

# Occupational Licensing Reforms in Wisconsin

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# About WILL

- WILL is a non-profit law and policy center in Milwaukee.
- Through education, litigation and participation in public discourse, we work to advance limited government, free speech, transparency, and education reform.
- We provide timely and comprehensive policy research to advance education reform, election reform, economic freedom, and policies to advance limited government.



# Fencing Out Opportunity: Occupational Licensing in the Badger State (2016)

- Over the past two decades, licensure requirements have grown by 84%, and hundreds of thousands of Wisconsin workers are subject to occupational licensing requirements.
- Growth in occupational licensing requirements outpaces Wisconsin population growth.
- Licensing requirements are estimated to result in 32,000 fewer jobs, and \$1.93 billion in consumer costs each year.



Fencing  
Out  
Opportunity

Occupational Licensing in the  
Badger State

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November 2016



# Fencing Out Opportunity: The Effect of Licensing Regulations on Employment (2017)

- The report finds that:
  - States that use licensure requirements for specific occupations employ less people in those lines of work.
  - Across ten studied occupations, Wisconsin had the 5th most burdensome licensure requirements among all 50 states.
  - Regulation in Wisconsin exceeded the national average for EMTs, aestheticians, veterinary technicians, and cosmetologists.
  - Wisconsin could increase employment in the ten studied professions by 7.06% if regulations matched the least burdensome state, and 2.42% if regulations matched the national average.



## Fencing Out Opportunity

The Effect of  
Licensing Regulations  
on Employment

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Will Flanders, Ph.D.  
Research Director

