

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1333 Interstate-Mobility and Universal-Recognition Occupational Licensing Act

SPONSOR(S): Koster, Maney, Salzman

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Helpling	Topp
3) Commerce Committee			

SUMMARY ANALYSIS

An occupational or professional license is a form of government regulation that requires individuals to obtain authorization in order to perform certain types of work, such as nurses, contractors, and cosmetologists. Florida's Sunrise Act prohibits state regulation of occupations and professions that unnecessarily restrict entry into the profession or occupation and the Act requires that any regulation only be adopted if it is necessary to protect the health, safety, and welfare of the public.

The bill requires Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement).

Applicants may seek a universal license through one of three pathways described in the bill. An applicant from another state is automatically approved under the universal licensing scheme if:

- The applicant is licensed by another licensing entity or state;
- The applicant has certain work experience in another state or in the military; or
- The applicant has a private certification with work experience in a non-licensing state or the military.

The bill provides that an applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is presumed to be qualified for the license and must be issued an occupational license or government certification by the appropriate Florida licensing board.

The bill provides that during a declared state of emergency, the Governor may order the recognition of occupational licenses from outside Florida or from a foreign country as if the licenses were issued in Florida, may expand any occupation license scope of practice, and authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

The bill will have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Occupational Licensing

An occupational or professional license is a form of government regulation that requires individuals who want to perform certain types of work, such as nurses, contractors, and cosmetologists, to obtain governmental authorization to work in a specific field.¹

An estimated 23.5 percent of the civilian labor force nationwide has an occupational license.² Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:³

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

In the 1950s, less than five percent of U.S. workers were required to have a license to do their jobs. Since then, the number of U.S. workers required to have a license has risen five-fold to more than one-quarter, with most of these workers being licensed by states. Almost two-thirds of this change stems from an increase in the number of professions that require a license. The number of licensed workers is even higher in Florida, with an estimated 28.7 percent of the workforce being licensed by the state.⁴

In 2015, the White House published a report on the current state of occupational licensing in the nation. The report found that when designed and implemented carefully, requiring occupational licenses offers important health and safety protections to consumers as well as benefits to workers. However, the report also found that too often licensing requirements are inconsistent, inefficient, arbitrary, and there is evidence that the current license regime in the U.S. raises the price of goods and services, restricts employment opportunities, and makes it more difficult for workers to take their skills across state lines.⁵

The report stated that because occupations are diverse in their tasks, designing and implementing successful occupational license regulations often requires a tailored approach. However, there are a number of common factors that policymakers should consider when contemplating enacting, revising, or repealing an occupational regulation. Policymakers should:⁶

- Ensure that restrictions are closely targeted to protecting public health and safety, and are not overly burdensome;
- Facilitate a careful consideration of licensure's costs and benefits; and

¹ The White House, *Occupational Licensing: A Framework for Policymakers*, 6 (July 2015)

https://obamawhitehouse.archives.gov/sites/default/files/docs/licensing_report_final_nonembargo.pdf (last visited on Mar 20, 2023).

² Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey, 2021*, [Certification and licensing status of the civilian noninstitutional population 16 years and over by employment status \(bls.gov\)](https://www.bls.gov/news.release/cps2021.pdf), (last visited on Mar. 20, 2023).

³ Chs. 20, 25, F.S.

⁴ White House *supra* note 1 at 3 & 24.

⁵ *Id.*

⁶ *Id.* at 41-43

- Work to reduce licensing's barriers to mobility.

Policymakers can facilitate a careful consideration of licensure costs and benefits through both sunrise and sunset reviews. However, evidence suggests that sunrise reviews are more successful at limiting the growth of licensing since removing a license is much more difficult than enacting one. Additionally, state regulators suggested that sunrise reviews may be more effective than sunset reviews.⁷

Sunrise Review

Generally, a sunrise review is a formal process where a legislature scrutinizes legislation proposing to regulate an unregulated profession or occupation by requiring a cost-benefit analysis before the legislation is enacted. Most sunrise reviews require the proponents of the regulation to outline the potential impacts, costs, and benefits of the proposed regulation. Some states require the proponents of the regulation to provide certain information to a legislative committee or a state agency for analysis and evaluation, which is then provided to the legislature. Policymakers can review the information provided before moving forward with the legislation.⁸

