

Too Many *Licenses?*

Government “Sunrise” Reviews
Cast Doubt on Barriers to Work

By Kathy Sanchez, Elyse Smith Pohl
and Lisa Knepper

February 2022

 INSTITUTE
for JUSTICE





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Executive Summary

In recent decades, states have enacted occupational licensing laws covering a growing number of jobs, and now more American workers than ever must get a license to work. But do we need these new licenses? Independent government reports, known as “sunrise” reviews, suggest the answer is often no.

This study presents the first comprehensive analysis of state sunrise laws and reviews. Although sunrise laws vary, they are generally designed to protect the right to freely enter occupations by evaluating whether proposed licenses are necessary to protect the public—not to protect the interests of occupational lobbies. They task government agencies with reviewing licensing proposals using criteria such as whether there is proof of harm from an occupation, whether benefits of licensing would outweigh costs, and whether public safety could be better protected in a less burdensome or restrictive way.

We studied 15 states with active sunrise processes from 1985 to 2017, gathering the largest ever collection of sunrise reports—397 reports covering 494 separate reviews. These reviews cover over 200 different occupations, creating a rich dataset of government reviewers’ analyses of specific regulatory proposals.

Key findings include:

1. Occupational lobbies, not consumers, drove the push for licensing.

- Occupational and professional associations initiated at least 83% of sunrise reviews, while consumer advocates were behind just 4%.
- A new license was by far the most requested regulation, in at least 67% of reviews. Proponents rarely sought less restrictive alternatives, such as certification or registration.
- Occupational lobbies’ campaigns for licensure often spanned multiple tries and several states. Some occupations sought review in the same state as many as five times, and two sought review in eight different states.

2. Sunrise reviews overwhelmingly recommended against licensing—and most recommended no new regulation.

- About 80% of reviews declined to recommend licensure. Most—54%—concluded no new regulation was needed, while 20% favored other, usually less restrictive, alternatives.
- This held true even for health-related occupations, with 75% of reviews declining to recommend a new or distinct license.
- And different reviewers tended to agree about the same occupations—usually recommending against licensure or any new regulation.
- Some states, such as Colorado and Hawaii, hardly ever recommended new licenses (in just 8% and 9% of reviews, respectively), while others did so more often. Arizona recommended new licenses the most by far, in 61% of reviews.

3. Legislatures often heeded reviews' warnings against regulation, but they enacted licensing more often than recommended, especially in the long run.

- When reviews did not recommend licensing, legislatures followed their lead in 65% of cases. They ultimately declined to enact 189 of 273 licenses.
- But legislatures did enact 84 licenses that were not recommended, and overall, they enacted licenses about twice as often as recommended.
- Sunrise reviews' influence may have been strongest in the short term. When legislatures ignored recommendations against licensure, it was often years after the review—eight years later, on average.
- Some states held the line against licensing better than others: While Maine and Georgia enacted licensing after just 15% and 26% of reviews, Arizona did so after 64%.

As these findings illustrate, licensing policy is typically driven by special interests, not the public interest. Overwhelmingly, demands come from motivated parties, who may put professional status or economic gain ahead of sound policy, and, in fact, independent government reviews most often conclude these demands are wrongheaded. Yet, over the long term, organized pressure often prevails, creating needless hurdles to work.

Sunrise review is one tool for countering such pressure, and we found preliminary evidence that it may thwart or at least slow some unwarranted licensing proposals—though, to be sure, the rigor of states' sunrise processes and reports varies a great deal. And more research is needed to determine whether states with sunrise processes—and stronger sunrise processes—do better at reining in licensing's growth than those without.

More important, our results show why lawmakers ought to greet licensing proposals with healthy skepticism—with or without a formal sunrise process. When subjected to scrutiny, licensing proposals tend to fall apart. Despite the claims of occupational lobbies, 30-plus years' worth of sunrise reviews suggest licensing often is not the answer.

Introduction



Mary Jackson
Institute for Justice Client

For decades, Mary Jackson has worked as a lactation consultant, teaching countless mothers how to breastfeed their babies. Mary holds certification with the Academy of Lactation Policy and Practice. She works at Atlanta's Grady Memorial Hospital and is a recognized expert on breastfeeding and has taught doctors, nurses and medical students. But that didn't stop the state of Georgia from trying to put her and over 800 other lactation consultants out of work when in 2016 it enacted a new occupational licensing scheme. Suddenly, only consultants who hold a different certification, that of the International Board of Lactation Consultant Examiners, were allowed to practice.¹

Instrumental in lobbying for the scheme was the United States Lactation Consultant Association, the professional association for International Board Certified Lactation Consultants. In a 2014 newsletter, the association told members, "One very important benefit of your USLCA membership that might be overlooked is continuously representing you and raising awareness of the IBCLC with policy makers and elected officials. . . . The USLCA's advocacy efforts are constantly going on, [m]any times behind the scenes, to help each of you have a more prosperous career as an IBCLC."² The newsletter also boasted that licensure legislation was in the works in several states and had been introduced in Georgia.³

Slated to go into effect in 2018, but on hold pending the outcome of a lawsuit,⁴ Georgia's lactation consultant license demands roughly two years of college courses and more than 300 hours of supervised clinical work, among other prerequisites, and the penalty for noncompliance is a \$500 fine for each violation.⁵ To meet those requirements, Mary and others like her would have to stop working and spend hundreds of hours and thousands of dollars learning to do what they already know how to do. They would be poorer as a result. So, too, would Georgia mothers and babies, who would be left with far fewer lactation consultants to serve them. Those better off would be existing IBCLCs, who, with less competition, would find themselves more in demand and therefore able to command higher pay.⁶

No other state licenses lactation consultants the way Georgia does—and only three other states license lactation consultants at all.⁷ Not only that, but the Georgia Occupational Regulation Review Council recommended against licensing lactation consultants in December 2013, saying it "would not improve access to care for the majority of breastfeeding mothers."⁸ In what is known as a "sunrise review process," GORRC, a joint legislative-executive agency, is charged with reviewing bills proposing new occupational regulations and evaluating whether and how to regulate an occupation based on statutory criteria. These criteria include whether unregulated practice threatens public health or safety and whether the public could be protected by other means.⁹

Georgia is one of 22 states whose laws provide for

sunrise reviews and one of 15 that regularly produce sunrise reports or have done so in the past.¹⁰ Sunrise reviews are intended to ensure new licenses and other occupational regulations are enacted only when necessary to protect the public—not to protect the interests of occupational lobbies such as the USCLA. These lobbies often see licensure as a way to improve their professional stature or to deliver economic benefits from limited competition.¹¹ To counter these lobbies' influence, sunrise reviews subject regulation requests to an independent, nonpolitical process to assess the possible harms from an occupation, whether regulation would mitigate those harms, and the regulation's costs and benefits. States first enacted sunrise review processes in the mid-1970s, at the same time policymakers were growing concerned about occupational overregulation.¹²

Since then, recognition has grown that occupational licensing imposes substantial costs on workers, consumers and the economy,¹³ even as licensing itself has expanded: Where 1 in 20 workers was licensed in the 1950s, that number now stands at about 1 in 4.¹⁴ As licensing has grown and recognition of its problems has become widespread, reformers have become increasingly interested in sunrise as a way to slow licensing's growth and ensure new licenses and other occupational regulations are necessary, targeted to real harms and no more restrictive than necessary to protect the public.¹⁵

This study is the first comprehensive examination of sunrise laws and reviews. Our research proceeded along two lines. First, we identified 15 states with sunrise laws that have also produced sunrise reports, and we reviewed their laws for commonalities and differences. And second, we gathered as many sunrise reports as possible from the states, identifying recommendations made and eventual legislative outcomes. In all, we gathered 397 reports covering 494 separate reviews of 208 unique occupations.

Our examination of the reports confirmed occupational insiders—not consumers—overwhelmingly drive regulation, and they most often seek licensure, not less restrictive regulation. Even so, sunrise reviews most often recommend against licensure, suggesting independent review can weed out licensure proposals that may not serve the public good. And after sunrise review, legislatures most often decline to enact licenses—though they enact them more often than recommended.

These findings suggest sunrise processes may thwart or at least slow down some licensing proposals not warranted by threats to the public. But more important, they show why lawmakers ought to greet licensing proposals with healthy skepticism. Most come from motivated parties who may put professional status or economic gain ahead of sound policy. And when subjected to scrutiny, licensing proposals tend to fall apart. Despite the claims of occupational lobbies, 30-plus years' worth of sunrise reviews suggest licensing is often not the answer.

What Is Sunrise Review?

Sunrise review is a process by which states evaluate the need for new occupational regulations, particularly new regulations of personal qualifications such as licensing, state certification and mandatory registration. Some states also review changes to existing regulations, such as amendments to scope of practice laws that define the tasks practitioners may perform, but this report looks only at reviews of new regulations.¹⁶

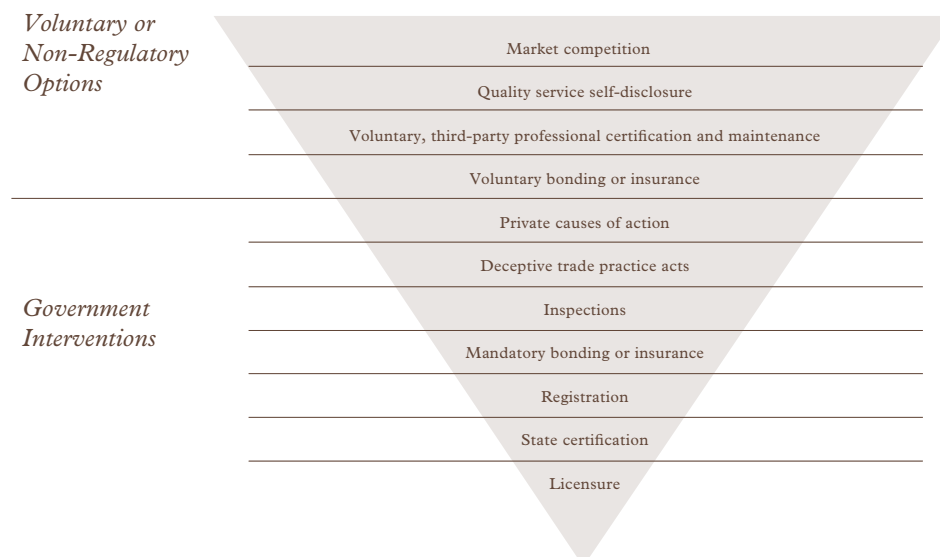
Sunrise review is intended to help legislators determine whether proposed regulations are necessary to protect the public. Legislators seldom have time to deeply research the bills that come before them; as a result, they often rely on information from organizations and individuals with a vested interest in seeing the legislation pass. With sunrise review, the idea is to give legislators a tool for assessing such information. Even if sunrise reviews cannot overcome special interests' influence, the hope is that they can at least counterbalance it with independent research.¹⁷

Sunrise review should not be confused with similarly named *sunset* review, though both arose around the same time and with a similar purpose. Rather than

reviewing occupational regulations *before* they become law, sunset review examines existing regulations and related government bodies, such as licensing laws and boards, to determine whether they are still (or were ever) necessary.¹⁸ The advantage of sunrise review over sunset is that it can, in theory, help keep unnecessary regulations off the books in the first place.

States' sunrise review processes tend to look similar, though they vary in the particulars. In general, what happens is this: When a new occupational regulation is proposed, a government agency or committee is tasked with reviewing it. The reviewer typically evaluates any harms from unregulated practice and weighs the costs and benefits of the proposed regulation. Often, the reviewer considers whether the public could be protected from any harms in another, less restrictive way. To this end, many sunrise laws provide lists of the different regulatory options available to legislators. These lists are sometimes similar to Figure 1, which lists both regulatory and non-regulatory options from least to most restrictive.

Figure 1: The Inverted Pyramid: A Hierarchy of Alternatives to Licensing



The reviewer also typically makes a recommendation about whether the proposed regulation, or any regulation, is warranted. The reviewer usually—though not always—puts this information into a written report for consultation by the legislature and interested members of the public. This study considers only written reports because they often provide a rich record of the types of regulations sought and by whom, as well as details about what reviewers recommended.

For this study, we began by identifying states with sunrise laws. In all, we found 22. But we excluded three (Arkansas, Idaho and Ohio) because they enacted their laws after our study period, which ended in 2017,¹⁹ and

four (California, New Mexico, Tennessee and Texas) because they have never regularly produced sunrise reports.²⁰ The remaining 15 states in this study are Arizona, Colorado, Florida, Georgia, Hawaii, Kansas, Maine, Minnesota, Nebraska, South Carolina, Utah, Vermont, Virginia, Washington and West Virginia. But, as indicated in Table 1, only 10 of these still regularly produce sunrise reports. Despite never formally repealing their sunrise laws, Florida, Maine, Minnesota, South Carolina and Utah rarely issue written reports.²¹ From the 15 states, we gathered the largest ever collection of sunrise reports—397. They cover the 33 years from 1985 to 2017.

Table 1: State Sunrise Laws in This Study

State	Year Enacted	Years Covered by Reports	Reports
Arizona (health)	1985	1986–2017	26
Colorado	1985	1985–2017	119
Florida*	1991	1993–1994	7
Georgia	1986	1987–2017	36
Hawaii	1977	1985–2017	29
Kansas (health)	1980	2011–2015	3
Maine*	1995	2000–2010	9
Minnesota* (health)	1976	2002–2009	6
Nebraska (health)	1985	1986–2017	29
South Carolina*	1988	1989–1997	7
Utah*	1999	2013–2015	2
Vermont	1977	1999–2017	22
Virginia	Health: 1977 Non-health: 1979	1987–2017	Health: 24 Non-health: 16
Washington	Health: 1983 Non-health: 1987	1988–2016	Health: 32 Non-health: 13
West Virginia	1998	1999–2017	17

Note: * = does not regularly produce reports. Two states, Virginia and Washington, have separate sunrise laws for health and non-health occupations. Kansas' and Nebraska's sunrise laws cover only health occupations. In 2014, Arizona amended its law to also review non-health occupations. But by the time we stopped collecting reports, the state had not yet produced any reports covering such occupations. In addition, Minnesota's law also covers non-health occupations, though the law specifically contemplates reports for health occupations only; we have found no reports covering non-health occupations.

Sunrise Laws' Key Features

Before examining data from sunrise reports, it helps to understand the central components of the laws under which they are produced. All sunrise laws strive to help legislatures evaluate the need for new or expanded occupational regulations before they enact them. To that end, they share three key commonalities. First, sunrise laws aim to help legislatures protect public safety without excessively interfering with the right to enter a lawful occupation. Second, most laws put the onus on those seeking regulation to prove a need for it. And third, sunrise laws are generally designed to promote transparency and objective fact-finding.

Our analysis examines sunrise statutes and, where statutes are light on detail, administrative regulations or departmental documents that guide reviews. (See the legal appendix on our website at ij.org/report/too-many-licenses/ for citations and the state profiles starting on p. 55 for greater detail.) But, as discussed below, reviewers' practices sometimes differ from statutory and regulatory guidance, at times quite substantially.

Protecting Public Safety and Occupational Entry

Sunrise laws aim to help legislatures (a) determine whether proposed new or expanded occupational regulations are genuinely necessary and, if they are, (b) identify and enact regulations that protect public safety without excessively interfering with the right to enter a lawful occupation. Sunrise laws pursue this objective in at least four ways.

First, most sunrise laws acknowledge the importance of balancing public safety with open occupational entry

Most states' sunrise laws—11 out of 15—include a preamble or policy statement describing the legislation's purpose, and each notes that regulation should be enacted only when necessary to protect the public. Whether explicitly or implicitly, these statements also acknowledge the importance of balancing public safety with open occupational entry (see Table 2). For example, the preamble to Virginia's sunrise law expressly recognizes the right to engage in a lawful occupation, declaring:

The right of every person to engage in any lawful profession, trade, or occupation of his choice is clearly protected by both the Constitution of the United States and the Con-

stitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare.²²

On the other hand, Colorado's sunrise law affirms the right to engage in a lawful occupation by implication. It begins: "The general assembly finds that regulation should be imposed on an occupation or profession only when necessary for the protection of the public interest."²³ In another example, Hawaii's sunrise law reads, in part: "[T]he purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation."²⁴

Such preambles and statements are not legally binding. Even so, they may serve as a lodestar for the interpretation and implementation of sunrise laws, reminding reviewers and legislators that the purpose of the law is to ensure regulations do not excessively interfere with the right to enter lawful occupations.

Table 2: Acknowledgment of Need to Protect Open Occupational Entry and Level of Harm Required to Justify Regulation in Sunrise Laws, 15 States

State	Acknowledgment of Need to Protect Open Occupational Entry	Level of Harm Required to Justify Regulation	Evidence of Past Harm to Be Considered
Arizona (health)	✓		✗
Colorado	✓		✗
Florida*	✓		✓
Georgia	✓		✗
Hawaii	✓		✓
Kansas (health)	✗		✗
Maine*	✗		✓
Minnesota* (health)	✓		✗
Nebraska (health)	✓		✗
South Carolina*	✗		✗
Utah*	✗		✗
Vermont	✓		✓
Virginia	Health and non-health: ✓	Health and non-health:	Health: ✓ Non-health: ✗
Washington (health and non-health)	✓		✗
West Virginia	✓		✓

Note: * = does not regularly produce reports.

Second, all sunrise laws require a showing of harm to justify regulation

All sunrise laws require a showing of harm to justify regulation, though some set more stringent standards than others (see Table 2). Ten states require evidence that unregulated practice poses a moderate threat of harm to public health and safety. Those laws often use language such as “can clearly harm”²⁵ or potential for harm that is “recognizable and not remote.”²⁶ Florida, Utah and West Virginia set a higher standard—a threat of significant or substantial harm. Hawaii and Maine, in contrast, use a lower standard, requiring evidence only of potential harm.

On top of setting a threshold level of harm, six states go a step further by asking for evidence of past harm from unregulated practice of an occupation. Such evidence may show the threat used to justify regulation is not merely hypothetical but rooted in real problems. Florida, for instance, requires regulation proponents to provide documentation of past harm by describing complaints from the previous three years. And guidelines for Virginia’s health reviews suggest the Board of Health Professions should investigate malpractice claim rates to determine the extent of past harm. Interestingly, although Hawaii uses one of the lowest standards of harm, it is among the states placing an emphasis on past harm. Its sunrise law states that “[e]vidence of

abuses by providers of the service shall be accorded great weight in determining whether regulation is desirable.”²⁷

By requiring a showing of harm and especially evidence of past harm to justify regulation, sunrise laws may help guard against the enactment or expansion of regulation based on hypothetical fears rather than verified threats. In this way, they may help reviewers and legislators preserve the balance between protecting the public from bona fide dangers and keeping the doors open to lawful occupations.

Third, all sunrise laws ask reviewers to weigh the costs and benefits of proposed regulations

Sunrise laws also seek to protect open occupational entry by providing for evaluations of the costs and benefits of proposed regulations. All sunrise laws do this, though the level of detail varies (see Table 3). Eight states—Arizona, Florida, Georgia, Hawaii, Nebraska, Vermont, Washington and West Virginia—contemplate the greatest level of detail, specifying that sunrise review can or should consider costs to workers, consumers and the state. In contrast, three states—

Colorado, Kansas and South Carolina—mention only one of those cost types, while Virginia’s sunrise law for non-health occupations calls for only an explanation of “[t]he cost of the proposed regulation.”²⁸ In addition, all but two states—Hawaii and Utah—specify that sunrise reviews can or should weigh the proposed regulation’s costs against its potential benefits, which sunrise laws tend to frame in terms of assuring consumers of service providers’ “initial and continuing professional or occupational competence.”²⁹ In practice, however, some states’ reviewers consistently conduct more—or less—detailed evaluations of costs and benefits than specified in law.

Importantly, when weighing costs versus benefits, sunrise laws do not call for sophisticated economic analyses, perhaps because needed data are rarely available for individual occupations under consideration and, in the rare cases where data about specific occupations are available, such analyses can be laborious and time-consuming. And, in fact, our dataset suggests reviewers rarely if ever perform them. Instead, states’ laws and reviewers’ reports reflect a belief that a careful and thoughtful weighing of available evidence is enough to judge whether a regulation’s benefits justify its costs.

Table 3: Cost-Benefit Evaluations Provided for in Sunrise Laws, 15 States

State	Costs to Workers	Costs to Consumers	Costs to State	Benefits
Arizona (health)	✓	✓	✓	✓
Colorado	✓	✗	✗	✓
Florida*	✓	✓	✓	✓
Georgia	✓	✓	✓	✓
Hawaii	✓	✓	✓	✗
Kansas (health)	✗	✓	✗	✓
Maine*	✗	✓	✓	✓
Minnesota* (health)	✓	✓	✗	✓
Nebraska (health)	✓	✓	✓	✓
South Carolina*	✗	✓	✗	✓
Utah*	✓	✓	✗	✗
Vermont	✓	✓	✓	✓
Virginia	Health and non-health: ✗	Health: ✓ Non-health: ✗	Health: ✓ Non-health: ✗	Health and non-health: ✓
Washington (health and non-health)	✓	✓	✓	✓
West Virginia	✓	✓	✓	✓

Note: * = does not regularly produce reports.

Fourth, many sunrise laws require reviewers to recommend, and encourage legislatures to enact, the least restrictive regulation necessary to address the identified harm

Many sunrise laws ask both reviewers and legislators to consider whether less restrictive regulations—including no regulation—can protect the public (see Table 4). As discussed above, there is a range of options, both regulatory and non-regulatory, for addressing occupational harms, of which licensure is perhaps the most well known but also the most restrictive.

Sunrise laws may promote less restrictive regulations in a few different ways. First, 12 states' sunrise laws catalogue regulatory options from least to most restrictive, often resembling Figure 1. For example, West Virginia's statute defines "least restrictive regulation" as meaning, from least to most restrictive:

- (1) Market competition,
- (2) Third-party or consumer-created ratings and reviews,
- (3) Private certification,
- (4) Voluntary bonding or insurance,
- (5) Specific private civil cause of action to remedy consumer harm,
- (6) Deceptive trade practice act,
- (7) Mandatory disclosure of attributes of the specific good or service,
- (8) Regulation of the process of providing the specific good or service,
- (9) Regulation of the facility where the specific good or service is sold,
- (10) Inspection,
- (11) Bonding,
- (12) Insurance,
- (13) Government registration,
- (14) Government certification,
- (15) Specialty occupational certification solely for medical reimbursement, and
- (16) Occupational license.³⁰

Such lists tell reviewers and legislators that even if they determine that the identified health and safety risks warrant a response, the proposed regulation might not be the best response. A less restrictive regulatory or even non-regulatory option may be enough.

Second, 12 states require or encourage regulation proponents or reviewers to consider prior measures to address the identified harm and explain why those

measures are ineffective. Prior measures may include actions taken by an occupation to police itself—such as with a code of ethics or voluntary private certifications³¹—or less restrictive government regulations already in place.

Third, sunrise laws in eight states ask reviewers or regulation proponents to consider whether a proposed regulation is "narrowly tailored" to the identified harm, which may make reviewers more likely to recommend least restrictive regulations. For instance, in Utah, reviewers must consider whether the proposed regulation is "narrowly tailored to protect against present, recognizable, and significant harm to the health or safety of the public" and whether the regulation will significantly diminish the identified risk.³² Similarly, Arizona's law allows reviewers to ask proponents to provide information on "[t]he extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation."³³

A narrowly tailored regulation is one that would remedy the specific harm at issue without being overbroad and unnecessarily burdening occupational entry. For example, with restaurant cooks, the potential harm might be foodborne illness. Both licensure for cooks and regular inspections of restaurant kitchens might protect the public, but only inspections are narrowly tailored to the specific harm. Indeed, inspections are the primary way most jurisdictions ensure restaurant food safety. And no state licenses restaurant cooks.³⁴ Similarly, where the potential harm is the risk of damage or fraud by fly-by-night service providers, registration may be more appropriate than full licensure. With registration, providers need not meet any specific qualifications, but the state can track those with complaints or disciplinary actions—and consumers can avoid businesses with a history of problems.³⁵

Fourth, nine states' sunrise laws explicitly require reviewers to recommend the least restrictive alternative to the proposed regulation. South Carolina's sunrise law, for instance, states that "the commission shall recommend the least extensive and restrictive form of regulation consistent with the public interest. The commission may not recommend any regulation unless necessary to protect the health, safety, or welfare of the public."³⁶ Likewise, Utah's law states that reviewers "shall study and make recommendations regarding potentially less restrictive alternatives to licensing for the regulation of lawful occupations, including registration, certification, or exemption, if appropriate, that would avoid unnecessary regulation while still protecting the health and safety of the public."³⁷

Finally, seven states encourage the legislature to enact the least restrictive regulation, some in very strong terms. Arizona, Nebraska and Vermont say the legislature “shall” enact the least restrictive regulation necessary to protect the public.³⁸ Virginia uses similarly strong language.³⁹ While a statute cannot tie the legislature’s hands, strong language may be effective in encouraging the legislature to enact the least restrictive regulation, including no regulation, thus helping to

protect open occupational entry.

Only two states—Georgia and, for health occupations, Virginia—promote less restrictive regulations in all five of the above ways. Arizona, Nebraska, Utah, Vermont, Washington, West Virginia and, for non-health occupations, Virginia do so in four ways. Two states, Colorado and Hawaii, do not promote less restrictive regulations in any of the above ways.

Table 4: Provisions Promoting Least Restrictive Regulations (LRR) in Sunrise Laws, 15 States

State	List of Regulatory Options Provided	Review to Consider Prior Measures to Address Harm	Review to Consider Whether Proposed Regulation Is Narrowly Tailored	Reviewer Required to Recommend LRR	Legislature Encouraged to Enact LRR
Arizona (health)	✓	✓	✓	✗	✓
Colorado	✗	✗	✗	✗	✗
Florida*	✗	✓	✗	✓	✗
Georgia	✓	✓	✓	✓	✓
Hawaii	✗	✗	✗	✗	✗
Kansas (health)	✓	✓	✗	✓	✗
Maine*	✓	✓	✗	✓	✗
Minnesota* (health)	✓	✓	✓	✗	✗
Nebraska (health)	✓	✓	✗	✓	✓
South Carolina*	✓	✓	✗	✓	✗
Utah*	✓	✓	✓	✓	✗
Vermont	✓	✓	✓	✗	✓
Virginia	Health and non-health: ✓	Health and non-health: ✓	Health and non-health: ✓	Health: ✓ Non-health: ✗	Health and non-health: ✓
Washington (health and non-health)	✓	✓	✓	✗	✓
West Virginia	✓	✗	✓	✓	✓

Note: * = does not regularly produce reports.

Asking Advocates to Justify Licensing

Sunrise laws typically require proponents to establish a need for government intervention, which may deter frivolous regulatory proposals. There are two main ways sunrise laws do this (see Table 5). First, to trigger sunrise review, some states require regulation proponents to file an application. Seven states—Arizona, Colorado, Kansas, Maine, Utah, Vermont and West Virginia—do this. In another two, Nebraska and Virginia, an application is one way to trigger sunrise review, but reviews can also be started by executive action. In the remaining six states, reviews are generally launched when regulatory legislation is introduced. (Although not mentioned in the states’ laws, in Virginia and Washington, reviews are, in practice, also started by legislative request.)

In most states with applications, anyone can file one—legislators, government officials, consumers and so forth. However, as our sunrise report data reveal, most applications are filed by industry representatives seeking regulation of their own occupation. Filing an application often requires these insiders to extensively detail why they believe regulation is justified. Asking proponents to present arguments and evidence rather than blanket assertions for why regulation is in the

public interest may deter the most baseless proposals. In addition, four states charge application fees ranging from \$500 (Nebraska and Utah) to \$1,000 (Kansas and Maine). Interestingly, Utah’s fee applies only to members of the occupation. Charging a fee may also deter some baseless or repeat proposals.⁴⁰

Colorado and Vermont have another way of deterring repeat proposals. Their laws permit reviewers to decline to consider proposals where a group repeatedly requests sunrise review of the same occupation without submitting new information that might affect the recommendation.⁴¹ Not only do such provisions empower reviewers to conserve public funds by not conducting redundant reviews, but they may also serve as a defense against persistent lobbying efforts.

In addition to or as an alternative to applications, several states require proponents to provide information demonstrating the need for regulation during the sunrise process.⁴² In one or both of these ways, nearly all sunrise states—13 out of 15—require proponents to justify the need for regulation. This does not necessarily mean that reviewers in the remaining states do not request information from proponents in practice.

Table 5: Provisions Putting Onus on Regulation Proponents to Demonstrate Need for Regulation in Sunrise Laws, 15 States

State	Application Required to Trigger Sunrise Process	Application Fee	Proponents Required to Provide Information Demonstrating Need for Regulation
Arizona (health)	✓	✗	✓ ^g
Colorado	✓	✗	✓
Florida*	✗ ^a	N/A	✓ ^g
Georgia	✗ ^a	N/A	✓ ^g
Hawaii	✗ ^a	N/A	✗
Kansas (health)	✓	\$1,000	✓
Maine*	✓	\$500 or \$1,000 ^{d,e}	✓
Minnesota* (health)	✗ ^a	N/A	✓
Nebraska (health)	✓ ^b	\$500 ^e	✓ ^h
South Carolina*	✗ ^a	N/A	✗
Utah*	✓	\$500 ^f	✓
Vermont	✓	✗	✓ ^g
Virginia	Health and non-health: ✓ ^{b,c}	Health and non-health: ✗	Health: ✓ ^g Non-health: ✓
Washington (health and non-health)	Health: ✗ ^a Non-health: ✗ ^{a,c}	Health and non-health: N/A	Health and non-health: ✓ ^g
West Virginia	✓	✗	✓

Note: * = does not regularly produce reports. ^a = sunrise triggered by introduction of legislation (in Minnesota, regulation proponents must file a “report”—effectively an application—within 15 days of a bill’s introduction). ^b = sunrise may also be triggered by executive action. ^c = sunrise also triggered by legislative request in practice. ^d = fee is \$500 if Commissioner of Professional and Financial Regulation is conducting independent assessment; \$1,000 if a technical committee is conducting review. ^e = fee can be waived. ^f = if applicant is member of the occupation. ^g = proponents must provide information only at the reviewer’s request. ^h = if sunrise is triggered by application.

Promoting Transparency and Objective Fact-Finding

Sunrise processes are generally designed to promote transparency and objective fact-finding. States’ laws may pursue these goals in at least three ways (see Table 6). First, they may explicitly require written sunrise reports. Written reports make reviewers’ reasoning and evidence a matter of public record, promoting a more objective, thorough and transparent review. If reviewers know their deliberations will become public, they may be less likely to accept regulation proponents’ arguments and evidence out

of hand and more likely to subject it to careful vetting. Most states’ sunrise laws—11 out of 15—require written reports. Only Arizona, Florida, Minnesota and Washington do not. However, even in states that require reports, reviewers do not always produce them routinely.

Second, some sunrise laws give reviewers more time to conduct their reviews, which may lead to stronger reports with more independent fact-finding. For seven states and health reviews in Virginia, re-

viewers have no time limit, while several states—Colorado, Georgia, Nebraska, Virginia (non-health) and West Virginia—give reviewers nine months to a year to study the need for regulation.

Third, sunrise reviews may encourage reviewers to accept input from members of the public besides regulation proponents. Encouraging reviewers to accept, or even solicit, input from other members of the public

may promote a more balanced, thorough and transparent process. Ten states' sunrise laws seek to level the playing field by mentioning in their laws that reviewers can or should consider input from regulation opponents, consumers and others who may be affected by proposed regulations (for Virginia, this applies to health reviews only). The remaining states do not expressly mention public input in their laws.

Table 6: Provisions Promoting Transparency and Objective Fact-Finding in Sunrise Laws, 15 States

State	Report Required	Report Author	Time Allowed for Review	Public Input on Review Encouraged
Arizona (health)	✗	Legislative	No limit	✓
Colorado	✓	Executive	At least 10.5 months	✗
Florida*	✗	Legislative	No limit	✗
Georgia	✓	Mixed	9 months	✓
Hawaii	✓	Legislative	No limit	✗
Kansas (health)	✓	Executive	4 months	✓
Maine*	✓	Executive	No limit	✓
Minnesota* (health)	✗	Executive	No limit	✗
Nebraska (health)	✓	Executive	12 months	✓
South Carolina*	✓	Executive	No limit	✓
Utah*	✓	Legislative	At least 4 months	✓
Vermont	✓	Executive	At least 4 months	✓
Virginia	Health and non-health: ✓	Health and non-health: Executive	Health: No limit Non-health: At least 11 months	Health: ✓ Non-health: ✗
Washington (health and non-health)	✗	Executive	No limit	✗
West Virginia	✓	Legislative	9 months	✓

Note: * = does not regularly produce reports.

Overall, our examination of commonalities among sunrise laws reveals their animating purpose: Despite variations, they are uniformly designed to subject regulatory proposals to evidence-based analysis to ensure new regulation addresses verified harms and is no more extensive than necessary for public protection. They acknowledge and aim to counterbalance lobbying by vested interests with independent fact-finding and

opposing viewpoints. And they seek to protect open occupational entry.

Of course, as noted, reports may be more or less rigorous than statutory and regulatory guidance would suggest. In the next section, we talk with three reviewers about how sunrise works in practice. Then, we explore the reports produced under state sunrise laws.

Reviewers' Takes on What Makes It Work

For an inside look at the sunrise process, we spoke with officials responsible for sunrise reviews in three states with well-established processes and generally strong reviews—Colorado, Vermont and Virginia. What they told us about their processes shows the variety of ways sunrise review can be done. Even so, a few key themes emerged. Most notably, all three officials agreed about the importance of (1) their statutory mandates, (2) their institutional cultures and (3) resources.

Statutory mandates, they said, provide guiding principles and, sometimes, objective criteria for conducting reviews. They ground reviewers to their legal duty and make it easier for them to do their job in the face of pressure from interested parties. But legal guidance alone is not enough; institutional culture is also critical. All three approach their task not only with a commitment to statutory mandates, but also with a serious and skeptical frame of mind. Whether information comes from regulation proponents, opponents or anyone in between, they take nothing at face value and conduct their own fact-finding and analysis. On the final piece, reviewers agreed on the importance of resources, particularly dedicated sunrise staff, ample time for reviews and access to experts.

Ahead, we recap our conversations with each reviewer. From them, lawmakers and policymakers looking to enact or improve a sunrise process can draw hands-on lessons about what makes sunrise work.

