

SUNRISE PROVISIONS FOR OCCUPATIONAL LICENSING: A REVIEW

SUMMARY

- About 25 percent of today's workforce needs state-issued licenses to work, compared to less than 5 percent in the early 1950s.¹ In order to control a growing number of regulated occupations 14 states established sunrise reviews – reports that analyze the need for a new occupational regulation prepared for the state legislatures.
- The practice of sunrise reviews differs from state to state. Depending on the state, sunrise reviews are conducted by legislative committees, by executive offices, or by special boards/councils. Some states have established a detailed procedure for sunrise reviews, while other states only list criteria for adoption of a new occupational regulation.
- Effective implementation of sunrise reviews depends on such factors as:
 - Whether the process of sunrise reviews is sufficiently formalized to ensure consistent protection of public interests;
 - Whether a cost-benefit analysis is conducted and regulation is determined to be cost effective with a positive economic impact
 - Whether a sunrise review is conducted by an independent body free from conflict of interests;
 - Whether the state legislatures make decisions regarding a new occupational regulation based on advancement of public interests rather than special interests.

INTRODUCTION

The policy brief provides information and best practices regarding sunrise legislation related to occupational licensing in the U.S. The policy brief is a supplement to the research report, *Occupational Licensing and Women Entrepreneurs in Missouri*, produced by the Institute of Public Policy in November 2016 for the Women's Foundation. An additional policy brief focused on sunset regulations was also produced as a supplement to the research report.

WHAT IS A SUNRISE REVIEW IN OCCUPATIONAL REGULATION?

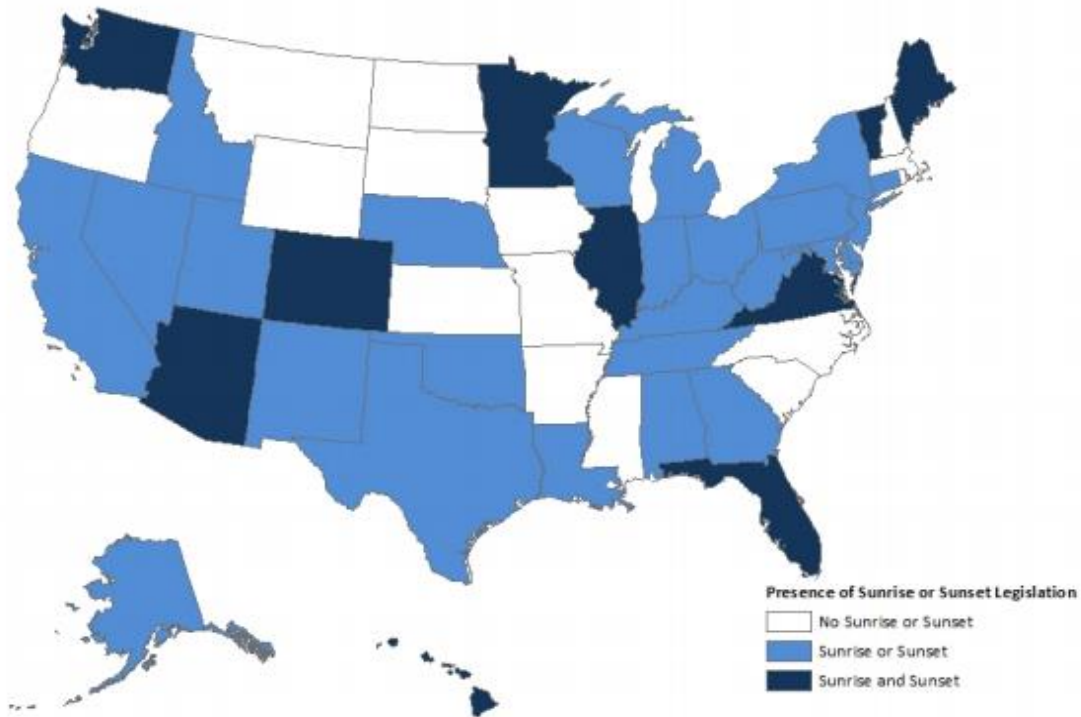
Sunrise reviews are processes that analyze the need to regulate a previously unregulated occupation in order to protect public health, safety and welfare. The reviews are prepared for a state legislature that has an authority to adopt laws regarding occupational regulation. It is important to note that sunrise reviews were established as a response to a growing number of regulated occupations. For example, research indicates that about 25 percent of today's workforce needs state-issued licenses to work, compared to less than 5 percent in the early 1950s.²