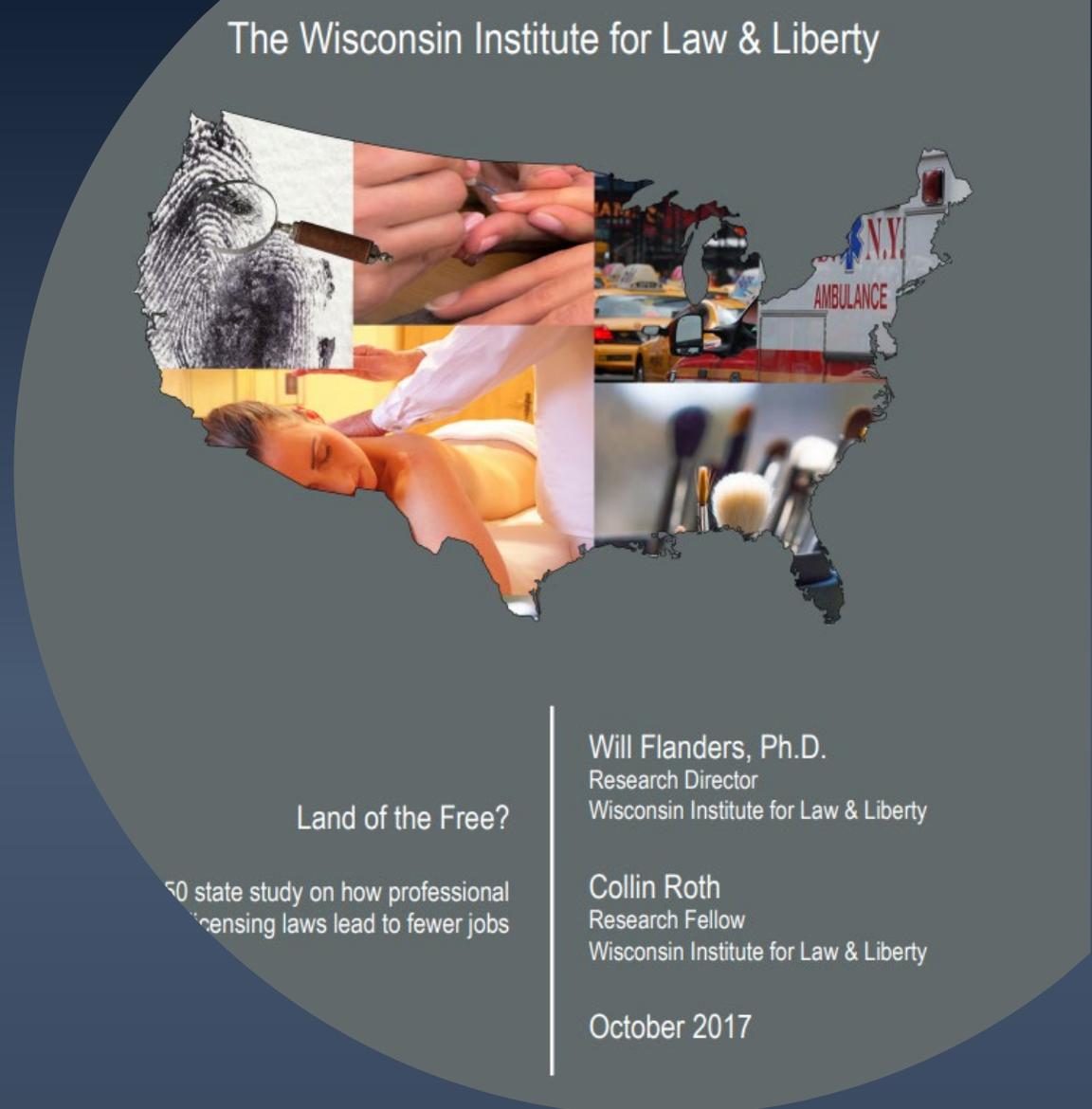
Collin Roth  
Research Fellow

March 2017



# Land of the Free? 50 state study on how licensure laws lead to fewer jobs (2017)

- Across ten studied professions, states with more burdensome licensure requirements employed fewer people in regulated professions.
- Modeling showed that 23 states could see employment growth of 5% or more if licensing laws were made comparable to the least burdensome state – Hawaii.
- Tennessee, Alabama, Nevada, Florida, and Wisconsin are ranked as the most burdensome.
- Hawaii, Massachusetts, Connecticut, Rhode Island, and Utah are ranked as the least burdensome.
- Employment in the ten studied professions could increase 4.5% nationwide if the laws of the least restrictive state were applied in each state.



Land of the Free?

50 state study on how professional  
licensing laws lead to fewer jobs

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Research Director  
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October 2017



# Backlogged: Licensing Delays Keep People from Entering the Workforce (2022)

- Problem: People are waiting upwards of 6-9 months to receive a license to work in Wisconsin because of backlog at DSPS.
- Backlog is partially driven by excessive licensing standards.
- DSPS is unable to understand the extent of their own backlog.
  - In records requests to DSPS, the agency was unable to provide the extent of backlog.
- Solutions:
  - Institute an agency performance dashboard to give licensees reasonable expectations and drive change internally.
  - Set processing goals publicly.

## Performance Dashboard Example:

License Category	Initial License Processing Time Goal	Initial License Processing Time Actual	License Renewal Processing Time Goal	License Renewal Processing Time Actual	New Applications	Outstanding Applications	Licenses Approved	Licenses Denied
Barber	10 Days	14.2 Days	7 Days	6 Days	521	2000	551	2
Physician Assistant	14 Days	28 Days	7 Days	10 Days	14	321	10	2
Social Worker	10 Days	46 Days	7 Days	14 Days	45	576	44	2