Colorado's Office of Policy, Research and Regulatory Reform

Colorado's sunrise reviewer is a "lean, mean machine." So says Brian Tobias, executive director of the Colorado Office of Policy, Research and Regulatory Reform, the six-person office within the Department of Regulatory Agencies that works on sunrise and other policy analyses. In speaking with us, Tobias described how his office searches for evidence of harm, consulting stakeholders and experts but also doing its own research. He also highlighted institutional and cultural factors that help the office remain independent and objective.

Colorado's sunrise process was, Tobias explained, "created to provide the legislature with objective research." He said his office's work was "centered on the question of: Is the public being harmed absent regulation that will justify state intervention?" With this mandate in mind, the office consults with stakeholders, including the parties who requested regulation, any parties who oppose regulation, and consumer groups. To make sure no one is left out, anyone else who wishes to engage in the process can use the office's online comment portal. The office also leans on the extensive network of experts it has built over the years to obtain "as much diverse input as practicable." The office generally meets with each stakeholder group separately, avoiding the town hall-style forums or hearings common in other states. Tobias believes this format allows for a deeper dive into subjects, resulting in a better understanding of harm and any need for regulation.

Tobias' office also conducts its own independent research into whether regulation is needed, including compiling literature reviews and searching for complaints and other evidence of actual consumer harm both in and outside Colorado. And when searching for complaints of harm, the staff focuses on ones that (1) are specific and (2) "would merit disciplinary action." Tobias said, "[t]he more specific someone can make it for us, the better."

According to Tobias, his office is structured to be objective and well insulated from outside pressure. While not its own entirely independent department—something Tobias explained the Colorado Constitution does not allow—the office is housed away from the General Assembly, keeping it safely distanced from the political process. The sunrise process also takes place before any regulatory bill is introduced. And although part of the executive's Department of Regulatory Agencies, the office operates independently of the umbrella agency's regulatory functions. This helps it avoid the problems that can arise from mixing the roles of sunrise reviewer and regulator, while also allowing staff to focus on their policy analyses.

Tobias said he and his staff continuously strive to remain objective. They "know that [stakeholders are] trying to convince us to go one way or the other." Moreover, he said it was "natural" that they would do so. But they also know that stakeholders and the occasional run-in with legislators can jeopardize the sunrise process's integrity if the office fails to remember its role: "We don't want politics to play into the review process. This is a fact-finding mission to find out whether this profession needs to be regulated according to the criteria that we have." Accordingly, the staff attempts to maintain a healthy skepticism toward all parties involved in a review.

The office's legal mandate, institutional culture and relative independence all help Colorado's review process avoid political influence and stay focused on its mission of determining whether proposed regulations are justified by consumer harm.

Vermont's Office of Professional Regulation

Lauren Hibbert is the director of Vermont's Office of Professional Regulation, which is home to the small team that produces Vermont's sunrise reviews. She told us of the team's culture of objectivity and transparency, crediting it—as well as the detailed sunrise reports that result—to the state's strong sunrise law. She also told us of some challenges her team faces.

According to Hibbert, the sunrise team's culture of objectivity comes from simply trying to adhere to its statutory role: “We do not want to be seen as advocating in one way or the other, just making a recommendation based on our analysis, [the framework for] which is pretty much set out in statute.” As she explained, the principle behind Vermont's sunrise reviews is: “Is there significant public harm that warrants government intrusion into the marketplace?” In line with that principle, the team recommends regulation only when it identifies significant harm and the regulation is narrowly tailored to realistically alleviate that harm. Hibbert noted that the team is “careful that we're . . . not overpromising what the government intrusion is going to be able to cure or solve.”

To investigate whether regulation is necessary and targeted to protect the public, the team generally takes the following approach. First, it asks the individual or group proposing regulation to articulate the harm it wants to remedy. Second, it seeks the public's input via meetings and comments. Third, it identifies how the occupation is regulated in other states, including enforcement and disciplinary laws. Finally, it seeks as much information as possible on the costs and benefits of regulating, including using other states' occupational regulations to help it find and interpret information about harms, such as complaints, enforcement actions, insurance malpractice and small claims, and lawsuits.

Hibbert also explained the law's high standards and level of detail serve another practical purpose. Specifically, they help the team do its job by making the expectations for sunrise review clear to everyone—stakeholders, the public and the team itself. This helps the team feel safe from stakeholder pressure and maintain its independent, impartial stance. If challenged, the team can always show how its recommendations simply follow the law neutrally.

In addition to striving for objectivity, the team strives for transparency, something Hibbert attributes to both the state's sunrise law—which promotes transparency and public engagement—and the team's experience. She described how in the past the team kept quiet about where an inquiry was headed with the result that stakeholders felt blindsided by its final recommendations. She said it is best to “be expressive about what your concerns are,” give stakeholders a chance to respond, and then try to “work in their opposition to your position and your response to their opposition.” That way, “you prevent them from saying you didn't give them the opportunity to be fully heard.”

The team's work is not without challenges. For example, regulation proponents tend to try to bypass the sunrise process. Instead of filing an application with the Office of Professional Regulation as the law requires, proponents usually go straight to the General Assembly with their requests, just as they would in non-sunrise states. It has therefore become part of OPR's job to educate regulation proponents and legislators about its existence, and Hibbert said awareness has improved over time.

Hibbert cited human capital as another challenge. The four OPR staff who work on sunrise also have other duties, including management and administration as well as other regulatory and policy work. This can make it challenging to meet deadlines while maintaining the team's high standards. Despite these challenges, OPR's sunrise team consistently produces rigorous reports.

Virginia's Board of Health Professions

An advisory board of Virginia's Department of Health Professions, the Board of Health Professions is responsible for the state's sunrise reviews of health occupations. BHP's reviews are thorough, which the board's executive director, Elizabeth Carter, largely attributes to the board's detailed policies and procedures document and human capital.

Virginia's sunrise law begins with a strong statement about its purpose: helping to uphold "the right of every person to engage in any lawful profession, trade or occupation," which "is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia." The board's policies and procedures document reiterates this view. It states, "The occupational property rights of the individual may be abridged only to the degree necessary to protect the public. This tenet is clearly stipulated in statute and serves as the Board's overarching philosophy in its approach to all its reviews." As Carter put it, "if you're not harming anybody, there's no need to regulate you."

The importance of BHP's policies and procedures document—which the board proudly calls its "cookbook" and "bible"—cannot be overstated. In addition to describing the board's philosophy, it outlines the board's review criteria, methodology and best practices. Having all this guidance rolled into one handy document helps the board fulfill its statutory duties and produce rigorous sunrise reports with objective recommendations. The document is publicly available online, which also promotes transparency in the sunrise process.

By law, proponents are supposed to apply for sunrise review with the board, but most take their request for regulation straight to the General Assembly, which then requests the review. The board next puts the ball back in proponents' court by asking them to submit an application. But BHP does not take the information they provide at face value. Carter said BHP recognizes that the vast majority of requests come from groups seeking regulation of their own occupations and that these groups often appear to see licensure as "a prize" or a way "to restrict the market." Accordingly, and in line with the board's statutory mandate, BHP maintains a healthy skepticism toward requests for regulation.

BHP takes a similar approach when it comes to interactions with legislators, who may try to influence the sunrise process. During training, board members are told that they cannot have "sidebars" with legislators—that they need to stay outside the political process, in other words. The message is, as Carter put it, "Go do your study, objectively as best you can,' and then somebody else deals with the political side of things." This, she said, gives the board an "extra level of independence."

Instead of getting bogged down in the political process, BHP endeavors to keep its eye on what the law requires to justify regulation: actual evidence of harm. As part of its search, it has a robust comment process in which it seeks to involve as many stakeholders as possible. To this end, the board posts notices intended to get members of the public, especially consumers, to attend in-person public forums and provide written comments. In addition to helping the board get a fuller picture of the need—or lack thereof—for regulation, this promotes transparency in the process.

BHP's policies and procedures document goes a long way toward explaining the state's rigorous sunrise reviews. But Carter said the board's abundant resources, specifically its human capital, are also critical. The board's five-member Regulatory Research Committee—selected annually—conducts sunrise reviews as its main job, but it can, for expert support, look to the rest of the board's 18 total governor-appointed members. The board's four full-time staff and other regulators and administrators from the Department of Health Professions are also available. For example, the RRC can seek help from the department's Healthcare Workforce Data Center, whose staff includes a part-time economist. And when the RRC has an especially heavy workload, the board is able to bring in a contractor, graduate student or other temporary assistance to help.

Carter believes BHP's approach to sunrise review—its detailed policies and procedures document, its culture of skepticism and transparency, and its wealth of resources—serves the state well and could serve as a model for other states.

What Sunrise Reviews Say About Licensing

For this report, we gathered the largest collection of sunrise reports yet assembled—397 reports from 15 states over 33 years.⁴³ Table 7 provides basic data about the reports by state, revealing variation in how actively states use their sunrise processes. Utah and Kansas produced just two and three,⁴⁴ respectively, during our study period, while Colorado produced 119, accounting for almost a third (30%) of our dataset. Most states fell in between, generating 17 to 45 reports.

Perhaps states with more reports see more proposals for new regulations, but more likely, states with few reports simply do not employ their sunrise processes consistently. Indeed, some states seem to have stopped producing reports altogether: Utah, Maine and Minnesota have not produced any new sunrise reports since 2015, 2010 and 2009, respectively, while Florida and South Carolina have not done so since the 1990s.⁴⁵

Table 7: Basic Data on Sunrise Reports, Reviews and Occupations in This Study

State	Years Covered by Reports	Reports	Reviews	Occupations Reviewed
Arizona	1986–2017	26	36	32
Colorado	1985–2017	119	145	92
Florida*	1993–1994	7	7	7
Georgia	1987–2017	36	38	28
Hawaii	1985–2017	29	44	37
Kansas	2011–2015	3	3	3
Maine*	2000–2010	9	13	13
Minnesota*	2002–2009	6	8	7
Nebraska	1986–2017	29	38	32
South Carolina*	1989–1997	7	18	18
Utah*	2013–2015	2	3	3
Vermont	1999–2017	22	24	19
Virginia	1987–2017	40	45	41
Washington	1988–2016	45	49	45
West Virginia	1999–2017	17	23	21
Total	1985–2017	398	494	208

Note: * = does not regularly produce reports.

Most of the reports in our dataset examine a single occupation. However, 54 reports cover between two and 10. This happened when proponents sought regulation for more than one related occupation at the same time and reviewers found it practical to combine the reviews into a single report.⁴⁶ For example, the Occupational Therapy Association of Colorado requested licensure of occupational therapists and occupational therapy assistants via one application in 2006.⁴⁷ The Colorado Department of Regulatory Agencies' Office of Policy, Research and Regulatory Reform addressed both requests in the same report.

Like the Occupational Therapy Association, proponents often request the same regulation for multiple occupations. But sometimes the regulations sought differ. In 2015, a group of surgical assistants and technologists in Nebraska requested licensure for assistants and certification for technologists in one application. Similarly, reviewers may make different recommendations for each occupation in a report, as Arizona did in 2007 when it recommended a distinct license for radiologist assistants and declined to make a recommendation for radiology practitioner assistants.

For these reasons, where a report comprises multiple reviews, we analyzed each review separately.⁴⁸ Our dataset of 397 sunrise reports therefore contains 494 separate reviews. The number of reviews in a state ranges from three (Kansas and Utah) to 145 (Colorado). The 494 reviews examine proposed regulations for 208 unique occupations, with the number of occupations reviewed in a state ranging from three (Kansas and Utah) to 92 (Colorado).

We used the full set of 494 reviews to explore three questions: Who sought sunrise review and what regulations did they propose? What did reviewers recommend? And what did legislatures do following sunrise review?

We also examined the same questions for three large subsets of reviews: (1) occupations repeatedly reviewed by the same state, (2) occupations reviewed by multiple states and (3) health occupations. These subsets make up sizable portions of our dataset. Many occupations were reviewed twice by the same state—some up to five times. For example, the Professional Private Investigators Association of Colorado requested licensure of private investigators five times between 1985 and 2014, when the state finally relented.⁴⁹ All told, we identified 64 sets of repeat reviews. Totalling 160 reviews, they make up 32% of our dataset. Similarly, many occupations were reviewed by multiple states, including two—acupuncturists and athletic trainers—that were reviewed by eight.⁵⁰ In all, roughly 40% of the occupations in our dataset were reviewed by multiple states. Finally, reviews of health occupations accounted for just over half of our dataset (265 of 494).

Analyzing these subsets gives additional insight into important questions. Looking at the two subsets of repeat reviews shows how tenacious occupational insiders can be in pursuing regulation within and across states, while examining health occupations allows us to see whether reviewers and legislatures treat these occupations differently, given their presumably close connection to public health and safety.

Who Wants Licensing? Occupational Insiders, Not Consumers

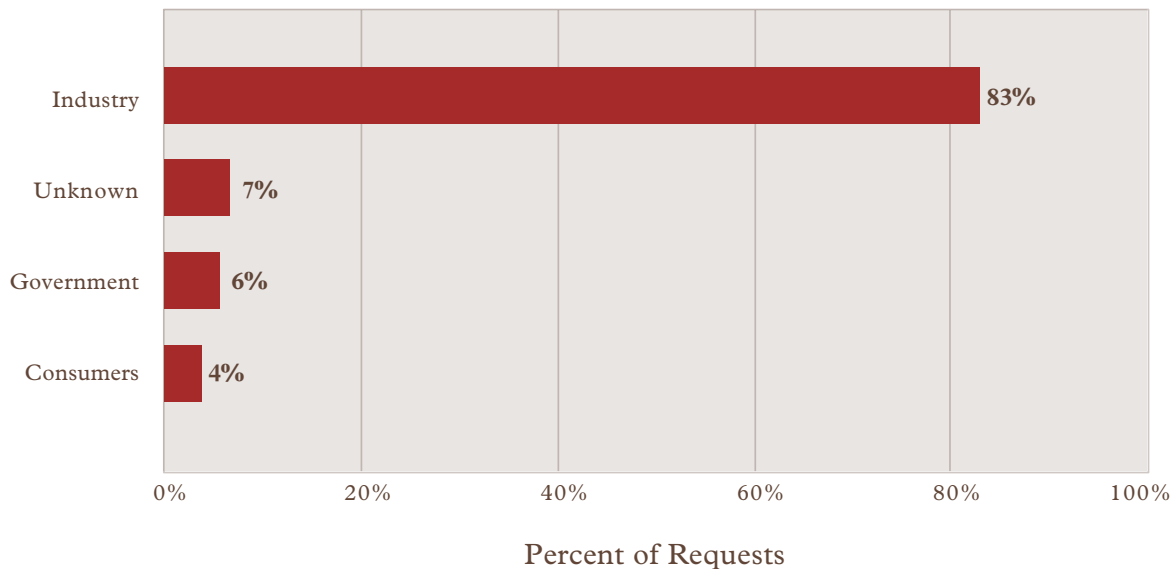
Sunrise review data confirm that occupational lobbies—not consumers—usually propose occupational regulation and that these groups typically seek the most stringent form of regulation, licensure. As described above, sunrise reviews typically start when an individual or group requests regulation. The overwhelming majority of sunrise reviews in our sample—83%—started when professional and occupational associations sought regulation of their own or related occupations (see Figure 2).

Often, a single group launched a request, such as when the Maine Association of Wetland Scientists sought licensure of soil scientists and the Vermont Alarm and Signal Association sought licensure of burglar alarm installers. But sometimes different groups from related occupations joined forces—for example, the American Society of Radiologic Technologists and the Certification Board for Radiology Practitioner Assistants. In a more extreme example, in 2002, a

coalition of 10 occupations from four behavioral health groups came together to lobby the Arizona Legislature for licensure of their occupations.⁵¹

After industry groups, the most common initiators of sunrise review were government entities, but they accounted for just 6% of our dataset. And usually, the government entities were occupational licensing boards, whose membership often includes occupational insiders. For example, in 2002, the Arizona State Board of Pharmacy, which oversees state regulation of pharmacy technicians, proposed swapping state certification for licensure. In other cases, those seeking licensure similarly already had regulatory power over the field, such as Vermont’s Office of Alcohol and Drug Abuse Programs, which sought licensure of addiction counselors, and West Virginia’s Division of Motor Vehicles, which pursued licensure of motor vehicle salespeople.

Figure 2: Most Requests for Regulation Came from Industry Groups



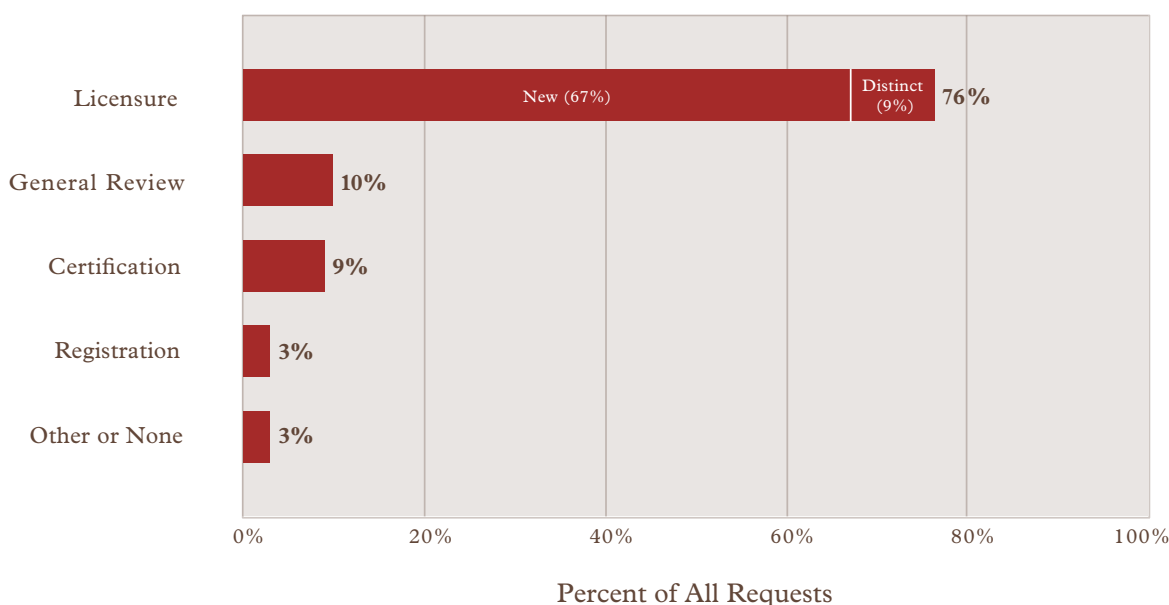
Note: Analysis considers 405 reviews that named the person or group requesting regulation. Unknown captures reviews that named regulation proponents but did not describe them in detail sufficient for us to determine a category. We excluded Hawaii’s reviews because they did not name or describe regulation proponents. We also excluded general reviews where we could not determine the impetus behind the review.

Consumers launched just 14 (4%) of the reviews in our sample, but in five of those, consumers sought regulation jointly with industry groups. In one example, the Metro Denver Fair Housing Center, a consumer advocacy group, joined with the Colorado Mortgage Lenders Association and the Colorado Association of Mortgage Brokers to seek licensure of various mortgage-related occupations. In another, the Colorado Association of the Deaf and the Colorado Registry of Interpreters for the Deaf worked together to request licensure of interpreters. So the 4% figure overstates how often consumers were the sole drivers behind regulation campaigns.

In the end, occupational lobbies were directly or indirectly behind nearly all reviews where we could identify those seeking regulation. And the regulation most often sought was licensure; less restrictive regulations were rarely requested (see Figure 3). Fully two-thirds of reviews sought licensure of a previously unlicensed occupation, while another 9% sought distinct licenses for occupations already licensed under another, usually broader, occupational category.

In terms of restrictiveness, distinct licenses are difficult to classify. Most often (37 out of 42), such requests involved health occupations where licensees' scopes of practice overlap and boundaries are disputed. Sometimes, these requests sought a marker of distinction for a subspecialty, such as marriage and family therapy or art therapy as separate from general counseling or psychology licensing. Other times, proponents argued distinct licenses would open new avenues of practice effectively closed by an existing license. One example is acupuncturists asking to be licensed separately from doctors.⁵² Another is mid-level dental hygienists, commonly known as dental therapists, who have sought their own license granting more responsibility than dental hygienists but less than fully licensed dentists.⁵³ But even in cases where broader licenses shut off practice, a distinct license may not be the least restrictive solution. When a Colorado hair braider proposed a license for braiders separate from cosmetologists, the Office of Policy, Research and Regulatory Reform instead recommended exempting them from licensing altogether.⁵⁴

Figure 3: Licensure Was the Most Requested Regulation



Note: Analysis considers all 494 requests in our dataset. Registration includes one request for a distinct registration scheme.

Whether counting distinct licenses or not, licensure requests swamped all less restrictive alternatives. Just 12% of the reviews in our dataset considered proposals for certification (9%) or registration (3%), while only a handful of those classified as other/none (3%) addressed other less restrictive regulations such as title protection.⁵⁵

Even so, our figures may underestimate how often sunrise reviews were driven by demand for licensure. The next largest category of reviews, at 10%, is what we call “general reviews.” Most often, these considered whether a state should enact *some* regulation of personal qualifications—licensure, certification or registration. Most begin when a legislature requests

sunrise review without proposing a specific regulation, most commonly in Washington and especially Virginia. Though these reports do not specify, some may have been prompted by advocates seeking licensure but aware that local custom dictates a general request as a starting point.⁵⁶

Overall, our sunrise request data validate prior research showing demand for licensure most often comes from within occupations, not from consumers—and thus calling into question whether licensing is pursued to serve the public or members of the occupations themselves.⁵⁷

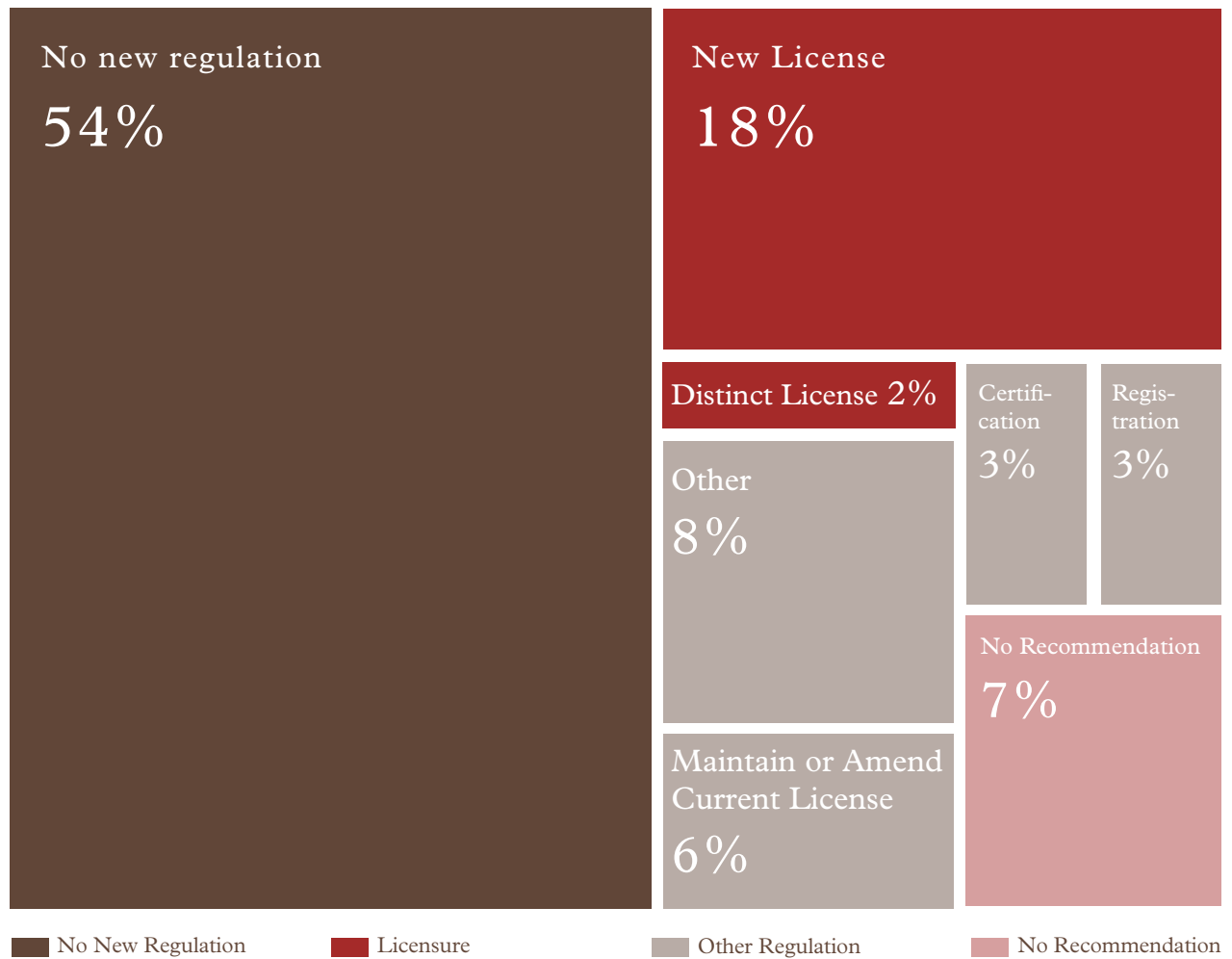
Is Licensing a Good Idea? Government Reviews Usually Say No

Despite the prevalence of requests for licensure, sunrise reviews most often recommend against it. This suggests that most licensure requests are based on occupational insiders’ professional or economic interest, not real evidence of harm—and that independent fact-finding can often weed out spurious requests. As Figure 4 shows, the overwhelming majority of reviews in our dataset—about 80%—declined to recommend licensure. And over half (54%) concluded no new regulation was needed.

Another 20% of reviews favored other, usually less restrictive, alternatives. These included maintaining or amending an existing license instead of creating a distinct one (6%), certification (3%), registration

(3%), and other less restrictive regulations (8%) such as amending building codes for utility contractors in Georgia and enacting bond requirements for closing agents in Colorado. Among the 38 recommendations for other regulations, most (58%) came from Colorado, where the Office of Policy, Research and Regulatory Reform (COPRRR) recommended regulations tailored to specific harms. Seven percent of reviews declined to make a firm recommendation or any recommendation at all, usually because reviewers felt they did not have enough information.⁵⁸ All told, just 20% of reviews recommended a new or distinct license (18% new; 2% distinct).⁵⁹

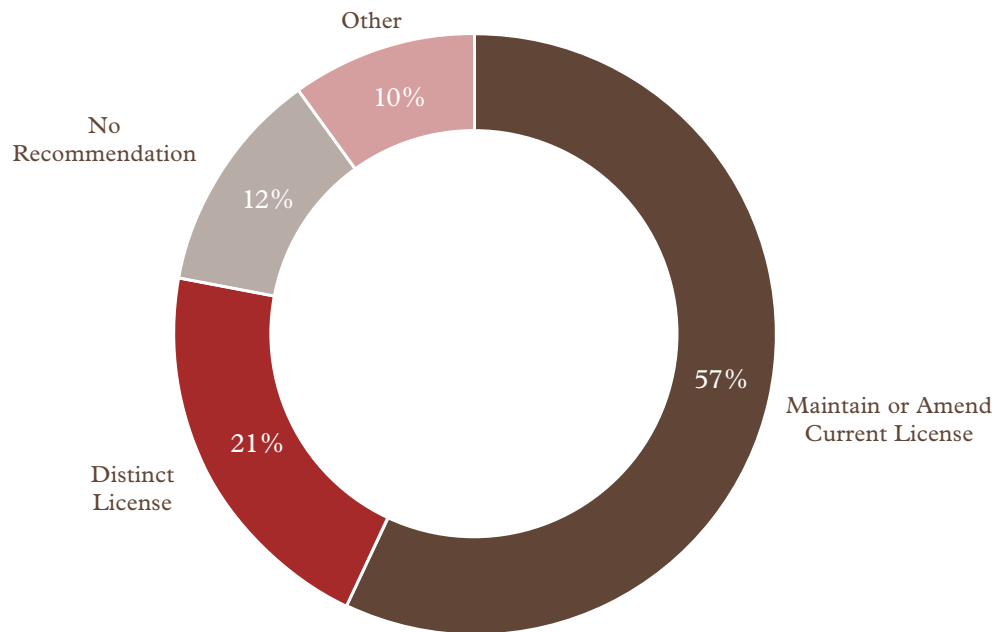
Figure 4: Most Sunrise Reviews Recommended No New Regulation



Reviewers' tendency to avoid recommending new licenses also holds when considering requests for distinct licenses. Out of 42 such requests, reviewers recommended distinct licenses for just nine (21%; see Figure 5). For more than half of distinct license requests (57%), reviewers instead recommended simply maintaining the existing license or, in a few cases, amending it. In one example, West Virginia's legislative auditor concluded marriage and family therapists did not need their own license because they were already regulated through professional counselor, psychologist and clinical social worker licenses. The legislative

auditor wrote, "While it is true that such specialized training exists, and may be effective in certain situations, this is not sufficient to require a separate license for persons trained in these techniques."⁶⁰ Similarly, instead of a new license for art therapists, Vermont's Office of Professional Regulation recommended that the state's Board of Allied Mental Health Practitioners better tailor its administrative regulations to address public health and eliminate unnecessary coursework so art therapists could more easily practice under other mental health licenses.

Figure 5: When a Distinct License Was Requested, Most Sunrise Reviews Recommended Simply Maintaining or Amending the Existing License



States varied in how often they recommended new licenses, though all but one recommended it a third of the time or less. As Table 8 and Figure 6 show, Florida, Maine and Utah have never recommended licensure, though they have done relatively few sunrise reviews and no longer regularly produce reports. Among states with more reviews, Colorado recommended licensure

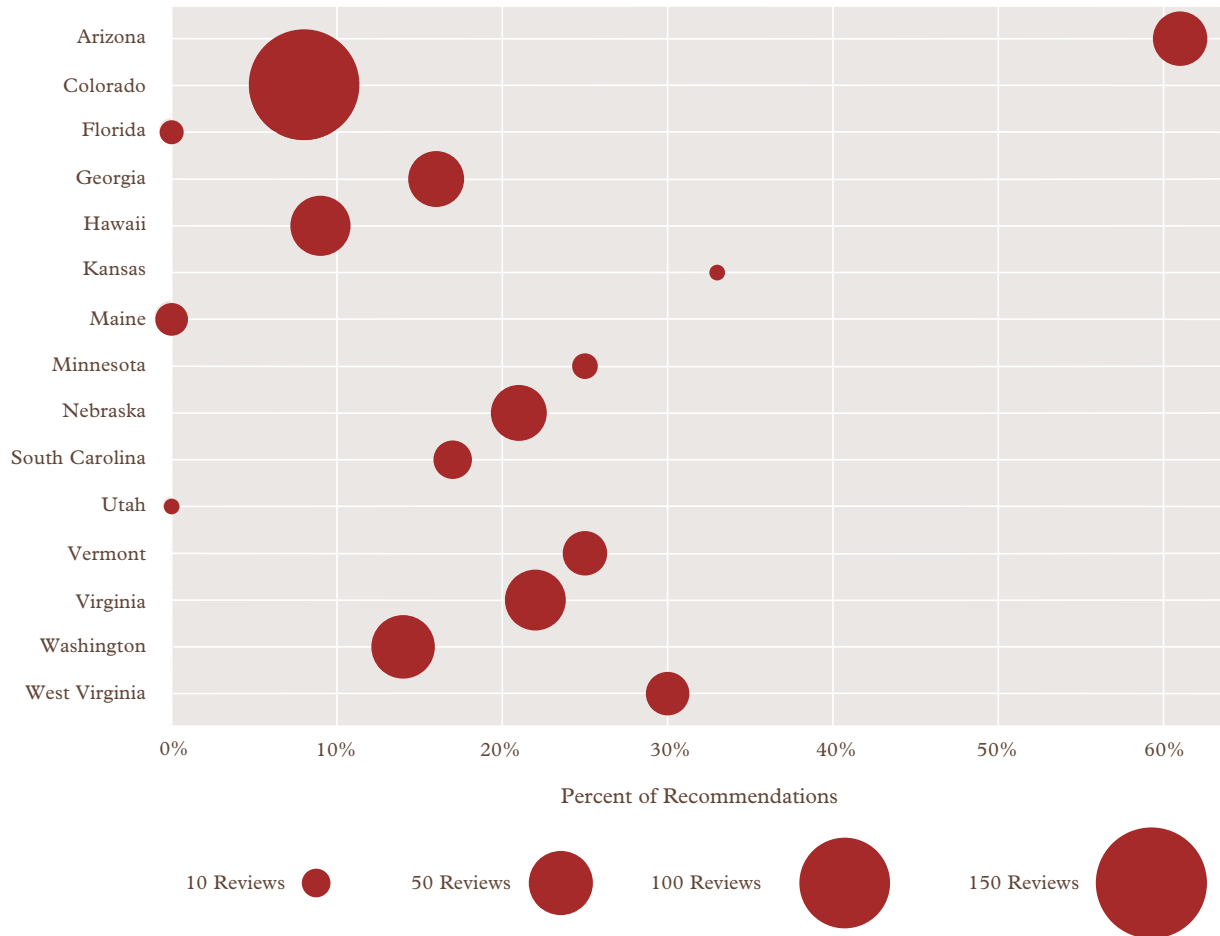
the least, in just 8% of reviews. Hawaii followed closely, recommending licensure in 9% of reviews. Arizona recommended licensure most frequently by far—in 61% of reviews. In fact, the rate of new license recommendations across the states drops from 18% to 14% without Arizona.

Table 8: New License Recommendations by State

State	Number of Reviews	New License Recommendations
Florida*	7	0%
Maine*	13	0%
Utah*	3	0%
Colorado	145	8%
Hawaii	44	9%
Washington	49	14%
Georgia	38	16%
South Carolina*	18	17%
Nebraska	38	21%
Virginia	45	22%
Minnesota*	8	25%
Vermont	24	25%
West Virginia	23	30%
Kansas	3	33%
Arizona	36	61%
Total	494	18%

Note: * = does not regularly produce reports.

Figure 6: New License Recommendations by State



The drastic differences across states are unsurprising given variation in the level of independent research and fact-finding in reports. Among states with more than a few reviews, those that produce more rigorous reports tend to recommend licensure less often. States like Georgia, Vermont and Washington regularly produce rigorous reports and recommend licensure fairly infrequently. And the states that most closely scrutinize proposed regulations—Colorado and Hawaii—are also those that recommend licensure

least often. In contrast, Arizona (together with Utah) produces the least rigorous reports and recommends licensure most often by far.