Currently 14 states, including Florida, have sunrise reviews.⁹ However, states vary widely in how independently and thoroughly they administer sunrise reviews. Colorado requires proponents of regulation to submit the proposed regulation along with the potential impacts, costs, and benefits to the Colorado Department of Regulatory Agencies for analysis and evaluation.¹⁰ Minnesota requires proponents of regulation to file a report outlining the regulation's potential impacts, costs, and benefits with the legislature within 15 days of the bill being introduced.¹¹ Maine requires sunrise reviews for legislation regulating an unregulated profession or occupation and legislation that substantially expands regulation of an already regulated profession or occupation.¹² Florida currently requires proponents of regulation to file information about the regulation's potential impacts, costs, and benefits upon request.¹³

Florida's Sunrise Act

Section 11.62, F.S., is Florida's sunrise review, which is called the Sunrise Act. The Sunrise Act states that regulation should not be adopted unless it is:

- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession or occupation, the Sunrise Act requires the Legislature to consider the following:

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

⁷ *Id.* at 42, 48-49.

⁸ *Id.* at 48; Iris Hentze, *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <https://www.ncsl.org/labor-and-employment/sunset-and-sunrise> (last visited Mar. 20, 2023); Council on Licensure & Regulation, *Sunrise, Sunset and State Agency Audits*, <https://clear.wildapricot.org/page-486181> (last visited Mar. 20, 2023).

⁹ Council on Licensure & Regulation *supra* note 5.

¹⁰ Colo. Rev. Stat. § 24-34-104.1.

¹¹ Minn. Stat. § 214.002.

¹² ME. Rev. Stat. Ann. Tit. 32-1A, § 60-J.

¹³ S. 11.62(4), F.S.

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of legislation that propose new regulation on professions or occupations to provide the following information, **upon request**, by the agency proposed to have jurisdiction or the legislative committee to which the legislation is referred, to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding three years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation;
- The details of any previous efforts in this state to implement regulation of the profession or occupation; and
- Any other information the agency or the committee considers relevant to the analysis of the proposed legislation.

The Sunrise Act requires the agency proposed to have jurisdiction over the regulation to provide the Legislature with the following information:

- The resources required to implement and enforce the regulation;
- The technical sufficiency of the proposal, including its consistency with the regulation of other professions; and
- Any alternatives that may result in less restrictive or more cost-effective regulation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal must assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.¹⁴

The Division of Professions (Professions) licenses and regulates more than 434,000 professionals through the following professional boards and programs:

- Board of Architecture and Interior Design,
- Asbestos Licensing Unit,
- Athlete Agents,
- Board of Auctioneers,
- Barbers' Board,
- Building Code Administrators and Inspectors Board,
- Regulatory Council of Community Association Managers,
- Construction Industry Licensing Board,
- Board of Cosmetology,
- Electrical Contractors' Licensing Board,
- Board of Employee Leasing Companies,
- Home Inspectors,
- Board of Landscape Architecture,
- Mold-Related Services,
- Board of Pilot Commissioners,
- Board of Professional Geologists,
- Talent Agencies,
- Board of Veterinary Medicine, and
- Florida Board of Professional Engineers.¹⁵

The Division of Regulation is the enforcement authority for the Florida Athletic Commission, Farm Labor Program, Child Labor Program, and any professional boards and programs housed within Professions.¹⁶ To ensure compliance with applicable laws and rules by those professions and related businesses, the division investigates complaints, utilizes compliance mechanisms, and performs inspections.¹⁷

The Division of Certified Public Accounting is responsible for the regulation of certified public accountants and accounting firms in the state.¹⁸

The Division of Real Estate is responsible for the regulation of real estate sales associates, brokers, and appraisers, in conjunction with the Florida Real Estate Commission and the Florida Real Estate Appraisal Board.¹⁹

¹⁴ s. 20.165, F.S.

¹⁵ Florida Department of Business and Professional Regulation, *Division of Professions*, <http://www.myfloridalicense.com/dbpr/pro/index.html> (last visited Feb. 20, 2017).

¹⁶ Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers.

¹⁷ Florida Department of Business and Professional Regulation, *Division of Regulation*, <http://www.myfloridalicense.com/DBPR/division-of-regulation/> (last visited Mar. 12, 2023).

¹⁸ S. 473.3035, F.S.; Florida Department of Business and Professional Regulation, *Certified Public Accounting*, [Certified Public Accounting – MyFloridaLicense.com](http://www.myfloridalicense.com) (last visited Mar. 12, 2023).