*\*Updated on March 16, 2022*

# Barriers: Interstate Mobility

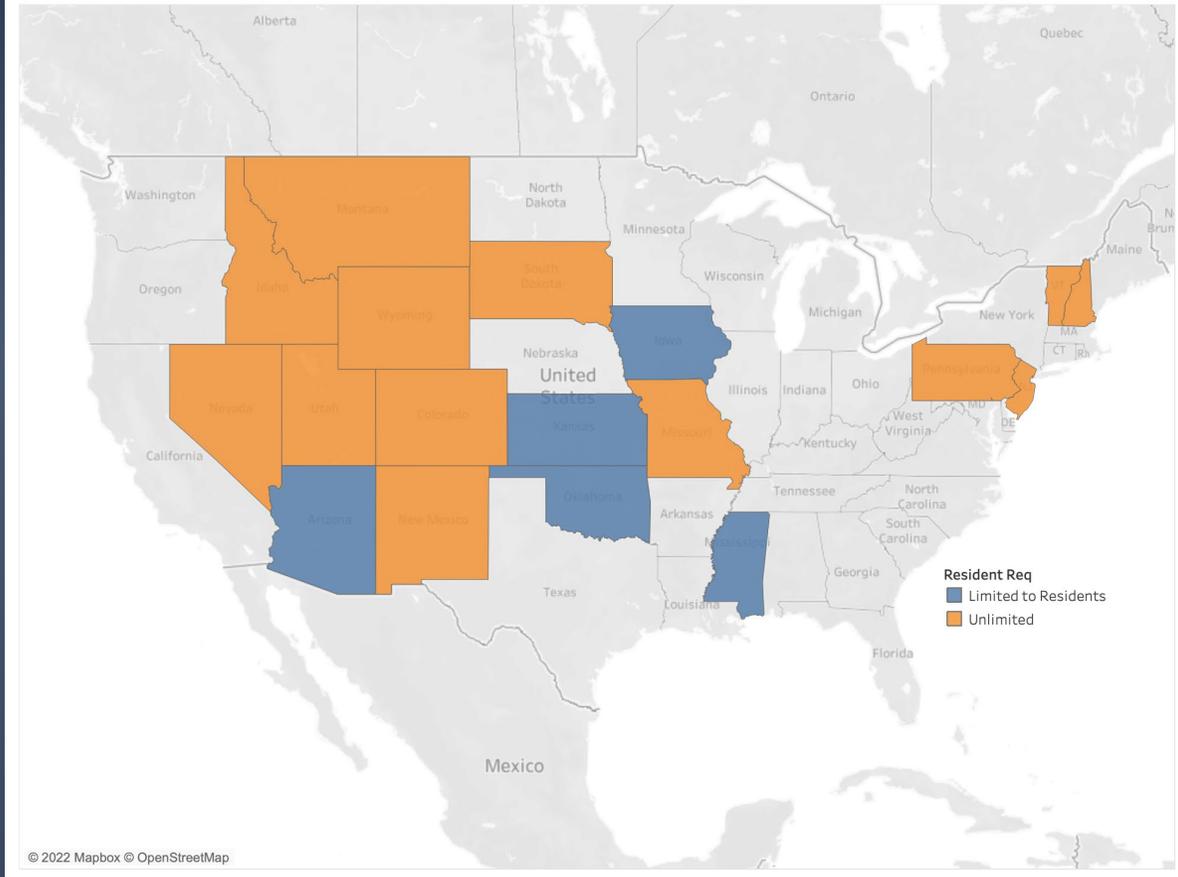
- Interstate mobility is a substantial barrier for holders of occupational licenses.
- States have differing licensing requirements.
  - Oftentimes professionals need to complete additional educational requirements or submit documentation of their educational or work experience.
  - Out of state applications can take more time, leading to additional delays.
- Many examining boards are given the power to enter into reciprocal agreements with other states, but few use this power.
- Interstate compacts increase interstate mobility, but only between member states.
  - WI: Physicians, Nurses, Physical Therapists, Occupational Therapists
  - State also cedes licensure standard authority to the compact, which could erect additional barriers.



# Universal License Recognition

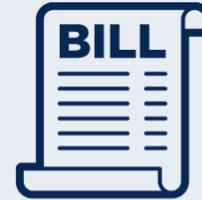
- Universal license recognition (ULR) laws are a framework that give an expedited review to recognize an out of state credential.
- ULR laws generally set less restrictive and more uniform license portability standards across all licensed occupations in a state.
- Currently, 18 states have passed some form of ULR laws. Generally, these laws share several common traits:
  - License in good standing in home state
  - No pending disciplinary action from the relevant board or a criminal record that would disqualify them from obtaining the license in the recognizing state.
  - Applicants may still be required to pay fees or take exams administered by the board in the recognizing state.

States that have Enacted Universal Licensing Reform



# Sunrise Reviews

- Sunrise reviews are a process to evaluate the need for new occupational regulations, serving as a "cost-benefit" analysis for lawmakers to understand the overall impact of a proposed regulatory regime on consumers, businesses, and the regulated community.
- Recommendations are non-binding on legislature.
- 22 states currently conduct sunrise reviews.
- Suggestion: A non-partisan, non-political agency should be tasked with conducting the reviews.
  - Ex. Legislative Audit Bureau