As an example of report rigor, Colorado's reports tend to be extremely detailed. Prepared by COPRRR, they typically begin with an outline and summary of the proposal, including a brief statement of the applicant's rationale for regulation. This is followed by a profile of the occupation, including typical duties, customers, work settings, any specialties, and training and educa-

tion. Next comes a summary of any prior regulations, including those in other states, followed by an analysis of harms from the occupation, including any anecdotes submitted by the applicant and an explanation of COPRRR's efforts to find other instances of harm. Importantly, in this section COPRR usually examines how (or whether) the requested regulation might alleviate alleged harms. Finally, the reports typically describe the need, or lack thereof, for regulation and make a recommendation, sometimes including possible alternatives.

In just one example of COPRRR's rigorous, independent research and fact-finding, for its 2006 sunrise review of a request to license or certify dialysis technicians:

[The office] performed a literature search, contacted and interviewed the individual applicants, reviewed licensure laws in other states, conducted interviews of administrators of those programs, and interviewed numerous patients, technicians, and individuals involved in the industry. [The office] also interviewed members of nationally recognized dialysis certification and advocacy organizations in addition to representatives of the federal Centers for Medicare and Medicaid Services, and the director and staff of Network 15, a federal oversight organization for dialysis patients. In order to determine the degree of state and federal oversight, and the number and types of complaints filed against dialysis technicians in Colorado, [office] staff contacted representatives of the Colorado Department of Public Health and Environment and the Colorado Board of Nursing. To better understand the hemodialysis occupation, the author of this report visited individual hemodialysis facilities in the Denver Metro area, and reviewed education and training programs at various Colorado hemodialysis facilities.⁶¹

Colorado law requires COPRRR to spend at least 10 months on its evaluations, which appears to pay off in report quality.

Arizona's sunrise process looks very different. While COPRRR's sunrise reviews take the better part of a year, Arizona's take place during one to a few

meetings of the legislature's "committees of reference" (COR), which conduct the reviews and prepare the reports. COR members are not expected to conduct independent research or analysis, and, based on meeting minutes, they appear to do so rarely, if ever. Evidence presented in COR meetings is usually limited to that put forth by interested parties, which often takes the form of anecdotes or warnings of potential harm rather than hard data or a showing of patterns of harm. The lack of independent research also means scrutiny of interested parties' claims is limited to COR members' offhand queries during the meetings. The final sunrise reports are, together with Utah's, the sparsest in our dataset, consisting of only a cover page stating the request, applicant and recommendation, plus the application and meeting agendas and minutes.

The rigor of states' sunrise reports does not always align with the rigor of their laws. For example, based only on their laws, one might expect both Colorado and Hawaii to do a poor job evaluating and recommending least restrictive regulations (see Table 4), yet both do so consistently. This could be because of factors such as reviewer independence and culture. In Hawaii, the Office of the Auditor performs reviews. The office was created specifically to conduct reviews of government without pressure from other executive, legislative or nongovernmental entities. Helping to preserve the office's independence, a sitting auditor serves renewable eight-year terms and can be removed prior to the end of a term only for cause.⁶² The office's special mandate may contribute to the quality of Hawaii's reports. And Colorado's COPRRR, while housed within the Department of Regulatory Agencies, is nevertheless insulated from political influence and prides itself on its long history of restraining regulatory burdens on occupations through sunrise, boasting of its success on its website.⁶³

Regardless, despite variation across states, most of the sunrise reviews in our dataset recommended against new licenses or any new regulation. And even within states, excepting Arizona, at least two-thirds of reviews recommended against licensure. These findings show licensing proposals tend to unravel under scrutiny, suggesting lawmakers—even in states without sunrise—should greet them with skepticism.

Do Legislatures Listen? Sometimes, But They Are More Prone to License

After sunrise review, legislatures usually reject licensure, though they enact licenses more often than reviewers recommend them. This is consistent with the concern animating sunrise laws: Political processes are prone to capture by special interests, leading to unwarranted regulatory growth. To explore whether legislatures heed sunrise recommendations, we researched the legislative outcomes of each sunrise review, focusing on regulations of personal qualifications.⁶⁴

Where a state reviewed the same occupation more than once, we would, ideally, have looked at what the legislature did after each sunrise review. However, this type of historical research is extremely complex. Instead, we researched only the regulatory status of each occupation as of 2018, the year after the last reports in our dataset.⁶⁵ For instance, if a state reviewed an occupation three times and licensure was the eventual outcome, we counted licensure as the outcome of all three reviews—no matter what the legislature did between reviews. Not only did looking only at these “final” outcomes ease data collection, but it also allowed us to focus on how many occupations ultimately became subject to licensure. This is arguably the most important question given that licensure is both the most restrictive form of occupational regulation and the form most frequently proposed. Prior research also suggests multiple requests by professional associations and interim regulations are often merely a strategy for

achieving the desired ultimate outcome of licensure,⁶⁶ making a “final outcomes” approach particularly relevant.

This approach is not, however, without some limitations. First, looking only at final outcomes likely underestimates sunrise reviews’ effects in the short term. Often when states enacted licenses, they did not do so until a decade after sunrise review, suggesting reviews’ influence on legislatures is greater in the short term but diminishes over time. Second, a focus on final outcomes does not factor in changes in occupations’ regulatory status over time. It was not unusual for a legislature to enact one form of regulation following a first review of an occupation and then licensure following a subsequent review, but we did not attempt to track such interim outcomes.

Figure 7 provides legislative outcomes for all reviews across all outcome categories; it also compares sunrise recommendations with legislative outcomes across all reviews for select outcome categories. It shows legislatures declined to enact new occupational regulations nearly half the time (49%)—almost as often as recommended (54%), suggesting legislatures may heed broad warnings against regulation. However, they also enacted a new or distinct license following 41% of reviews—about twice as often as recommended. Other types of legislative outcomes trailed both no new regulation and licensure.⁶⁷

Figure 7: Legislatures Enacted Licensure More Often Than Reviewers Recommended It—But Legislatures May Heed Broad Warnings Against Regulation

Figure 7A: Legislative Outcomes for Sunrise Reviews

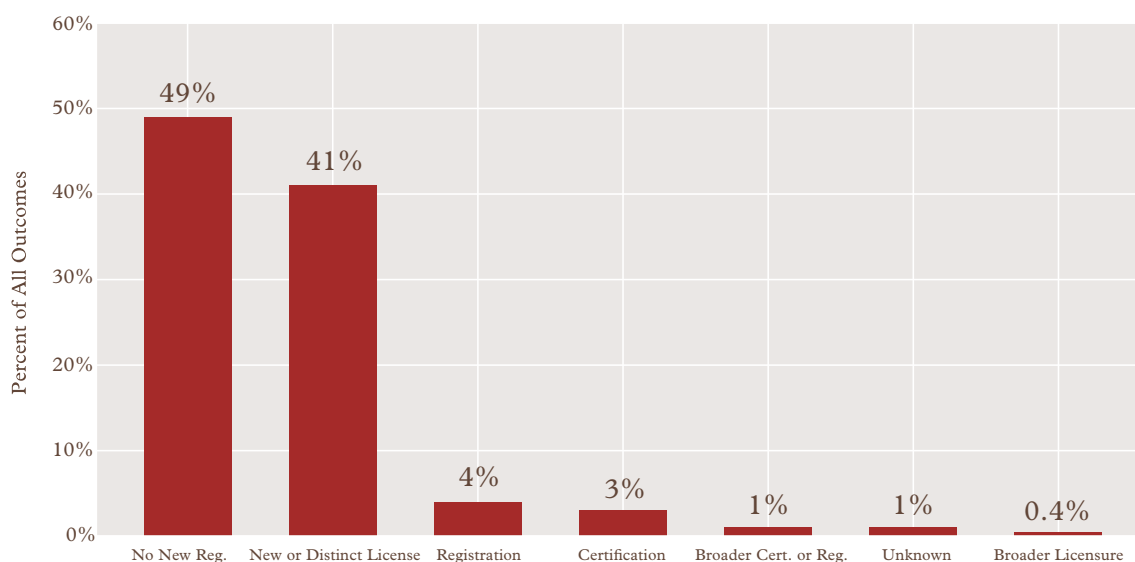
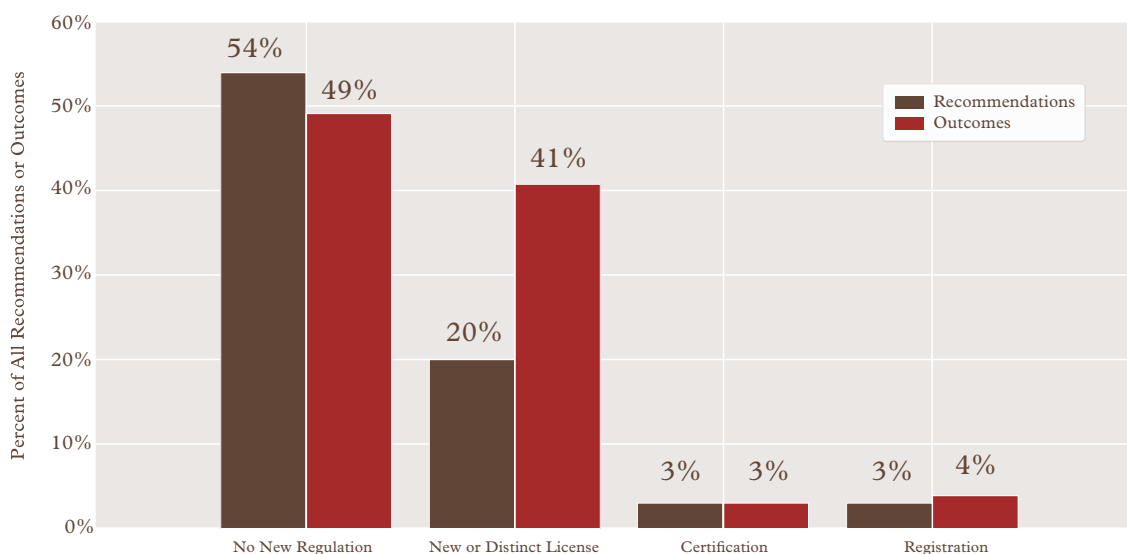


Figure 7B: Sunrise Recommendations vs. Actual Outcomes for Select Categories



Note: This is an aggregate analysis; it does not compare specific recommendations to their outcomes. Recommendations of no new regulation mean just that; outcomes of no new regulation mean no new regulation of *personal qualifications*. The legislature may have enacted other regulations, such as business regulations.

Where legislatures enacted licenses, they often did not do so immediately following sunrise reviews, suggesting that reviews' influence is strongest in the short run—and that their influence fades over time. Often, it was several years after an initial review before legislatures enacted licenses. In a few cases, it was decades: Virginia licensed massage therapists 21 years after its first review.⁶⁸ Likewise, Hawaii licensed respiratory therapists 24 years after its first review and 15 years after its second.⁶⁹

Just as states vary in how often their sunrise reviews recommend licensure, they vary in how often their legislatures enact licenses. Table 9 and Figure 8 compare overall rates of new and distinct license recommendations and outcomes for all reviews, by state. It shows Utah never enacted licenses following sunrise review, though it conducted only a few reviews. Maine and Georgia enacted licenses following just 15% and 26%. At 39%, Colorado's licensure enactment rate is quite a bit higher, but this is a product of the state's unusually high number of repeated reviews. Accounting for those repeats brings Colorado's licensure enactment rate down to 26%. On the other end of the spectrum, Arizona and Vermont enacted licenses most frequently,

following 64% and 63% of reviews.

Licensure enactments exactly match licensure recommendations in two states, Kansas and Utah, but both have few reviews. Hawaii, Vermont and Washington see the largest gulfs between licensure recommendations and licensure enactments (14% vs. 48%; 25% vs. 63%; 14% vs. 49%). Only one state, Arizona, recommended licenses more often than the legislature enacted them (72% vs. 64%). That this occurred in the state with the highest licensure recommendation rate by far highlights a danger of a poor sunrise process—instead of slowing the growth of licensing, it could create a path for more.

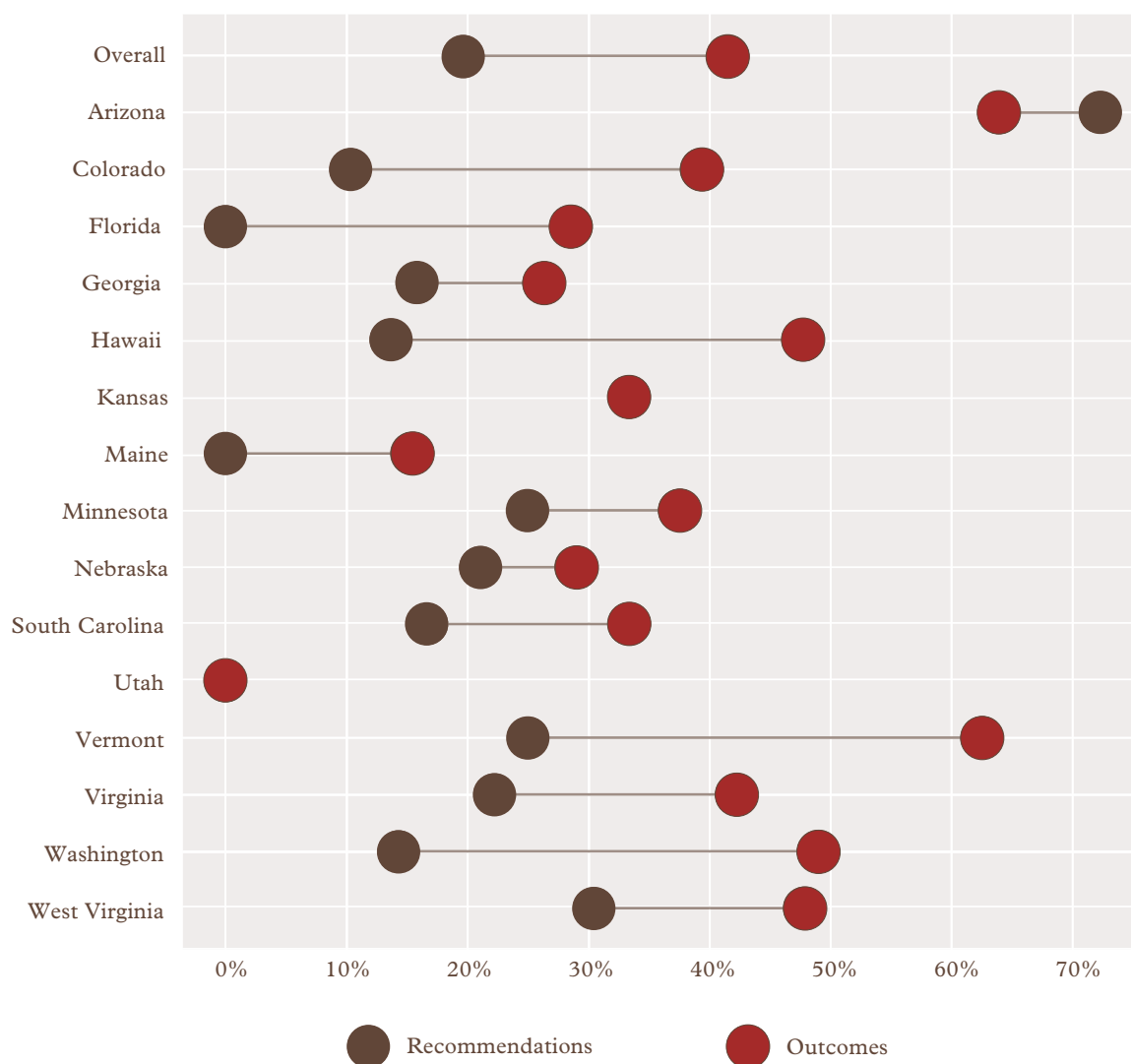
Multiple factors could contribute to variation in enactment rates. One might be whether legislatures find reviews persuasive. Perhaps legislatures in Hawaii and Vermont are less persuaded by their states' reviews recommending against licensing, despite their rigor. Legislators might lack confidence in the sunrise process, or legislator turnover during the sunrise review might result in more regulation-friendly legislators receiving the report than those who requested it. Or perhaps industry lobbyists are more influential in some states.

Table 9: New and Distinct License Recommendations vs. Legislative Outcomes by State

State	Reviews	Recommendations	Outcomes
Arizona	36	72%	64%
Colorado	145	10%	39% [†]
Florida*	7	0%	29%
Georgia	38	16%	26%
Hawaii	44	14%	48%
Kansas	3	33%	33%
Maine*	13	0%	15%
Minnesota*	8	25%	38%
Nebraska	38	21%	29%
South Carolina*	18	17%	33%
Utah*	3	0%	0%
Vermont	24	25%	63%
Virginia	45	22%	42%
Washington	49	14%	49%
West Virginia	23	30%	48%
Total	494	20%	41%

Note: * = does not regularly produce reports. † Colorado had an unusually high number of repeat reviews. Excluding those, its licensure enactment rate drops to 26%.

Figure 8: New and Distinct License Recommendations vs. Legislative Outcomes by State



All told, legislatures enacted 158 new licenses following sunrise review, including 84 that sunrise reviews did not recommend (see Table 10).⁷⁰ Those 84 licenses affect vast numbers of people. Though information about active licenses (as of 2021) was publicly available online for 42 of them, we identified at least 107,000 individuals who had to obtain licenses because

of legislatures' failure to follow sunrise recommendations. This is likely a massive undercount. Not only does it represent just half the 84 licenses enacted without sunrise recommendations in support, but it also excludes expired or revoked licenses. Our analysis also excludes distinct licenses, as well as analogous licenses from non-sunrise states.

Table 10: 84 New Licenses Enacted Without Sunrise Recommendations in Support

Occupation	State	Occupation	State
Acupuncturists	Colorado [†] Kansas	Massage Therapists	Colorado ^{*†} Georgia [*] Virginia
Addiction Counselors	Vermont [†] Washington [†]	Matchmakers, Mixed Martial Arts	Hawaii
Asbestos Air Samplers	Colorado	Medical Assistants	Washington [†]
Athletic Trainers	Florida [†] Hawaii Washington ^{*†}	Medical Nutrition Therapists	Nebraska
Audiologists	Colorado ^{*†} Vermont [†] Washington [†]	Mental Health Practitioners	Washington [†]
Behavior Analysts	Vermont [†]	Midwives	Maine [†] Vermont [†]
Certified Medication Aides	Arizona	Mortgage Brokers	Colorado [*]
Conveyance Contractors	Colorado [†]	Motor Vehicle Salespeople	West Virginia [†]
Conveyance Inspectors	Colorado [†]	Nutritionists	Hawaii [†]
Conveyance Mechanics	Colorado	Occupational Therapists	Colorado ^{*†}
Crane Operator Apprentices	Hawaii	Occupational Therapy Assistants	Colorado ^{*†} Virginia
Crane Operators	Hawaii [†] Washington	Pharmacy Technicians	Virginia
Dental Hygienist, Mid Level	Vermont	Physical Therapist Assistants	Washington ^{*†}
Dialysis Technicians	Colorado ^{*†} Nebraska Washington [†]	Plumbers	South Carolina West Virginia
Electricians	South Carolina	Professional Counselors	Colorado [†] Hawaii [*]
Fire Damper Technicians	West Virginia	Property Managers	Virginia
Fire Sprinkler Fitters	West Virginia	Radiographers, Limited Scope	Nebraska
Genetic Counselors	Hawaii Washington [†]	Radiologic Technicians	Nebraska Virginia
Geologists	Washington [†]	Real Estate Appraisers	Washington [†]
Hearing Aid Dispensers	Colorado [†]	Respiratory Therapists	Hawaii [*] Washington [†]
Home Inspectors	Florida [†] Virginia	Seconds, Mixed Martial Arts	Hawaii
HVAC Technicians	South Carolina West Virginia [†]	Social Workers, Bachelor	Hawaii [*]
Judges, Mixed Martial Arts	Hawaii	Social Workers, Masters	Hawaii [*]
Lactation Consultants	Georgia [†]	Social Workers, Senior	Hawaii [*]
Landscape Architects	Colorado ^{*†} Vermont ^{*†} Virginia	Speech Language Pathologists	Colorado [†] Vermont [†] Washington [†]
Locksmiths	Virginia	Speech Language Pathology Assistants	Virginia Washington ^{*†}
Managers, Mixed Martial Arts	Hawaii	Tattooists	Minnesota [†] Virginia
Marriage and Family Therapists	Colorado [†]	Timekeepers, Mixed Martial Arts	Hawaii
		Utility Contractors	Georgia
		Vocational Rehabilitation Counselors	Virginia [†]

Note: * = multiple reviews recommending against licensure or making no recommendation. † = 42 occupations for which active licensee counts were publicly available. Actual license names may vary across states.

In these 84 instances, politics as usual may have won out despite the independent analysis provided by sunrise review. On the other hand, legislatures often do heed sunrise recommendations. In our data, they rejected 189 new licenses that reviewers recommended against or failed to recommend. While some licensing proposals may have failed for other reasons, the many matches between sunrise recommendations and legislative outcomes suggest sunrise reviews are often successful in persuading legislatures not to license occupations.

Taken together, these findings suggest sunrise processes do not completely overcome the political problem animating sunrise laws. At best, they serve as a counterbalance. Our findings also underscore that sunrise does not trump or outsource legislative decision-making: Legislators retain their prerogative to set economic and regulatory policy. But when done well, sunrise reviews can give them valuable information with which to craft sound policy.

Licensure Advocates' Persistence: Campaigning in the Same States

Many occupations in our dataset underwent review multiple times in a state. As Table 11 shows, we identified 64 sets of such reviews, accounting for 160 reviews total—nearly a third of our dataset. Usually an occu-

pation underwent review twice, but some occupations were reviewed three, four or even five times, as with dietitians, laboratory scientists and roofing contractors.

Table 11: Repeat Reviews in This Study

State	Repeat Reviews	Percent of All Reviews	Repeated Occupations	Percent of All Occupations
Arizona	7	19%	3	9%
Colorado	79	54%	26	28%
Florida*	0	0%	0	0%
Georgia	18	47%	8	29%
Hawaii	13	30%	6	16%
Kansas	0	0%	0	0%
Maine*	0	0%	0	0%
Minnesota*	2	25%	1	14%
Nebraska	12	32%	6	19%
South Carolina*	0	0%	0	0%
Utah*	0	0%	0	0%
Vermont	10	42%	5	26%
Virginia	7	16%	3	7%
Washington	8	16%	4	9%
West Virginia	4	17%	2	10%
Total	160	32%	64	31%

Note: * = does not regularly produce reports.

Repeat reviews show how persistent licensure advocates can be. Indeed, they were usually triggered by the same industry groups, and they usually sought licensure—the same regulation previously requested and rejected. For instance, in Georgia, electrologists and roofing contractors each requested licensure on three separate occasions. Similarly, in Colorado, funeral directors, cremationists and embalmers came together twice to request licensure. In all, in 73% of sets of repeat reviews, the reviews all considered the same proposed regulations.⁷¹ And those regulations were always new or distinct licenses. All sets included at least one request for a new or distinct license.

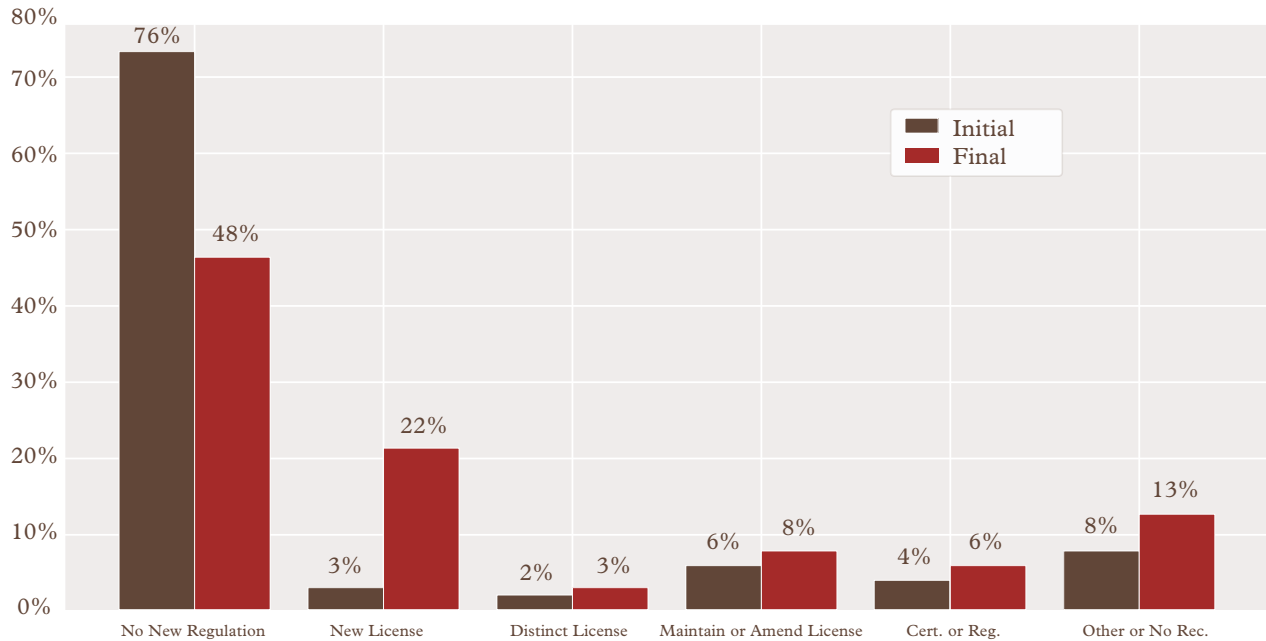
In a few cases, industry groups waited 10 or more years after a first sunrise review to propose regulation again. Washington surgical technologists requested licensure in 1996 and again in 2012. And the Nebraska Dental Assistants Association proposed licensure for dental assistants in 1986 and again over two decades later in 2009. In other cases, repeat proposals were separated by just a few years. In Hawaii, various social worker occupations sought licensure in 1986 and again in 1988. In Nebraska, surgical technologists requested

certification in 2015 and then licensure in 2016.

Over time, such industry persistence can result in licensure recommendations and enactments despite earlier rejections. Across sets of repeat reviews, reviewers recommended licensure in only 3% of initial reviews but in 22% of final reviews (see Figure 9). This is about the same rate of licensure recommendations among occupations reviewed just once (21%). To be sure, in half the sets of repeat reviews recommendations did not change, but when they did, they typically became more restrictive.

For example, speech language pathology assistants requested licensure in Washington in 1995, and the Department of Health found no need for new regulation. But after a second request in 2009, the Department recommended certification. Similarly, when the Virginia Board for Professional and Occupational Regulation first reviewed regulation of electrologists in 1999, it did not recommend new regulation, but in 2002 it recommended licensure. In Colorado, the Office of Policy, Research and Regulatory Reform reviewed respiratory therapists four times, rejecting regulation in its first three reviews, but recommending licensure in its fourth.

Figure 9: Reviewers Were More Likely to Recommend Licensure Following Final Reviews



Note: Initial: n = 96 reviews in sets, final: n = 64 final reviews in sets

Similarly, repeat requests can eventually succeed with legislatures. In fact, they are slightly more likely to enact new or distinct licenses following repeat reviews (45%) than they are following any review (40%) or a one-time review (39%),⁷² though in all three situations they decline to enact new regulation about half the time. To the extent persistence pays with legislatures, shifting sunrise recommendations may play a role: Legislatures enacted a new or distinct license 50% of the time when recommended in a final review (n=7), but a bit less frequently—44%—when licensure was not recommended (n=22), though sample sizes are small.

Reviewers and legislatures might change their minds for any number of reasons. Licensing proponents might learn from failed requests, making more sophisticated arguments. Personnel changes in reviewing agencies or in legislatures could mean subsequent

requests are considered by people more favorable to licensure. Or perhaps repeat requests simply wear down reviewers and legislatures.

Regardless of the reason, it appears persistence is a reasonable strategy for groups wishing to achieve licensure. And occupational lobbies likely know this. When Colorado home inspectors requested regulation in 2001, COPRRR recommended against it. But 13 years later, their recommendation changed to licensure. In the legislature, a licensing bill was narrowly defeated, but a private certification board for home inspectors claimed COPRRR's changed recommendation as a small victory: "It remains to be seen, whether Colorado may one day require licensure of home inspectors . . . [W]here [COPRRR] once opposed the idea, it had changed its position. So the tide may be turning."⁷³

Licensure Advocates' Persistence: Campaigning Across States

Just as occupational groups campaign within states, they also campaign across states. Over 40% of the 208 occupations in our dataset underwent review in more than one state. As shown in Table 12, the most reviewed occupations were acupuncturists (eight states), athletic trainers (eight states), genetic counselors (seven states) and massage therapists (seven states).⁷⁴

Multistate reviews often appear to stem from coordinated campaigns by affiliated industry groups seeking some benefit for their occupations. From the mid-1980s through the early 2000s, the Arizona, Colorado, Nebraska and Washington state nutrition and dietetic associations, all state affiliates of the national Academy of Nutrition and Dietetics, pursued licensure of dietitians in their states—including five times in Colorado and twice in Nebraska.⁷⁵ The Colorado and Nebraska associations' proposals also included regulation of nutritionists. Hawaii considered nutritionist licensing as well. And while the state's sunrise report does not name the group that proposed regulation, there is a Hawaii nutrition and dietetics association,⁷⁶ and the report notes that "regulation is likely to benefit the profession more than consumers."⁷⁷

Similarly, genetic counselors, who assess patient risk for inherited conditions and provide related counseling, undertook a national lobbying campaign for licensure in the mid-2000s, and the occupation underwent review nine times across seven states.⁷⁸ Vermont's 2006 sunrise report noted that the licensure proposal was "part of a multi state effort by genetic counselors to promote the practice of genetic counseling. They are currently seeking licensure in approximately 15 other states."⁷⁹ Interestingly, genetic counselors' main justification for licensing was not the need to protect the

public. Instead, it was to "raise the [occupation's] visibility," thereby increasing the popularity of and access to genetic counseling services and allowing providers to bill their services to insurers.⁸⁰

In the 2010s, music therapists likewise campaigned for licensure, with at least five sunrise reviews spanning five states and six years. State music therapy task forces were behind proposals for licensure in Washington, Arizona, Utah and West Virginia and one for title protection in Colorado. These task forces are affiliated with the American Music Therapy Association and the national Certification Board for Music Therapists. These groups collaborate on a project called the State Recognition Operational Plan, which advises state groups seeking regulation. The project's goal is to persuade states to require CBMT certification before aspiring music therapists can legally work.⁸¹ As with genetic counselors, health and safety does not appear to be a motivating factor. Instead, the SROP indicates the push for licensure is intended to elevate recognition and esteem for the occupation and expand its reach within health care.⁸²

This is not unusual in the history of occupational licensing. Previous research has documented nationwide campaigns for licensure motivated by a desire to enhance an occupation's prestige rather than solely to protect the public.⁸³ Beginning in the late 19th century, for example, the National Funeral Directors Association pursued licensure of funeral directors and embalmers from coast to coast out of a desire to "professionalize" their industry.⁸⁴ The association eventually won licensure of funeral directors across all 50 states and the District of Columbia.⁸⁵

Table 12: Occupations with the Most Sunrise Reviews Across States

Occupation	States	Reviews	Total reviews across states
Acupuncturists	8	AZ (1997), CO (1986, 1988), GA (1991), HI (1985), KS (2012), NE (2000), VA (1989), WA (1993)	9
Addiction Counselors	6	AZ (2002), GA (1999), NE (2004), VT (1999), WA (1995), WV (1999)	6
Art Therapists	4	AZ (2017), CO (1988, 1989, 2016), VT (2015, 2017), VA (1995)	7
Athletic Trainers	8	AZ (2000), CO (1987, 1990, 1995, 2005), FL (1994), HI (2010), VT (2002), VA (1999), WA (1993, 2002), WV (2004, 2007)	13
Audiologists	4	CO (1991, 1994), MN (2002), VT (1999), WA (1995)	5
Behavior Analysts	5	AZ (2007), NE (2011), VE (2015), WA (2014), WV (2012)	5
Community Association Managers	4	CO (2012), HI (2005), UT (2015), WA (1996)	4
Dialysis Technicians	5	AZ (2000), CO (1992, 1994, 1995, 2006), NE (2016), WA (1999), WV (2005)	8
Dietitians	5	AZ (1986), CO (1985, 1989, 1990, 1993, 2001), NE (1987, 1994), VA (1987), WA (1993)	10
Electrologists	5	CO (1994), GA (1989, 1991, 1995), SC (1994), VT (1999, 2004), VA (1999, 2002)	9
Genetic Counselors	7	CO (2004, 2013, 2017), GA (2017), HI (2006), NE (2011), VT (2006), VA (2011), WA (2006)	9
Home Inspectors	5	CO (2001, 2014), FL (1994), GA (1999, 2008), VT (2013), VA (1994)	7
HVAC Technicians	5	CO (1995), HI (1994), ME (2010), SC (1989), WV (2013)	5
Interior Designers	6	CO (1989, 2000, 2008), GA (1989), SC (1991), UT (2015), VA (1988), WA (2005)	8
Laboratory Technicians	4	MN (2009), NE (1987), VT (2009), VA (2012)	4
Marriage and Family Therapists	6	AZ (2002), CO (1985), HI (1995), NE (1988), VA (1994), WV (2006)	6
Massage Therapists	7	AZ (2002), CO (1989, 1990, 2007), GA (1997, 2002), KS (2011), MN (2002, 2009), VT (2010, 2016), VA (1995)	12
Midwives	6	CO (1992, 1985, 1991), HI (1999, 2017), ME (2008), NE (1994, 2006), VT (1999), WV (2008)	10
Music Therapists	5	AZ (2013), CO (2014), UT (2013), WA (2012), WV (2017)	5
Nutritionists	4	CO (1989), HI (1995), NE (1987, 1994), VA (1987)	5
Professional Counselors	4	AZ (2002), CO (1985), HI (1988, 1992, 1999), NE (1986)	6
Radiologist Assistants	4	AZ (2007), CO (2014), WA (2005), WV (2006)	4
Respiratory Therapists	6	AZ (1986, 1989), CO (1986, 1987, 1995, 1999), HI (1986, 1995), VT (1999, 2003), VA (1995), WA (1994)	12
Speech Language Pathologists	4	CO (1991), MN (2002), VT (1999), WA (1995)	4
Surgical Assistants	5	AZ (1995, 2000, 2007), CO (2004), GA (2004), NE (2015), VA (2010)	7
Surgical Technologists	4	CO (2010), NE (2015, 2016), VA (2010), WA (1996, 2012)	6
Tattooists	5	CO (1999), MN (2009), SC (1996), VA (1994), WA (1993)	5

When multiple states reviewed the same occupations, they tended to agree about whether licensure was warranted, even if their specific recommendations differed.⁸⁶ And when reviewers agreed about licensure, they mostly recommended against it or made no recommendation at all. For example, four of the five states that reviewed dietitians, all five states that reviewed HVAC technicians, and all four states that reviewed surgical technologists recommended against licensure, though in a few cases reviewers recommended a less restrictive alternative.⁸⁷

Not only did different states' reviewers often agree about whether licensure was warranted, but they often returned the same specific recommendations.⁸⁸ For 20 occupations, all reviewers agreed no new regulation at all was warranted. Among those occupations were crane operators (three states), nutritionists (four), physical therapist assistants (two) and recreation therapists (three).⁸⁹

For only two occupations were multiple reviewers united in favoring licensure: assisted living administrators (two states) and domestic violence counselors (two).⁹⁰ Overall, for occupations reviewed by multiple states, nearly half (49%) received recommendations for no new regulation, while only about a quarter received recommendations for licensure.