Generally, sunrise reviews consider the need for registration, certification, or licensure as types of occupational regulation, with a default preference for less regulation. Registration is the least restrictive

type of professional regulation: any person may engage in a profession after submitting information concerning the location, nature, and operation of the practice. Certification protects specific occupational titles of persons who have met certain educational and experiential standards. Only persons certified in that occupation may use the title, although anyone may practice the occupation. Under licensure, which is the most restrictive type of occupational regulation, only persons who possess a license can engage in an occupation. Thus, state legislatures make decisions concerning not only the need for the new regulation, but also the appropriate type of regulation.³

According to the Council on Licensure, Enforcement and Regulation (CLEAR) there are 14 states which have established sunrise reviews, including Arizona, Colorado, Florida, Georgia, Hawaii, Illinois, Maine, Minnesota, Nebraska, Vermont, Virginia, Washington, West Virginia, and Delaware, however Delaware's legislation is currently inactive.⁴ Map 1 shows states with sunrise and sunset regulations in the United States. Sunset provisions are discussed more in-depth in the supplementary policy brief.⁵

Map 1: Sunrise and Sunset Legislation for Occupational Licensing Boards in the U.S.



Source: *Occupational Licensing and Economic Rents, 2015.*

SUNRISE PROVISIONS IN PRACTICE

Criteria for Establishing New Occupational Regulation

In 1976 Minnesota became one of the first states to pass sunrise legislation, which included criteria for occupational regulation against which any new or increased regulation were to be judged, including:

1. Whether the unregulated practice of an occupation may harm or endanger the health, safety, and welfare of citizens, and whether the potential for harm is recognizable and not remote;
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 citizens are or may be effectively protected by other means; and
4. Whether the overall cost effectiveness and economic impact would be positive.⁶

Similar criteria are used to determine the need for a new regulation across other states. For example, the state of Hawaii regulates professions and vocations only where reasonably necessary to protect consumers, including:

1. Regulation should protect the health, safety, and welfare of consumers and not the profession;
2. Evidence of abuses should be given great weight in determining whether a reasonable need for regulation exists;
3. Regulation should be avoided if it artificially increases the costs of goods and services to the consumer, unless the cost is exceeded by potential dangers to the consumer;
4. Regulation should be eliminated when it has no further benefit to consumers;
5. Regulation should not unreasonably restrict qualified persons from entering the profession; and
6. Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.⁷

Even though sunrise states have adopted similar criteria for regulation of a new profession as a part of the state legislation, not all states have established a detailed sunrise review process, which ensures that the policy is applied in a consistent fashion.

Cost-Benefit Analysis

One of the integral components of sunrise regulations is the provision for a cost-benefit analysis. This type of analysis should provide an objective review to determine if the benefits of the proposed regulation outweigh the costs. Of the states that have adopted sunrise regulations, there is significant variation in the level of formality and consistency in the cost-benefit review process.

A cost-benefit analysis is defined as a review to determine “the extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers.”⁸ Few details are available on exactly how the cost-benefit analysis within these states is conducted, the sunrise review process is discussed further in this brief.

Who conducts sunrise reviews?

The sunrise reviews differ in terms of the level of formalization, responsible bodies, and timelines. In general, there are three government bodies that prepare sunrise reviews:

1. Legislative committees conduct sunrise reviews as a part of a regular legislative process;
2. Executive offices prepare sunrise reviews, that includes recommendations for the legislature;
3. Boards/Councils, which consist of professional board members and/or representatives of executive agencies, prepare sunrise reviews and recommendations for the legislature.

In all sunrise states, a decision to regulate a new occupation is an exclusive jurisdiction of the state legislature.

Legislative Committees and Sunrise Reviews

In Arizona, Florida, Illinois, Maine, and West Virginia, legislative proposals to regulate a new occupation are considered by an appropriate legislative committee as a part of a regular legislative process. Some states, like Illinois, don't have an explicit procedure that regulates how sunrise reviews should be conducted. Whereas, other states, like Arizona, require that an applicant who seeks regulation of a profession must submit a written report to the legislature by September 1.⁹ The report must define the problem; explain the need for regulation; discuss the costs, benefits and negative impact of regulation; list the affected associations, organizations and other practitioner groups; summarize efforts taken to address the problem; describe alternatives to regulation; and discuss the maintenance of professional standards. The written report is assigned to the appropriate committee for review. The committee is required to study the sunrise report and deliver its recommendations regarding the sunrise application to the governor, president of the senate, speaker of the house of representatives and, if appropriate, the regulatory board or entity of the applicant group by December 1, of the same year the application is submitted. Legislative committee staff and Legislative Council draft any recommended legislation.¹⁰

Thus, proposals for new regulation are considered within a regular legislative process, the legislature puts a burden of proving the need for new regulation on interested parties. Hence, the sunrise review includes the following steps:

1. An applicant submits a written report proposing regulation of a new profession to the legislature;
2. A responsible legislative committee considers the report, gathers additional information, and makes recommendations to the legislature according to the criteria for establishing a new regulation; and
3. The state legislature makes a final decision concerning the need for a new regulation.¹¹