**Step 1:** Bill is introduced to license new profession.



**Step 2:** Legislative Audit Bureau (LAB) prepares sunrise review report.



**Step 3:** LAB makes recommendations and submits report to legislature.



**Step 4:** Legislature takes action on recommendations.

# Purpose of Sunrise Reviews

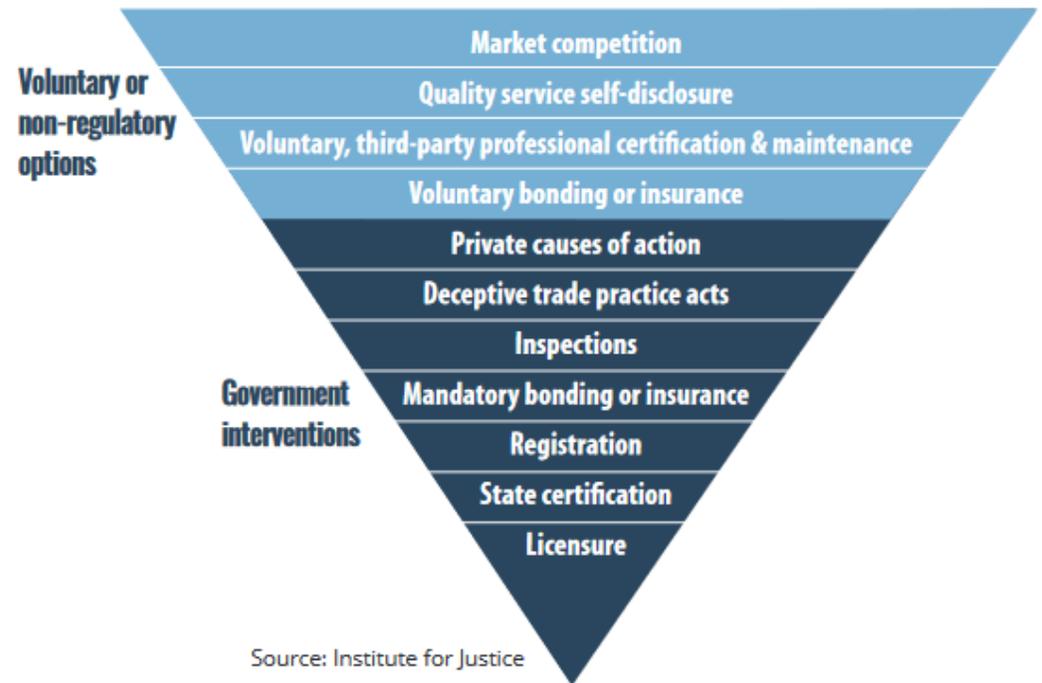
<p>Give Lawmakers Objective Information</p>	<p>Give lawmakers objective information to determine whether proposed regulations are necessary to protect the public health, or whether there is a less restrictive means of achieving this objective.</p>
<p>Balance Public Safety &amp; Openness of Entry Into Occupation</p>	<p>What is the regulatory goal that is to be achieved? Is the regulation narrowly tailored to remedy the specific harm without being overbroad and unnecessarily burden occupational entry?</p>
<p>Guard Against Regulatory Capture</p>	<p>Industry insiders often lobby government officials to be regulated, thus crowding out potential competitors to incumbents. Advocates for regulation must proactively justify the necessity of a regulatory scheme.</p>



# Components of an Effective Sunrise Review

- **Public Health and Safety Evaluation:**
  - Is there documented evidence of substantial and systematic harm, not just anecdotes or speculation?
  - "Whether the unregulated practice of the profession, occupation, or business can clearly harm or endanger the health, safety or welfare of the public, and whether the potential for harm is recognizable and not remote or speculative."
- **Other State Practices**
  - Education requirements, fees, reciprocity agreements, etc.
- **Estimate of the total additional financial burden that will be imposed on the individual.**
  - Cost of education, exams, fees, etc.
- **Least restrictive means standard**
- **Cost-Benefit Analysis of Licensure Effect on Consumers**

Figure 1 **The inverted pyramid: A hierarchy of alternatives to licensing**



# Non-Regulatory Options

- **Market Competition** – Consumer websites like BBB, Yelp, Google and Angie’s List
- **Quality of Service Self Disclosure** – Contractors often share reviews and recommendations from previous customers.
- **Third-Party Professional Certification** – Voluntary, but sends market signal to customers of qualifications.
  - Example: Mechanics = ASE Certified
- **Voluntary Bonding or Insurance** – Demonstrates that providers are financially sound and follow best practices.