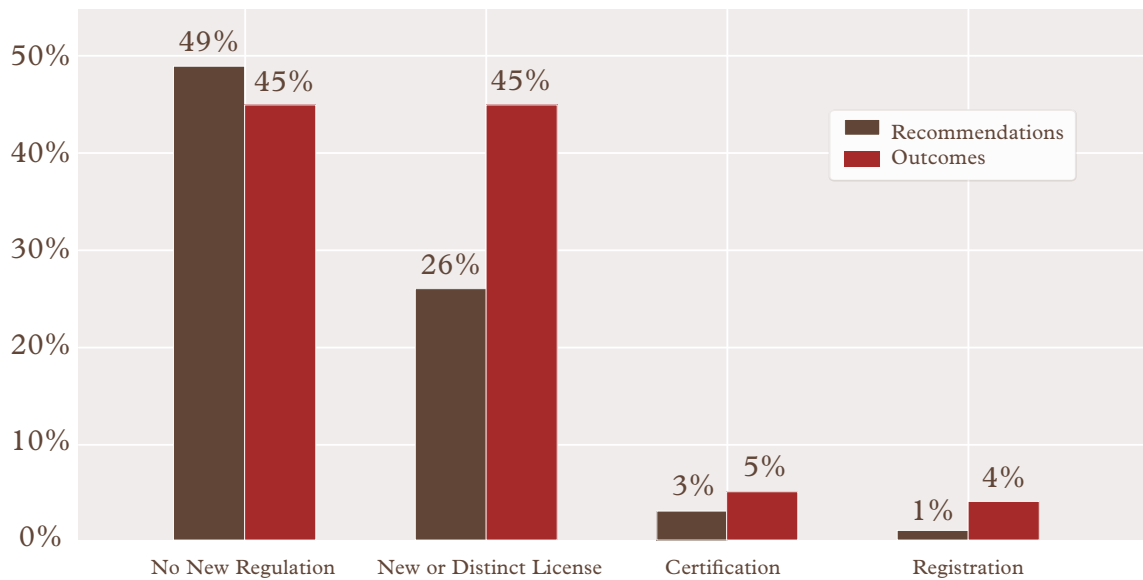
Legislatures also tended to agree about whether to create a new or distinct license for an occupation.⁹¹ In several cases, they were unified against licensure. For example, none of the six states that reviewed interior designers enacted licensure.⁹² The same went for dietitians (five states) and music therapists (five).⁹³ In those occupations, a few states enacted a less restrictive

regulation, but in others, legislatures in different states agreed no new regulation of personal qualifications was needed. These include community association managers (four), fire alarm installers (two), laboratory scientists (three), laboratory technicians (four) and soil scientists (three).⁹⁴

In other cases, however, different states' legislatures united in favor of licensure, and they did so more often than reviewers. While, as noted above, only two occupations saw unanimous recommendations for licensure—and each involved just two states—15 occupations saw all legislatures agree on licensure. Moreover, most cases involved three or more states taking the same legislative action. For example, four states licensed speech language pathologists, six respiratory therapists and eight acupuncturists.⁹⁵ In keeping with our broader results, legislatures again appear more amenable to licensure than sunrise reviewers.

Indeed, as Figure 10 illustrates, once again, legislatures enacted new or distinct licenses for far more occupations than reviewers recommended it (45% vs. 26%). This includes new licenses enacted even though most sunrise reviewers found them unnecessary. For example, while all four states that reviewed nutritionists recommended against licensing the occupation, Hawaii licensed it anyway.⁹⁶ Similarly, four states opted to license genetic counselors even though four of seven reviewers recommended against it.⁹⁷ For athletic trainers the gap was even starker: All but one state enacted licenses, despite five out of eight reviewers recommending against it.⁹⁸ The other state enacted certification.⁹⁹

Figure 10: When Multiple States Reviewed Occupations, They Enacted Licensure More Often Than Recommended



Note: Analysis considers 275 reviews of 85 occupations reviewed in multiple states. For occupations reviewed more than once in the same state, analysis considers only the final recommendation and counts the outcome only once. Recommendations of no new regulation mean just that; outcomes of no new regulation mean no new regulation of *personal qualifications*. The legislature may have enacted other regulations, such as business regulations.

Different legislatures licensing the same occupations could be taken as evidence those licenses are truly necessary. On the other hand, sunrise reviews of these occupations usually recommended against licensure. An alternative explanation is that licensure in one state creates momentum, even urgency, for licensure in other states—no matter what sunrise reviews recommend. In its 1999 review of electrologists, the Virginia

Board of Health Professions suggested as much. It wrote: “[T]he Board is concerned that there is pressure from national trade associations and surrounding states which currently have a regulatory program.”¹⁰⁰ Coordinated multistate or national campaigns for licensure may not pan out everywhere, but sunrise data suggest they may create momentum once a first state gives in.

Are Health Occupations Different?

By definition, health care occupations have a tighter connection to health and safety than many occupations in other fields. And as discussed above some states review only health occupations, while others review health and non-health occupations using slightly different criteria. For these reasons, it is worth exploring whether health and non-health occupations fare differently in sunrise review processes. For this analysis, we categorized occupations as health-related or not using the North American Industry Classification System's coding.¹⁰¹ We then compared regulation requests,

sunrise recommendations and legislative outcomes across health and non-health occupations for all states.

Table 13 shows that, all told, 54% of the 494 sunrise reviews in our dataset covered health occupations, encompassing 42% of 208 occupations. Health occupations included acupuncturists, dialysis technicians, genetic counselors, massage therapists and surgical technologists, while non-health occupations included martial arts instructors, pawnbrokers, taxidermists, home inspectors and seed sellers.

Table 13: Health and Non-Health Reviews in This Study

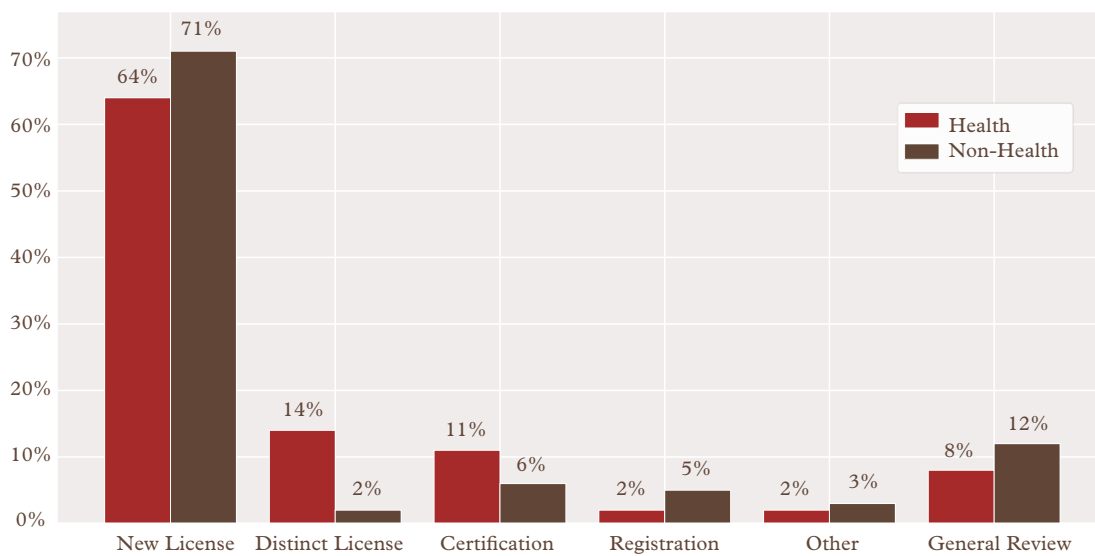
State	Health		Non-Health	
Arizona	86%	31	14%	5
Colorado	41%	60	59%	85
Florida*	14%	1	86%	6
Georgia	32%	12	68%	26
Hawaii	48%	21	52%	23
Kansas	100%	3	0%	0
Maine*	23%	3	77%	10
Minnesota*	88%	7	13%	1
Nebraska	92%	35	8%	3
South Carolina*	22%	4	78%	14
Utah*	33%	1	67%	2
Vermont	67%	16	33%	8
Virginia	58%	26	42%	19
Washington	63%	31	37%	18
West Virginia	61%	14	39%	9
Total	54%	265	46%	229

Note: * = does not regularly produce reports.

Regulation proponents sought licensure more often for non-health occupations (71% vs. 64% for health occupations; see Figure 11). However, proponents sought distinct licenses far more frequently for health occupations (14% vs. 2% for non-health). Often, these are so-called allied health occupations—that is, health occupations apart from doctor or nurse—which

tend to be highly regulated and involve overlapping duties. For instance, reflexologists, who practice a form of alternative medicine that involves applying pressure to points on the feet, have sought their own licenses separate from massage therapists. Likewise, doctors of homeopathy and naturopathic physicians have sought separate licensure from traditional medical physicians.¹⁰²

Figure 11: Regulation Proponents Pursued Licensure More Often for Non-Health Occupations

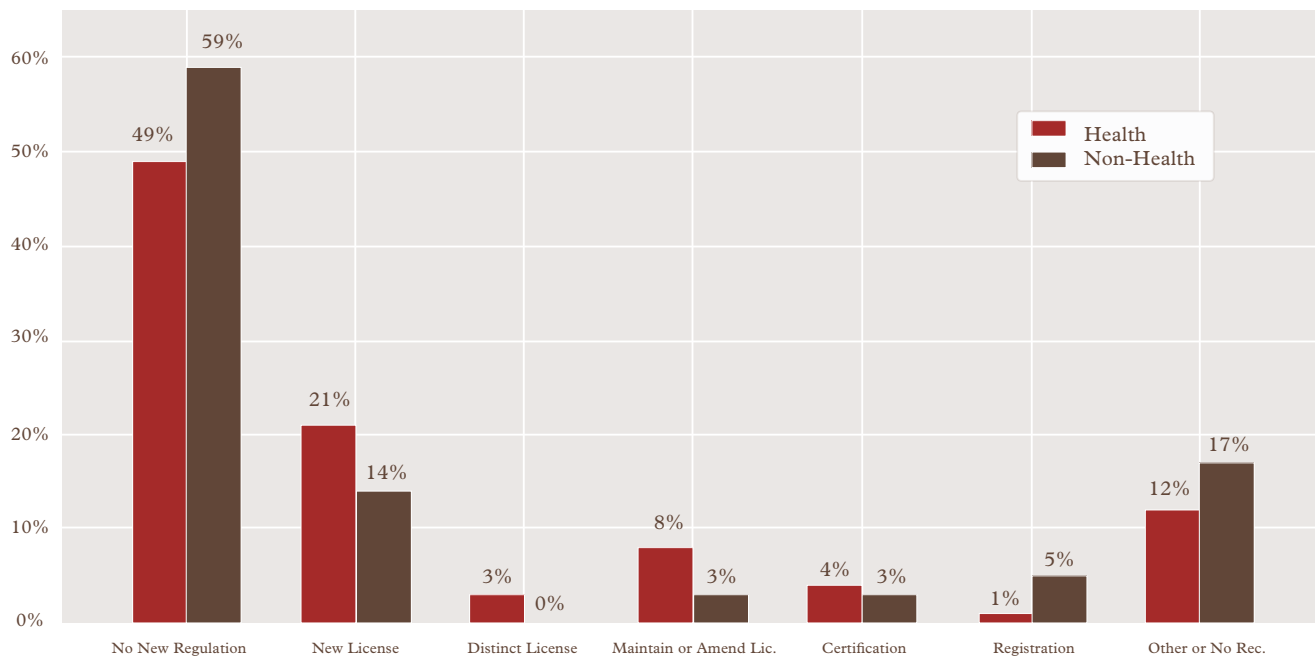


Note: 265 health reviews, 229 non-health reviews.

Perhaps unsurprisingly given health occupations' tighter connection to health and safety, reviewers recommended licensure more often for health occupations (21% vs. 14% for non-health; see Figure 12). They also recommended distinct licenses more often: While reviewers never recommended distinct licenses for non-health occupations, they recommended them for 3%

of health ones. Reviewers were also less likely to recommend no new regulation for health occupations (49% vs. 59% for non-health). However, even for health occupations, reviews overwhelmingly declined to recommend new or distinct licenses (75%), and nearly half recommended no new regulation at all (49%).

Figure 12: Reviewers Rejected Regulation More Often for Non-Health Occupations

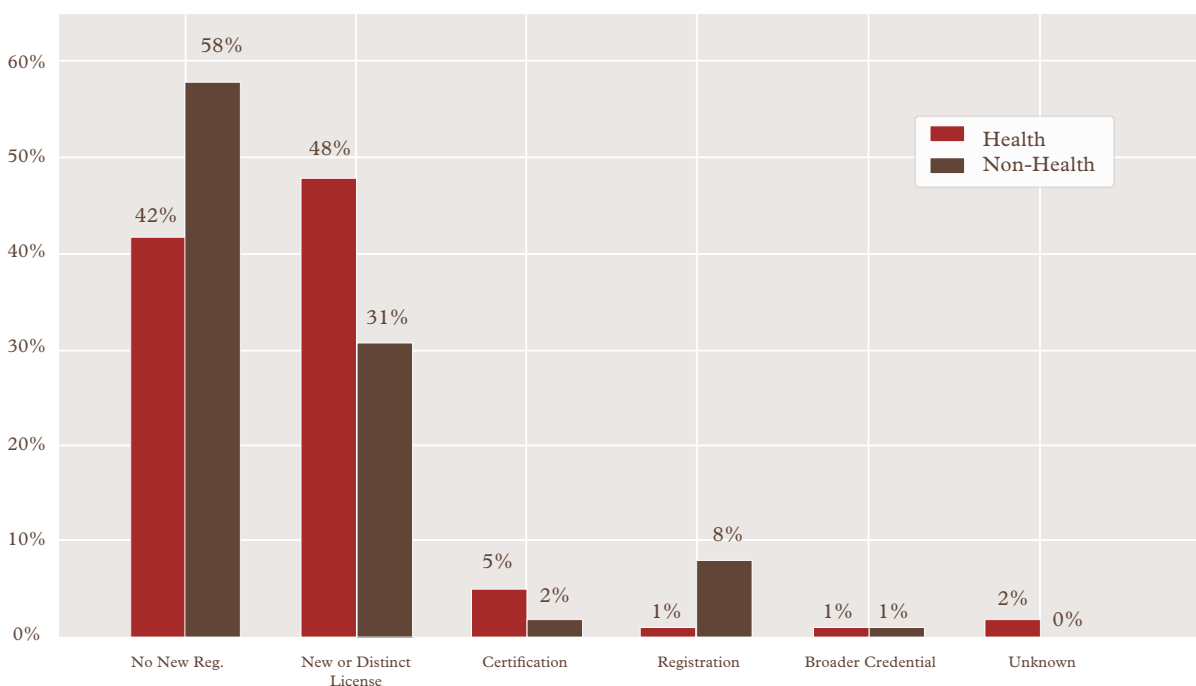


Note: 265 health reviews, 229 non-health reviews.

Legislatures were also more likely to enact most forms of regulation for health occupations than for non-health (see Figure 13). This was especially true with licensure (48% for health vs. 31% for non-health). The one exception was registration, which legislatures were

more likely to enact for non-health occupations (8% vs. 1% for health). They were also less likely to enact no new regulation of personal qualifications for health occupations (42% vs. 58% for non-health).

Figure 13: Legislatures Enacted Licensure More Often for Health Occupations



Note: 208 health occupations, 190 non-health occupations. For occupations reviewed more than once in the same state, analysis counts the outcome only once. Outcomes of no new regulation mean no new regulation of *personal qualifications*. The legislature may have enacted other regulations. Broader credential means the legislature opted to sweep the occupation into broader licensure, certification or registration scheme.

That reviewers and legislatures embraced licensure and most other regulations more often for health occupations than for non-health ones may make some sense given that health occupations have a tighter connection to health and safety and may therefore pose a greater risk of harm. Nevertheless, that reviewers and legislatures so often rejected licensure even for health occupations is notable. It suggests that even for health occupations where some regulation may be warranted, reviewers—and sometimes legislatures—recognize licensure is not always the right fit.

Dialysis technicians, for example, have been reviewed by five states—and four concluded licensing was unwarranted.¹⁰³ Dialysis technicians' work unquestionably implicates health and safety. They operate and monitor hemodialysis machines, which control blood pressure and remove waste from the blood, an essential procedure for end-stage renal disease patients. Such patients are a rare example of consumers advocating for regulation through sunrise review.¹⁰⁴ Yet reviewers have expressed skepticism that licensure or state certification is appropriate.

Indeed, in Colorado, the Office of Policy, Research and Regulatory Reform's most recent review noted that patients' support for regulation of dialysis technicians is "sometimes misplaced, as the patients often believe that the certification/licensure process is more meaningful and comprehensive than [sic] the actual reality of such programs."¹⁰⁵ COPRRR also noted that complaints about the occupation generally fell under infection control and quality of care, which the department concluded did not relate directly to skills, education or training—personal qualifications, in other words. COPRRR wrote: "Although kidney failure and hemodialysis is a life threatening and life saving procedure, there is a lack of evidence to indicate that any risk associated with dialysis would be lessened or decreased by creating a certified training program, or requiring licensure, for hemodialysis technicians."¹⁰⁶ Nevertheless, four states ultimately opted to license dialysis technicians after sunrise review.¹⁰⁷

For surgical assistants, by contrast, reviewers' conclusions were mixed,¹⁰⁸ but in the end, no state licensed the occupation following sunrise review, opting instead for less restrictive regulations such as certification or registration, or existing market and regulatory checks.¹⁰⁹ Surgical assistants are members of a surgical team who

perform tasks like making incisions, removing veins and arteries, and reconnecting internal and external tissue. While accepting that this work involves risk, Georgia observed there were no known complaints against surgical assistants, and Colorado's report found "no evidence of harm being caused to Colorado citizens by the unregulated practice of surgical assistants."¹¹⁰ Both reports pointed to existing voluntary certifications and noted that surgical assistants "function in a highly structured environment" under the direct supervision of operating physicians and that hospitals use rigorous bylaws for surgical assistants and other allied health occupations.¹¹¹

At face value, health occupations may seem more dangerous than other occupations because of their tighter links to health and safety. And, indeed, even though health occupations tend to seek licensure less often than non-health occupations, reviewers and legislatures alike are more willing to countenance licensure for health occupations. At the same time, both reviewers and legislatures reject licensure for health occupations more often than they accept it, recognizing that even where seemingly risky, and even life-threatening, job duties are at issue, licensure may not be the answer.

Does Sunrise Work?

Preliminary Evidence

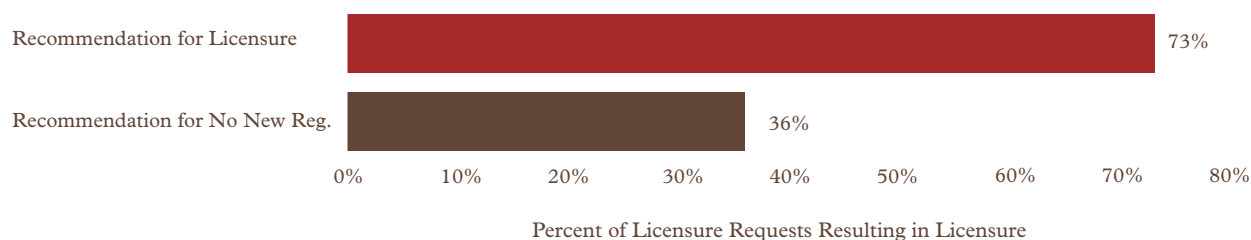
Do sunrise processes prevent the enactment of unnecessary occupational licenses? This study is primarily descriptive and thus not designed to determine which licenses are necessary or unnecessary. Indeed, which occupations should be licensed or otherwise regulated and how requires careful occupation-by-occupation analysis. And though licensing policy should be informed by evidence of the type strong sunrise processes are designed to produce, it will always be subject to differences of opinion about how best to balance public protection with open occupational entry.

An easier question is whether sunrise processes slow licensing's growth. Though it seems obvious that a system designed to subject licensing proposals to independent scrutiny would lead to fewer licenses, the opposite could be true. Sunrise laws could, instead, formalize a path for occupations to seek and obtain licensure, leading to *more* licensing laws than would otherwise exist. Exploring that question would require a rigorous

comparison of states with sunrise laws to those without, looking at all licenses proposed and enacted, not just those that underwent sunrise review—an undertaking beyond our scope, but worthy of future research.

Still, our data provide preliminary evidence that sunrise reviews influence legislatures and may have slowed licensing's growth by helping prevent—or at least delay—the enactment of new licenses. First, as Figure 14 shows, legislatures are far less likely to enact requested new licenses when sunrise reviews disfavor them as compared to when they endorse them (36% vs. 73%). This suggests legislatures do, to some degree, rely on sunrise recommendations to decide which occupations should be licensed—and often heed their warnings against regulation. Alternatively, perhaps legislatures generally reach similar conclusions to sunrise reviewers but are more inclined to favor licensure—or more sensitive to industry pressure.

Figure 14: Legislatures Were Twice as Likely to Enact New Licenses When Sunrise Reviews Recommended Them



Note: Analysis considers outcomes of 315 reviews with requests for new licenses.

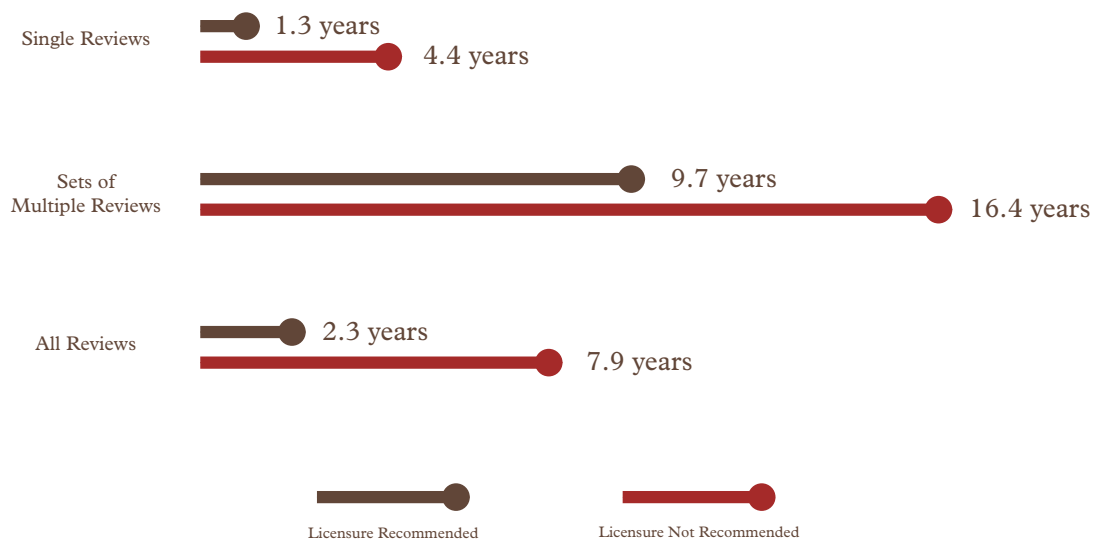
Second, whether sunrise reviews were for or against licensure appears to factor into how long it takes legislatures to enact licenses (see Figure 15). When legislatures ignored recommendations against licensure, they seldom did so until long after an initial review—nearly eight years later on average. By contrast, when reviews recommended licenses, legislatures usually enacted them quickly, within about two years. With a recommendation for licensure, the longest it took a legislature to enact a license following a single review was five years (South Carolina nuclear medicine technologists and radiation therapists). With a recommendation against licensure, the longest it took was 21 years (Colorado speech language pathologists and Virginia home inspectors).

Moreover, following a sunrise recommendation against licensure, it usually took multiple reviews before

a legislature gave in to requests for licensure. In one example, Colorado landscape architects requested licensure four times between 1989 and 2005, each time receiving a recommendation of no new regulation. The lobby finally achieved licensure in 2007, 18 years after its initial request. Similarly, and also in Colorado, it took three reviews—all with recommendations against licensure—and 14 years before the General Assembly opted to license mortgage brokers.

And, as noted above, while legislatures enacted 84 licenses following sunrise studies that recommended something less restrictive, including no new regulation, or that made no recommendation, they also declined to enact 189. Put differently, when reviews did not recommend licensing, legislatures usually followed their lead—in 65% of cases.

Figure 15: Average Time It Took Legislatures to Enact New Licenses

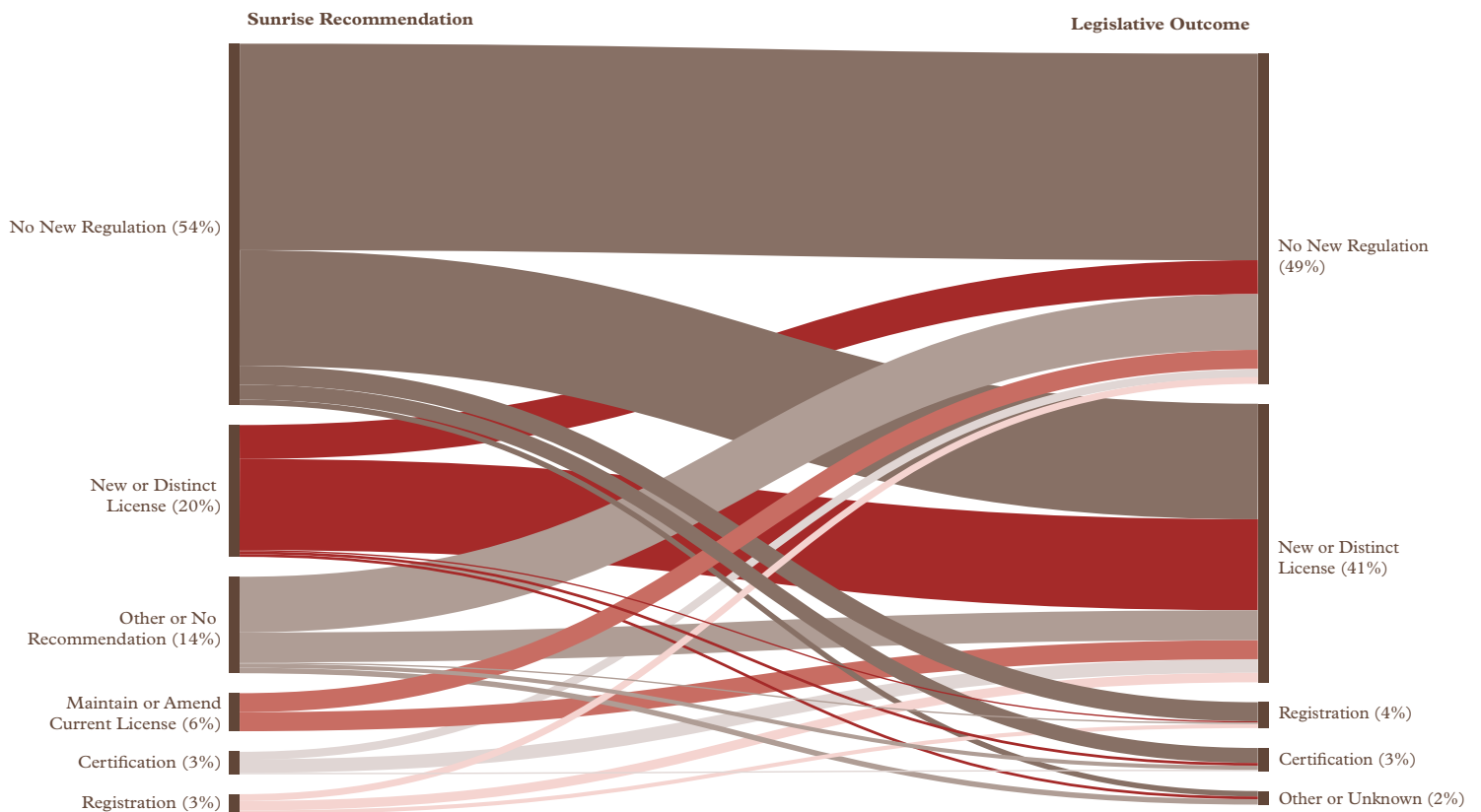


Note: Analysis considers 105 occupations for which new licenses were requested and enacted.

Figure 16 provides further evidence sunrise reviews influence legislatures. It traces each specific recommendation in our dataset to its legislative outcome. Unlike Figure 14, it looks at all reviews regardless of request, not just those with requests for new licenses. It shows that when sunrise reviews found no need to regulate at all, more often than not, legislatures agreed: About 57% of recommendations for no new

regulation resulted in outcomes of no new regulation of personal qualifications, while roughly a third resulted in new or distinct licenses. Looked at from the perspective of where outcomes came from, about two-thirds of all outcomes of no new regulation stemmed from reviews recommending that legislatures enact no new regulation or maintain or amend an existing license.

Figure 16: How Sunrise Recommendations Translated to Legislative Outcomes



Note: Recommendations of no new regulation mean just that; outcomes of no new regulation mean no new regulation of *personal qualifications*. The legislature may have enacted other regulations, such as business regulations.

Legislatures are even more likely to heed recommendations for licensure: When reviews recommended new or distinct licenses, legislatures enacted licensure almost 70% of the time. It could be that licensure recommendations have a rubberstamp effect because legislatures are already inclined toward regulation. That said, following about a quarter of licensure recommendations, legislatures enacted no new regulation. (The rest of the time, they opted for less restrictive regulations.)

Although it suggests sunrise reviews influence legislatures, Figure 16 also highlights how legislatures are not beholden to them. Looking at licensure outcomes, the data show they stemmed from all types of recommendations, not just, or even primarily, ones for licensure. In fact, the plurality of licensure outcomes—41.5%—came from reviews that recommended no new regulation at all. Only a third followed recommendations for new or distinct licenses. About a quarter followed recommendations for less restrictive regulations or reviews that failed to make any recommendation. Included among those are 14 distinct licenses legislatures created following recommendations to

maintain or amend an existing license. Less commonly, legislatures exercised their prerogative to enact less restrictive regulations than recommended. For example, they enacted no new regulation following 10% of licensure recommendations. All told, licenses were enacted about twice as often as recommended.

Though our findings are suggestive, our dataset comprises only 15 states. Some of those states have produced very few reports, and a few no longer regularly produce reports at all. Moreover, many factors likely influence both sunrise recommendations and legislative outcomes. To name just a few, the precise text of sunrise statutes, political factors particular to states and the strength of local occupational lobbies, and report quality may all impact whether sunrise processes work to check licensing's growth. And in turn, report quality is almost certainly influenced by reviewer structure, independence, resources and culture. Unfortunately, with such a small sample of states, it is hard to draw firm conclusions about how these factors may influence sunrise effectiveness.

Lessons for Sunrise

It is clear not all sunrise processes are created equal. Some yield searching, evidence-based analyses of regulatory proposals, while others do not. And our data indicate some states appear to hold the line against new licenses better than others. Among states with generally high-quality reports and relatively low rates of licensure recommendations, a few commonalities stand out. These may point to promising best practices for states interested in establishing a new sunrise process or improving an existing one.

One common feature of states with strong analyses involves the review criteria employed, which may (and often does) differ from what sunrise statutes specify. During our study period, Colorado, Hawaii, Washington and Georgia had the lowest rates of licensure recommendations, ranging from 8% to 16%; they also stood out for consistently producing in-depth reviews. Reports from these states nearly always examined three key questions:

1. Is there documented evidence of substantial and systematic harm, not just anecdotal, potential or even likely harm, from an occupation?
2. What are the likely costs and benefits of proposed regulations, and how do they compare?
3. If harms are identified, what is the least restrictive regulatory—or non-regulatory—option best and most narrowly tailored to address them?

In answering these questions, reviewers typically consult a variety of sources, including independent sources, not just information proffered by occupational interest groups. Such sources include consumer complaint data, cease-and-desist orders, online reviews, court filings, civil actions and scholarly research. Reviewers sometimes even conduct original research of their own, such as surveys of consumers, interviews with those in the field and analyses of other states' regulatory approaches. And, in examining harm, they often search for patterns of substantial harm—rather than isolated incidents—to justify regulation. If they do not find such patterns, careful reviewers are comfortable recommending against new regulations. They also closely examine licensing and other regulatory alternatives to

consider whether they will actually mitigate harm or instead simply add barriers without solving the problem.

A second notable feature of states with stronger sunrise reports is reviewer independence. As noted, Hawaii's reviewer is an officer appointed to an eight-year term and removable only for cause, allowing little room for political influence.¹¹² Washington's and Colorado's reviewers are housed within umbrella regulatory agencies—largely removed from influence by particular occupations' boards—and Colorado has taken concrete steps to insulate the group that conducts reviews from regulatory matters.¹¹³ It also has a strong culture of impartial, evidence-based analysis and regulatory skepticism. Georgia and West Virginia both have strong reviews and a formal connection to the legislature, as the reviewers are selected by the legislature. However, the two states that rely most heavily on legislative committees—Arizona and Utah—consistently produced reports that lack detail and rigorous analysis, suggesting that shielding reviewers from the legislative branch may promote higher quality.