Each profession is governed by an individual practice act and by ch. 455, F.S., which provides the general powers of DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under DBPR.²⁰ Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.”²¹

In Fiscal Year 2021-2022, DBPR’s Division of Professions had 937,960 active licensees (of which 38,541 were licensed accountants; 66,936 were licensed engineers, and 345,026 were real estate-related licensees).²² Such licenses have statutory procedures in places to allow out-of-state licensees to obtain a Florida license.

In 2020, HB 1193,²³ an omnibus license deregulation bill, was enacted, which instituted greater license portability measures for the following DBPR licenses:

- Veterinarians,
- Construction contractors,
- Electrical contractors,
- Landscape architects,
- Geologists,
- Professional engineers,
- Certified public accountants,
- Home inspectors,
- Building code professionals,
- Cosmetologists, and
- Barbers.

Locally Licensed Contractors

Chapter 489, F.S., relates to “contracting,” with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting. DBPR, through the Construction Industry Licensing Board and the Electrical Contractors’ Licensing Board and under the Division of Professions, provide statewide licenses for various construction and electrical contractors. Chapter 489, F.S., also allows local jurisdictions across the state to locally license registered contractors to practice in their jurisdiction.²⁴

Department of Health

The Department of Health (DOH) is created under the authority of s. 20.43, F.S., which outlines the composition of the agency structure to include the Division of Medical Quality Assurance (MQA). MQA is statutorily responsible for the following boards and professions established within the division:

- The Board of Acupuncture, created under ch. 457, F.S.;
- The Board of Medicine, created under ch. 458, F.S.;
- The Board of Osteopathic Medicine, created under ch. 459, F.S.;
- The Board of Chiropractic Medicine, created under ch. 460, F.S.;
- The Board of Podiatric Medicine, created under ch. 461, F.S.;
- Naturopathy, as provided under ch. 462, F.S.;
- The Board of Optometry, created under ch. 463, F.S.;
- The Board of Nursing, created under part I of ch. 464, F.S.;

¹⁹ S. 475.021, F.S.

²⁰ S. 455.203, F.S.

²¹ S. 455.01(6), F.S.

²² See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 10, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 20, 2023).

²³ Ch. 2020-125, L.O.F.

²⁴ Ss. 489.117 and 489.131, F.S.

- Nursing assistants, as provided under part II of ch. 464, F.S.;
- The Board of Pharmacy, created under ch. 465, F.S.;
- The Board of Dentistry, created under ch. 466, F.S.;
- Midwifery, as provided under ch. 467, F.S.;
- The Board of Speech-Language Pathology and Audiology, created under part I of ch. 468, F.S.;
- The Board of Nursing Home Administrators, created under part II of ch. 468, F.S.;
- The Board of Occupational Therapy, created under part III of ch. 468, F.S.;
- Respiratory therapy, as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, as provided under part X of ch. 468, F.S.;
- The Board of Athletic Training, created under part XIII of ch. 468, F.S.;
- The Board of Orthotists and Prosthetists, created under part XIV of ch. 468, F.S.;
- Electrolysis, as provided under ch. 478, F.S.;
- The Board of Massage Therapy, created under ch. 480, F.S.;
- The Board of Clinical Laboratory Personnel, created under part III of ch. 483, F.S.;
- Medical physicists, as provided under part IV of ch. 483, F.S.;
- The Board of Opticianry, created under part I of ch. 484, F.S.;
- The Board of Hearing Aid Specialists, created under part II of ch. 484, F.S.;
- The Board of Physical Therapy Practice, created under ch. 486, F.S.;
- The Board of Psychology, created under ch. 490, F.S.;
- School psychologists, as provided under ch. 490, F.S.;
- The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under ch. 491, F.S.; and
- Emergency medical technicians and paramedics, as provided under part III of ch. 401, F.S.;

The DOH and the practitioner boards have different roles in the regulatory system. Boards establish practice standards by rule, pursuant to statutory authority and directives.²⁵ The DOH receives and investigates complaints about practitioners and prosecutes cases for disciplinary action against practitioners.

The DOH, on behalf of the professional boards, investigates complaints against practitioners.²⁶ Once an investigation is complete, the DOH presents the investigatory findings to the boards. The DOH recommends a course of action to the appropriate board's probable cause panel which may include:²⁷

- Issuing an emergency order;
- Having the file reviewed by an expert;
- Issuing a closing order; or
- Filing an administrative complaint.

