

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1364

INTRODUCER: Regulated Industries Committee and Senator Collins and others

SUBJECT: Interstate-Mobility and Universal-Recognition Occupational Licensing Act

DATE: April 17, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Betta</u>	<u>AEG</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CB/SB 1364 addresses occupational license portability in the United States by requiring 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). The bill provides that this requirement does not apply to occupations regulated by the Florida Supreme Court or certified public accountants.

Applicants may seek a universal license through one of three pathways authorized in the bill:

- Universal licensing if licensed by another licensing entity;
- Universal licensing based on work experience in another state or the military; or
- Universal licensing based on private certification with work experience in a non-licensing state or the military.

Under the bill, 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 other licensing entities, may expand any occupation license scope of practice, and may authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

This bill will have a significant negative fiscal impact to the DBPR and the DOH. CS/SB 1366 is linked to this bill and authorizes licensing boards to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application. The fees may offset costs incurred by the DBPR and the DOH. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2023.

II. Present Situation:

Chapter 455, F.S., provides for the regulation of professions by the Department of Business and Professional Regulation (DBPR), and ch. 456, F.S., provides for the regulation of health professions by the Department of Health (DOH).

Department of Business and Professional Regulation

Organization of the DBPR

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has the following 11 divisions:

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

The Florida Athletic Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.¹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.²

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting “any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting,

¹ Section 548.003(1), F.S.

² See Parts I and III of ch. 450, F.S.

Professions, Real Estate, and Regulation.”³ The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.⁴

The term “profession” means any activity, occupation, profession, or vocation regulated by the department [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁵

The DBPR’s regulation of professions is to be undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”⁶ Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.⁷

However, the DBPR and its boards may not create a regulation that has an unreasonable effect on job creation or job retention or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.⁸

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.⁹

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.¹⁰

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a “permit, registration, certificate, or license” to the licensee.¹¹

³ Section 455.01(6), F.S.

⁴ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. See s. 455.221(1), F.S.

⁵ Section 455.01(6), F.S.

⁶ Section 455.201(2), F.S.

⁷ *Id.*

⁸ Section 455.201(4)(b), F.S.

⁹ Section 455.219(1), F.S.

¹⁰ See s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. See s. 455.221(1), F.S.

¹¹ Section 455.01(4) and (5), F.S.

Division of Certified Public Accounting

In Fiscal Year 2021-2022, there were 38,541 active licensees in the DBPR's Division of Certified Public Accounting.¹²

Division of Professions

In Fiscal Year 2021-2022, the 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), including:¹³

- Accountants (CPAs);
- Architects and interior designers;
- Asbestos consultants and contractors;
- Athlete agents;
- Auctioneers;
- Barbers;
- Building code administrators and inspectors;
- Community association managers;
- Construction industry contractors;
- Cosmetologists;
- Electrical contractors;
- Employee leasing companies;
- Engineers;
- Geologists;
- Home inspectors;
- Pilot commissioners;
- Landscape architects;
- Mold-related services;
- Real estate appraisers;
- Real estate (brokers/associates);
- Talent agencies; and
- Veterinarians.

As noted by the DBPR, most professions regulated by the Division of Profession include a governing professional board responsible for ultimate licensing and disciplinary decisions, but the DBPR is responsible for licensing and regulating asbestos consultants and contractors, athlete agents, community association managers, home inspectors, mold-related professionals, and talent agencies.¹⁴

¹² See Department of Business and Professional Regulation, *Annual Report, Fiscal Year 2021-2022*, at 18, at <http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2021-22.pdf> (last visited Mar. 30, 2023).

¹³ *Id.*

¹⁴ See the DBPR Annual Report at 26, *supra* note 12, noting that the Regulatory Council of Community Association Managers is responsible for adopting rules relating to the licensure examination, continuing education requirements, continuing education providers, fees, and professional practice standards to assist the DBPR in carrying out its duties.

Unlike most DBPR professions, the administrative, investigative, and prosecutorial services for the Florida Board of Professional Engineering (FBPE) are not provided by the DBPR. The DBPR has contracted with the Florida Engineers Management Corporation (FEMC) to provide such administrative, investigative, and prosecutorial services for the FBPE.¹⁵

Division of Real Estate

In Fiscal Year 2021-2022, there were 345,026 active licensees in the DBPR's Division of Real Estate.¹⁶

Department of Health

Licensure and Regulation of Health Care Practitioners

The Division of Medical Quality Assurance (MQA), within the DOH, has general regulatory authority over health care professionals (practitioners).¹⁷ The MQA works in conjunction with 22 regulatory boards and four councils to license and regulate ten unique types of health care facilities and more than 40 health care professions.¹⁸ Each profession is regulated by an individual practice act and by ch. 456, F.S., which provides general regulatory and licensure authority for the MQA. The MQA is statutorily responsible for the following boards and professions established within the division and the DOH:¹⁹

- 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, under the DOH 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.;
- Nursing assistants, under the Board of Nursing 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.;

¹⁵ See s. 471.038, F.S., the Florida Engineers Management Corporation Act, for the duties and authority of the FEMC. See the Annual Report of the FEMC for FY 2021-2022, available at <https://fbpe.org/wp-content/uploads/2022/09/FEMC-Annual-Report-2022.pdf> (last visited Mar. 18, 2023), and the contract between the DBPR and the FEMC for the period between July 1, 2021 and June 30, 2025 at <https://fbpe.org/wp-content/uploads/2021/10/2021-25-DBPR-FEMC-Contract.pdf> (last visited Mar. 18, 2023).

¹⁶ See the DBPR Annual Report at 26, *supra* note 12.