Finally, states with strong reports tend to have ample time and support to produce them. Colorado provides 10 and a half months and Georgia nine months, while Hawaii and Washington impose no time limits. Virginia, another state with typically thorough reviews, allows at least 11 months. These states also have well-established structures for supporting lengthy reviews. For example, in Colorado, the Office of Policy, Research and Regulatory Reform is staffed by a director and full-time, permanent analysts.¹¹⁴ Hawaii's auditor serves renewable eight-year terms.¹¹⁵ Georgia's review council has standing members and is housed in the governor's office. And the Virginia Board of Health Professions' Regulatory Research Committee has permanent board and department staff available to help with sunrise reviews.¹¹⁶

Of course, states cannot perfectly control all these factors by statute. As we found, sunrise reviews are often less and sometimes more rigorous than the law requires. However, legislators interested in enacting or reforming sunrise processes should consider them when crafting legislation. So, too, should agencies newly charged with conducting sunrise reviews. An engaged reviewer can make up for many deficiencies in a weaker sunrise law.¹¹⁷

Lessons for Licensing



Potentially more important than lessons for strong sunrise reviews, our study offers lessons for licensing policy more broadly, even—perhaps especially—in states without a sunrise process. Prior licensing research has examined the effects of individual licenses, the extent of licensing and its economic costs, and the types of requirements imposed. However, no prior research has compiled such a large collection of government reports trying to determine whether specific licensing proposals are sound policy. Our 30-plus years of sunrise review data can tell policymakers a great deal about how licensing really works.

First, our findings validate prior research showing occupational regulations are overwhelmingly driven by occupational insiders, not consumers or consumer watchdogs.¹¹⁸ These groups often pursue licensure in multiple states, and if at first they do not succeed, frequently they will try again. The industry campaign by the United States Lactation Consultant Association that led Georgia to enact the nation's strictest lactation consultant license was no aberration. In fact, it was typical of industry requests for regulation, which often pay lip service to health and safety but which sunrise reviewers may recognize as truly motivated by a desire to fence out competitors and increase an occupation's visibility, prestige or profitability.

Second, even if one assumes good faith on the part of those who request licensure, our data show most license proposals fall apart under sunrise scrutiny, just as the USLCA's did before the Georgia Occupational Regulation Review Council. Independent analyses by government agencies across a wide array of occupations overwhelmingly recommend against licensure, and many recommend no new regulation at all. Typically, these reviews find purported harms are unsubstantiated, the costs of licensure are likely to outweigh potential benefits or licensure is ill suited to address any legitimate concerns—and sometimes they conclude all the above. This is true for health and non-health occupations alike, and the breadth and consistency of these findings suggest that quite often licensing is not the right answer.

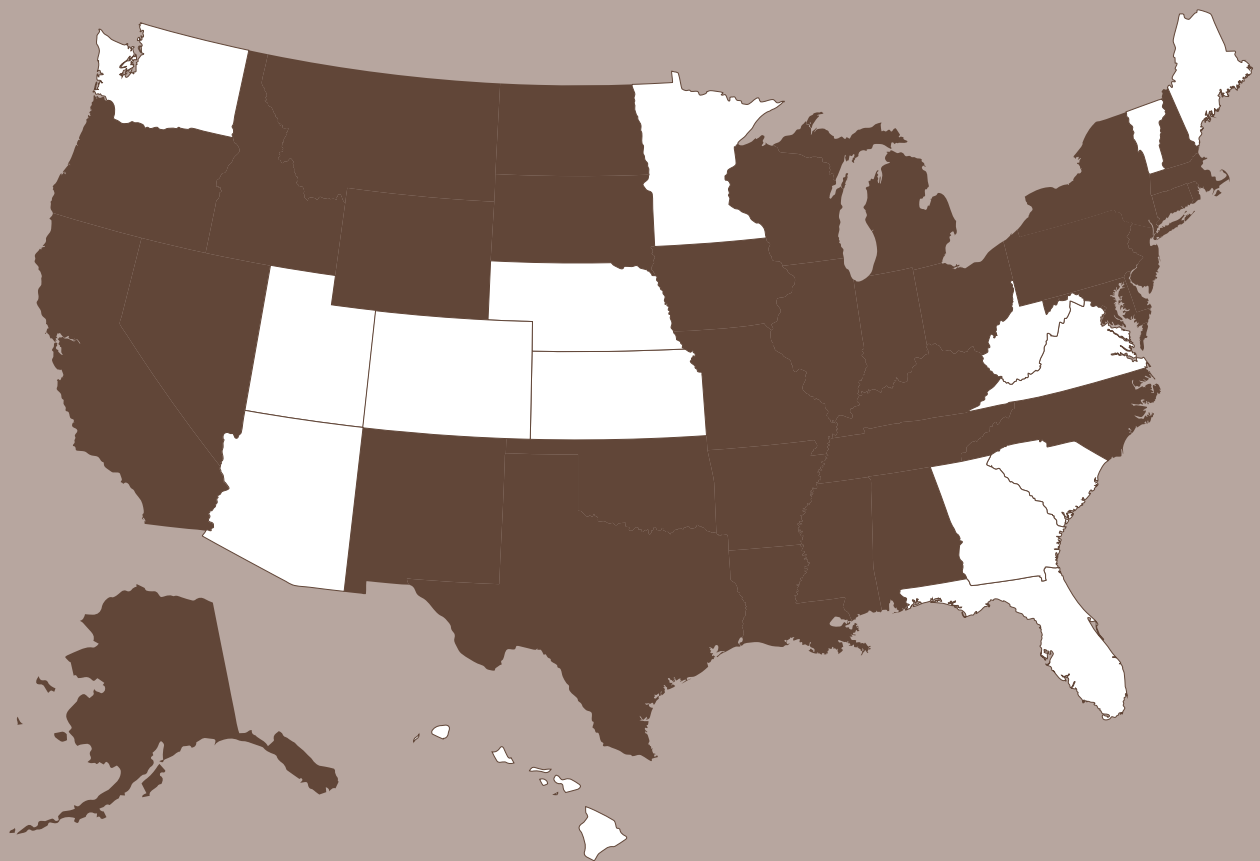
Third, our findings underscore the ongoing influence of special interests in licensing policy. Despite independent reviews recommending against it, legislatures can be swayed to license occupations anyway, as Georgia's was in enacting a license that matched the USLCA's certification requirements. In sunrise states at least, political influence appears to be particularly effective over time as the reviews' persuasive power wanes and repeat players are eventually able to succeed, especially if they have gotten a first domino to fall in another state.

And our study suggests this political influence comes at a cost. We identified 84 new licenses that were enacted without sunrise recommendations in support. In the 42 occupations for which we could obtain data, at least 107,000 people currently hold licenses that may not be warranted—to say nothing of past licensees, the other occupations without readily available licensee counts, people in other states with those same licenses, or the people blocked from entering those occupations because they do not have the time or financial resources to become licensed. Unnecessary licenses shut honest, hardworking people like Mary Jackson, the lactation consultant from our introduction, out of work. They waste resources. They cost consumers, and they cost the economy at large.

Thus, this study's most important lesson for licensing policy is this: With or without a sunrise process, legislators should maintain a healthy skepticism of proposals for new occupational regulation and new licenses—especially when they come from industry groups. They should demand systematic, empirical proof of real and substantial harms from an occupation as well as evidence that the regulation proposed is both the best suited and the least restrictive necessary to address those harms. Well-reasoned, evidence-based policymaking is the best way to protect public safety while maintaining occupational freedom.



State Profiles



• ARIZONA • COLORADO • FLORIDA • GEORGIA • HAWAII • KANSAS •
• MAINE • MINNESOTA • NEBRASKA • SOUTH CAROLINA • UTAH •
• VERMONT • VIRGINIA • WASHINGTON • WEST VIRGINIA •

Arizona

Now Only Discretionary, Arizona's Sunrise Review Process Has Long Produced Superficial Sunrise Reports

In Arizona, sunrise reviews of health occupations have been discretionary since 2018,¹ but, based on the reports in our dataset, the state's sunrise reports lacked independent research and meaningful analysis even when reviews were mandatory. Instead of deeply researching occupations and the need, or lack thereof, for regulation, the responsible legislative committees appear to conduct sunrise reviews entirely within committee meetings. The resulting reports are, along with Utah's, the nation's most superficial.

Arizona enacted its sunrise law for health-related occupations in 1985. Sunrise review is initiated when an applicant group, defined as a "health professional group . . . or any other interested party," files an application proposing regulation; all but one application in our study came from industry insiders. There is no application fee. Applications are filed with the speaker of the House of Representatives and president of the Senate and are assigned to both chambers' "committees of reference" (COR) for review and recommendation.

Until 2018, the COR produced written sunrise reports and regulation proponents sought to introduce regulatory legislation when the committees recommended it. Now, the Legislature

can consider regulation regardless of what the committees recommend—and even if they fail to conduct a review at all. These revisions have effectively rendered sunrise review optional. All reports in our study pre-date the 2018 revisions.

Arizona's sunrise law charges applicants with demonstrating a need for new regulation.² Among other factors, applicants must describe the nature of any potential harm to consumers, recognizing that state law permits regulation only if "[t]here is credible evidence that the unregulated practice . . . can clearly harm or endanger the public health, safety or welfare and the potential for harm is easily recognizable and not remote or dependent on tenuous argument." This is a moderate standard.

Arizona law also directs the Legislature, if it decides to regulate a health occupation, to implement the least restrictive regulation, from a list of regulatory alternatives to licensure, that would address the potential harm identified. And it requires that regulation be imposed "not . . . for the purpose of prohibiting competition, but only for the exclusive purpose of protecting the public interest."

Of course, the sunrise law cannot pre-empt legislative decisions, so these

provisions are nonbinding. The sunrise process—when employed—does not require information or analysis that would help the Legislature determine whether and what type of regulation is in the public interest. For instance, unless requested by the COR, applicants are not required to provide the following information: costs of the proposed regulation to workers, consumers or the state; possible benefits; whether the proposed regulation is more restrictive than necessary to protect the public; or whether other regulations, including previous or ongoing efforts, would address the potential harm identified.

These deficits and the political nature of Arizona's reviews may contribute to the superficiality of its sunrise reports, which consist of only a cover page stating the request, applicant and recommendation, plus attachments including the application and meeting agendas and minutes.

97%
of Requests Came
from Industry

75%
of Requests Sought
New Licenses

61%
of Reviews Recommended
New Licenses

26
Reports from
1986 to 2017

36 Reviews
32 Unique Occupations
3 Sets of Repeat Reviews

**Regularly Produces
Sunrise Reports***

Ariz. Rev. Stat. Ann. §§ 32-3101 to -3108

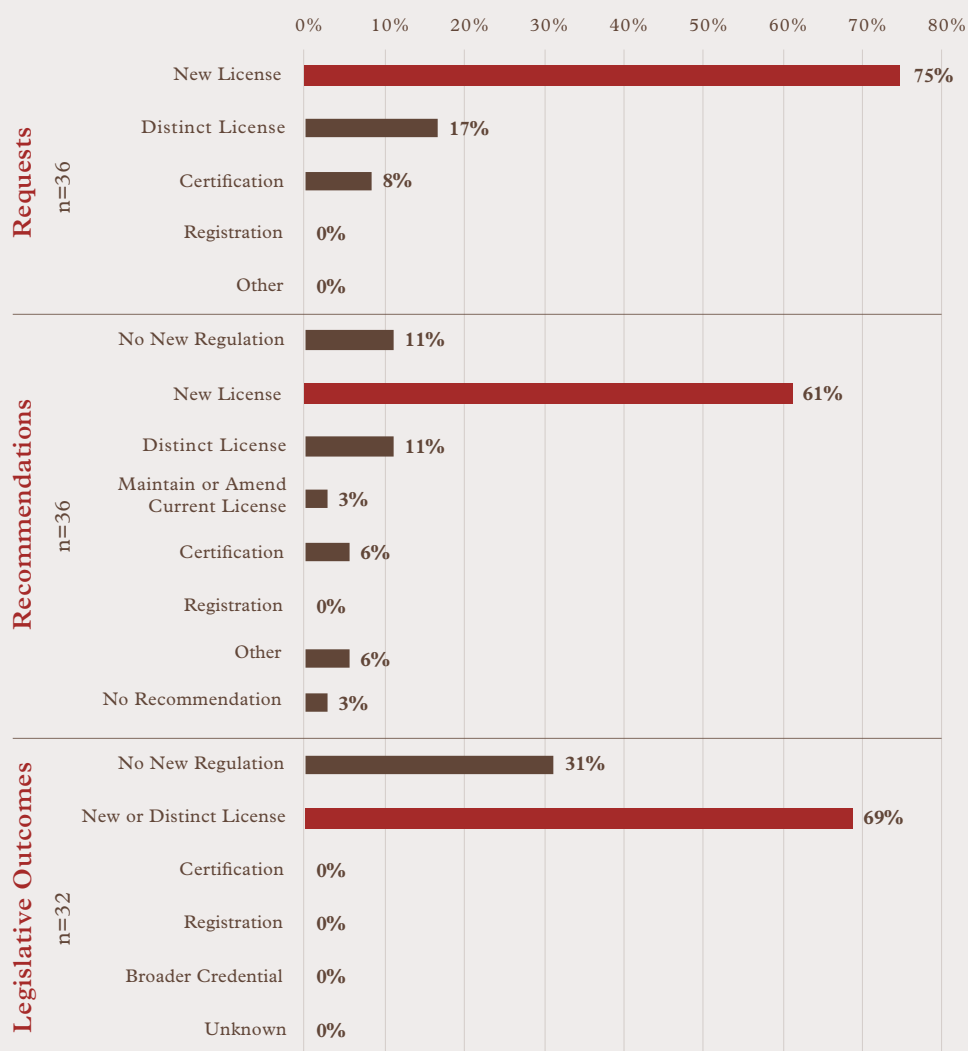
* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

1 S.B. 1034, 53d Leg., 2d Reg. Sess. (Ariz. 2018). The state also has a sunrise law, enacted in 2008, for non-health occupations. Ariz. Rev. Stat. §§ 41-3501 to -3504. Those reviews are still mandatory. Arizona even expanded its non-health law in 2021 with additional review and report criteria. S.B. 1218, 55th Leg., Reg. Sess. (Ariz. 2021). However, the Legislature provided no reports on non-health occupations in response to public records requests.

2 Arizona's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Ariz. Rev. Stat. Ann. §§ 32-3101(3), -3104, -3106.

Licensure Was Frequently Sought, Recommended and Enacted

Summary of Arizona's Sunrise Reviews 1986–2017



Occupations Licensed Without Supporting Recommendations

Certified Medication Aides

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Colorado

Colorado Consistently Produces Some of the Nation's Strongest Sunrise Reports Despite Limited Law

Colorado has long produced some of the nation's most in-depth sunrise reports despite a state sunrise law requiring scant consideration of proposed regulations' costs or of least restrictive regulations. Colorado enacted its sunrise law, which covers both health and non-health occupations, in 1985.

Sunrise review is initiated when regulation proponents file an application with the Colorado Department of Regulatory Agencies' Office of Policy, Research and Regulatory Reform (COPRRR). Any interested party can file an application, provided it is accompanied by a statement of support signed by at least 10 individuals. Most applications—81%—are filed by industry insiders. There is no application fee.

Colorado's sunrise law gives COPRRR more than 10 months to review applications: Applications must be submitted by December 1 and COPRRR has until October 15 of the following year to produce its report. After that, applicants can ask General Assembly members to sponsor legislation creating new occupational regulations. COPRRR can decline repeat requests from the same applicants unless they provide new information that might affect its recommendations. Only Vermont's sunrise law has

a similar provision. Colorado's sunrise law is unique in allowing COPRRR to forgo review if the office—together with the Legislative Council, which assists the General Assembly with policy research—finds an imminent threat to public safety.

Colorado's sunrise law charges applicants with demonstrating a need for new regulation. Among other factors, applicants must “defin[e] the problem . . . to be solved by regulation and the reasons why regulation is necessary” and explain why they are proposing a particular form of regulation and not another form.

After reviewing an application, COPRRR conducts its own analysis and evaluation of the proposed regulation. Colorado's sunrise law requires COPRRR to consider “[w]hether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.” This is a moderate standard.

Colorado's law also asks for a general evaluation of regulation's costs rather than the inquiry into specific types of costs required in some other states. The one exception is that it

does require COPRRR to consider a proposed regulation's potential effects on opportunities for ex-offenders.

Colorado's law does not suggest that reviews consider previous or ongoing efforts to address the potential harm identified. Nor does it suggest that reviews consider whether proposed regulations are narrowly tailored to that harm. And it does not require COPRRR to recommend, or the General Assembly to enact, the least restrictive regulation.

Despite the state's limited law, the Colorado sunrise reports in our dataset are highly rigorous, consistently using independent research and analysis to understand occupations and the need, or lack thereof, for regulation. Colorado's sunrise process is also very active, producing more than twice as many reports as the state with the next most active process. The quality and quantity of Colorado's sunrise reviews likely owe to COPRRR's unique history and culture.

81%
of Requests Came
from Industry

68%
of Requests Sought
New Licenses

8%
of Reviews Recommended
New Licenses

119
Reports from
1985 to 2017

145 Reviews
92 Unique Occupations
26 Sets of Repeat Reviews

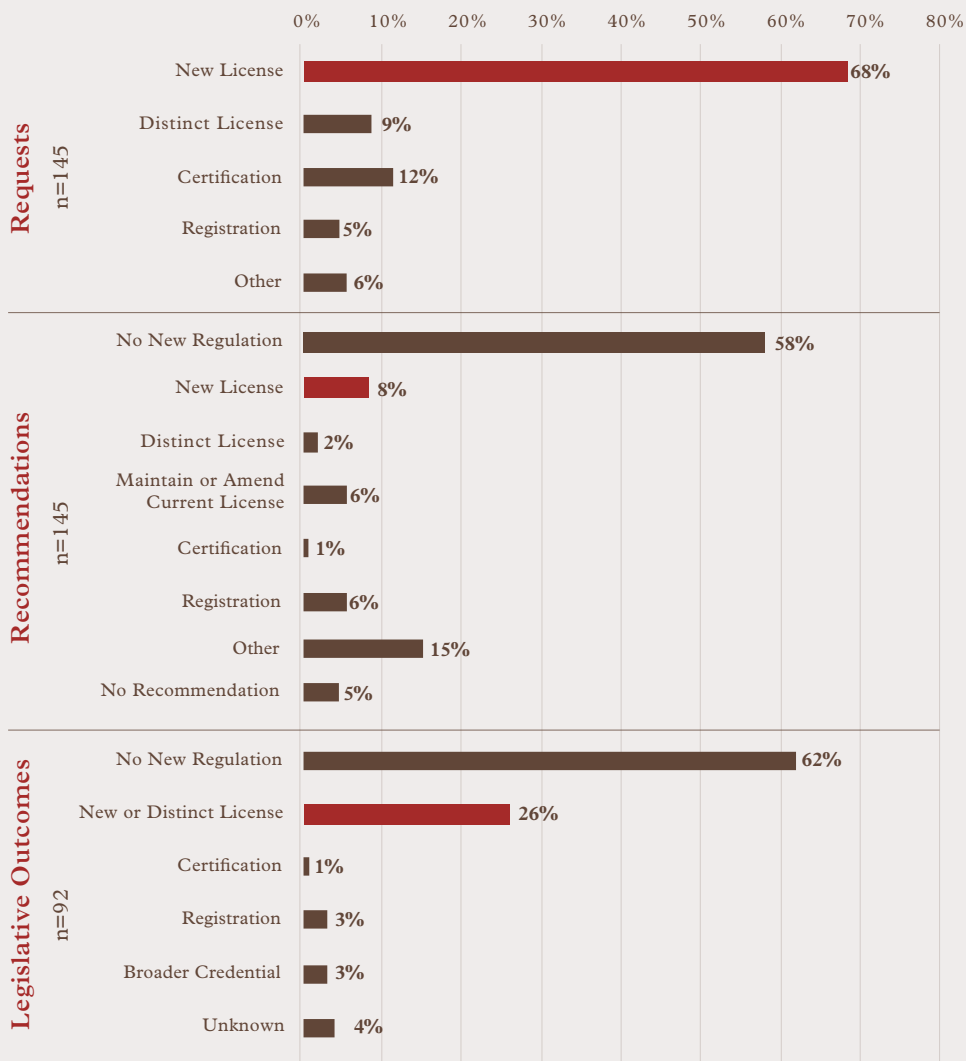
**Regularly Produces
Sunrise Reports***

Colo. Rev. Stat. Ann. § 24-34-104.1

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Colorado's Sunrise Reviews 1985–2017



Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018. "Registration request" includes a request for a distinct registration scheme.

Occupations Licensed Without Supporting Recommendations

Acupuncturists
Asbestos Air Samplers
Audiologists *
Conveyance Contractors
Conveyance Inspectors
Conveyance Mechanics
Dialysis Technicians *
Hearing Aid Dispensers
Landscape Architects *
Marriage and Family Therapists
Massage Therapists *
Mortgage Brokers *
Occupational Therapists *
Occupational Therapy Assistants *
Professional Counselors
Speech Language Pathologists

*Multiple recommendations against licensure.

Florida

Florida's Sunrise Reports Are Rigorous but Few as They Are Not Required by Law

Florida's sunrise law requires some of the most detailed inquiries into occupational harms and proposed regulations' costs of any state. In line with the law, the Florida sunrise reports in our dataset are rigorous. However, written reports are not required. Perhaps for this reason, we identified only seven reports from the state, all from 1993 and 1994.

Florida enacted its sunrise law, which covers both health and non-health occupations, in 1991. Sunrise review is triggered by the introduction of regulatory legislation. Although the law does not require regulation proponents to file an application to initiate the sunrise process, the state's reports indicate that industry insiders were behind all but one of the bills.

After a bill is introduced proposing new regulation of an occupation, it is referred to a legislative committee for review and recommendation.¹ In practice, the House Committee on Business and Professional Regulation has conducted all of the state's sunrise reviews. The law sets no time limit for the committee's review.

Guiding the committee in the task is the preamble to Florida's sunrise law, which expressly acknowledges the importance of preserving open occupational entry while also requiring a high standard of harm to justify regulation. It states that no occupation should be regulated (a) "unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage" and (b) "in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public."

Florida's sunrise law requires the committee to determine—and recommend—the least restrictive and most cost-effective regulatory scheme that would protect the public. Accordingly, the committee must evaluate the costs to workers, consumers and the state, as well as possible benefits, of the proposed regulation. To this end, it may ask regulation proponents to provide documentation of past harm from the occupation; it may also ask them to supply information about

voluntary efforts by those working in the occupation to address the identified harm and explain why those efforts are inadequate. Although the committee is required to recommend least restrictive regulations, the Legislature is not required or encouraged to enact them.

Florida's sunrise reviews are few, but they are also rigorous. Guided by the state's thorough law, the House Committee on Business and Professional Regulation used independent research and analysis to understand occupations and scrutinize the need, or lack thereof, for regulation, including weighing whether regulation would protect the public from harm.

86%
of Requests Came
from Industry

86%
of Requests Sought
New Licenses

No Reviews Recommended
New Licenses

7
Reports from
1993 to 1994

7 Reviews
7 Unique Occupations
No Sets of Repeat Reviews

**Does Not Regularly Produce
Sunrise Reports***

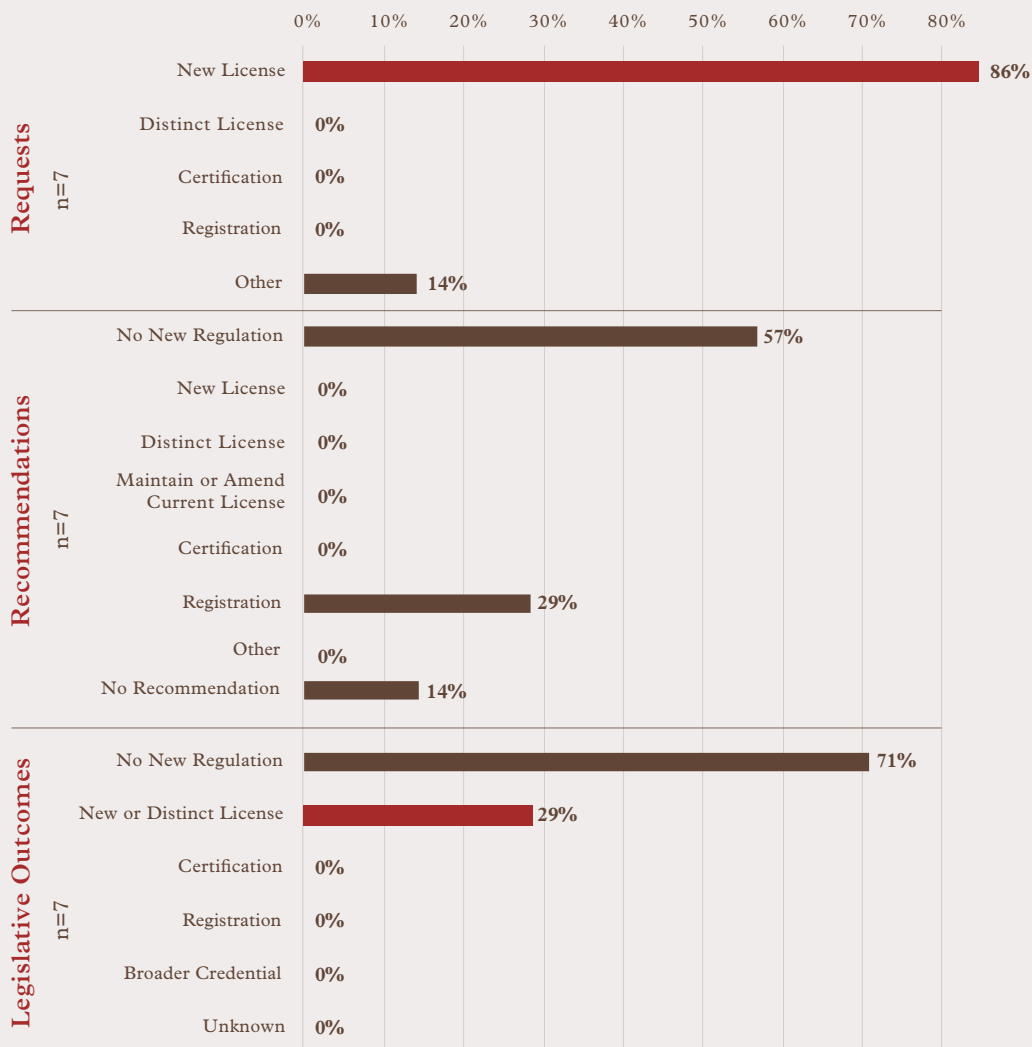
Fla. Stat. Ann. § 11.62

* We describe states as not regularly producing reports if they had not produced a report within two years of 2017, when we collected reports for this study.

¹ The Department of Business and Professional Regulation also performs limited sunrise reviews, including written reports, as part of its legislative bill analyses, but it does not make recommendations pursuant to Florida's sunrise law. DBPR's analyses are therefore not included in this study.

Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Florida's Sunrise Reviews 1993–1994



Occupations Licensed Without Supporting Recommendations

Athletic Trainers
Home Inspectors

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Georgia

Georgia Consistently Produces Rigorous Sunrise Reports Under Its Strong Sunrise Law

Georgia's sunrise law requires some of the most detailed inquiries into proposed regulations' costs and least restrictive regulations of any state. In line with the law, the Georgia sunrise reports in our dataset are consistently rigorous.

Georgia enacted its sunrise law, which covers both health and non-health occupations, in 1986. Sunrise review is triggered by the introduction of regulatory legislation. Although the law does not require regulation proponents to file an application to initiate the sunrise process, the state's reports indicate that industry insiders were behind most (82%) of the bills.

After a bill is introduced proposing new regulation of an occupation, the chairman of the committee to which the bill is referred (the "committee of reference") informs the Georgia Occupational Regulation Review Council. GORRC, which is housed in the governor's office and consists of nine members drawn from the executive and legislative branches, then has nine months to conduct its review and produce its report.

Guiding GORRC in its task is the preamble to Georgia's sunrise law, which states that the law's purpose is to "ensure that no programs of licensure and certification shall hereafter be imposed upon any profession or business unless required for the safety and well-being of the citizens of this state." Accordingly, regulation is justified only if unregulated practice of the occupation is shown to have the clear potential to harm the public—a moderate standard.

As part of its review, GORRC may solicit information from regulation proponents and other interested parties on the proposed regulation's costs to workers, consumers and the state, as well as its benefits. GORRC may also require proponents to explain why less restrictive regulations or previous efforts to address the potential harm identified are insufficient to ameliorate it.

Georgia's sunrise law requires GORRC to recommend, and the General Assembly to enact, the least restrictive appropriate method of regulation that would protect the public. To this end, the law provides a list of

regulatory alternatives to licensure and certification. It also describes situations in which the General Assembly should enact licensure or certification or instead consider a less restrictive form of regulation. Of course, the sunrise law cannot pre-empt legislative decisions, so these provisions are nonbinding.

Georgia's sunrise law does not put the onus on regulation proponents to file an application to trigger sunrise, but it has other strengths, requiring careful consideration of proposed regulations' costs and least restrictive regulations. Accordingly, the state's sunrise process results in rigorous reports that consistently use independent research and analysis to understand occupations and the need, or lack thereof, for regulation.

82%
of Requests Came
from Industry

82%
of Requests Sought
New Licenses

16%
of Reviews Recommended
New Licenses

36
Reports from
1987 to 2017

38 Reviews
28 Unique Occupations
8 Sets of Repeat Reviews

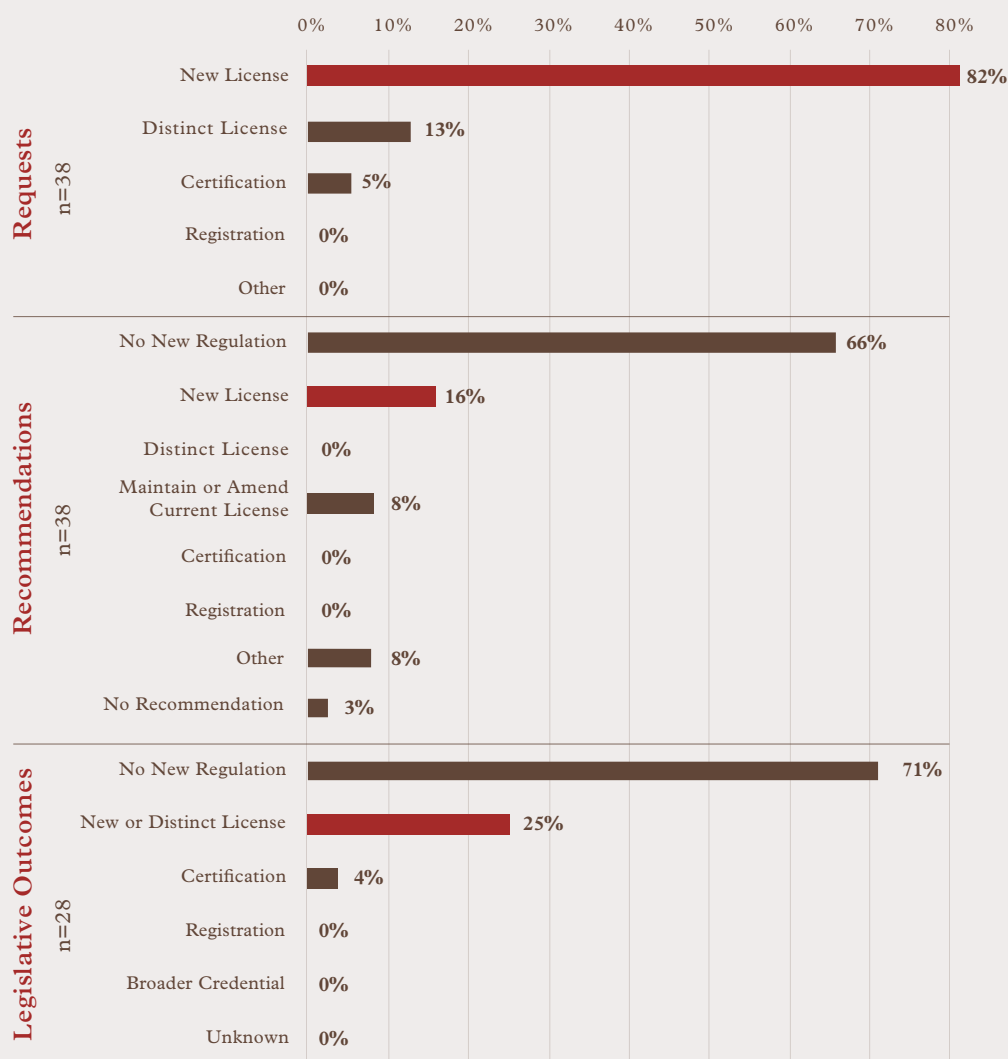
**Regularly Produces
Sunrise Reports***

Ga. Code Ann. §§ 43-1A-1 to -9

*We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Georgia's Sunrise Reviews 1987–2017



Occupations Licensed Without Supporting Recommendations

Lactation Consultants
Massage Therapists *
Utility Contractors

*Multiple recommendations against licensure.

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Hawaii

Hawaii's Auditor Produces Some of the Nation's Strongest Sunrise Reports

Hawaii has long produced some of the nation's most in-depth sunrise reports. Though Hawaii's sunrise law is weak in some respects, it is strong in others. Moreover, the state's reviewer, the Office of the Auditor, is largely shielded from political interference.

Hawaii enacted its sunrise law, which covers both health and non-health occupations, in 1977, making it one of the nation's oldest. Sunrise review in Hawaii is triggered by the introduction of regulatory legislation. After a bill is introduced proposing new regulation of an occupation, it is referred to Office of the Auditor, which was created specifically for the purpose of conducting reviews of government operations and proposals without pressure from other executive, legislative or nongovernment entities. In the sunrise context, the auditor is tasked with identifying the probable effects of proposed regulations and evaluating whether their enactment would be consistent with the policy goal of ensuring regulations protect the public from harm, not occupations from competition. The law sets no time limit for the auditor's review.

The auditor is guided in his or her task by the law's policy statement, which states that "[t]he regulation and licensing of professions and vocations shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation."

Hawaii's sunrise law does not suggest that reviews consider previous or ongoing efforts to address the potential harm identified. Nor does it suggest that reviews consider whether proposed regulations are narrowly tailored to that harm. And it does not require the auditor to recommend, or the Legislature to enact, the least restrictive regulation. However, the law does specify that the auditor should recommend, and the Legislature should enact, regulation only if is "reasonably necessary to protect the health, safety, or welfare of consumers" and "when the health, safety, or welfare of the consumer may be jeopardized by the nature of the service offered by the provider."

80%
of Requests Sought
New Licenses

9%
of Reviews Recommended
New Licenses

29
Reports from
1985 to 2017

44 Reviews
37 Unique Occupations
6 Sets of Repeat Reviews

Regularly Produces
Sunrise Reports*

Both the auditor and the Legislature are also supposed to "accord[] great weight" to evidence of past harm "in determining whether regulation is desirable" as well as to consider whether regulations would unreasonably restrict entry into occupations, artificially increase the costs of goods and services, and be self-funding.