The boards determine the course of action and any disciplinary action to take against a practitioner under the respective practice act.²⁸ For professions for which there is no board, the DOH determines the action and discipline to take against a practitioner and issues the final orders.²⁹ The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.³⁰ If a case is appealed, DOH attorneys defend the final actions of the boards before the appropriate appellate court.³¹

²⁵ The DOH also establishes these for some professions. Professions which do not have a board include naturopathy, nursing assistants, midwifery, respiratory therapy, dietetics and nutrition, electrolysis, medical physicists, genetic counselors, and school psychologists.

²⁶ Department of Health, *Investigative Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited Mar. 20, 2023).

²⁷ Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Mar. 20, 2023).

²⁸ S. 456.072(2), F.S.

²⁹ *Supra* note 25.

³⁰ *Supra* note 27.

³¹ *Id.*

The DOH and board rules apply to all statutory grounds for discipline against a practitioner. Under current law, the DOH has disciplinary authority for violations of a practice act only for practitioners that are not regulated by a board. The DOH does not have final disciplinary authority over practitioners for which there is a board.

Florida Health Care Licensure

The DOH does not license health care practitioners by specialty or subspecialty. A health care practitioner's specialty area of practice is acquired through the practitioner acquiring additional education, training, or experience in a particular area of health care practice. Practitioners who have acquired additional education, training, or experience in a particular area may also elect to become board-certified in that specialty by private, national specialty boards, such as the American Board of Medical Specialties (ABMS), the Accreditation Board for Specialty Nursing Certification, and the American Board of Dental Specialties.³² Board certification is not required to practice a medical or osteopathic specialty.

Health Care Practitioner Licensure – Federal Government and Military

The federal government does not license health care practitioners, nor does it regulate practitioner behavior in terms of scope of practice, standards of practice, or practitioner discipline. Instead, the federal government relies on state governments to fulfill those functions.

In addition to state licensure requirements, Medicare, Medicaid, and other government reimbursement programs³³ rely on the power of the purse to manage practitioners and facilities providing health care services to persons enrolled in such programs. These programs impose “conditions of participation” and “conditions of payment,” which essentially mandate compliance with specified standards. Certification under a federal health care program is an authorization to participate in government payment systems; it is distinct from state licensure or accreditation by a nationally-recognized board.³⁴

For example, under federal labor law, the definition of “health care provider” includes, in part, a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices, and others capable of providing health care services, including podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse midwives, clinical social workers, and physician assistants who are authorized to practice in the state and performing within the scope of their practice as defined under state law.³⁵

Federal laws do not license or regulate such practitioners in the manner state regulatory laws and practice acts do, and do not define practitioner credentials or scopes of practice outside the applicable state law.

United States Armed Forces Career Fields

The U.S. Armed Forces consists of six military branches: Air Force, Army, Coast Guard, Marine Corps, Navy, and Space Force. The secretary of the U.S. Department of Defense controls each branch, except the Coast Guard, which is under the Department of Homeland Security (DHS). With more than two million civilian and military employees, the U.S. Department of Defense is the world's largest employer.³⁶

³² Examples of specialties include dermatology, emergency medicine, ophthalmology, pediatric medicine, certified registered nurse anesthetist, clinical nurse specialist, cardiac nurse, nurse practitioner, endodontics, orthodontics, and pediatric dentistry.

³³ Programs such as the federal workers' compensation program for longshoremen and harbor workers found under 20 CFR Subchapter A, available at: <https://www.law.cornell.edu/cfr/text/20/chapter-VI/subchapter-A> (last visited Mar. 17, 2023).

³⁴ The Healthcare Law Review: USA, *Spotlight: The Regulation of Healthcare Providers and Professionals in the USA*, Sept. 7, 2020, available at: <https://www.lexology.com/library/detail.aspx?g=c3c193d0-753e-4244-914a-fd943e70ec8e> (last visited Mar. 17, 2023).

³⁵ See 29 CFR s. 825.125, defining the term “health care provider” in the context of the Family and Medical Leave Act of 1993, as amended.

³⁶ Military.com, *What Are the Branches of the US Military?* at <https://www.military.com/join-armed-forces/us-military-branches-overview.html> (last visited Mar. 20, 2023).