Executive Offices and Sunrise Reviews

While in five states sunrise reviews are conducted by legislative committees as a part of a regular legislative process, five other states have specific executive agencies, responsible for a sunrise review.¹² For example, in Colorado, the Department of Regulatory Agencies' Office of Policy, Research and Regulatory Reform is responsible for sunrise reviews.¹³ In Hawaii, the reviews are a responsibility of the Auditor's Office, while in Vermont they are prepared by the Secretary of State's Office of Professional Regulation.¹⁴

In Colorado, sunrise applications received by December 1, will have a review completed by October 15th of the following year. The application has 26 questions concerning the need for new regulation. For example, some questions ask about expected costs and benefits of the proposed regulation:

- What would be the impact of the proposed regulation on the supply of practitioners in the occupation, including the degree to which existing practitioners would be precluded from practice?
- To what degree would the proposed regulation either directly or indirectly affect the cost of goods or services provided by the occupational group? Specify those costs as they exist now and as they would change after the imposition of regulation.
- What is the applicant seeking to gain through regulation of the occupational group?¹⁵

The Office of Policy, Research and Regulatory Reform prepares a sunrise review based on the application, public hearings, and comments from interested parties and provides recommendations to the general assembly. The sunrise review is assigned to the appropriate legislative committee for consideration. Finally, the general assembly makes the final determination whether regulation should be imposed upon the profession.¹⁶

Thus, sunrise reviews are conducted by a variety of executive offices. This means that the state legislatures delegated the authority to conduct sunrise reviews to the executive branch, but a final decision regarding a new regulation is still within the exclusive jurisdiction of the legislators.

Boards, Councils and Sunrise Review Process

Three states have special councils or boards responsible for sunrise reviews. For example, in Georgia, the Occupational Regulation Review Council consists of seven members representing the executive branch, two members from the legislature, and is chaired by the director of the Office of Planning and Budget. The Council reviews bills introduced to the General Assembly to regulate a profession that is not previously regulated.¹⁷

Minnesota and Virginia have established boards which conduct sunrise reviews for health professions. Minnesota's Council of Health Boards and Virginia's Board of Health Professions consist of members representing boards that regulate health professions. These boards have established criteria for regulation that specifically focus on health professions:

1. Promotion of effective health outcomes and protection of the public from harm.
2. Accountability of health regulatory bodies to the public.
3. Promotion of consumers' access to a competent health care provider workforce.
4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.
5. Facilitation of professional and geographic mobility of competent providers.
6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.¹⁸

In Virginia, the sunrise reports, including recommendations are prepared by the Regulatory Research Committee of the Board of Health Professions. Once completed, the report is forwarded to the Board, which prepares it for the consideration of directors of the relevant executive agencies, the governor, and the general assembly.¹⁹

Thus, the sunrise reviews are prepared by different government bodies and include recommendations for the state legislatures.

SUNRISE REVIEW IN MISSOURI

Missouri does not have sunrise provisions for the review of new occupational licensing boards. However, there was an unsuccessful attempt to pass a sunrise law in 2014. The house bill, HB 1824, which proposed a sunrise review starting January 1, 2015, passed the Missouri House Committee on Professional Registration and Licensing, but failed in the Rules Committee in April 2014.²⁰ Another attempt to deregulate occupational licensing, HB 1891 which authorized a person to practice specific professions²¹ without license if he or she doesn't claim to be a licensed practitioner also failed in 2014.²²

In May 2016, HB 1466 was introduced in the Missouri House. This bill establishes guidelines for regulation of occupations not currently regulated by the Division of Professional Registration. It would require an applicant group to submit a written report to the legislative committee describing how any continuing education requirements would be effective for regulation of the profession. The bill is currently not on the hearing calendar.²³

CONCLUSION

The adoption of sunrise provisions by the states does not automatically guarantee that public health and safety will be better protected. In practice, the implementation of sunrise reviews can vary from being a pure formality to being an effective tool of eliminating excessive professional regulation. This research has shown some of the factors that may influence a successful implementation of sunrise reviews include:

- Whether the process of sunrise reviews is sufficiently formalized to ensure a consistent protection of public interests;
- Whether a cost-benefit analysis is conducted and regulation is determined to be cost effective with a positive economic impact;
- Whether a sunrise review is conducted by an independent body free from conflict of interests;
- Whether the state legislatures make decisions regarding a new occupational regulation based on advancement of public interests rather than special interests.

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- ²¹ The occupations in HB1891 included geologist; the boxing, sparring, wrestling, and karate occupations; massage therapy; interior designer; PI; landscape architect; barber; cosmetologist; embalmer; funeral agent; and athletic agent.
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