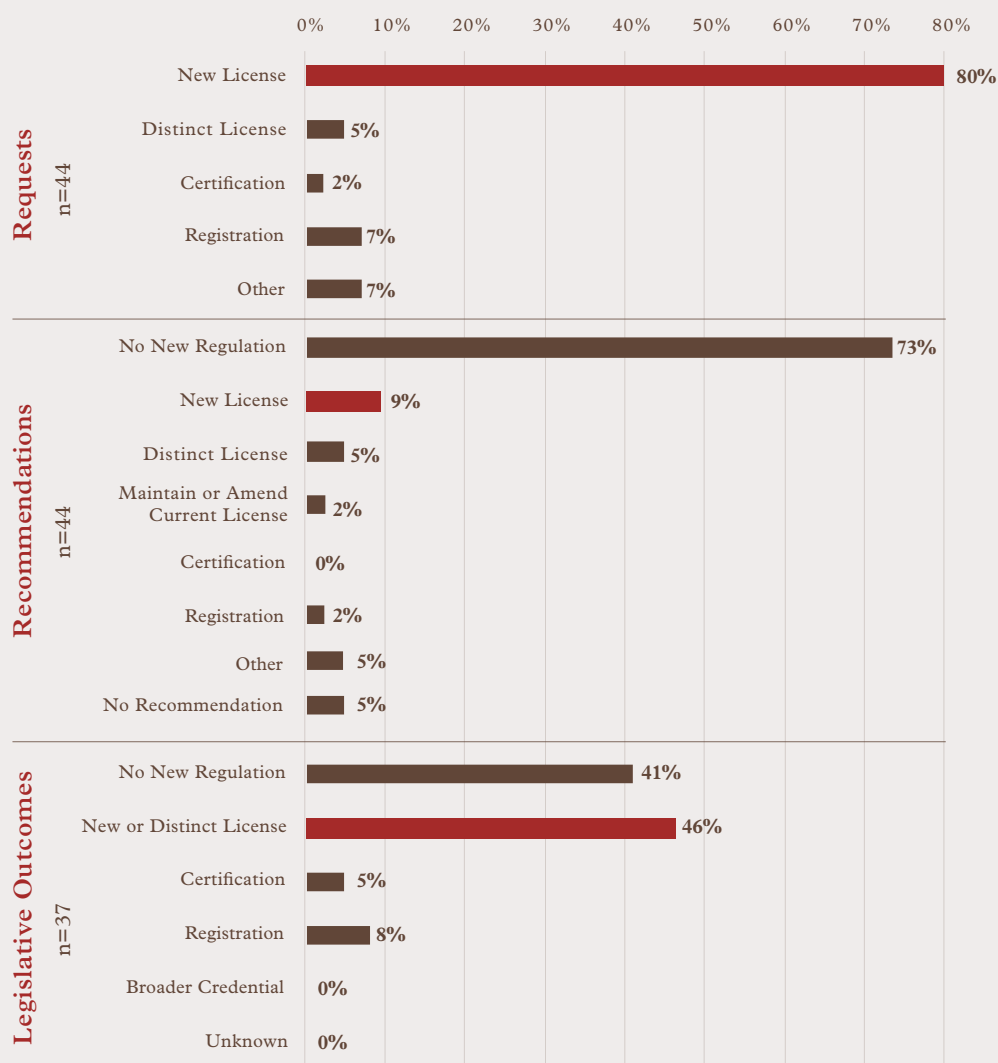
Although Hawaii's sunrise law does not require the most detailed inquiries among the states, it has other strengths, requiring careful consideration of past harms from an occupation as well as regulation's costs. Those requirements together with the state's uniquely independent reviewer may explain the highly rigorous nature of the state's reports in our dataset.

Haw. Rev. Stat. §§ 26H-1 to -7

*We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

Licensure Was Frequently Sought and Enacted Despite Few Licensure Recommendations

Summary of Hawaii's Sunrise Reviews 1985–2017



Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Occupations Licensed Without Supporting Recommendations

Athletic Trainers
Crane Operator Apprentices
Crane Operators
Genetic Counselors
Judges, Mixed Martial Arts
Managers, Mixed Martial Arts
Matchmakers, Mixed Martial Arts
Nutritionists
Professional Counselors *
Respiratory Therapists *
Seconds, Mixed Martial Arts
Social Workers, Bachelor *
Social Workers, Masters *
Social Workers, Senior *
Timekeepers, Mixed Martial Arts

*Multiple recommendations against licensure.

Kansas

Kansas' Few Sunrise Reports Miss the Mark Despite Law Requiring Thorough Reviews

The Kansas sunrise reports in our dataset are lacking in independent research and meaningful analysis despite a two-step review process that might be expected to produce rigorous reports. They are also very few, possibly due to a records retention policy that allows the agency to destroy records after five years. We identified only three reports from the state, all from between 2011 and 2015.

Kansas enacted its sunrise law, which covers only health-related occupations, in 1980. Sunrise review is initiated when health care practitioners—that is, industry insiders—wishing to have their occupation regulated notify the secretary of the Department of Health and Environment of their intent to file an application. If the secretary approves, regulation proponents can then file their application. (If denied, they can appeal.) Applications must be accompanied by a \$1,000 fee and a statement of support signed by at least 100 individuals.

Kansas' sunrise law charges applicants with demonstrating a need for new regulation. Specifically, they must prove by clear and convincing evidence that the occupation should be regulated. This means proving that “[t]he unregulated practice of the occupation or profession can harm or endanger the health, safety or welfare of the public and the potential for such harm is

recognizable and not remote.” This is a moderate standard of harm.

Under the law, the secretary of health and environment must refer applications to a seven-member technical committee composed of three health care workers already credentialed by the state and four consumers. The committee is tasked with conducting an objective review of the proposal. To that end, no member of the committee can have a direct interest in the credentialing or noncredentialing of the occupation.

The technical committee must review the application, conducting fact-finding hearings and soliciting information from interested parties, including both proponents and opponents of the proposed regulation. Kansas' sunrise law sets out the review criteria, which include a cost-benefit evaluation that looks at the effect of regulation on the number of practitioners and the cost of health care, the level of knowledge and proficiency required to work in the occupation, and whether the public needs and would benefit from assurances of initial and continuing practitioner competency.

The technical committee must also consider any previous or ongoing regulatory measures aimed at protecting the public and evaluate whether additional regulation is needed. If the committee concludes that regulation is

needed, Kansas' sunrise law requires it to recommend the least restrictive regulation that would protect the public. To this end, the law provides a list of less restrictive alternatives to licensure.

The law sets no time limit for the technical committee's review. Once the review is complete, the committee produces for the secretary of health and environment a written report with a recommendation. Within 120 days of receiving the committee's report, the secretary produces his or her own report, summarizing the technical committee's findings but free to reach a different conclusion. Both reports are transmitted together to the Legislature, which is not required to follow their recommendations or, indeed, to enact least restrictive regulations. This study considers the secretary's reports.¹

Despite the state's seemingly robust sunrise review process, the secretary's few reports miss the mark, largely because the technical committee's reviews on which they are based rely mostly on information supplied by applicants rather than independent fact-finding.

100%
of Requests Came
from Industry

67%
of Requests Sought
New Licenses

33%
of Reviews Recommended
New Licenses

3
Reports from
2011 to 2015

3 Reviews
3 Unique Occupations
No Sets of Repeat Reviews

**Regularly Produces
Sunrise Reports***

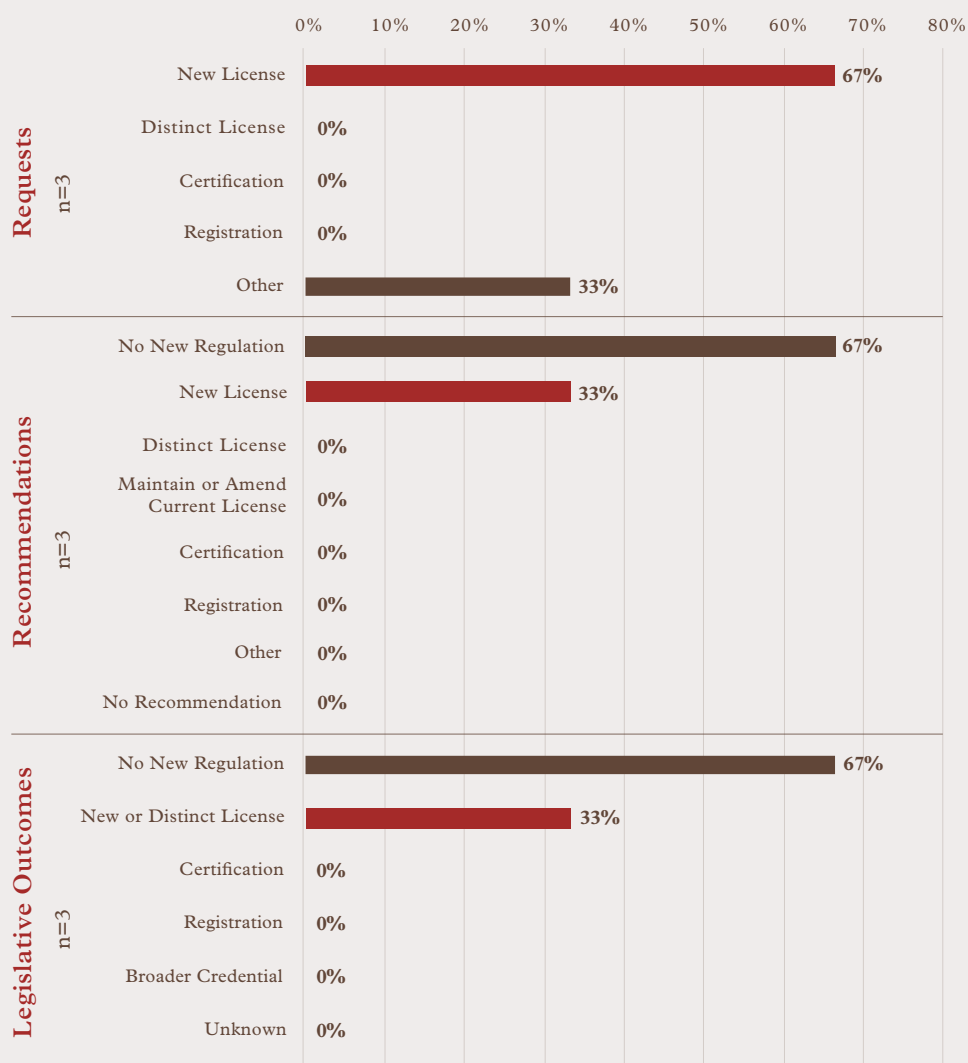
Kan. Stat. Ann. §§ 65-5001 to -5011

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study. Kansas meets this threshold, though, due to the records retention policy, we don't know how long it has regularly produced reports.

¹ The department provided only one of three technical committee reports.

Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Kansas' Sunrise Reviews 2011–2015



Occupations Licensed Without Supporting Recommendations

Acupuncturists

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Maine

Maine's Sunrise Law Requires Thorough Reviews, But Reports Are Few

With fairly detailed review criteria, Maine's sunrise law, on its face, might be expected to produce rigorous reports. However, the state's reports are very few. For our dataset, we identified only nine reports, covering 13 reviews, from the state, all from between 2000 to 2010.

Maine enacted its sunrise law, which covers both health and non-health occupations, in 1995, making it one of the most recent in our dataset. Sunrise review is initiated when proponents file an application proposing regulation of an occupation and regulatory legislation is introduced.¹ (This appears to happen concurrently.) Any interested party can file an application. However, most applications—62%—are filed by industry insiders.

In Maine, sunrise review can be conducted by any of three reviewing bodies: (1) the joint standing committee of the Legislature to which the bill was referred, (2) the commissioner of the Department of Professional and Financial Regulation, at the standing committee's request, or (3) a technical committee established by the commissioner, at the standing committee's request. Applicants must pay up to

\$500 if the commissioner carries out the review and up to \$1,000 if a technical committee does. This study considers only the commissioner's independent reviews.²

For his or her reviews, the commissioner considers information from the applicant and any other interested party, including regulation opponents. The commissioner is then required to independently evaluate the application based on the law's criteria. Among these criteria are "the nature and extent of potential harm to the public if the profession or occupation is not regulated." This is a low standard, though the commissioner also considers evidence of past harm in the form of complaints against practitioners filed with government agencies within the past five years.

In addition, the commissioner is required to perform a cost-benefit evaluation, weighing the proposed regulation's costs to consumers and the state against possible benefits, and to consider voluntary efforts by those working in an occupation to address the threat of harm as well as previous regulatory efforts by the state and evaluate whether they are working to protect the

public. If the commissioner determines that new regulation is necessary, he or she must recommend the least restrictive method. To this end, Maine's sunrise law provides a list of regulatory alternatives to licensure.

The law sets no time limit for the commissioner's independent reviews.³ When ready, the commissioner must submit his or her final report to the standing committee that requested the evaluation. The Legislature is not required to follow the commissioner's recommendations or, indeed, to enact least restrictive regulations.

Despite its law requiring reports, Maine has not produced a report since 2010. Maine's law encourages independent review, and the commissioner indeed proactively sought information on its own but focused on doing so from interested parties, not from skeptical or disinterested sources.

62%
of Requests Came
from Industry

69%
of Requests Sought
New Licenses

No Reviews
Recommended New
Licenses

9
Reports from
2000 to 2010

13 Reviews
13 Unique Occupations
No Sets of Repeat Reviews

Does Not Regularly
Produce Sunrise Reports*

Me. Stat. tit. 5, § 12015; Me. Stat. tit. 32, § 60-J, -K, -L

*We describe states as not regularly producing reports if they had not produced a report within two years of 2017, when we collected reports for this study.

¹ Maine's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Me. Stat. tit. 5, § 12015(3).

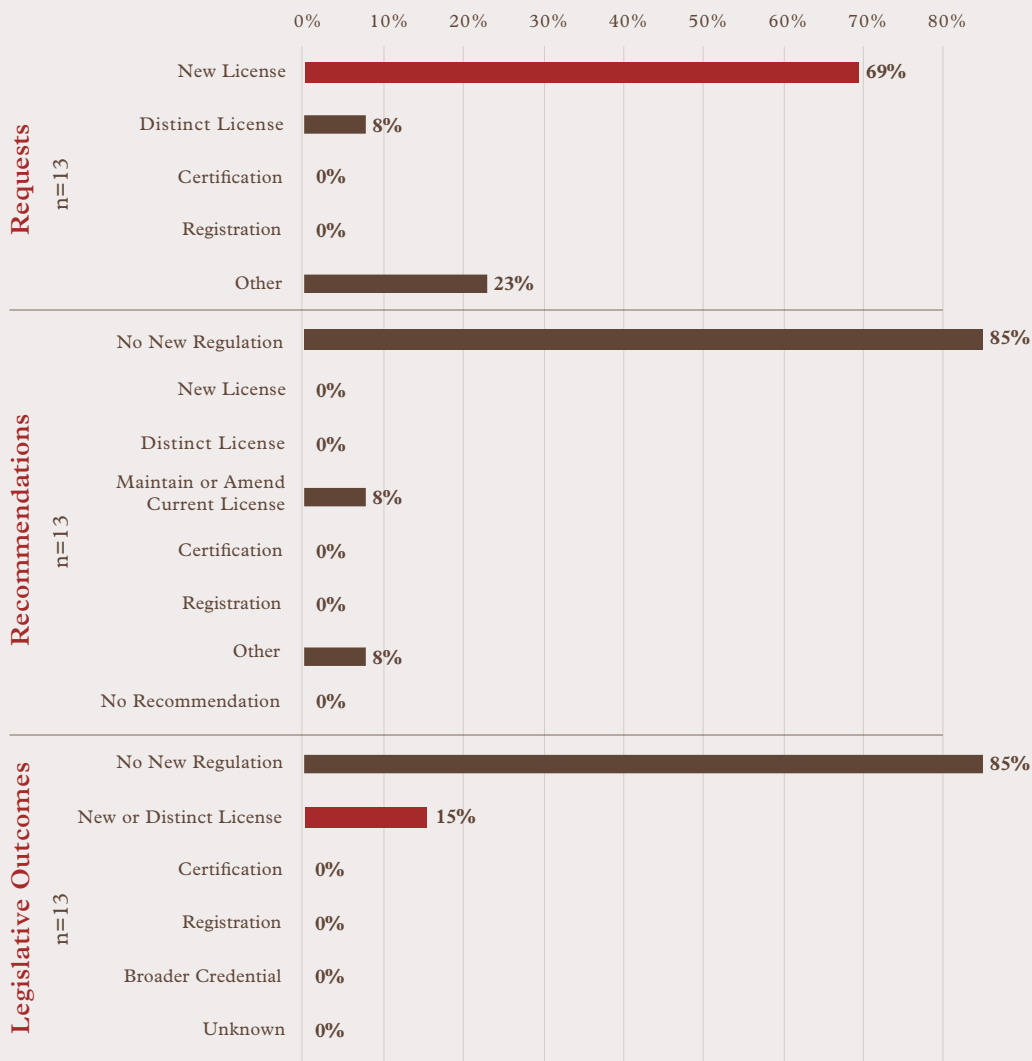
² The department had no other reports available, aside from scope of practice reports, according to a phone call on July 26, 2017.

³ If a technical committee is established, the commissioner must submit his or her final report to the standing committee within nine months.



Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Maine's Sunrise Reviews 2000–2010



Occupations Licensed Without Supporting Recommendations

Midwives

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Minnesota

Minnesota's Few Sunrise Reports Miss the Mark Thanks to a Politicized Process

The Minnesota sunrise reports in our dataset are lacking in independent research and meaningful analysis thanks to the state's politicized process, which leaves room only for proponents' input. They are also very few, and it is unclear why. We identified only six reports, covering eight reviews, from the state, all from between 2002 and 2009.

Minnesota enacted its sunrise law, covering health-related occupations,¹ in 1976, making it one of the nation's oldest. Sunrise review is triggered by the introduction of regulatory legislation.² Within 15 days of the bill's introduction, regulation proponents must submit a written explanation, termed a "report," explaining the need for regulation; six of Minnesota's eight reports were submitted by industry insiders.

After a bill is introduced proposing new regulation of an occupation, the bill is supposed to be referred to the relevant standing committee. As outlined in the law, the standing committee then asks the Council of Health Boards for feedback on the proposal. The Council's response is, in effect, a sunrise review and report. Accordingly, this study counts the Council's responses as sunrise reports.

Among the factors regulation proponents must address are the nature of the threat of harm posed by unregulated practice; why the particular regulation is being proposed and not a less restrictive form of regulation; the level of skill and training the occupation requires; and how the regulation would impact the entry of new workers into the field, the supply of workers and the costs of services to consumers. They must also address "why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public" and must explain "whether practitioners of the occupation work without supervision or are supervised and monitored by a regulated institution or by regulated health professionals."

The Council must evaluate a proposal according to four criteria: (1) "whether the unregulated practice of an occupation may harm or endanger the health, safety and welfare of citizens of the state and whether the potential for harm is recognizable and not remote," which is a moderate standard; (2) "whether the practice of an occupation requires specialized skill or training and whether the public needs

and will benefit by assurances of initial and continuing occupational ability"; (3) "whether the citizens of this state are or may be effectively protected by other means"; and (4) "whether the overall cost effectiveness and economic impact would be positive for citizens of the state." The law also provides a menu of regulatory options, ranked from least to most restrictive. However, sunrise reviews are not required to recommend least restrictive regulations, and the Legislature is not required to enact them.

Despite Minnesota's relatively robust review criteria, the Council's reports are superficial, relying almost entirely on information supplied by regulation proponents. Yet such overreliance on proponents' information is precisely the political problem that sunrise review is intended to mitigate. Moreover, half of the Council's reviews offer no recommendations, making them less useful for the Legislature.

75%
of Requests Came
from Industry

75%
of Requests Sought
New Licenses

25%
of Reviews Recommended
New Licenses

6
Reports from
2002 to 2009

8 Reviews
7 Unique Occupations
1 Set of Repeat Reviews

**Does Not Regularly
Produce Sunrise Reports***

Minn. Stat. Ann. §§ 214.001 to -.002

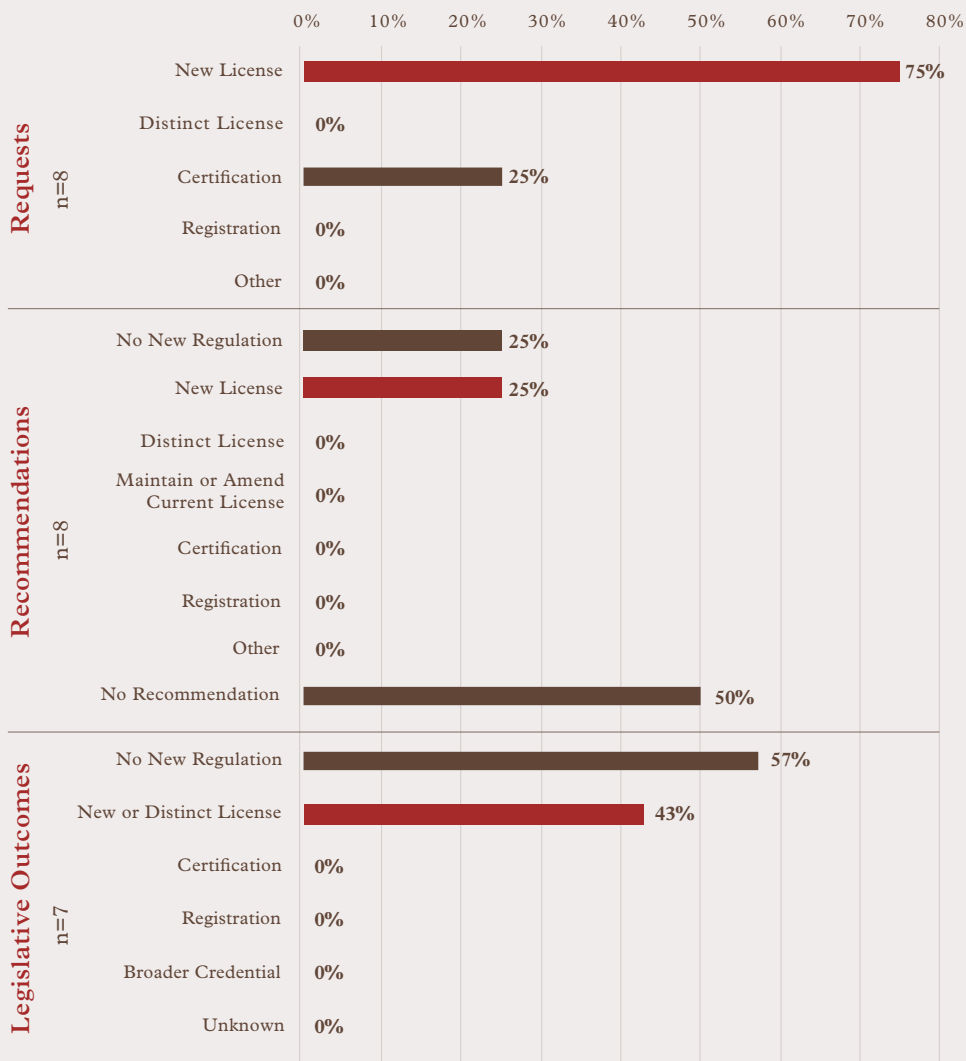
* We describe states as not regularly producing reports if they had not produced a report within two years of 2017, when we collected reports for this study.

1 Minnesota's law also covers non-health occupations, though it specifically contemplates reports only for health occupations.

2 Minnesota's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Minn. Stat. Ann. § 214.002, subd. 1.

Licensure Was Frequently Sought and Enacted Despite Few Licensure Recommendations

Summary of Minnesota's Sunrise Reviews 2002–2009



Occupations Licensed Without Supporting Recommendations

Tattooists

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018. Minnesota's reports offer only "conclusions," which we counted as recommendations where possible.

Nebraska

Nebraska's Sunrise Reports Miss the Mark Despite Law Requiring Thorough Reviews

The Nebraska sunrise reports in our dataset are lacking in independent research and meaningful analysis despite a law that, on its face, might be expected to produce rigorous reports. Not only are the law's review criteria detailed, but the law is unique in requiring three separate reviews, including one by a technical committee, all of which we considered for this study.

Nebraska enacted its sunrise law, which covers only health-related occupations, in 1985. Sunrise review is initiated when regulation proponents submit a letter of intent to file an application, along with a \$500 fee, to the director of public health.¹ If the application is eligible for review, the director informs regulation proponents that they can file their application. Any interested party can file an application. However, most applications—84%—are filed by health industry organizations or other occupational insiders.

Nebraska's sunrise law contains a policy statement that expressly acknowledges the importance of balancing public safety with open occupational entry. It states: "The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or an environmental service unless there is an overwhelming need for the state to protect the public from harm."

Nebraska's law charges applicants with demonstrating a need for new

regulation.² Among other factors, applicants must explain "[t]he problem created by not regulating a health professional group not previously regulated" and describe any standards already in place to guard against harms. They also "have the burden of producing evidence to support [their] application[s]."

Once an application is received, the director of public health establishes a six-member technical review committee. By law, the director must "ensure that the total composition of the committee is fair, impartial, and equitable."

The technical committee is required to review the application and gather evidence by its own fact-finding and through public hearings. The committee must evaluate the proposal according to the law's criteria, which includes whether "[u]nregulated practice can clearly harm or endanger the health, safety, or welfare of the public." This is a moderate standard. In addition, the committee must consider whether regulation would impose costs on workers, consumers or the state and whether the public could be protected by less restrictive means. If it determines regulation is required, it must recommend the least restrictive regulation that would protect the public. To this end, Nebraska's sunrise law provides a list of regulations ranging from inspections to licensing.

On finishing its review, the technical committee is required to prepare a written report and file it with the

director of public health and the state Board of Health. The Board must then conduct its own review according to the same criteria as the technical committee. After the Board forwards its report to the director, the director is required to conduct his or her own review, again following the same statutory guidance. Not bound by the other reviewers' recommendations, the director must produce a final report and submit it to the Legislature no later than 12 months after the application was filed. If the Legislature deems regulation appropriate, it must enact the least restrictive regulation.

Despite the state's seemingly robust three-step sunrise review process, in which reviewers proactively seek out information, the state's reports miss the mark. This may be because the technical committee tends not to seek out independent sources, instead consulting mainly industry insiders. Nevertheless, Nebraska's reviews rarely recommend licensure.

84%
of Requests Came
from Industry

66%
of Requests Sought
New Licenses

21%
of Reviews Recommended
New Licenses

29
Reports from
1986 to 2017

38 Reviews
32 Unique Occupations
6 Sets of Repeat Reviews

Regularly Produces
Sunrise Reports*

Neb. Rev. Stat. Ann. §§ 71-6201 to -6229

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

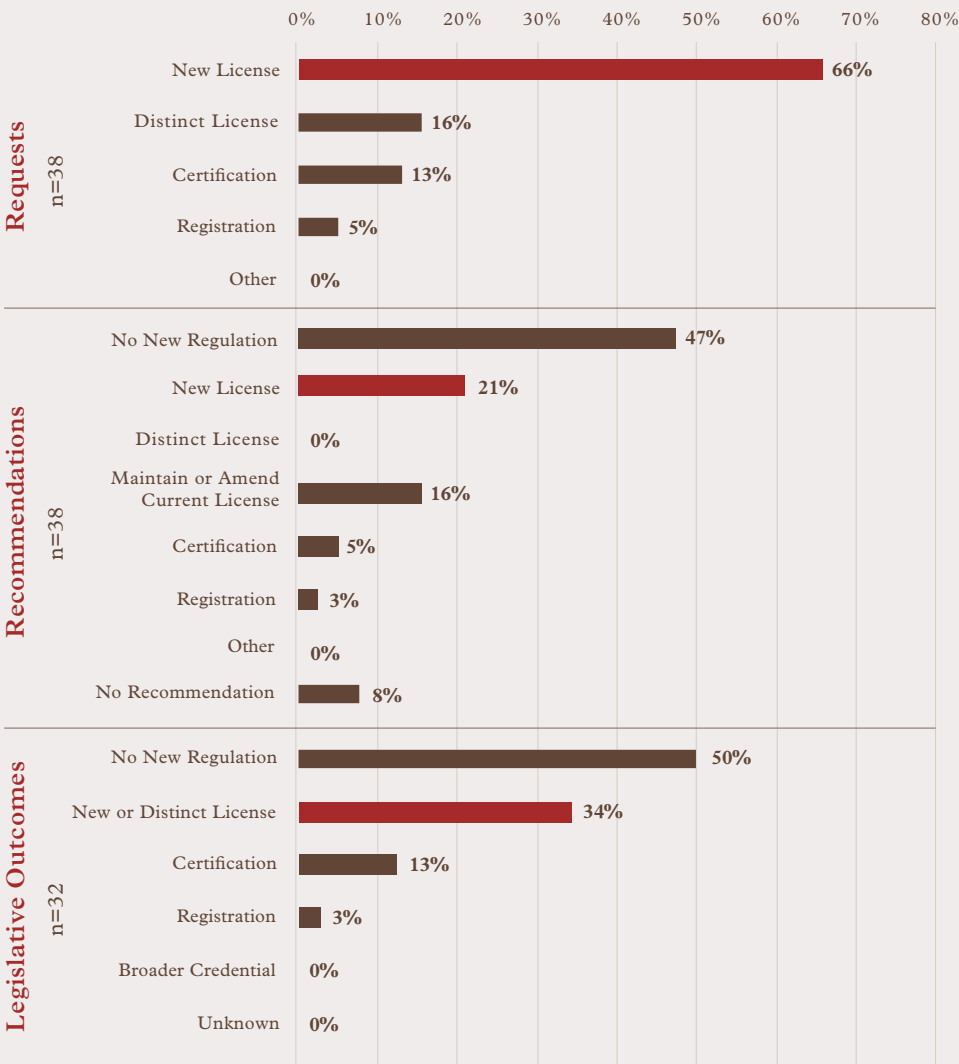
1 Nebraska's sunrise law also allows for a "directed review" initiated by the director and the chairperson of Legislature's Health and Human Services Committee, rather than by an applicant. Directed review involves an investigation by only the technical committee.

2 Nebraska's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Neb. Rev. Stat. Ann. §§ 71-6202, -6221.



Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of Nebraska's Sunrise Reviews 1986–2017



Occupations Licensed Without Supporting Recommendations

Dialysis Technicians
Medical Nutrition Therapists
Radiographers, Limited Scope
Radiologic Technicians

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018. To generate recommendations, we selected the most frequent recommendation among the three reviewers. For example, if two of the three reviewers recommended no new regulation, we counted that as the recommendation. We coded no recommendation in cases where the reviewers all disagreed.

South Carolina

South Carolina's Now Defunct Sunrise Review Commission Once Produced Thorough Reports

For almost 10 years, South Carolina produced thorough sunrise reports thanks to an agency called the State Reorganization Commission. However, the General Assembly repealed the commission in the late 1990s. It has not produced any new sunrise reports since.

South Carolina enacted its sunrise law, which covers both health and non-health occupations, in 1988. Under the law, sunrise review is triggered by the introduction of regulatory legislation. Although the law does not require regulation proponents to file an application to initiate the sunrise process, the state's reports indicate that industry insiders were behind most (89%) of the bills.

After a bill proposing new regulation of an occupation is introduced, the bill is supposed to be referred to the relevant subcommittee. Prior to SRC's repeal, the subcommittee then had three options: It could (1) conduct a public hearing and evaluate the need for regulation itself; (2) conduct the hearing with special assistance from SRC and ask SRC to produce a report with its analysis; or (3) request that SRC conduct the hearing itself, carry out a review of the proposed regulation,

and produce a written report with its findings and a recommendation. All of the South Carolina reports in our dataset were produced according to the third option.

For its sunrise reviews, SRC was tasked with evaluating whether regulation was justified by a "clear and recognizable danger to the health, safety, or welfare of the public" posed by unregulated practice of the occupation. This is a moderate standard of harm. SRC also had to consider a regulation's costs to consumers and possible benefits and ascertain whether existing laws and regulations were sufficient to protect the public. To these ends, SRC was required to gather evidence from regulation proponents and any other parties affected by regulation during the hearing. It was also required to conduct its own research. The law set no time limit for SRC's review.

If SRC concluded new regulation was necessary, South Carolina's sunrise law required it to recommend the least restrictive regulation that would protect the public. To guide that determination, the law provides a menu of regulatory options, beginning with less restrictive measures such as civil causes of action

and criminal penalties, inspections, and registration; the law also specifies that licensure is only appropriate where other regulations are insufficient. The law does not require the General Assembly to enact least restrictive regulations, however.

South Carolina's sunrise law requires less in-depth reviews than the laws of some other states. Nevertheless, the state's reports in our dataset are highly rigorous, consistently using independent research and analysis to understand occupations and the need, or lack thereof, for regulation. Since repealing SRC in 1998, South Carolina has not produced any new sunrise reports, though its sunrise law remains on the books.

