

Barriers to Affordable Legal Help

South Dakota Overall Grade: **C** Rank: **#14** out of 51



↑ South Dakota is one of only 19 states where the attorney general, rather than the bar, enforces unauthorized practice regulations. While these regulations still prohibit services that could be helpful to consumers, the attorney general is less likely than the bar to use them to protect the bar from competition.

Barriers to Lawyer Help (45%)

Grade: **D** Rank: **#t28** out of 51

Does the state allow lawyers to use innovative business models that decrease the price of hiring a lawyer and provide consumers easier access to lawyers?

- ▶ Does the state allow non-lawyer ownership of law firms, which would allow business innovators to create more affordable law firms through better business processes and economies of scale? (30%)
- ▶ How easy does the state make it for consumers to buy unbundled services from lawyers, allowing them to save money by using a lawyer for only part of a legal matter? (5%)
- ▶ What types of restrictions does the state place on information that lawyers communicate to potential clients? (5%)
- ▶ What restrictions does the state place on consumers hiring lawyers from other states? (5%)

Barriers to Non-Lawyer Help (40%)

Grade: **B** Rank: **#t8** out of 51

Does the state allow consumers to use competent service providers who aren't lawyers to assist them with simpler legal matters?

- ▶ Are consumers allowed to use someone other than a lawyer to help them in various ways, including preparing legal forms and other documents; financial advice, such as help with Medicaid spend-down; real estate closings; contract negotiation; and free advice from friends or family (20%)
- ▶ How strictly does the state enforce the above regulations regarding the unauthorized practice of law (UPL)? Are those regulations enforced by the bar, the state supreme court, or the attorney general? (20%)

Treatment of Self-Represented Litigants (15%)

Grade: **C** Rank: **#t27** out of 51

Are the courts user-friendly for people trying to resolve disputes without a lawyer?*

*This information is drawn from the Justice Index, published by the National Center for Access to Justice at Cardozo Law School.

In defiance of a February Supreme Court ruling, many states are continuing to allow state bars to put the business interests of lawyers above the public's interest in affordable legal help.

The Supreme Court ruled in *FTC v. North Carolina State Board of Dental Examiners* that professional associations that restrict competition can be liable for antitrust violations if they are not adequately supervised by the state. Currently, 27 states are failing to adequately review state bar restrictions on how the public can get legal help. These state bar restrictions take two forms: restrictions on innovation by law-

yers and restrictions on other professionals providing legal services.

The American legal profession uniformly prohibits lawyers from accepting outside investment in their law firm. "This restriction prevents consumers from having access to innovative new ways to get lawyer help," said Tom Gordon, executive director of Responsive Law. "Currently, lawyers who work on issues affecting the average consumer work in small practices where they can't benefit from the economies of scale that a much larger firm could provide. As a result, legal fees can't get much lower than \$200 an hour."