Joining the U.S. Armed Forces as an enlisted member or an officer has a significant impact on the type of experience and training a new recruit receives. All jobs for enlisted members require a high school diploma, although, with certain exceptions, a passing General Education Development (GED) test score is acceptable. While jobs for enlisted members include infantry roles, most jobs involve hands-on training for mechanical, transportation, human service, or office fields that transfer to the civilian world.

Almost all officer positions require a four-year college degree or equivalent. Officers are the managers of the military, acting in leadership roles that require planning, directing operations, and making critical decisions. Officer positions also include careers that require advanced degrees, such as law and medicine.³⁷

The careers available to members of the U.S. Armed Forces are extensive, and depending on the service branch, have been referred to as career management fields (CMF), occupational management fields (OMF), and military occupational specialties (MOS).³⁸

Servicemember Professional License Portability

The federal Veterans Auto and Education Improvement Act of 2022,³⁹ (the federal portability act) which became law on January 5, 2023, addresses the portability of professional licenses held by members of the U.S. Armed Forces (service members) and their spouses, when they move outside the jurisdiction that issued the license due to military orders for military service, under specified circumstances.

Portability is available only for a professional license or certificate in good standing with the issuing licensing authority which has been actively used by the servicemember or spouse during the two years immediately preceding the relocation (covered licenses), and licenses to practice law are expressly not covered.

Under the act, a covered license must be considered valid at a similar scope of practice and in the discipline applied for in the jurisdiction of such new residency for the duration of such military orders if such servicemember or spouse:

- Provides a copy of military orders to the licensing authority in the new jurisdiction;
- Remains in good standing with:
 - The licensing authority that issued the covered license; and
 - Every other licensing authority that has issued to the servicemember or spouse a license with a similar scope of practice and in the discipline applied in the new jurisdiction; and
- Submits to the authority of the licensing authority in the new jurisdiction for the purposes of standards of practice, discipline, and fulfillment of any continuing education requirements.

If the license of a servicemember or spouse is covered by an interstate licensure compact, use of the license is governed by the interstate compact or applicable state law, and the above portability provisions do not apply.

Occupational Licensing Trends

According to the National Conference of State Legislatures (NCSL), “occupational licensing remains a growing area of interest for states, stemming largely from tight labor markets and the race to recruit workers for the large number of job openings nationwide. In 2022, the focus has largely been on

³⁷ Today’s Military, *Enlisted and Officer Paths*, at <https://www.todaysmilitary.com/ways-to-serve/enlisted-officer-paths> (last visited Mar. 20, 2023).

³⁸ See e.g., listed careers for the Air Force, Army, Marines, and Navy, respectively, at <https://www.airforce.com/careers>; https://en.wikipedia.org/wiki/List_of_United_States_Army_careers; <https://www.marines.com/about-the-marine-corps/roles/military-occupational-specialty.html>; and <https://www.navy.com/node/3512> (all last visited Mar. 20, 2023).

³⁹ See s. 19, Pub. Law No. 117-333, H.R. 7939, 117th Cong. (Jan. 5, 2023) at <https://www.congress.gov/bill/117th-congress/house-bill/7939/text> (last visited Mar. 17, 2023), which amended the Servicemembers Civil Relief Act (SCRA), 42 U.S.C. 4021 *et seq.* by adding Section 705A. The amendment also expands the right to terminate certain types of service contracts and clarifies options for tax residence for a servicemember and his or her spouse.

improving the accessibility of licensing in order to bolster the workforce and integrate new employees.”⁴⁰ The NCSL identified four trends: worker mobility; universal licensure recognition; reducing barriers for veterans and military spouses; and simplifying or eliminating licensing.⁴¹

Emergency Powers

During a declared state of emergency, in addition to any other powers conferred upon the Governor by law, the Governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of any state agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency.⁴²

Effect of Bill

The bill, titled the Interstate-Mobility and Universal-Recognition Act, relates to licenses and certifications issued by DBPR and DOH. The bill requires DBPR and DOH to recognize other state licenses and certifications, certain work experience, and private certifications and work experience for certain individuals, under certain circumstances.

The bill requires Florida licensing boards that issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulations of professions by the Department of Business and Professional Regulation (DBPR), or ch. 456, F.S., relating to the regulation of professions by the Department of Health (DOH), to issue an occupational license or government certification (universal license) to eligible applicants, under certain circumstances (universal licensing requirement).

