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February 2018

Annotated Summary of the Occupational Licensing Task Force Report

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Introduction

The Oklahoma Occupational Licensing Task Force, created pursuant to an executive order by Governor Mary Fallin in December 2016, has produced an 82-page report. Although the body of the report is only 27 pages (the rest being appendices) and there is a short executive summary, the report deserves more attention than such reports often receive. Thus, this summary.

The 1889 Institute has produced several reports concerned with occupational licensing. (See references below.) Since the task force clearly does not consider its mission to have been completely accomplished, this summary is annotated with insights regarding shortcomings, strengths, and suggestions for this and future reports and actions of the legislature. Annotations or comments are in italics and are also indicated with **1889** where they begin.

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Report Summary

Transmittal Letter

- The Task Force determined that its two main goals would be:
 1. to establish a detailed database of Oklahoma's occupational licenses,
 2. to design a blueprint by which current and proposed occupational licenses could be evaluated.
- The Task Force stated that the state should "achieve a balance between free market principles, protecting public safety, and reducing barriers to escape poverty."

Background Section

- Defines and discusses arguments for and against occupational licensing.
 - For – promotes public safety and practitioner quality
 - Against – reduces economic liberty and leads to occupational protectionism
- Lists and explains 7 alternative ways to regulate occupations in order of most to least restrictive with licensing being the most restrictive.

- Discusses a dental board case out of North Carolina where the board was made up largely of dentists and had complete independent discretion. The court determined that this constituted restraint of trade under anti-trust law unless boards are strictly supervised by higher levels of state government.
- Describes a congressional effort to legislatively overturn the North Carolina case's ruling with the *Restoring Board Immunity Act*.
- Notes that the Obama and Trump administrations have both taken a dim view of occupational licensing due to its contribution to reduced employment and increased income disparity.

1889 comments

- *Economists have shown that there is little to no evidence supporting arguments in favor of occupational licensing but a good deal of evidence for arguments against.*
- *Left out of the effects of licensing is explicit mention that it redistributes income from consumers to licensees, and often from those with limited means to those with greater means.*
- *The Institute for Justice lists 15 alternatives to regulate occupations, all included in the Occupational Licensing Board Reform Act model bill in the appendix of the Task Force's report.*
- *Some might argue in favor of the proposed federal Restoring Board Immunity Act on federalism/state sovereignty grounds. This seems misguided given the Constitution's implicit assumption of unfettered economies.*
- *The 1889 Institute's director has, to a limited extent, counseled with both the Obama and Trump administrations on occupational licensing.*

Task Force's 7 Meetings Summarized

1889 comments

- *Only one meeting took testimony.*

Discussion of Challenges Faced By the Task Force

- Received little or no cooperation from agencies.
- Experts in specific licensed occupations are invariably members of the occupation, making it difficult for outsiders to evaluate what the experts say about the need for licensing.
- Push-back from members of licensed occupations.
- Lack of resources.
- Inability to compare Oklahoma to other states.
- Local and federal regulations excluded from the analysis due to complexity.
- The ad hoc nature of Oklahoma's occupational licensing

systems, providing no logic or records explaining reasons for its existence.

1889 comments

- *The lack of cooperation from agencies is a direct result of a history of the legislature and governor failing to hold agencies accountable with unity, too little direct oversight, and the appropriation of only 1/3 of total spending, with legislators largely in the dark about the remaining 2/3. Agency personnel have developed a justified mindset that they are completely in charge.*
- *It is not difficult to show that many of the arguments and evidence "experts" present in favor of licensing are spurious and manufactured. See the 1889 Institute's specific criticisms of cosmetology/barbering, funeral director/embalming, electrology, and pedorthist licensing. (www.1889institute.org/licensing.html)*
- *The federal "Career One Stop" website provides a way to compare states, although it is somewhat clunky and time-consuming. (www.careeronestop.org/toolkit/training/find-licenses.aspx)*
- *There is no real logic for most licensing from a pure public policy viewpoint; it is a result of a mixture of intense lobbying by parties with a pecuniary interest in licensing and naiveté on the part of legislators.*

Task Force Recommendations

1. Establish an independent review commission over a long term.
2. Establish a permanent legislative sunset committee.
3. Establish a standing, dedicated legislative licensing committee.
4. Establish a centralized licensing agency.
5. Continue and strengthen the licensing database the task force started.
6. The governor should require agency cooperation when licensing information is requested. (DONE)
7. Change licensing board memberships to have a greater share of lay people.
8. Continue the task force or a new commission – recommends specific issues to review in the future, mostly oriented toward how licensees are impacted.
9. Grant broader reciprocity to honor other states' licenses.
10. Create more gradations of licenses in certain areas.
11. Establish a third-party certification system of some sort.
12. Reform criminal justice laws to keep previous convictions from preventing former convicts from having gainful employment.

