning-proposed-rules-allow-independent-practice/111125mainedental.pdf)

Recent studies strongly suggest that the burdens of excessive occupational licensing fall disproportionately on the most economically disadvantaged citizens.<sup>22</sup> Another group particularly impacted by excessive occupational licensing are the spouses of U.S. military personnel. Because members of the military move to new states frequently, their spouses must repeatedly meet new and often different licensing requirements as they move from state to state.

The harms of excessive state licensing are not limited to those looking for new jobs. Licensing requirements may limit not only who is allowed to work in a particular field, but also how they work. When the state mandates particular ways of doing things, these regulations may stifle entrepreneurship and innovation. For example, one study found that for a subset of low- and moderate-income jobs, the average license required around nine months of education and training.<sup>23</sup> In some cases, over the long-term, these regulatory barriers to entry may severely impede the flow of labor or services to where they are most in demand, potentially reducing consumer access to valued services.<sup>24</sup>

Additionally, when licensing reduces the number of people working in a given field, that can blunt competition and may cause prices to increase. Several studies have found that prices increase, sometimes significantly, due to licensing an occupation at the state level.<sup>25</sup> One estimate has shown that licensing restrictions can raise consumer expenses by over two hundred billion dollars nationwide.<sup>26</sup> This means that even citizens who have never sought work in a particular area can be harmed by excessive state

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licensing because they may pay higher prices or receive lower quality services than would otherwise prevail absent the licensing.

Further, the purported consumer protection benefits of licensing may not justify the costs. Reductions in competition caused by licensing can also cause quality, choice, and access to decline. Although well-meaning licensing rules may be designed to provide consumers with minimum quality assurances, these rules do not always increase service quality,<sup>27</sup> especially if training or educational requirements do not directly relate to the services a given professional provides.<sup>28</sup>

For these reasons, FTC staff urges legislators and regulators to consider removing excessive, unnecessary licensing restrictions wherever possible. Liberalization of occupational licensing may promote competition and benefit consumers. Benefits that may flow from an expanded supply of qualified workers can include improved access to services, lower prices, and improved service quality. Reform may also spur innovation in how services are delivered.

We respectfully recommend that state legislators, regulators, and other policy decision makers consider the following framework when evaluating changes to occupational licensing law.

What legitimate policy justifications, if any, were articulated when the original license requirements were imposed?

Are there currently any specific, legitimate, and substantiated policy objectives that justify continuing the license requirements?

If current, legitimate policy objectives are identified, does the furtherance of those objectives likely outweigh the expected harms from licensing? Such harms may include reduced economic opportunities, restricted employment, increases in consumer prices, and reductions in quality or access.

If state licensing appears justified, are there any less restrictive alternatives to the current licensing system that still address the legitimate policy objectives, while reducing burdens on the public? Are the licensing requirements narrowly tailored

to achieve the specific public policy purpose, or is there a less intrusive way



Respectfully submitted,

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