Applicants may seek a universal license through one of three pathways described in the bill. An applicant from another state is automatically approved under the universal licensing scheme if:

- The applicant is licensed by another licensing entity or state;
- The applicant has certain work experience in another state or in the military; or
- The applicant has a private certification with work experience in a non-licensing state or the military.

The bill provides that an applicant with a valid occupational license or certification in good standing, or who otherwise meets the requirements for an occupational license for a lawful occupation, is presumed to be qualified for the license and must be issued an occupational license or government certification by the appropriate Florida licensing board.

The bill provides the following definitions:

- "Board" means an agency, board, department, or other governmental entity that regulates a lawful occupation under DBPR or DOH and issues an occupational license or government certification to an individual.
- "Government certification" means a voluntary, government-granted, and nontransferable recognition granted to an individual who meets personal qualifications related to a lawful occupation. The term includes a military certification for a lawful occupation. The term does not include credentials,⁴³ such as those used for medical board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

⁴⁰ See NCSL 2022 Occupational Licensing Trends Summary, <https://www.ncsl.org/labor-and-employment/2022-occupational-licensing-trends> (last visited Mar. 20, 2023).

⁴¹ *Id.*

⁴² S. 252.36(6), F.S.

⁴³ The term “credentials” is not defined in the bill, however, see the University of Florida Professional and Workforce Development Medical Credentialing Program information at <https://pwd.ua.ufl.edu/medical-credentialing-program/> (last visited Mar. 20, 2023). The Florida Certification Board (FCB), a nonprofit organization, indicates it has, over the last 30 years, designed, developed and managed certification programs in Florida for over 30 health and human services professions. See <https://flcertificationboard.org/credentials/> and <https://flcertificationboard.org/about/> (last visited Mar. 20, 2023).

- "Lawful occupation" means a course of conduct, pursuit, or profession that includes the lawful sale of goods or services to sell regardless of whether the individual selling them is subject to an occupational license.
- "Military" means the Armed Forces of the United States, including the Air Force, Army, Coast Guard, Marine Corps, Navy, Space Force, National Guard, and all reserve components and auxiliaries. The term also includes the military reserves and militia of any United States territory or state.
- "Occupational license" means a nontransferable authorization in law for an individual to exclusively perform a lawful occupation based on meeting personal qualifications. The term includes a military occupational specialty.
- "Other licensing entity" or "another licensing entity" means any United States territory or state in the United States other than this state which issues occupational licenses or government certifications. The term includes the military.
- "Private certification" means a voluntary program in which a private organization grants nontransferable recognition to an individual who meets personal qualifications and standards relevant to performing the occupation, as determined by the private organization.
- "Scope of practice" means the procedures, actions, processes, and work that a person may perform under an occupational license or government certification issued in this state.

The bill provides that notwithstanding any other law, a board must issue an occupational license or government certification to a person applying to a board for such license or certification if all of the following apply:

- The person holds a current and valid occupational license or government certification by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a board in this state.
- The person has held the occupational license or government certification by another licensing entity for at least 1 year.
- A board for the other licensing entity required the person to pass an examination or meet education, training, or experience standards.
- A board for the other licensing entity holds the person in good standing.
- The person does not have a disqualifying criminal record as determined by a board in this state.
- A board for another licensing entity has not revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation.
- The person did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the person's work in the occupation in another state or in the military.
- The person does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.
- The person pays all applicable fees in this state.

If another licensing entity issued the person a government certification but this state requires an occupational license to work, a board must issue an occupational license to the person if the person otherwise satisfies all of the above qualifications.

Work Experience

In addition, the bill requires boards under DBPR and DOH to issue an occupational license or government certification to a person applying to a board for such license or certification based on work experience in another state or the military if all of the following requirements are met:

- The person worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses

an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.

- The person worked for at least 3 years in the lawful occupation.
- The person satisfies all of the above qualifications under occupational license or government certification.