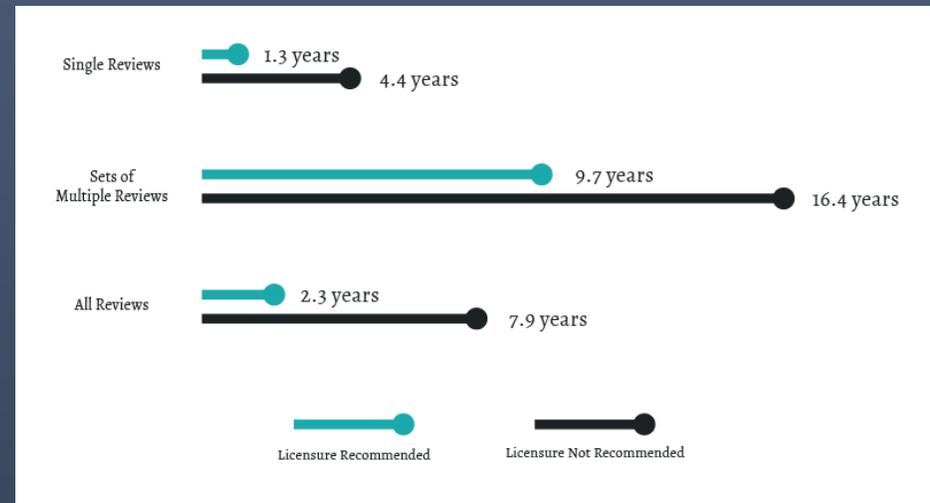
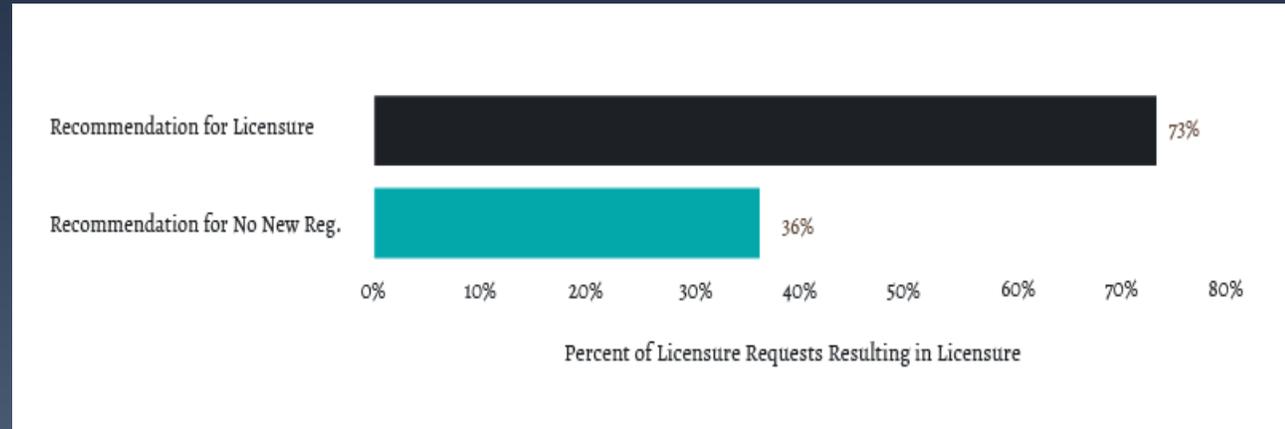
# Government Interventions

- **Private Cause of Action** – Make it easier for consumers to sue bad actors for injury or loss in small claims court.
- **Deceptive Trade Practice Acts** – Consumers can sue fraudulent businesses. Give AG power to investigate and prosecute.
- **Inspections** – Can ensure sanitary standards are met or that hazards are avoided.
- **Mandatory Bonding or Insurance** – Gives consumer redress and encourages best practices.
- **Registration** – A business or individual must register their name and contact information with the state. Discourages fly by night operators, supports enforcement of other alternatives.
- **State Certification** – Signals that providers are qualified, but allows others to practice. Use of “State Certified” label is limited.
  - Ex. Certified Cosmetology Instructors
- **Licensure** – Most restrictive regulatory scheme. Cannot practice in field without a license.