89%
of Requests Came
from Industry

78%
of Requests Sought
New Licenses

17%
of Reviews Recommended
New Licenses

7
Reports from
1989 to 1997

18 Reviews
18 Unique Occupations
No Sets of Repeat Reviews

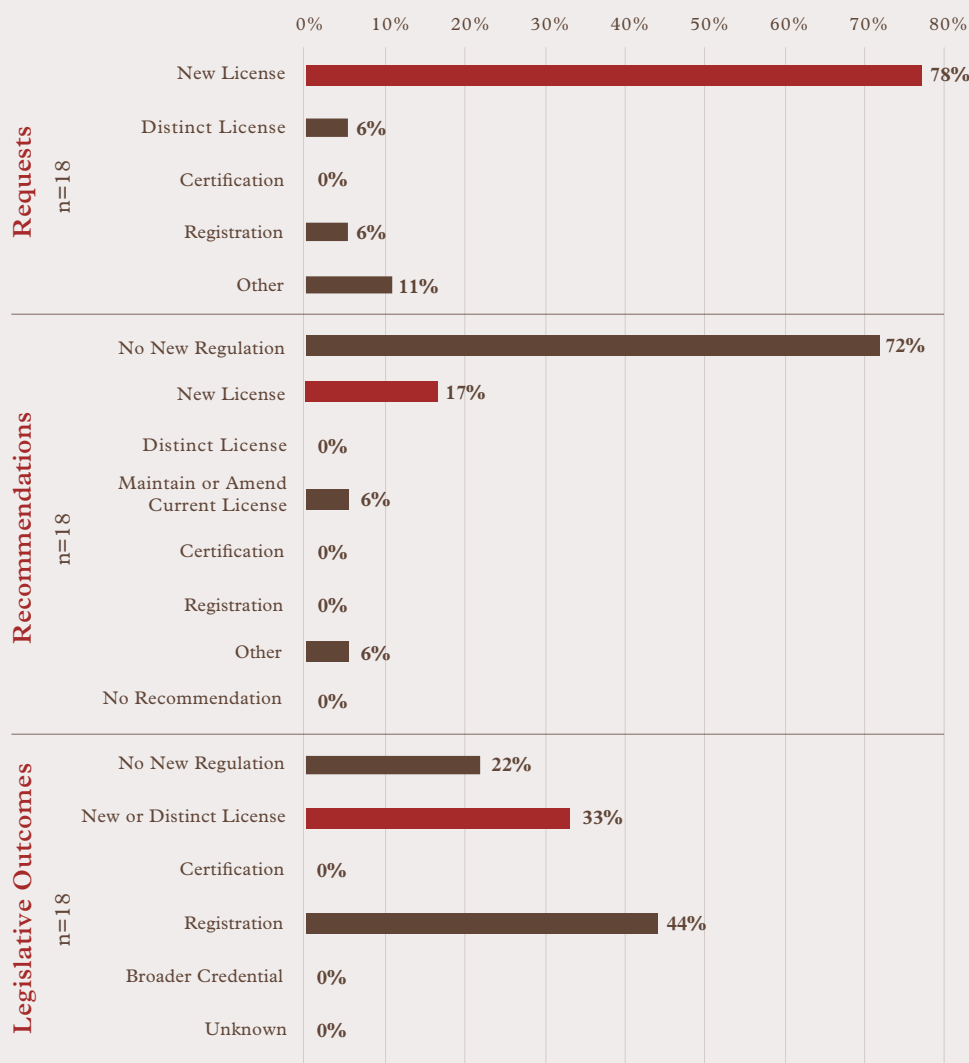
**Does Not Regularly Produce
Sunrise Reports***

S.C. Code Ann. §§ 1-18-10; -20; -30; -40; -50; -60; -70

*We describe states as not regularly producing reports if they had not produced a report within two years of 2017, when we collected reports for this study.

Licensure Was Frequently Sought but Infrequently Recommended or Enacted

Summary of South Carolina's Sunrise Reviews 1989–1997



Occupations Licensed Without Supporting Recommendations

Electricians
HVAC Technicians
Plumbers

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018. “Other request” includes a review where there was no request.

Utah's Two Sunrise Reports Are Superficial Despite Law Requiring Thorough Reviews

The Utah sunrise reports in our dataset are lacking in independent research and meaningful analysis despite a law that, on its face, might be expected to produce rigorous reports. They are also very few. We identified only two reports, covering three reviews, from the state, all from between 2013 and 2015.¹

Utah enacted its sunrise law, which covers both health and non-health occupations, in 1999, making it one of the most recent in our dataset. Sunrise review is initiated when a government representative or a representative of the unregulated occupation files an application proposing regulation;² occupational representatives must pay a \$500 fee. All three requests in our study came from such industry insiders.

Applications are filed with the Office of Legislative Research and General Counsel and are assigned to the Occupational and Professional Licensure Review Committee for review and recommendation. The nine-member OPLRC is composed of six legislators and three members of the public appointed by the Legislature; it is co-chaired by one House member and one Senate member. OPLRC conducts in-person reviews, receiving information from applicants and any other interested party.

Utah's sunrise law charges applicants with demonstrating a need for new regulation. Among other factors, they must explain why regulation "is necessary to address a compelling state interest in protecting against present, recognizable, and significant harm to the health or safety of the public." This is among the highest standards of harm in our dataset.

Utah's law sets out various criteria for the review, including a cost-benefit evaluation that asks whether regulation would negatively impact practitioners or reduce their numbers, impose new economic hardship on the public, or create barriers to service. OPLRC must also determine whether previous or ongoing measures can address the threat of harm, including considering whether the occupation has an established code of ethics, a voluntary certification program or other measures to ensure a minimum quality of service. It is also supposed to ask whether the proposed regulation is narrowly tailored to protect against the specific harm identified.

If OPLRC finds that the proposed regulation is overbroad, it must determine and recommend the least restrictive regulation that would protect the public. However, the Legislature is not required to enact the least restrictive regulation.

OPLRC is supposed to produce an annual report detailing all of its reviews for the year. However, it rarely produces such reports in practice, though this could change if a recent proposal to reform the sunrise law comes to fruition.³ Moreover, the two reports it has produced are, along with Arizona's, the nation's most superficial, merely stating the request, applicant, recommendation and any outcome. One of the two also included meeting minutes as attachments. Based on the reports, it appears OPLRC only scrutinizes requests during committee meetings and rarely, if ever, engages in independent research or analysis.

100%
of Requests Came
from Industry

67%
of Requests Sought
New Licenses

**No Reviews Recommended
New Licenses**

2
Reports from
2013 to 2015

3 Reviews
3 Unique Occupations
No Sets of Repeat Reviews

**Does Not Regularly
Produce Sunrise Reports***

Utah Code Ann. §§ 36-23-101 to -109

* We describe states as not regularly producing reports if they had not produced a report within two years of 2017, when we collected reports for this study.

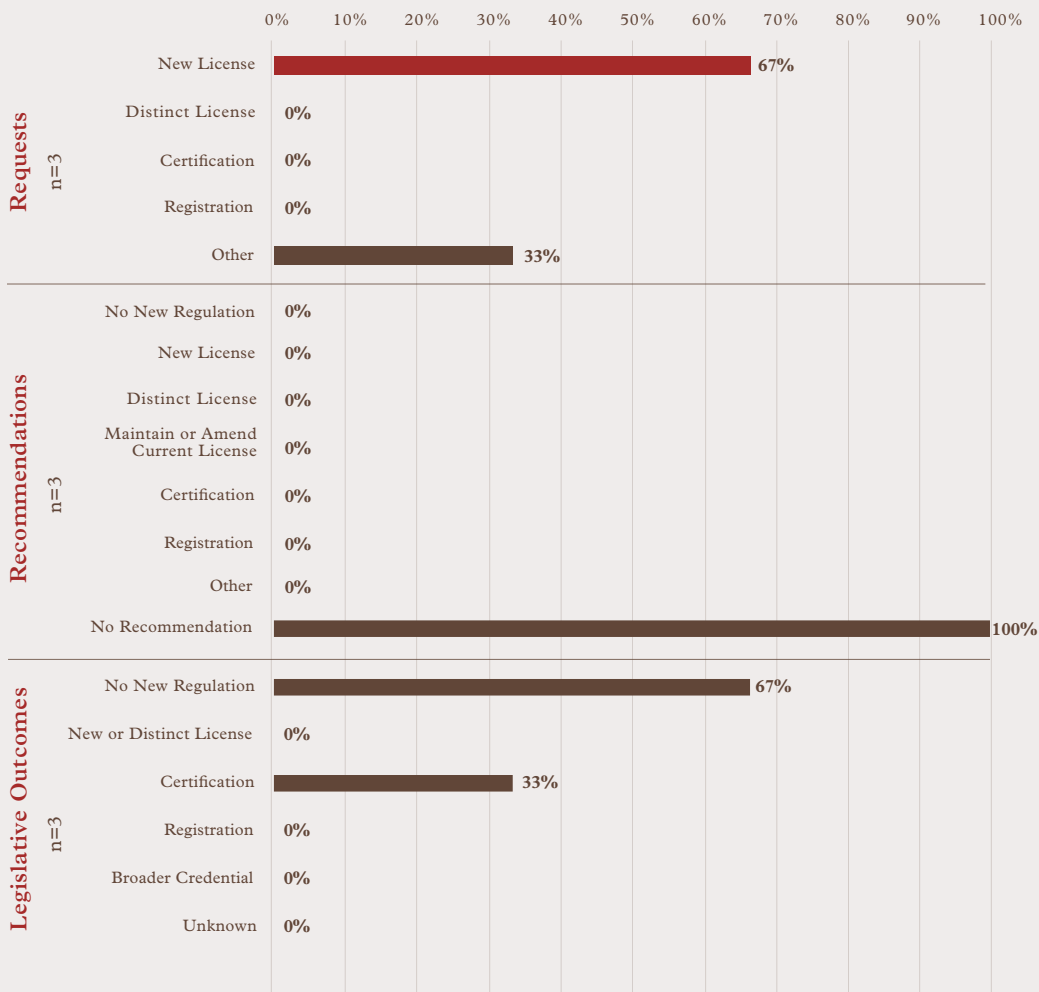
¹ Meeting minutes show that Utah conducted several additional sunrise reviews; however, it never produced corresponding reports.

² An application must be filed before any regulatory legislation can be introduced.

³ The proposal would move sunrise review authority to the Department of Commerce. S.B. 16, 64th Leg., Gen. Sess. (Utah 2022).

Licensure Was Frequently Sought but Never Recommended or Enacted

Summary of Utah's Sunrise Reviews 2013–2015



Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Vermont

Vermont Generally Produces Rigorous Sunrise Reports Under Its Strong Sunrise Law

Vermont's sunrise law requires some of the most detailed inquiries into occupational harms, proposed regulations' costs and least restrictive regulations of any state. In line with the law, the Vermont sunrise reports in our dataset are generally rigorous.

Vermont enacted its sunrise law, which covers both health and non-health occupations, in 1977, making it one of the nation's oldest. The law's preamble expressly acknowledges the importance of preserving open occupational entry: "The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation."

Vermont's sunrise process puts the onus on proponents to demonstrate the need for new regulation.¹ Administrative regulations indicate sunrise review is initiated when regulation proponents file an application with the state's Office of Professional Regulation, an executive agency. Most requests for regulation—88%—originated with industry insiders. There is no application fee.

OPR has at least four months to review applications and produce its report, called a preliminary assessment, depending on when applications are submitted. OPR can decline to review an application if the proposed regulation would affect fewer than 250 individuals

or require an unwarranted expenditure of state resources. OPR can also decline repeat requests unless they provide new information. Only Colorado's sunrise law has a similar provision.

Vermont's sunrise law states that an occupation should be regulated only when three criteria are met: (1) "the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote," which is a moderate standard; (2) "the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability"; and (3) "the public cannot be effectively protected by other means."

To determine whether a regulatory proposal meets these criteria, OPR must review the application and hold a public meeting. Among other factors, OPR may consider, if any, "specific examples of the harm or threat identified" and previous efforts to mitigate such harms; how regulation "will result in reduction or elimination of the harms or threats identified"; and why alternatives "would not be adequate to protect the public interest." It may also consider "the extent to which regulation might harm the public" by, for example, "restrict[ing] entry into the profession or occupation." OPR is not required to recommend the least restrictive regulation.



After OPR submits its report, the General Assembly is supposed to consider the proposal. If it finds that new regulation is necessary, it must enact the least restrictive measure consistent with the public interest. To this end, the law provides a list of regulatory alternatives to licensure, ranging from strengthened civil remedies and criminal sanctions to business or facility regulations to registration to certification. It also describes situations in which each would be appropriate. Of course, the sunrise law cannot pre-empt legislative decisions, so these provisions are nonbinding.

Vermont's strong sunrise law requires careful consideration of occupational harms, the costs of proposed regulations, and least restrictive regulations. And in fact, Vermont's sunrise reports are rigorous, generally using independent research and analysis to understand occupations and the need, or lack thereof, for regulation. Nevertheless, the state's reviews tend to recommend licensure more often than states with similarly strong laws or reports.

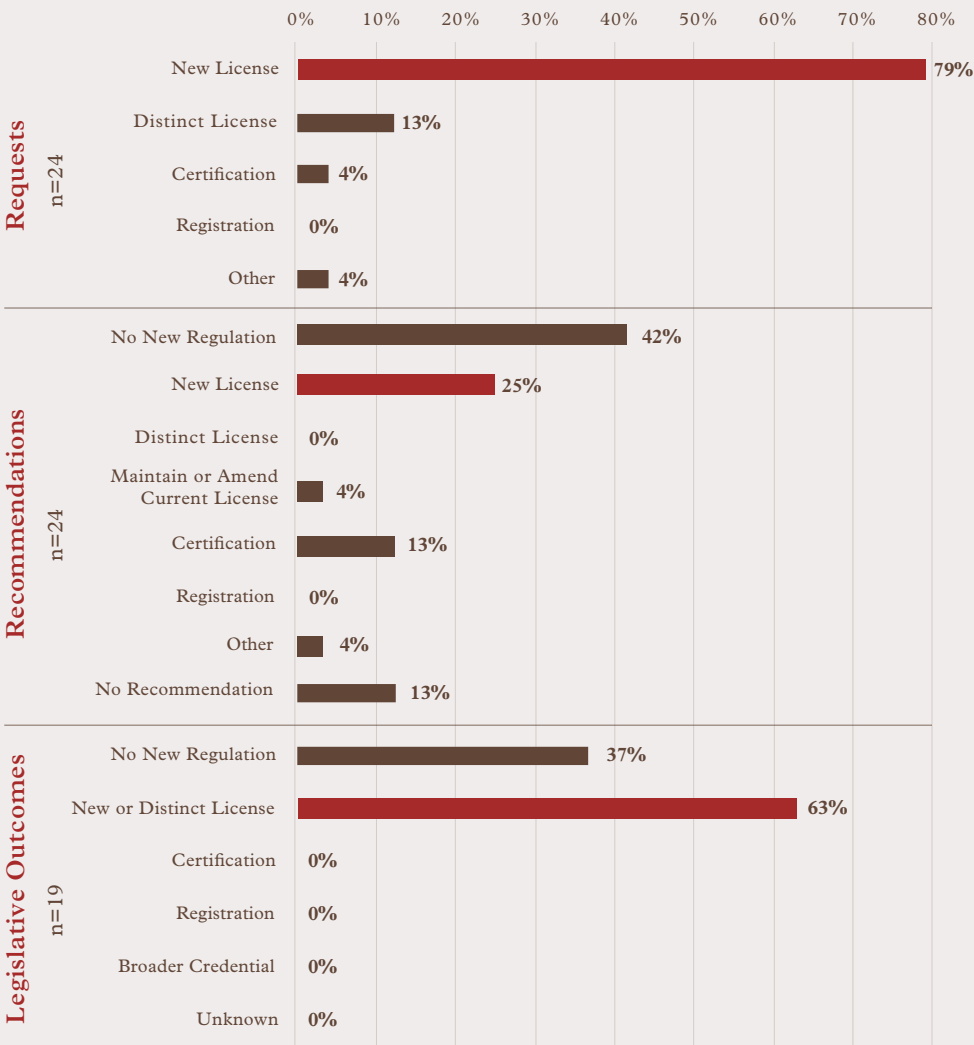
Vt. Stat. Ann. tit. 26, §§ 3101 to -3107

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

¹ Vermont's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Vt. Stat. Ann. tit. 26, § 3108.

Licensure Was Frequently Sought and Enacted Despite Few Licensure Recommendations

Summary of Vermont’s Sunrise Reviews
1999–2017



Occupations Licensed Without Supporting Recommendations

Addiction Counselors
Audiologists
Behavior Analysts
Dental Hygienist, Mid Level
Landscape Architects*
Midwives
Speech Language Pathologists

*Multiple recommendations against licensure.

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Virginia

Virginia Consistently Produces Rigorous Sunrise Reports Under Its Strong Processes

Virginia has separate but similar sunrise processes for health and non-health occupations. The state's sunrise laws and administrative policies require some of the most detailed inquiries into least restrictive regulations of any state. Moreover, both processes are guided by a policy statement that expressly acknowledges the importance of preserving open occupational entry while requiring a moderate standard of harm to justify regulation.

Virginia law states: "The right of every person to engage in any lawful profession, trade, or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare." Regulation is justified only if the unregulated occupational practice "can harm or endanger . . . the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument."

Virginia enacted its sunrise processes for health and non-health occu-

pations in 1977 and 1979, making them two of the nation's oldest. For both types of occupations, sunrise review can be triggered by an application filed by regulation proponents, by executive action or by legislative request. There is no fee for applications. In practice, however, most reviews have been initiated when the General Assembly has requested a general review into whether regulation of an occupation is needed.

For health occupations, sunrise reports of health occupations are produced by the Board of Health Professions. In addition to conducting its own investigations, BHP considers comments from practitioners and members of the public. It evaluates the threat of harm from unregulated practice and searches for evidence of past harm based on a review of malpractice insurance information and job analyses. It also evaluates whether regulation's costs to consumers and the state are justified and whether current laws and efforts by occupational groups can protect the public. And BHP must consider less restrictive alternatives, such as strengthened consumer protection laws and inspections, and ultimately recommend the least restrictive regulation that would protect the public. The law sets no time limit for BHP's reviews.

For non-health occupations, sunrise reports are produced by the



Board for Professional and Occupational Regulation. Unlike BHP, BPOR is not expressly permitted to accept input from parties other than regulation proponents. Nor is it required to consider evidence of past harm, weigh costs to consumers or the state, or recommend least restrictive regulations. However, it must evaluate the threat of harm from unregulated practice, whether current government and private measures can address the threat, and whether the proposed regulation is narrowly tailored. The law gives BPOR at least 11 months for its review, depending on when applications are submitted.

For both types of occupations, Virginia's sunrise law requires the General Assembly to enact least restrictive regulations. Of course, the sunrise law cannot pre-empt legislative decisions, so this provision is nonbinding.

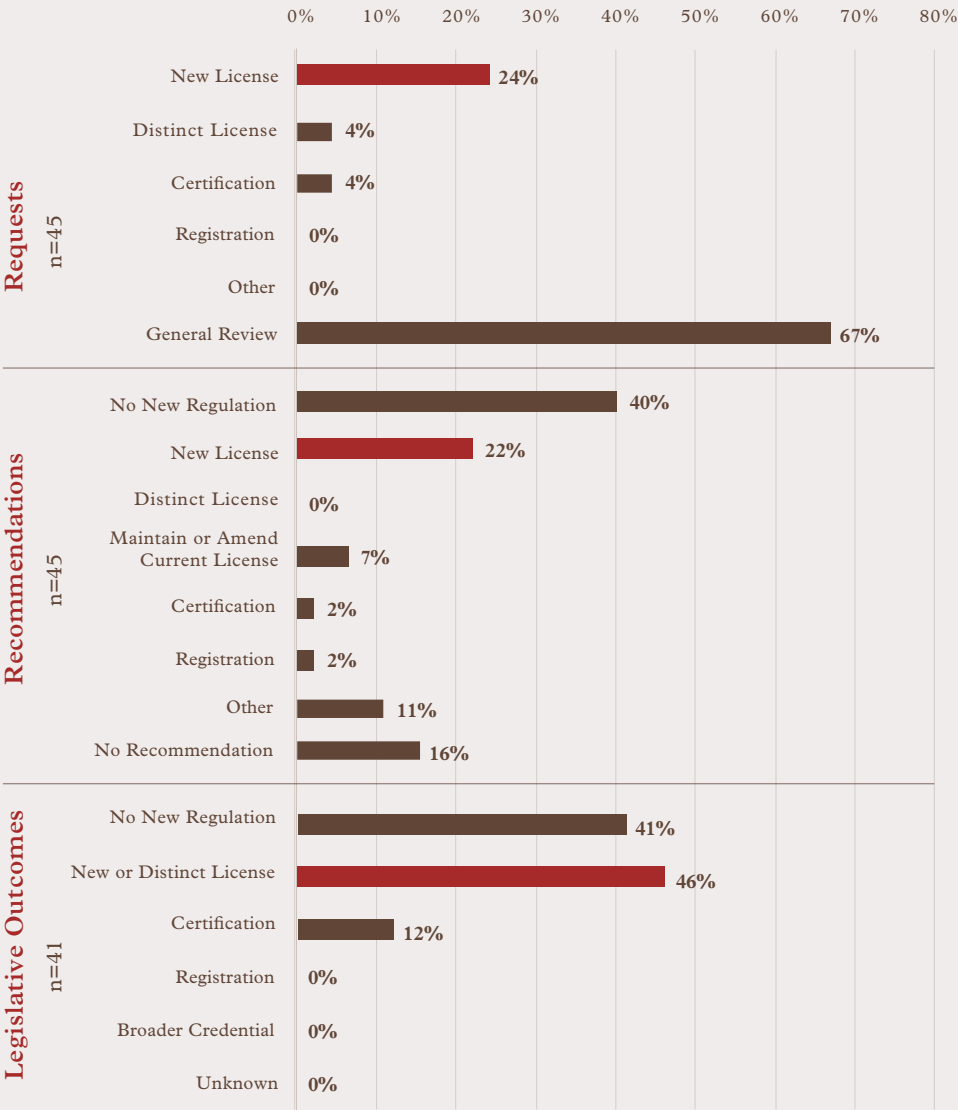
Both Virginia's health and non-health reports in our dataset are highly rigorous, consistently using independent research and analysis to understand occupations and the need, or lack thereof, for regulation.

Health-related occupations: Va. Code Ann. §§ 54.1-2510; 54.1-100; **Policies and Procedures for the Evaluation of the Need to Regulate Health Occupations and Professions, Guide Document No. 75-2 (revised February 25, 2019); Non-health-related occupations:** Va. Code Ann. §§ 54.1-100; -.300; -.310; -.310.1; -.311

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

General Reviews and Licensure Were Frequently Sought—and Licensure Was Frequently Enacted Despite Few Licensure Recommendations

Summary of Virginia’s Sunrise Reviews
1987–2017



Occupations Licensed Without Supporting Recommendations

Home Inspectors
Landscape Architects
Locksmiths
Massage Therapists
Occupational Therapy Assistants
Pharmacy Technicians
Property Managers
Radiologic Technicians
Speech Language Pathology Assistants
Tattooists
Vocational Rehabilitation Counselors

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A general review is an open-ended inquiry into whether and how an occupation should be regulated. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Washington

Washington Consistently Produces Rigorous Sunrise Reports Under Its Strong Sunrise Law

Washington has separate but similar sunrise processes for health and non-health occupations. The state's sunrise laws require some of the most detailed inquiries into proposed regulations' costs and least restrictive regulations of any state. Moreover, both processes are guided by policy statements that expressly acknowledge the importance of balancing public safety with open occupational entry.

Both of Washington's sunrise statutes state that "[t]he legislature believes that all individuals should be permitted to enter into [an occupation] unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the [occupation]." In line with this policy, Washington law permits regulation only when three criteria are met: (1) "[u]nregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument," which is a moderate standard; (2) "[t]he public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability"; and (3) "[t]he public cannot be effectively protected by other means in a more cost-beneficial manner."

Washington enacted its sunrise processes for health and non-health occupations in 1983 and 1987, respectively. For both types of occupations, sunrise review is triggered by the introduction of regulatory legislation.¹ In practice, the Legislature has also frequently initiated reviews by requesting a general review into whether regulation of an occupation is needed. Although the law does not require regulation proponents to file an application to initiate the sunrise process, the state's reports indicate that industry insiders were behind most (61%) of the bills.

After a bill is introduced proposing new regulation of an occupation, the bill is referred to the relevant legislative committee. The committee can conduct its own reviews or else refer health bills to the Department of Health and non-health bills to the Department of Licensing, both executive agencies, for review and recommendation.

Reviews of both types of occupations must include evaluations of harm from an occupation; previous or ongoing efforts to address the identified harm; and proposed regulations' costs to workers, consumers and the state as well as its possible benefits. Reviews may also consider whether proposed regulations are narrowly targeted to

address the identified harm. Reviews are not, however, required to recommend the least restrictive regulation that would protect the public. The law sets no time limit for reviews.

After a department submits its written report to the Legislature, the Legislature deliberates. Washington's sunrise law encourages the Legislature, if it determines regulation is necessary, to enact the least restrictive regulation. To this end, the law provides a menu of regulatory options, ranging from least restrictive, strengthened civil remedies and criminal penalties, to most restrictive, licensing.

Both Washington's health and non-health reports in our dataset are highly rigorous, consistently using independent research and analysis to understand occupations and the need, or lack thereof, for regulation.

61%

of Requests Came
from Industry

53%

of Requests Sought
New Licenses

14%

of Reviews Recommended
New Licenses

45

Reports from
1988 to 2016
(32 health, 13 non-health)

49 Reviews

45 Unique Occupations

4 Sets of Repeat Reviews

**Regularly Produces
Sunrise Reports***

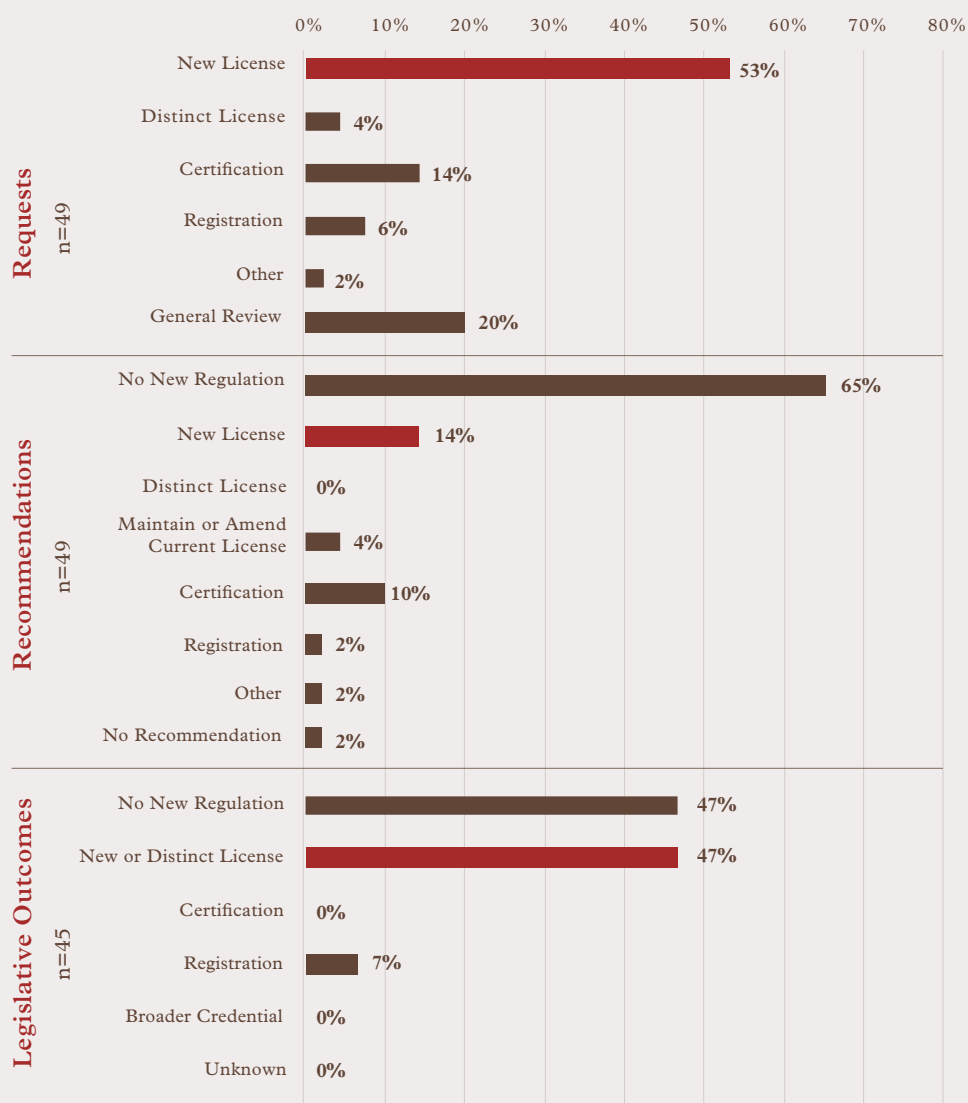
Health-related occupations: Wash. Rev. Code Ann. §§ 18.120.010, -.020, -.030, -.040; Non-health-related occupations: Wash. Rev. Code Ann. §§ 18.118.005, -.010, -.020, -.030, -.040

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

¹ Washington's health and non-health sunrise laws also cover proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. Wash. Rev. Code Ann. §§ 18.120.010(1), -.020(1), -.050; 18.118.010(1), -.020(1).

Licensure and General Reviews Were Frequently Sought—and Licensure Was Frequently Enacted Despite Few Licensure Recommendations

Summary of Washington's Sunrise Reviews 1988–2016



Occupations Licensed Without Supporting Recommendations

Addiction Counselors
Athletic Trainers*
Audiologists
Crane Operators
Dialysis Technicians
Genetic Counselors
Geologists
Medical Assistants
Mental Health Practitioners
Physical Therapist Assistants *
Real Estate Appraisers
Respiratory Therapists
Speech Language Pathologists
Speech Language Pathology Assistants*

*Multiple recommendations against licensure.

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A general review is an open-ended inquiry into whether and how an occupation should be regulated. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

West Virginia

West Virginia Consistently Produces Rigorous Sunrise Reports Under Its Strong Sunrise Law

The West Virginia sunrise reports in our dataset are consistently rigorous, likely thanks to a sunrise law that requires a two-step review and some of the most detailed inquiries of any state into occupational harms and proposed regulations' costs.

West Virginia enacted its sunrise law, which covers both health and non-health occupations, in 1998, making it one of the most recent in our dataset. The law's preamble expressly acknowledges the importance of preserving open occupational entry while also requiring a high standard of harm to justify regulation. It states: "[I]t is the policy of this state that: (1) The right of an individual to pursue a lawful occupation is a fundamental right; (2) Where the state finds it is necessary to displace competition, it will use the least restrictive regulation to protect consumers from present, significant, and substantiated harms that threaten public health and safety."

West Virginia's sunrise law puts the onus on proponents to demonstrate the need for new regulation by filing an application with the Legislature's Joint Standing Committee on Government Organization.¹ This application initiates sunrise review. Any interested party can file an application, provided

it is accompanied by a statement of support signed by 10 members of the occupation. However, most—61%—are filed by industry insiders. There is no application fee.

Applications are referred to the Office of the Legislative Auditor's Performance Evaluation and Research Division. PERD has nine months to conduct its review and produce its report.

To justify regulation, West Virginia's sunrise law requires "[e]vidence, if any, of present, significant, and substantiated harms to consumers in the state." This is among the highest standards of harm in our dataset. PERD must also evaluate "the effects of legislation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs and other effects." West Virginia's law also requires PERD to recommend the least restrictive appropriate method of regulation that would protect the public. To this end, the law provides a list of regulatory alternatives to licensure.

After PERD submits its report to the Joint Standing Committee, the law allows the Committee to hold public hearings and produce its own report, with its own recommendations,

including those for least restrictive regulations, for submission to the Legislature along with PERD's report. This study considers only PERD's reports. The Legislature is required to enact least restrictive regulations. Of course, the sunrise law cannot pre-empt legislative decisions, so this provision is nonbinding.

West Virginia's strong sunrise law requires careful consideration of evidence of past harm from an occupation as well as the costs of proposed regulations. And in fact, West Virginia's sunrise reports are rigorous, consistently using independent research and analysis to understand occupations and the need, or lack thereof, for regulation. Nevertheless, the state's reviews tend to recommend licensure more often than states with similarly strong laws or reports, possibly because PERD's placement within the legislative branch leaves the process susceptible to politics.

61%
of Requests Came
from Industry

87%
of Requests Sought
New Licenses

30%
of Reviews Recommended
New Licenses

17
Reports from
1999 to 2017

23 Reviews
21 Unique Occupations
2 Sets of Repeat Reviews

Regularly Produces
Sunrise Reports*

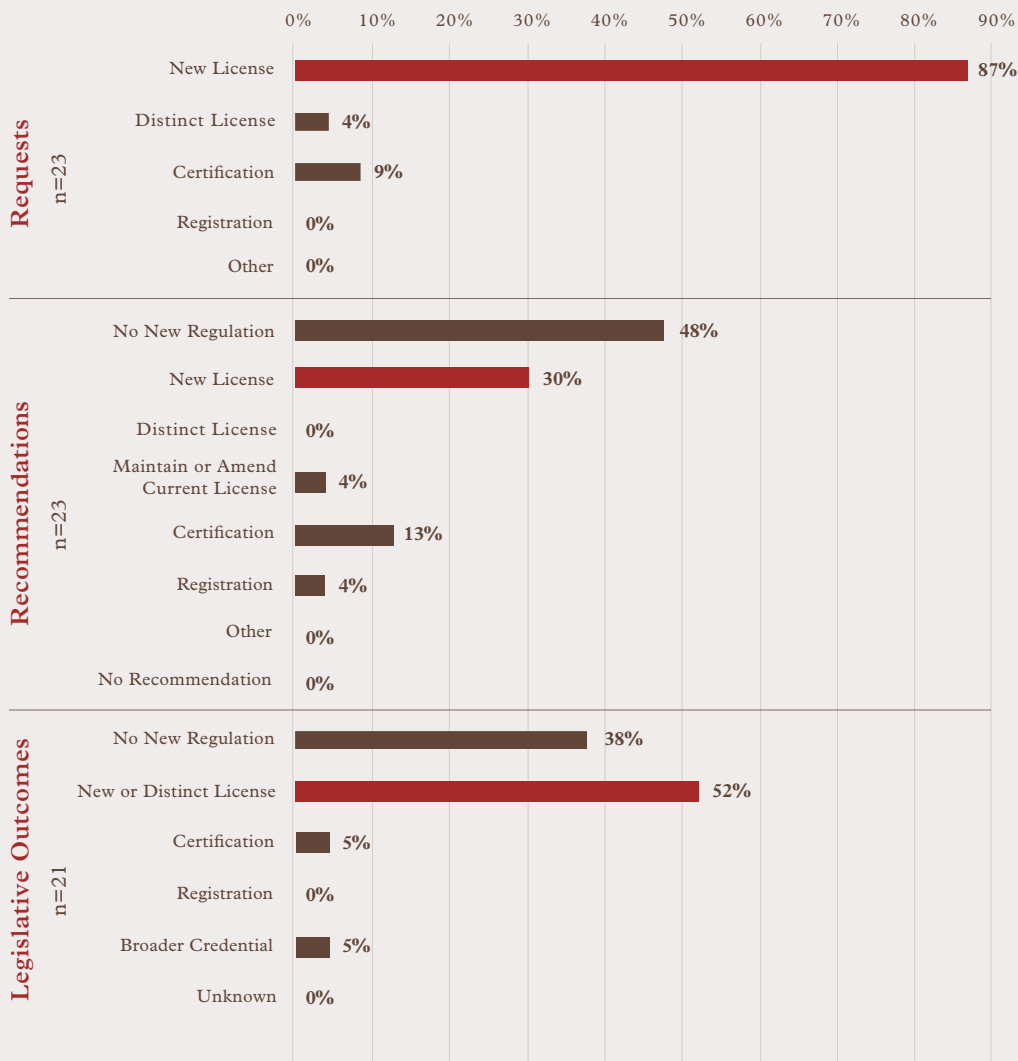
W. Va. Code Ann. §§ 30-1A-1, -1a, -2, -3, -4, -5, -6

* We describe states as regularly producing reports if they had produced at least one report within two years of 2017, when we collected reports for this study.