Private Certification

Notwithstanding any other law, a board must issue an occupational license or government certification to a person applying for such license or certification based on the person holding a private certification and the person's work experience in another state or the military if all of the following apply:

- The person holds a private certification and worked in a state that does not use an occupational license or government certification to regulate a lawful occupation or was a member of the military, but this state uses an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The person worked for at least 2 years in the lawful occupation.
- The person holds a current and valid private certification in the lawful occupation.
- The private certification organization holds the person in good standing.
- The person does not have a disqualifying criminal record as determined by a board in this state.
- A board for another licensing entity has not revoked the person's occupational license or government certification because of negligence or intentional misconduct related to the person's work in the occupation.
- The person did not surrender an occupational license or government certification, or have such license or certification revoked, because of negligence or intentional misconduct related to the person's work in the occupation in another state or in the military.
- The person does not have a complaint, allegation, or investigation pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime. If the person has a complaint, allegation, or investigation pending, a board may not issue or deny an occupational license or government certification to the person until the complaint, allegation, or investigation is resolved or the person otherwise meets the criteria for an occupational license or government certification in this state to the satisfaction of a board in this state.
- The person pays all applicable fees in this state.

Presumption of Approval

The bill provides that unless a board can demonstrate a substantial difference between licensure or certification requirements of another licensing entity and this state, there is a presumption that an applicant who holds a valid occupational license, government certification, or private certification, or otherwise meets the requirements to be credentialed for a lawful occupation, and is in good standing in another state is qualified for an occupational license or government certification in this state and **must** be approved by the board.

A board shall provide an applicant with a written decision regarding the application within 90 days after receiving a complete application.

Appeal Process

The person may appeal the board's decision to the Division of Administrative Hearings, such as:

- The board's denial;
- Determination of the occupation;
- Determination of the similarity of the scope of practice of the occupational license or government certification issued; or
- Other applicable determinations.

Applicability

The bill provides that:

- Nothing in this bill shall prevent a person from obtaining an occupational license or government certification from another law or rule.
- An occupational license or government certification issued under this bill is valid only in this state unless otherwise provided by law.
- It does not prevent Florida from entering into a licensing compact or reciprocity agreement with another state, foreign province, foreign country, international organization, or other entity.
- May not be construed to prevent this state from recognizing occupational credentials issued by a private certification organization, foreign province, foreign country, international organization, or other entity.
- May not be construed to require a private organization to grant or deny private certification to any individual.

The bill provides that the Governor may order the recognition of occupational licenses from other licensing entities or from a foreign country as if the licenses were issued in this state under a state of emergency declared by the Governor.

The bill requires each board under DBPR and DOH to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by December 31 of each year, detailing the number of licenses or certifications issued, the number of applications submitted which were denied, and the reason for each denial.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1: Creates s. 455.2135, F.S.; the “Interstate-Mobility and Universal Recognition Occupational Licensing Act.”
- Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase revenues from application fees at DBPR and DOH due to an increase in out-of-state license applicants.

2. Expenditures:

DBPR and DOH may have an indeterminate negative fiscal impact related to creating new licensing processes and forms. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may increase revenues from application fees for local contracting licenses due to an increase in out-of-state license applicants.

2. Expenditures:

The bill may cause an increase in local contractor licenses being issued, but local governments may charge fees to cover the cost of regulation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals in the state may make the decision to forgo education and testing requirements in Florida in favor of moving to another state that has an easier path to licensure, or move to a state that doesn't

have a licensing scheme to obtain a private certification, and later return to be licensed in the state through one of the bill's alternative pathways.

Out-of-state professionals seeking to work in the state may be eligible under the additional alternative pathways created by the bill to obtain a license to work in specified occupations and professions in Florida. Thus, the state may see an increase in the number of available professionals to hire.

D. FISCAL COMMENTS:

DBPR has provided the following response on the fiscal impact:⁴⁴

The potential fiscal impact to DBPR is indeterminate at this time. Depending upon the number of individuals who take advantage of this new licensing method the DBPR would collect a corresponding amount of revenues from the licensees. Additionally, if enough new license applications are received there could be staffing needs in order to process any increased applications or complaints.

DOH estimates they will need \$2.5 M in additional resources including 13.00 positions. The estimate includes \$1.1 M in salary and benefits, \$432 K in expenses, \$18 K in OPS, and \$641 K in contracted services. However, in Fiscal Year 2021-2022, DOH reverted \$125.0 M in salaries and benefits, \$43.0 M in expenses, \$27.4 M in OPS, and \$35.4 M in contracted services. Additionally, as of April 4, 2023, DOH had 2,473.85 vacant positions for a department vacancy rate of 19.3 percent.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art, VII, s. 19 of the Florida Constitution may apply if the fee provisions in the bill are interpreted to be a new fee.