# Evidence for Sunrise Reviews

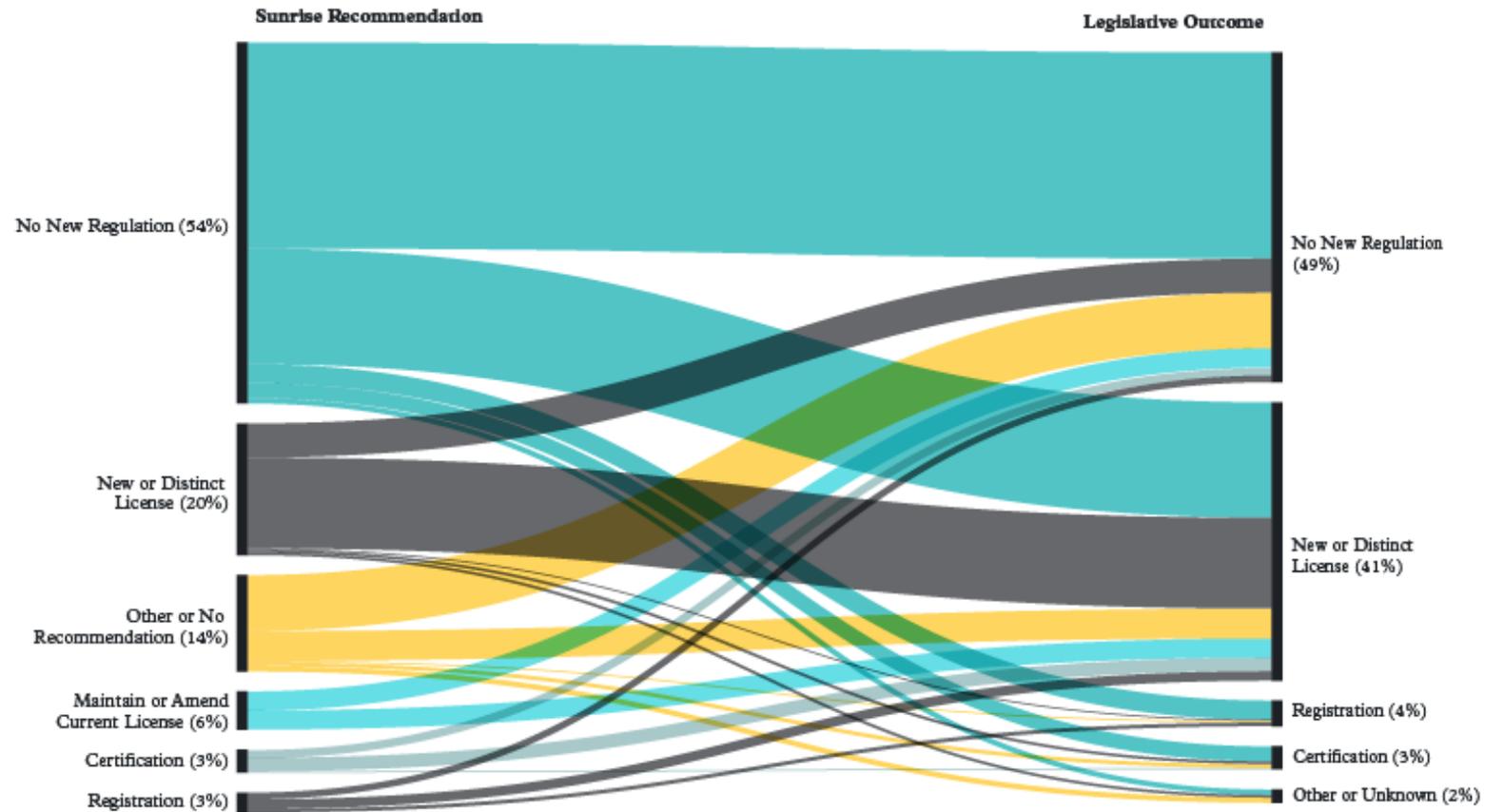
- Evidence shows that more often than not, legislatures generally follow the recommendations of sunrise reviews.
- Preliminary evidence also shows that sunrise reviews can slow the process down, especially in instances where licensure is not recommended.



• Source: Institute for Justice

# Sunrise Review Results

Figure 16: How Sunrise Recommendations Translated to Legislative Outcomes



• Source: Institute for Justice

# Sunset Reviews

- Sunset reviews are similar to sunrise, except that they look retrospectively on current license requirements.
- Uses same standard of review as sunrise reviews.
- Process is not be a dichotomy between a license and deregulating.
- Can also make recommendations on more detailed aspects of occupational licensure, such as:
  - education and continuing education requirements,
  - testing requirements,
  - rules that limit scope of practice, and
  - anti-competitive rules and actions by boards.