1889 comments

- *The 1889 Institute's "Oklahoma Licensing Directory" (www.1889institute.org/licensing.html) provides an example of how an independent licensing review commission might do its work, along with the Task Force's excellent blueprint (below).*
- *In most states, sunset processes are weak; legislators cannot be counted on to provide reform inertia. The best sunset systems are formalized and funded with independent staff. An alternative is institutional reform that imposes outside discipline. (See the "21st Century Consumer Protection & Private Certification Act" proposal below.)*
- *Dedicated legislative licensing committees have a tendency toward "capture." Licensing advocates are more motivated to gain licensing than the general public is to stop them and legislators act accordingly.*
- *More information is always good and Governor Fallin's recent order to agencies to cooperate is to be commended.*
- *No government regulatory or managing board of any sort should be populated at all by persons who have a pecuniary interest in the board's decisions.*
- *Any new task force or commission should be instructed to make specific and bold recommendations to roll back occupational licensing. Issues mentioned by the Task Force for a future review were reviewed in 2011.*
- *Reciprocity can entrench licensing and create special licensing constituencies; it should not be a priority.*
- *More licensing gradations grows licensing. This is an example of how licensing begets more licensing. (See 1889's publication, "The Need to Review and Reform Occupational Licensing in Oklahoma.")*
- *Government can create a fertile ground for 3rd-party certification that can reduce the clamor for more occupational licensing. (See the "21st Century Consumer Protection & Private Certification Act" proposal below.)*

Task Force Recommended Blueprint for Evaluating an Occupational License

- The task force recommends asking 4 questions about a licensed or potentially licensed occupation, with each question having a decision associated.

First, is there a compelling public interest to protect?

If yes, then

Second, Is the least restrictive means sufficient to protect the public interest being used?

(A large list of alternatives to occupational licensing is provided)

If yes, and that is occupational licensing, then

Third, does the board in charge of licensure consist

of a controlling number of participants in the licensed occupation?

If yes, then

Fourth, is the board being actively supervised by the state?

If yes, then the state is legally in the clear.

If no, the board could be successfully sued under antitrust.

- The task force provides sample evaluations for licensing of veterinary technicians and hair braiding technicians. It concludes that neither should be licensed.

1889 comments

- *The 1889 Institute wholeheartedly supports the blueprint.*
- *The 1889 Institute has reviewed barber/cosmetology, funeral director/embalmer, electrologist, and pedorthist licensing in a way similar to what the task force has recommended and has concluded that none of these occupations should be licensed.*

Three Legislative Models (appendix)

1. *Occupational Licensing Board Reform Act* – Institute for Justice
 - Defines pursuit of an occupation as a fundamental right.
 - Requires that the least restrictive means of regulation should be used in regulating occupations.
 - Regulation is restricted only to apply to practices explicitly defined in law.
 - Requires that the governor establish an office to actively supervise occupational licensing boards
 - Establishes a sunrise and sunset requirement for occupational regulation laws.
2. *21st Century Consumer Protection & Private Certification Act* – Goldwater Institute and 1889 Institute
 - Establishes criteria, focused on transparency to consumers, whereby private organizations that certify individuals as competent in occupations can enjoy the legal protection of the state's fraud laws should someone falsely claim a qualifying entity's certification.
 - Allows for multiple organizations certifying in the same basic occupation to simultaneously exist and compete.
 - Allows individuals certified by private organizations that meet the criteria to compete with individuals in licensed occupations without fear of prosecution.
 - Preserves the right of government to regulate substances, including who handles them, as well as

the federal government's ability to require licensing as a condition for participation in federal programs.

3. H.R. 3446 by Issa, July 27, 2017
 - Attempts to create incentives for states to regulate occupations using less restrictive means than licensing.

Previous Oklahoma Licensing Task Force Report, 2011 (appendix)

1889 comments

- *This report was an effort to make licensing easier to deal with from a licensee point of view, making sure they are not drains on the state's budget, and limiting their spread. It appears to have been largely ignored.*
- *The past task force's mission was very different from that of the current task force and its report reflects this, having little impact on the current task force's report.*

Conclusion

The 1889 Institute commends the work and the report of the Oklahoma Occupational Licensing Task Force but agrees with the Task Force's report when it says that it has only begun the work that needs doing. Further exploration of licensing and its impacts on the state's economy is needed in order to spur badly needed action by the legislature in the face of what will likely be determined opposition by entrenched interests that benefit from licensing. This work is past due and institutions should be put in place, such as a rigorous sunrise and sunset review process that includes appointed blue-ribbon members who are otherwise disinterested parties, to evaluate existing and proposed licensing schemes. The Institute also urges that something patterned on the *21st Century Consumer Protection & Private Certification Act* become law.

References

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