¹ West Virginia's sunrise law also covers proposed changes to existing regulations, such as alterations to a license's scope of practice, but our study looks only at proposals for new regulations. W. Va. Code §§ 30-1A-2, -5.

Licensure Was Frequently Sought and Enacted More Often Than Recommended

Summary of West Virginia's Sunrise Reviews 1999–2017



Occupations Licensed Without Supporting Recommendations

Fire Damper Technicians
Fire Sprinkler Fitters
HVAC Technicians
Motor Vehicle Salespeople
Plumbers

Notes: A distinct license is a separate license for an occupation already licensed under another, usually broader, occupational category. A recommendation of no new regulation means just that; a recommendation to maintain or amend license refers to a recommendation to reject new regulations (such as a distinct license) in favor of keeping an existing license, with or without amendments. A legislative outcome of no new regulation means no new regulation of *personal qualifications*; the legislature may have enacted other regulations. An outcome of broader credential means the legislature opted to sweep the occupation into a broader licensure, certification or registration scheme. Where a state reviewed an occupation more than once, we are counting only the legislative outcome as of 2018.

Endnotes

- 1 Verified Petition, *Jackson v. Raffensperger*, 843 S.E.2d 576 (Ga. 2020) (No. S20A0039), <https://ij.org/wp-content/uploads/2018/06/Final-Verified-Petition-with-Exhibits.pdf>
- 2 *Workshop: Examining health care competition (Project Number P131207): Before the United States Federal Trade Commission* (2014) (comments of the Healthy Children Project, Inc.). https://www.ftc.gov/system/files/documents/public_comments/2014/04/00150-89997.pdf
- 3 *Workshop*, 2014. See also Walker, M. (2017). Licensure of the International Board Certified Lactation Consultant: A national necessity in the United States. *Journal of Human Lactation*, 33(4), 761–764 and United States Lactation Consultant Association. (2016, Sept. 13). *Advocacy in action*.
- 4 Prabhu, M. T. (2018, June 29). Georgia agrees to delay enforcement of lactation consultant licensing. *The Atlanta Journal-Constitution*. <https://www.ajc.com/news/state--regional-govt--politics/georgia-agrees-delay-enforcement-lactation-consultant-licensing/EOXWNNBWuozsHnxaj1FjhM/>
- 5 Ga. Code Ann. § 43-22A-7.
- 6 See, e.g., Pizzola, B., & Tabarrok, A. (2017). Occupational licensing causes a wage premium: Evidence from a natural experiment in Colorado's funeral services industry. *International Review of Law and Economics*, 50, 50–59.
- 7 New Mexico, Oregon and Rhode Island also license lactation consultants. However, their laws do not prevent non-IBCLC lactation consultants like Mary from practicing. N.M. Stat. §§ 61-36-1 *et seq.* (effective June 16, 2017); Or. Rev. Stat. §§ 676.665 *et seq.* (effective Jan. 1, 2018); 23 R.I. Gen. Laws §§ 23-13.6-1 *et seq.* (effective July 3, 2014).
- 8 Georgia Occupational Regulation Review Council. (2013) *House Bill 363: Georgia Lactation Consultant Practice Act*, p. 17.
- 9 Georgia Occupational Regulation Review Law, Ga. Code Ann. §§ 43-1A-1 *et seq.*
- 10 The 15 states that regularly produce sunrise reports or have done so in the past are Arizona, Colorado, Florida, Georgia, Hawaii, Kansas, Maine, Minnesota, Nebraska, South Carolina, Utah, Vermont, Virginia, Washington and West Virginia. The other seven states with sunrise laws on the books are Arkansas, California, Idaho, New Mexico, Ohio, Tennessee and Texas.
- 11 See, e.g., Hawaii's sunrise law, which specifies that "the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation," Haw. Rev. Stat. § 26H-2, and Arizona's, which says, "Regulation shall not be imposed on any unregulated health profession for the purpose of prohibiting competition, but only for the exclusive purpose of protecting the public interest." Ariz. Rev. Stat. Ann. § 32-3103(A). See also Council on Licensure, Enforcement and Regulation. (n.d.). *Sunrise, sunset and state agency audits*. <https://www.clearhq.org/page-486181>; Hentze, I. (2018, July). Improving occupational licensing with sunrise and sunset reviews. *LegisBrief*, 26(25), <https://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx>; Johnson, E., Aggarwal, S., Bezjak, S., Butitova, D., Islam, M. M., & Poudel, H. (2016). *Occupational licensing and women entrepreneurs in Missouri: A report to the Women's Foundation* (IPP Research Report). The Women's Foundation. <https://static1.squarespace.com/static/545815dce4b0d75692c341a8/t/582b2125e4fcb54bebfd651e/1479221544420/OL+and+Women+Entrepreneurs+in+MO+-+Final+11.14.16.pdf>. And for research on how occupational lobbies pursue regulation to improve their professional stature, see, e.g., Larson, M. S. (1977). *The rise of professionalism: A sociological analysis*. Berkeley, CA: University of California Press; Abel, R. L. (1979). The rise of professionalism. *British Journal of Law and Society*, 6(1), 82–98; Freidson, E. (2001). *Professionalism: The third logic*. Chicago, IL: University of Chicago Press; Carpenter, D. M. (2007). *Designing cartels: How industry insiders cut out competition*. Arlington, VA: Institute for Justice. <http://ij.org/wp-content/uploads/2015/03/Interior-Design-Study.pdf>; Carpenter, D. M. (2008). Regulation through titling laws: A case study of occupational regulation. *Regulation and Governance*, 2(3), 340–359; Erickson, A. C. (2013). *White out: How dental industry insiders thwart competition from teeth-whitening entrepreneurs*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2015/03/white-out1.pdf>; Allensworth, R. H. (2017). Foxes at the henhouse: Occupational licensing boards close up. *California Law Review*, 105(6), 1567–1610; Edlin, A., & Haw, R. (2014). Cartels by another name: Should licensed occupations face antitrust scrutiny? *University of Pennsylvania Law Review*, 162, 1093–1164; *Occupational licensing: Regulation and competition: Hearing before the Subcommittee on Regulatory Reform, Commercial, and Antitrust Law of the Committee on the Judiciary, House of Representatives*, 115th Cong. (2017) (written testimony of Rebecca Haw Allensworth). <https://www.govinfo.gov/content/pkg/CHRG-115hhrg29777/pdf/CHRG-115hhrg29777.pdf>; Mellor, W., & Carpenter, D. M. (2016). *Bottlenecks: Gaming the government for power and private profit*. New York, NY: Encounter Books; Carpenter, D. M., Knepper, L., Sweetland, K., & McDonald, J. (2017). *License to work: A national study of burdens from occupational licensing* (2nd ed.) Arlington, VA: Institute for Justice. <http://ij.org/report/license-work-2/>
- 12 Council on Licensure, Enforcement and Regulation, n.d.; Johnson et al., 2016; Quitmeyer, J. M. (1977). Sunset legislation: Spotlighting bureaucracy. *University of Michigan Journal of Law Reform*, 11, 269–273; Adams, B., & Sherman, B. (1978). Sunset implementation: A positive partnership to make government work. *Public Administration Review*, 38(1), 78–81; Kearney, R. C. (1990). Sunset: A survey and analysis of the state experience. *Public Administration Review*, 50(1), 49–57; Hamm, K. E., & Robertson, R. D. (1981). Factors influencing the adoption of new methods of legislative oversight in the US states. *Legislative Studies Quarterly*, 133–150. See also Shimberg, B., Roederer, D., & Marcelli, R. J. (1978). *Occupational licensing: Questions a legislator should ask*. Lexington, KY: Council of State Governments.

- 13 See, e.g., Shepard, L. (1978). Licensing restrictions and the cost of dental care. *Journal of Law and Economics*, 21(1), 187–201; Haas-Wilson, D. (1986). The effect of commercial practice restrictions: The case of optometry. *Journal of Law and Economics*, 29(1), 165–186; Cox, C., & Foster, S. (1990). *The costs and benefits of occupational regulation*. Washington, DC: Bureau of Economics, Federal Trade Commission. https://www.ftc.gov/system/files/documents/reports/costs-benefits-occupational-regulation/cox_foster_-_occupational_licensing.pdf; Kleiner, M. M. (2000). Occupational licensing. *Journal of Economic Perspectives*, 14(4), 189–202; Kleiner, M. M., & Kudrle, R. T. (2000). Does regulation affect economic outcomes? The case of dentistry. *Journal of Law and Economics*, 19(2), 277–294; Harrington, D. E., & Krynski, K. J. (2002). The effect of state funeral regulations on cremation rates: Testing for demand inducement in funeral markets. *Journal of Law and Economics*, 45(1), 199–225; Kleiner, M. M. (2006). A license for protection. *Regulation*, 29(3), 17–21. <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2006/10/v29n3-2.pdf>; Chevalier, J. A., & Morton, F. M. S. (2008). State casket sales restrictions: A pointless undertaking? *Journal of Law and Economics*, 51(1), 1–23; Thornton, R. J., & Timmons, E. J. (2013). Licensing one of the world's oldest professions: Massage. *Journal of Law and Economics*, 56(2), 371–388; Timmons, E. J., & Mills, A. (2015). *Bringing the effects of occupational licensing into focus: Optician licensing in the United States* (Mercatus Working Paper). Arlington, VA: Mercatus Center, George Mason University. <https://www.mercatus.org/system/files/Timmons-OpticianLicensing.pdf>; Kleiner, M. M., Marier, A., Park, K. W., & Wing, C. (2016). Relaxing occupational licensing requirements: Analyzing wages and prices for a medical service. *Journal of Law and Economics*, 59(2), 261–291; Pizzola and Tabarrok, 2017; Kleiner, M. M., & Vorotnikov, E. S. (2018). *At what Cost? State and national estimates of the economic costs of occupational licensing*. Arlington, VA: Institute for Justice. https://ij.org/wp-content/uploads/2018/11/Licensure_Report_WEB.pdf
- 14 Kleiner and Vorotnikov, 2018; Kleiner, M. M., & Vorotnikov, E. (2017). Analyzing occupational licensing among the states. *Journal of Regulatory Economics*, 52, 132–158; Kleiner, M. M., & Krueger, A. B. (2013). Analyzing the extent and influence of occupational licensing on the labor market. *Journal of Labor Economics*, 31(S1, pt. 2), S173–S202; Kleiner, M. M., & Krueger, A. B. (2010). The prevalence and effects of occupational licensing. *British Journal of Industrial Relations*, 48(4), 676–687.
- 15 See, e.g., Rege, G., Riley, T., Mitchel-Slantz, B., Yibass, S., & Curnow, C. (2019). *NCSL Occupational Licensing Consortium case study reports*. Washington, DC: American Institutes for Research; Hentze, 2018; Department of the Treasury Office of Economic Policy, Council of Economic Advisers, & Department of Labor. (2015). *Occupational licensing: A framework for policymakers*. Washington, DC: White House. https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf; Kleiner, M. M. (2015). *Reforming occupational licensing policies* (Discussion Paper 2015-01). Washington, DC: The Hamilton Project, Brookings Institution. https://www.brookings.edu/wp-content/uploads/2016/06/THP_KleinerDiscPaper_final.pdf
- 16 In addition to reviews of existing regulations, we excluded certain other types of reviews to ensure like comparisons within the dataset. We did not include reviews of requests for business regulations (except those geared toward regulating a sole proprietor's personal qualifications) or federal mandates to regulate an occupation. We retained reviews wherever possible to maintain a full population.
- 17 Council on Licensure, Enforcement and Regulation, n.d.; Hentze, 2018; Johnson et al., 2016.
- 18 Quitmeyer, 1977; Adams and Sherman, 1978. Another difference between sunrise and sunset reviews is that sunset reviews may be used to terminate various types of existing regulations and government bodies, not just those in the occupational regulation context.
- 19 H.B. 1527, 92d Gen. Assemb., Reg. Sess. (Ark. 2019); S.B. 255, 132d Gen. Assemb., Reg. Sess. (Ohio 2018); S.B. 1351, 65th Leg., 2d Reg. Sess. (Idaho 2020). Arkansas and Ohio have produced reports under their new laws, while Idaho has not yet done so.
- 20 Cal. Gov't Code § 9148.8; N.M. Stat. Ann. §12-9A-1 to 12-91-6; Tenn. Code Ann. § 4-29-118; Tex. Gov't Code Ann. §§ 318.001 to 318.003. We also excluded Illinois, which produces sunrise reports on an ad hoc basis, and Pennsylvania, whose sunrise process does not have the force of law.
- 21 In response to a 2021 order from the governor, the Utah executive is proposing reform that would move sunrise review authority to the Department of Commerce. If this reform comes to fruition, Utah could begin producing reports again. S.B. 16, 64th Leg., Gen. Sess. (Utah 2022).
- 22 Va. Code Ann. § 54.1-100.
- 23 Colo. Rev. Stat. Ann. § 24-34-104.1(1).
- 24 Haw. Rev. Stat. § 26H-2.
- 25 Ariz. Rev. Stat. Ann. § 32-3103(A)(1); Neb. Rev. Stat. Ann. § 71-6221; Vt. Stat. Ann. tit. 26, § 3105(a)(1); Wash. Rev. Code Ann. § 18.120.010(2)(a); Wash. Rev. Code Ann. § 18.118.010(2)(a).
- 26 Ariz. Rev. Stat. Ann. § 32-3103(A)(1); Colo. Rev. Stat. Ann. § 24-34-104.1(4)(b)(I); Ga. Code Ann. § 43-1A-6(1); Kan. Stat. Ann. § 65-5006(a)(1); Minn. Stat. Ann. § 214.001, subd. 2(1); Vt. Stat. Ann. tit. 26, § 3105(a)(1); Va. Code Ann. § 54.1-100(1); Wash. Rev. Code Ann. § 18.120.010(2)(a); Wash. Rev. Code Ann. § 18.118.010(2)(a).
- 27 Haw. Rev. Stat. § 26H-2(3).
- 28 Va. Code Ann. § 54.1-310.1(C)(5).

- 29 Colo. Rev. Stat. Ann. § 24-34-104.1(4)(b)(II). See also Fla. Stat. Ann. § 11.62(3)(b); Ga. Code Ann. § 43-1A-6(2); Kan. Stat. Ann. § 65-5006(a)(2); Minn. Stat. Ann. § 214.001, subd. 2(2); Vt. Stat. Ann. tit. 26, § 3105(a)(2); Va. Code Ann. § 54.1-100(3).
- 30 W. Va. Code Ann. § 30-1A-1a.
- 31 See, e.g., Utah Code Ann. § 36-23-107(3)(g).
- 32 Utah Code Ann. § 36-23-107(2)(d), (3)(c).
- 33 Ariz. Rev. Stat. Ann. § 32-3105(4)(a).
- 34 Several municipalities do require at least one person on site at a restaurant to possess a food handling permit, but the requirements can be satisfied in a few hours, often online, at very low cost. Moreover, they are narrowly tailored to food safety. See, e.g., Krook, D. (n.d.). How to get (and keep) a food handlers permit [Blog post]. <https://www.touchbistro.com/blog/how-to-get-and-keep-a-food-handlers-permit/> and WebstaurantStore. (2019, Apr. 7). *Food handling certification: How to obtain a food handling certificate*. <https://www.webstaurantstore.com/article/126/food-handling-certification-how-to-obtain-a-food-handling-certificate.html>. Such permits are not comparable to full occupational licenses.
- 35 See, e.g., Hemphill, T. A., & Carpenter, D. M. (2016). Occupations: A hierarchy of regulatory options. *Regulation*, 39(3), 20–24 and Ross, J. K. (2017). *The inverted pyramid: 10 less restrictive alternatives to occupational licensing*. Arlington, VA: Institute for Justice. <http://ij.org/report/the-invertedpyramid/>
- 36 S.C. Code Ann. § 1-18-40.
- 37 Utah Code Ann. § 36-23-109(1).
- 38 Ariz. Rev. Stat. Ann. § 32-3103(B); Neb. Rev. Stat. Ann. § 71-6222; Vt. Stat. Ann. tit. 26, § 3105(b).
- 39 Va. Code Ann. § 54.1-100.
- 40 Though these fees may help deter the most baseless proposals, the amounts involved are likely to be a drop in the bucket for many industry groups, which are responsible for most requests for regulation. To the extent application fees may represent an undue hardship for those groups or for consumers and so deter reasonable requests, it should be noted that two states, Maine and Nebraska, allow their sunrise reviewers to waive sunrise application fees if they find it in the public interest to do so. And there is nothing in sunrise laws to prohibit any interested party from directly telling a legislator that regulation is needed.
- 41 Colo. Rev. Stat. Ann. § 24-34-104.1(3); Vt. Stat. Ann. tit. 26, § 3105(e).
- 42 Somewhat confusingly, Florida and Georgia call proponents “applicants.” However, neither state requires an “application” to initiate the sunrise process.
- 43 We stopped collecting sunrise reports in 2017 and collected information on occupations’ regulatory status as of the following year. This study’s tallies of requests and recommendations are therefore current as of 2017, while its tallies of legislative outcomes are current as of 2018.
- 44 The Kansas Department of Health and Environment has records retention practices that prevented us from obtaining any older sunrise reports the state may have produced: “We were not able to provide records prior to 2011 as our Records Retention policy does not require us to maintain these reports for more than five years.” K. Radloff. L1700496 (personal email communication, Aug. 9, 2017). While Utah produced only two reports, one of those covered two occupations. Our dataset therefore includes three reviews for Utah.
- 45 Although Utah has not produced reports in recent years, it still conducts oral committee sunrise reviews, documenting them in meeting agendas and minutes. Because these are not the sunrise reports required by Utah law, we have excluded them from our dataset. The Florida Department of Business and Professional Regulation performs sunrise reviews as part of its bill analyses. We have excluded those reviews from our dataset as they usually do not make recommendations. And when they do make recommendations, they do so under the broader scope of the bill analyses, not just under sunrise criteria. South Carolina repealed its reviewing agency, the State Reorganization Commission, in 1998; however, its sunrise law requiring SRC to produce sunrise reports remains on the books. H.B. 4700, 112th Gen. Assemb., Reg. Sess. (S.C. 1997).
- 46 The one exception is Utah, which is required to report on its sunrise reviews in the Occupational and Professional License Review Committee’s annual reports. Utah’s 2015 report, one of its two reports included in this study, covered two unrelated occupations: community managers and interior designers.
- 47 Throughout this report, when we mention the year of a request for regulation, we present the year the sunrise report was produced. It is possible the application, proposal or bill was submitted or introduced one or two years prior. However, this detail was not always available; in any event, using the year the report was produced makes for a simpler presentation.
- 48 On the other hand, Nebraska requires three reviewers to evaluate each request for regulation, so each review results in three reports. Each report holds equal weight, so this study considers the three reports together as one report. To generate recommendations for Nebraska, for each set of three reports, we selected the most frequent recommendation. For example, if two of the three reports recommended no new regulation, we counted that as the recommendation. Kansas has a similar multilevel review process. However, our records request returned only the reports of one reviewer, so this study considers only those reports.

- 49 As of 2018, Colorado had a licensing program for private investigators. However, while we have not systematically re-researched legislative outcomes before or after 2018, we are aware that Colorado enacted certification in 2011 and licensure in 2014 and ultimately repealed private investigator licensure in 2019. 2011 Colo. Legis. Serv. Ch. 312 (H.B. 11-1195) (West). 2014 Colo. Legis. Serv. Ch. 389 (S.B. 14-133) (West) Colo. Rev. Stat. Ann. § 24-34-104.
- 50 Arizona, Colorado, Georgia, Hawaii, Kansas, Nebraska, Virginia and Washington reviewed acupuncturists. Arizona, Colorado, Florida, Hawaii, Vermont, Virginia, Washington and West Virginia reviewed athletic trainers.
- 51 The occupations were already subject to state certification.
- 52 Georgia, Nebraska and Virginia reviewed requests for distinct licensure.
- 53 Arizona, Maine and Vermont reviewed requests for distinct licensure.
- 54 Colorado is not alone. At the time of this writing, 31 states have exempted hair braiders from licensure. See Institute for Justice. (n.d.) *Braider freedom act* [Model legislation]. <https://ij.org/activism/legislation/model-legislation/model-braiding-law/> and Avelar, P., & Sibilla, N. (2014). *Untangling regulations: Natural hair braiders fight against irrational licensing*. Arlington, VA: Institute for Justice. <https://ij.org/report/untangling-regulations/>
- 55 This report distinguishes between state certification and title protection, though both regulate occupational titles rather than occupational practice. We count as state certification those schemes where the government administers the credentialing program required to use a certain title. We count as title protection those schemes where a private entity administers the credentialing program, which may be called a certification, and the government recognizes that entity's exclusive right to confer the title. Our other/none category also included a case where the reviewer recommended a license for a different occupation than requested, a request where the type of regulation being requested was unclear, and requests for more than one type of regulation of the same occupation. For example, in 2009, Colorado fiduciaries sought both certification and registration of their occupation via one application. Similarly, in 1985, Colorado professional counselors proposed either title protection or certification.
- 56 Our general review category also includes a few reviews where regulation proponents declined to propose any specific regulation. For instance, in 2000, the Colorado Interior Design Coalition sought state regulation of interior designers but did not suggest a particular form of regulation. The review noted that "[t]he applicants contend that the sunrise review process will help determine the appropriate level of regulation." Colorado Department of Regulatory Agencies Office of Policy and Research. (2000). *Interior designers: 2000 sunrise review*, p. 2.
- 57 Previous research identifies two primary reasons occupations seek licensure: economic advantage and social prestige. See e.g., Larson, 1977; Abel, 1979; Freidson, 2001; Carpenter, 2007, 2008; Allensworth, 2017; Edlin and Haw, 2014; *Occupational licensing*, 2017; Carpenter et al., 2017.
- 58 The 7% figure includes reviews from Nebraska where the state's three reviewers disagreed and made three different recommendations.
- 59 Results were similar when considering all reviews except those evaluating requests for a distinct license (n=452): 19% of reviews recommended licensure, while 59% recommended no new regulation. In the few cases of recommendations to amend existing licenses, reviewers suggested more strictly enforcing a broader license or amending the broader license to sweep in the occupations requesting regulation.
- 60 West Virginia Legislative Auditor Performance Evaluation and Research Division. (2006). *Sunrise report: West Virginia Association for Marriage and Family Therapy*, p. 18.
- 61 Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform. (2006, Oct. 12). *Hemodialysis technicians: 2006 sunrise review*, p. 2.
- 62 State of Hawaii Office of the Auditor. (n.d.). *History of the Hawai'i Office of the Auditor*. <https://auditor.hawaii.gov/history-of-the-hawai%CA%BBi-office-of-the-auditor/>
- 63 Colorado Office of Policy, Research and Regulatory Reform. (n.d., b). *What is COPRRR?* <https://coprrr.colorado.gov/>; Colorado Office of Policy, Research and Regulatory Reform. (n.d., a). *COPRRR: Your gateway to state government*. <https://coprrr.colorado.gov/what-we-do>
- 64 While states occasionally recommended or enacted other types of regulations, such as amending building codes, amending medical practice acts or adding bond requirements, these were too difficult to tie to the proposals giving rise to sunrise review.
- 65 The legislative outcomes reported here do not perfectly reflect the regulatory status of all the occupations in the study. For example, when an occupation was already regulated by registration or certification and a legislature declined to enact more stringent regulations, we counted this as no new regulation. Likewise, in the 21 cases where legislatures declined to create a distinct license for an occupation already licensed under a broader job category, leaving the broader license in place, we also counted this as no new regulation. In addition, all legislative outcomes are based on the year legislation was enacted. Regulatory schemes are not always implemented in the same year.
- 66 Carpenter 2007, 2008; Mellor and Carpenter, 2016.

- 67 In addition to analyzing outcomes by review, we analyzed outcomes by occupation. While outcomes by review apply the final legislative outcome to all reviews, including repeats, outcomes by occupation effectively collapses repeat reviews, counting an outcome only once per occupation in a state. For example, Hawaii reviewed social workers twice before enacting licensure. Haw. Rev. Stat. §§ 467E-7, -13. That counts as two licensure outcomes when analyzing outcomes by review but only one when analyzing outcomes by occupation. Looking at outcomes by occupation allows us to see whether repeat reviews lead to overcounting of different types of regulatory outcomes. However, our outcomes by occupation analysis produced very similar results to our outcomes by review analysis both on the aggregate and by state; accordingly, we do not present those results here. The one exception is Colorado. Because of the state's unusually high number of repeat reviews, there is a large difference in its licensure enactment rates by review and by occupation (39% vs. 26%).
- 68 Va. Code Ann. §§ 54.1-3001, 54.1-3008, 54.1-3029.
- 69 Haw. Rev. Stat. §§ 466D-3, 466D-8.
- 70 This analysis is not limited to occupations with requests for licensure; it also considers occupations with requests for certification, registration or other regulations. However, it excludes occupations with distinct license requests, recommendations or legislative outcomes. When an occupation was reviewed more than once in the same state, the analysis considers only the reviewer's final recommendation.
- 71 This analysis excludes two sets of general reviews.
- 72 These figures consider legislative outcomes by occupation rather than by review to avoid double counting.
- 73 S.B. 140, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015); Inspection Certification Associates. (2015, Feb. 25). *Colorado lawmakers reject bill to license home inspectors*. <https://icaschool.com/2015/02/25/colorado-lawmakers-reject-bill-to-license-home-inspectors/>
- 74 Counting within-state repeats, occupations with the most total reviews were athletic trainers (13 across eight states), dietitians (10 across five states), massage therapists (12 across seven states) and midwives (10 across six states).
- 75 Virginia also reviewed dietitians and nutritionists during the same time period; however, its review was a general review and thus the report named no requestor. Virginia does, however, have a state nutrition and dietetics association. Eatright-PRO Academy of Nutrition and Dietetics. (n.d.). *State affiliates*. <https://www.eatrightpro.org/membership/academy-groups/affiliates/state-affiliates>
- 76 EatrightPRO Academy of Nutrition and Dietetics, n.d.
- 77 State of Hawaii Office of the Auditor. (1995). *Sunrise analysis of two proposals to regulate nutritionists: A report to the governor and the legislature of the state of Hawaii* (Report No. 95-27), p. 9.
- 78 Colorado, Georgia, Hawaii, Nebraska, Vermont, Virginia and Washington.
- 79 Office of Professional Regulation. (2006). *Genetic counselors: Sunrise application* (Docket No. GC-02-0706), p. 3.
- 80 Office of Professional Regulation, 2006, p. 4.
- 81 AMTA and CBMT State Recognition Operational Plan. (n.d.). https://www.musictherapy.org/assets/1/7/2020_AMTA_CBMT_OP.doc. See also Certification Board for Music Therapists. (n.d., a). *Advocacy*. <https://www.cbmt.org/about/advocacy/>; Certification Board for Music Therapists. (n.d., b) *Partners*. <https://www.cbmt.org/about/partners/>
- 82 AMTA and CBMT State Recognition Operational Plan, n.d.; Certification Board for Music Therapists, n.d., a, b.
- 83 Carpenter, 2007, 2008; Mellor and Carpenter, 2016.
- 84 Mellor and Carpenter, 2016.
- 85 Mellor and Carpenter, 2016. Colorado has since converted its license into title protection. Colo. Rev. Stat. Ann. §§ 12-135-110, -111.
- 86 We define “agreement” here as more than half of states agreeing about whether a given occupation warranted licensure. In states with repeat reviews, we considered only the final review's recommendation.
- 87 Colorado, Nebraska, Virginia and Washington recommended no new regulation of dietitians, while Arizona recommended licensure. Colorado, Hawaii, Maine and South Carolina recommended no new regulation of HVAC technicians, while West Virginia recommended certification. And Colorado, Nebraska and Washington recommended no new regulation of surgical technologists, while Virginia recommended that employers require private certification.
- 88 In this instance, we define “agreement” as more than half of states returning the same specific recommendation.
- 89 Crane operators: Colorado, Hawaii and Washington. Nutritionists: Colorado, Hawaii, Nebraska and Virginia. Physical therapist assistants: Hawaii and Washington. Recreation therapists: Colorado, Nebraska and Washington.
- 90 Assisted living administrators: Virginia and West Virginia. Domestic violence counselors: Colorado and Washington.
- 91 We define “agreement” here as more than half of states ultimately licensing (or not licensing) a given occupation.

- 92 Colorado, South Carolina, Utah and Washington enacted no new regulation of personal qualifications, while Georgia and Virginia enacted state certification.
- 93 Dietitians: Arizona, Colorado, Nebraska, Virginia and Washington. Music therapists: Arizona, Colorado, Utah, Washington and West Virginia.
- 94 Community association managers: Colorado, Hawaii, Utah and Washington. Fire alarm installers: Colorado and Maine. Laboratory scientists: Nebraska, Vermont and Virginia. Laboratory technicians: Minnesota, Nebraska, Vermont and Virginia. Soil scientists: Georgia, Maine and Washington.
- 95 Speech language pathologists: Colo. Rev. Stat. Ann. § 12-305-106, -107, -114; Minn. Stat. Ann. §§ 148.513, 148.515; Vt. Stat. Ann. tit. 26, §§ 4452, 4457; Wash. Rev. Code Ann. § 18.35.080. Respiratory therapists: Ariz. Rev. Stat. Ann. § 32-3523; Colo. Rev. Stat. Ann. § 12-300-107, -114; Haw. Rev. Stat. § 466D-3, -8; Vt. Stat. Ann. tit. 26 § 4702, 4708; Va. Code Ann. § 54.1-2956.01; Wash. Rev. Code Ann. § 18.89.090. Acupuncturists: Ariz. Rev. Stat. Ann. §§ 32-3921, 32-3924; Colo. Rev. Stat. Ann. § 12-200-106, 12-200-108; Ga. Code Ann., §§ 43-34-64; Haw. Rev. Stat. §§ 436E-3, 436E-5; Kan. Stat. Ann. §§ 65-7601 to 65-7624; Neb. Rev. Stat. Ann. §§ 38-2058, 38-2060; Va. Code Ann. § 54.1-2956.9; 18 Va. Admin. Code §§ 85-110-50 to -90; Wash. Rev. Code Ann. § 18.06.020; 18.06.050; Wash. Admin. Code § 246-803-100.
- 96 The states that reviewed the occupation were Colorado, Hawaii, Nebraska and Virginia. Hawaii enacted licensure, and Virginia enacted certification. Haw. Rev. Stat. § 448B-4, -5; Va. Code Ann. § 54.1-2731.
- 97 The states that reviewed the occupation were Colorado, Georgia, Hawaii, Nebraska, Vermont, Virginia and Washington. Hawaii, Nebraska, Virginia and Washington enacted licenses. Haw. Rev. Stat. § 451K-4, -6, -15; Neb. Rev. Stat. Ann. § 38-3416; Va. Code Ann. § 54.1-2957; Wash. Rev. Code Ann. §§ 18.290.040, 18.290.100.
- 98 Florida, Hawaii, Washington and West Virginia recommended no new regulation. Colorado recommended enacting no new restrictions on personal qualifications and removing the state's supervision requirement. Arizona, Vermont and Virginia recommended licensure. Arizona, Colorado, Florida, Hawaii, Vermont, Virginia and Washington enacted licensure. S.B. 1202, 44th Legis., 2d Reg. Sess. (Ariz. 2000); Ariz. Rev. Stat. Ann. § 32-4103; Colo. Rev. Stat. Ann. §§ 12-205-107, -108, -115; Fla. Stat. Ann. § 468.717; Haw. Rev. Stat. § 436H-4; Vt. Stat. Ann. tit. 26, § 4153; 18 Va. Admin. Code § 85-120-40; Wash. Rev. Code Ann. § 18.250.040.
- 99 As of 2018, West Virginia had a government certification program for athletic trainers. However, while we have not systematically researched legislative outcomes after 2018, we are aware that West Virginia enacted licensure of athletic trainers in 2019. S.B. 60, 2019 Leg. Sess. (W. Va. 2017).
- 100 Board for Professional and Occupational Regulation. (1999). *Study of the regulation of electrologists: Report of the Board for Professional and Occupational Regulation to the governor and the general assembly of Virginia* (Senate Document No. 8), p. 8.
- 101 Two-digit NAICS code 62 covers both health care and social assistance businesses. We counted occupations falling under ambulatory services (three-digit NAICS code 621), hospitals (three-digit NAICS code 622), and nursing and residential facilities (three-digit NAICS code 623) as health care occupations. Three-digit NAICS code 624, however, covers social assistance businesses rather than health care occupations. Accordingly, we did not count occupations falling under code 624 as health care occupations.
- 102 Homeopathic physicians: Arizona. Naturopathic physicians: Colorado and Nebraska. Naturopathic physicians also underwent a general review in Virginia.
- 103 Only West Virginia's reviewer recommended licensure. Arizona, Colorado and Washington recommended against licensure, and Nebraska's three reviewers did not agree on a recommendation.
- 104 Colorado (1992, 1994, 1995, 2006) and Washington (1999).
- 105 Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, 2006, p. 34.
- 106 Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, 2006, p. 33.
- 107 Colorado, Nebraska, Washington and West Virginia licensed dialysis technicians. Colo. Rev. Stat. § 25-1.5-108; Neb. Rev. Stat. Ann. § 38-3706; Wash. Rev. Code Ann. § 18.360.020; Wash. Admin. Code § 246-827-0500; W. Va. Code Ann. §§ 30-7C-3, 30-7C-10 (b)(7).
- 108 Arizona recommended no new regulation in its first two reviews and licensure in its final review. Colorado and Georgia both recommended no new regulation. Nebraska and Virginia both recommended licensure.
- 109 As of 2018, Arizona and Georgia had enacted no new regulation of personal qualifications, Colorado had enacted registration, and Nebraska and Virginia had enacted state certification.
- 110 Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform. (2004). *Surgical assistants: 2004 sunrise review*, p. 17.
- 111 Colorado Department of Regulatory Agencies Office of Policy, Research and Regulatory Reform, 2004, p. 19.
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About IJ

The Institute for Justice is a nonprofit, public interest law firm that litigates to secure economic liberty, educational choice, private property rights, freedom of speech and other vital individual liberties and to restore constitutional limits on the power of government.

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