**Step 1:** Legislature sets a schedule for licensing review.



**Step 2:** Legislative Audit Bureau (LAB) conducts review of licenses on set schedule.



**Step 3:** LAB makes recommendations and submits report to legislature.



**Step 4:** Legislature takes action on recommendations.

# Right to Earn a Living

- Rational basis review of occupational regulations is a low bar
  - Rational relationship
  - Legitimate government interest
  - Patently arbitrary



# Right to Earn a Living Act

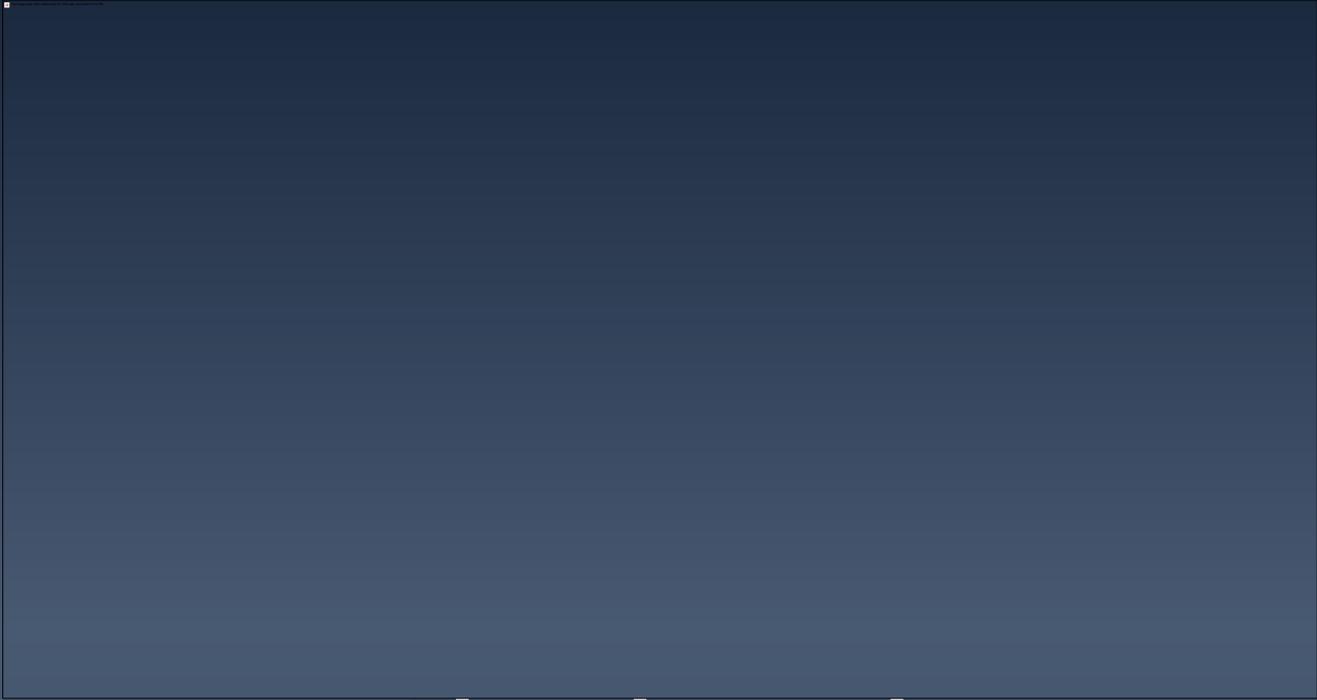
“All entry regulations with respect to businesses and professions shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public health, safety, or welfare objectives.”



# Components of Right to Earn a Living Act

- Intermediate standard of review
- Comprehensive agency review of existing occupational regulations (Sunset Review)
- Right to petition agencies to repeal or modify regulations
- Cause of action
- Preemption
  - 2015 Act 65 – Limits the authority of localities to create new licenses.
  - 2017 Act 327 - Local governments cannot impose occupational licensing restrictions that are more stringent than state imposed-licensing requirements.





**Thank you!**

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