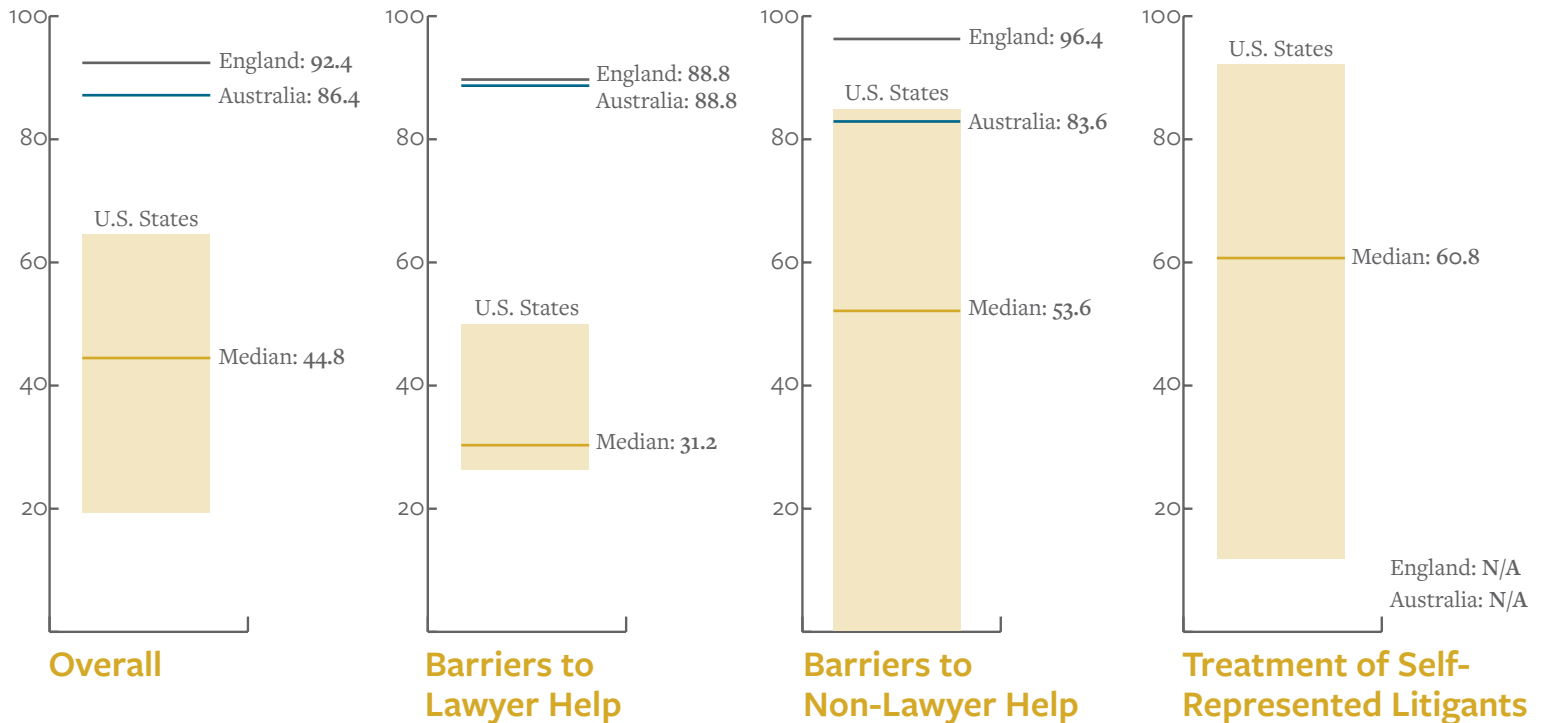
Americans also are generally forbidden from using anyone other than a lawyer to help them with legal matters, through restrictions on what the bar considers the unauthorized practice of law, prohibiting anyone other than a lawyer from performing a wide range of tasks. "The bar claims that unauthorized practice restrictions protect the public from scam artists," said Gordon.

"But the truth is, unauthorized practice restrictions exist to protect lawyers from competition, not to protect consumers from fraud."

The United States is far behind other countries in allowing the public access to affordable legal help.

Australia and England are way ahead of the U.S. in allowing innovative and affordable legal help from both lawyers and non-lawyers. In both countries, lawyers are allowed to receive outside investment in their practices. As a result, Australians can call a national law firm's hotline and be connected with a lawyer specializing in their legal issue. And in England, legal advice is available through kiosks in malls and shopping centers. Also, England allows non-lawyers to help with legal problems, from writing wills to accompanying a self-represented litigant to court.

The charts below show the scores Australia and England would have received compared to the range of scores of U.S. states.



Overall

Barriers to Lawyer Help

Barriers to Non-Lawyer Help

Treatment of Self-Represented Litigants

Top 5

1. Washington
2. Massachusetts
3. Wisconsin
4. New Hampshire
5. Hawaii

Top 5

1. District of Columbia
2. Washington
3. Colorado
4. North Carolina
5. California

Top 5

1. Washington
2. Alaska
- t3. Minnesota
- t3. Wisconsin
- t5. Massachusetts
- t5. New Hampshire

Top 5

1. Hawaii
2. Delaware
3. California
4. Arizona
- t5. Indiana
- t5. Iowa
- t5. Washington

Bottom 5

51. Florida
50. North Carolina
49. Ohio
48. Mississippi
47. Kentucky

Bottom 5

- t46. Illinois
- t46. Minnesota
- t46. Nebraska
- t46. Oklahoma
- t46. Rhode Island
- t46. Texas

Bottom 5

51. Florida
50. North Carolina
49. Ohio
- t47. Georgia
- t47. Virginia

Bottom 5

51. Mississippi
- t49. Arkansas
- t49. Kentucky
48. Pennsylvania
- t45. Alabama
- t45. Rhode Island
- t45. South Carolina