



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of Policy Planning
Bureau of Competition
Bureau of Economics

March 15, 2017

Hon. Senator John Lowe
District 37
State Capitol
P.O. Box 94604
Lincoln, Nebraska 68509-4604

Dear Senator Lowe:

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.¹

In the 1950s, less than five percent of jobs in the United States required a license.² Estimates today place that figure between 25 and 30 percent nationally.³ Nebraska falls roughly in -22(D (3)Tj EJ1c (3)Tj EJ1c (3)Tj E311)-224 (3)Tc 1 0.004 Tw 0.26 0 Td [(can)-4(b)-4

RIT J. INDUS. REL. 2 (2010).

⁴ Press Release, Office of Governor Pete Ricketts, Gov. Ricketts, Senators Unveil Occupational Licensing Reforms (Jan. 10, 2017), <https://governor.nebraska.gov/press/gov-ricketts-senators-unveil-occupational-licensing-reforms>. ¹ KLEINER, *supra* note 2, at 9.

I. Nebraska Occupational Licensing Reforms

FTC staff was asked to comment on four bills that would reduce or eliminate certain restrictions on occupational licensing in Nebraska.

- x L.B. 341 would allow banks to elect “active executive officers” as exempt from the requirement to apply for and obtain licenses from the state

II. Competition, Occupational Licensing and the Federal Trade Commission

Competition is a core organizing principle of America's economy.¹⁰ It gives consumers the benefits of lower prices, higher quality goods and services, increased access to goods and services, and greater innovation.¹¹ The FTC works to promote competition through enforcement of the antitrust laws, which prohibit certain transactions and business practices that harm competition and consumers. The FTC also engages in competition advocacy to urge decisions that benefit competition and consumers, in the form of comments on proposed legislation and regulations, discussions with regulators, court filings, and other advocacy channels.

The FTC has engaged in various advocacy efforts relating to licensing requirements for occupations and professions. Since the late 1970s, the Commission and its staff have conducted economic and policy studies,¹² as well as submitted advocacy comments to state and self-regulatory entities on competition policy and antitrust law issues.¹³ Advocacies on occupational licensure have involved such professionals as real estate brokers,¹⁴ electricians,¹⁵ accountants,¹⁶ dentists and dental hygienists,¹⁷ nurses,¹⁸ eye doctors and opticians,¹⁹ and veterinarians.²⁰

¹⁰ ~~g~~, N.C. State Bd. of Dental Exam'rs v. FTC, 1.5(Tm ()Tj 4E88)e9(E)4r m ()1101, ()Tj 4110Tj 49 ('—12.9320

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.²¹ 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.

¹⁶ 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-

Recent studies strongly suggest that the burdens of excessive occupational licensing fall disproportionately on the most economically disadvantaged citizens.²² 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.²³ 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.²⁴

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.²⁵ One estimate has shown that licensing restrictions can raise consumer expenses by over two hundred billion dollars nationwide.²⁶ 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,²⁷ especially if training or educational requirements do not directly relate to the services a given professional provides.²⁸

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.

- x What legitimate policy justifications, if any, were articulated when the original license requirements were imposed?
- x Are there currently any specific, legitimate, and substantiated policy objectives that justify continuing the license requirements?
- x 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.
- x 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

Respectfully submitted,

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