Mandating acceptance of unspecified private certifications and other state licenses may potentially implicate the "nondelegation doctrine." Article III, Section 1 of the Florida Constitution states that "[t]he legislative power of the state shall be vested in a legislature of the State of Florida." The Florida Supreme Court has held that this constitutional provision requires that "primary policy decisions must be made by members of the legislature who are elected to perform those tasks, and administration of legislative programs must be pursuant to some minimal standards and guidelines...."⁴⁵

The Legislature may constitutionally transfer subordinate functions to "permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions."⁴⁶ However, the Legislature "may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law."⁴⁷ Further, the nondelegation doctrine precludes

⁴⁴ Department of Business and Professional Regulation, Agency Analysis of 2023 Senate Bill 1364, p. 10 (Mar. 20, 2023).

⁴⁵ *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla. 1978).

⁴⁶ *Microtel v. Fla. Pub. Serv. Comm'n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep't of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

⁴⁷ *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

the Legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”⁴⁸ When the Legislature delegates power to another body, it “must clearly announce adequate standards to guide in the execution of the powers delegated.”⁴⁹

The bill allows people to obtain a license in this state that move here from another state more easily than Florida residents. There are constitutional provisions and analysis that may be implicated.⁵⁰

B. RULE-MAKING AUTHORITY:

The bill requires boards at DBPR and DOH to create new licensing processes and forms. The bill does not provide rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear if the bill is intended to cover all licensed professions in the state or only those licensed professions covered in chs. 455 and 456, F.S., as it specifically excepts occupations regulated by the Florida Supreme Court, such professionals are not regulated by DBPR or DOH.

The sponsor has indicated that an amendment is planned to address concerns once the sponsor has heard from all interested parties and received input from DBPR and DOH. The planned amendment will also address technical drafting issues, make conforming changes, clarify definitions and other language for consistency, address profession and industry specific concerns by identifying more specifically those individuals who are not covered by the universal licensing requirements created by the bill, and will allow rulemaking by DBPR and DOH to implement the provisions in the bill.

The bill may also need clarification related to which fees an applicant must pay. DBPR and DOH have a specific fee structure authorized for each type of license and avenue for obtaining licensure, including a license by endorsement. The bill does not currently specify which fee or fees are applicable.

The bill may need clarification related to the requirements for a universal license based on work experience, which appear to be internally inconsistent. To qualify under this provision, the bill requires the applicant to have worked in another state that does not require a license for the occupation; however, to qualify under this provision, the bill also requires the applicant to meet the requirements s. 455.2135(3)(a), F.S., which requires the person to have been licensed by another licensing entity.

Some of the bill’s provisions conflict with current law. For example: The bill creates s. 455.2135, F.S., to provide occupational license portability for professions or occupations regulated by the DBPR and DOH. However, ch. 455, F.S., relates to professions regulated by the DBPR. The sponsor may wish to include in an amendment additional provisions in ch. 456, F.S., noting the applicability of the act to professions regulated by the DOH, and providing notice to eligible individuals and the affected boards of the universal licensing requirements. A similar amendment may be needed to clarify conflicts between the bill’s provisions related to the Emergency Powers of the Governor that conflict with current law.

DBPR has conveyed the following concerns:⁵¹

The bill states that a board may not issue or deny an occupational license or government certification to any person with a pending complaint, allegation, or investigation until such matter is resolved. This conflicts with s. 455.213(4), F.S., which authorizes denial of an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the respective professional practice acts, until such time as the investigation is complete. It is unclear if the provisions of s. 120.60(1), F.S., that deem an application approved for failure to issue a

⁴⁸ *Dep’t of Bus. Reg., Div. of Alcoholic Beverages and Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

⁴⁹ *Martin*, 916 So.2d at 770.

⁵⁰ U.S. Const. art IV, § 2, cl. 1; U.S. Const. art I, § 8, cl. 3; U.S. Const. amend. XIV, §§ 1,2;

⁵¹ *Id.* at 8-9.

decision within 90 days of a complete application would still apply when an agency is prohibited from denying or issuing a license while the applicant has pending complaints, allegations, or investigations.

The bill's effective date of July 1, 2023 will not allow sufficient time for rulemaking to implement the provisions of the bill, including developing new fees and applications.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES