



Occupational licensing roadmap for state CPA societies

Issue overview for state CPA societies

Over the years, there has been an increase in efforts to ease, at the very least, or eliminate, at the worst, the regulation of licensed occupations. The CPA profession, must defend the legitimacy and efficacy of state licensure against threats to reduce or eliminate occupational licensure.

The anti-licensing push can be traced to the 2015 U.S. SCOTUS case *North Carolina State Board of Dental Examiners v. F.T.C.* The decision requires that licensee-controlled state boards be “actively supervised” by a neutral state entity to enjoy immunity from federal antitrust law. While the details of the case are particular to dentists and the ruling itself was vague regarding “active supervision,” the ramifications apply equally to many state regulatory boards. It specifically puts state boards of accountancy members at potential risk of being personally sued for the actions they take as board members, which presents a problem for individual board members and the profession as a whole. The AICPA® supports the protection of state boards of accountancy so that current and potential board members understand that they will not bear the cost of potential antitrust liability, and so the interest in serving on state boards continues.

Since the N.C. Dental decision, the efforts to curb occupational licensure have evolved. In addition to the active supervision requirements, states have looked to reduce or eliminate licensure through regulatory

“sunrise/sunset” reviews that include harmful language to professions that use certifications. States have also been looking at regulatory consolidation to save money due to budgetary concerns. Additionally, states are examining how to increase mobility by lowering regulatory to reciprocal licensing. These proposals are often under the guise of reducing barriers for employment and use language such as, “The Right to Work.” The AICPA supports the protection of appropriately regulated licensure of the accounting profession.



Issues for state CPA societies

Occupational licensing legislation generally falls under the guise of the following categories:



Universal licensure — These bills allow an individual who is licensed in the same/similar occupation or profession, and is in good standing, to automatically be eligible for licensure in the jurisdictions where this bill has become law. The CPA profession has a proven and effective licensing model that already provides for interstate mobility and reciprocity, and Universal Licensing bills oftentimes undo the systems in place.



Military licensure — These bills provide for licensing boards to treat the licensing process for military, military spouse and, in some cases, dependents of a military member different than the general population. These bills must contain language that does not lessen or cut licensing requirements.



Board composition — These bills create a majority public member board for occupations and professions. Decreasing the number of licensed individuals on a regulatory board removes important professional knowledge and experience from the board by making licensed members the minority.



Prior criminal convictions — These bills prevent a licensing board from denying a license to an individual with a prior criminal conviction. Think tanks believe that state boards use someone's criminal history as a "barrier to entry." These bills can be harmful to the profession when they include prior criminal convictions that are related to the profession, and when legislation attempts to eliminate "good moral character" provisions in licensing requirements.



Regulatory review — These bills require a reduction in regulations after a review of the agency and are often included in sunrise/sunset review bills. Requirements to reduce regulations often force regulatory boards to eliminate regulations, regardless of if they are necessary or not. Because of "least restrictive means" language, regulatory boards are forced to defend all regulations of the profession.



Consumer choice — These bills allow for "non-licensed" disclosure agreements with consumers and workers, which would allow work to be completed in lawful occupations without an occupational license. Consumer choice bills should be labeled as "consumer beware" bills, as they leave the public vulnerable to poor practices by unqualified individuals. This type of legislation started as a measure the American Legislative Exchange Council (ALEC) introduced.

Importance to state CPA societies

Occupational licensing protects the public by ensuring a baseline level of proven qualification and expertise, which helps protect consumers from unqualified practitioners. Occupational licensing is particularly important in highly complex, technical professions where consumers do not have the specialized knowledge needed to evaluate qualifications and performance. It helps level the playing field by removing subjectivity and setting clear, evenly applied levels of qualification. Licensing also establishes consistency of qualifications within professions so professionals can move from state to state and continue practicing.

States should be willing to make clear that members are not subject to personal liability because of their service on the board. They should also indemnify boards and members for actions taken in their official capacities. Additionally, proposals to ease or reduce occupational regulations should be highly scrutinized for the impact on public protection, and efforts should be made to keep the mobility provisions and the rigorous requirements of education, examination and experience (the “Three E’s”) that are already in place.

Suggestions when talking to policymakers

- ▶ The efforts to ease or eliminate licensing put the public at risk. Reducing the training and qualifications necessary for work directly affects public safety, trust and welfare.
- ▶ The public overwhelmingly supports regulation done correctly. Seventy-five percent of voters said that ensuring qualifications for certain professions is important, while 67% of voters said that consumers are best protected by a system that regulates education, examination and experience standards (Source: Benenson Survey, 2019).
- ▶ A license narrows the gender-driven wage gap by about one-third and the race-driven wage gap by about half (Source: Oxford Economics Survey, 2020).
- ▶ The efforts to reduce barriers to entry and increase interstate mobility threaten the licensing models in place that already effectively provide mobility and reciprocity.

Additional information:

responsiblelicensing.org/

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