¹⁷ Pursuant to s. 456.001(4), F.S., health care practitioners are defined to include acupuncturists, physicians, physician assistants, chiropractors, podiatrists, naturopaths, dentists, dental hygienists, optometrists, nurses, nursing assistants, pharmacists, midwives, speech language pathologists, nursing home administrators, occupational therapists, respiratory therapists, dietitians, athletic trainers, orthotists, prosthetists, electrologists, massage therapists, clinical laboratory personnel, medical physicists, genic counselors, dispensers of optical devices or hearing aids, physical therapists, psychologists, social workers, counselors, and psychotherapists, among others.

¹⁸ Florida Department of Health, Division of Medical Quality Assurance, *Annual Report and Long-Range Plan, Fiscal Year 2021-2022*, at 5, <https://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html> (last visited Mar. 17, 2023).

¹⁹ Section 456.001(4), 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, under the Board of Respiratory Care as provided under part V of ch. 468, F.S.;
- Dietetics and nutrition practice, under the Board of Medicine 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, under the Board of Medicine 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 I of ch. 483, F.S.;
- Medical physicists, under the DOH as provided under part II of ch. 483, F.S.;
- Genetic Counselors, under the DOH as provided under part III 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, under the Board of Psychology created under ch. 490, F.S.;
- School psychologists, under the Board of Psychology 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, under the DOH 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.²⁰ 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.²¹ 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:²²

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

²⁰ The DOH also establishes these for some professions. *See infra* note 24.

²¹ Department of Health, *Investigative Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/isu.html> (last visited Mar. 17, 2023).

²² Department of Health, *Prosecution Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/psu.html> (last visited Mar. 17, 2023).

The boards determine the course of action and any disciplinary action to take against a practitioner under the respective practice act.²³ 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.²⁴ The DOH is responsible for ensuring that licensees comply with the terms and penalties imposed by the boards.²⁵ If a case is appealed, the DOH attorneys defend the final actions of the boards before the appropriate appellate court.²⁶

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.

Health Care Specialties and Florida 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.²⁷ Board certification is not required to practice a medical or osteopathic specialty.

Health Care Practitioner Licensure - Federal Government and United States 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 programs²⁸ 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.²⁹

²³ Section 456.072(2), F.S.

²⁴ 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.

²⁵ *Supra* note 22.

²⁶ *Id.*

²⁷ 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.

²⁸ 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).

²⁹ 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).

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.³⁰

Another example found in federal law is the workers’ compensation program for longshoremen and harbor workers.³¹ Under this federal program, for the purpose of establishing who may be paid for providing health care services to patients in the program, the term “physician” includes doctors of medicine, surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice, as defined by state law.³²

Some provisions of federal law distinguish between “physicians” and other practitioners who are included in the “physician” payment provisions above. For example, federal Medicaid law requires that state Medicaid programs “must provide for payment of optometric services as physician services, whether furnished by an optometrist or a physician,” thereby differentiating between optometrists and physicians instead of classifying them jointly.³³

These 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.³⁴

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.

³⁰ 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.

³¹ *Supra* note 28.

³² See 20 CFR s. 702.404.

³³ See 42 CFR s. 441.30.

³⁴ 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. 17, 2023).

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.³⁵

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).³⁶

Portability of Professional Licenses Held by Servicemembers; Interstate License Compacts

The federal Veterans Auto and Education Improvement Act of 2022,³⁷ (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.

³⁵ Today's Military, *Enlisted and Officer Paths*, at <https://www.todaymilitary.com/ways-to-serve/enlisted-officer-paths> (last visited Mar. 17, 2023).

³⁶ 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. 17, 2023).

³⁷ 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.

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 improving the accessibility of licensing in order to bolster the workforce and integrate new employees.”³⁸ The NCSL identified four trends: worker mobility; universal licensure recognition; reducing barriers for veterans and military spouses; and simplifying or eliminating licensing.³⁹

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.⁴⁰

III. Effect of Proposed Changes:

CS/SB 1364 requires Florida licensing boards that regulate a lawful occupation and issue occupational licenses or government certifications to individuals under ch. 455, F.S., relating to the regulation of professions by the Department of Business and Professional Regulation (DBPR) and 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 an eligible person, under certain circumstances (universal licensing requirement).

The professions and occupations affected by the universal licensing requirement in the bill are subject to the general regulatory authority of the DBPR and the DOH.

The bill creates s. 455.2135, F.S., and provides that the section may be cited as the “Interstate-Mobility and Universal-Recognition Occupational Licensing Act” (act). The following terms are defined in the act:

- “Board” means an agency, board, department, or another governmental entity that regulates a lawful occupation under ch. 455, F.S., or ch. 456, F.S., and issues an occupational license or government certification (universal license) to an applicant, under certain circumstances (universal licensing requirement), except those boards that regulate an occupation that is excepted from the act.
- “Government certification” means a voluntary, government-granted, and nontransferable recognition granted to an individual who meets personal qualifications related to a lawful occupation, including a military certification.

³⁸ See NCSL 2022 Occupational Licensing Trends Summary, <https://www.ncsl.org/labor-and-employment/2022-occupational-licensing-trends> (last visited Mar. 17, 2023).

³⁹ *Id.*

⁴⁰ Section 252.36(6), F.S.

- “Lawful occupation” means a course of conduct, pursuit, or profession⁴¹ that includes the lawful sale of goods or services 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, including the military reserves and militia of any United States territory or state.
- “Occupational license”⁴² means a nontransferable authorization in law for an individual to perform a lawful occupation based on meeting personal qualifications, including a military occupational specialty.
- “Other licensing entity” or “another licensing entity” means any United States territory, state other than this state, private certification organization, foreign province, foreign country, international organization, or other entity that issues occupational licenses or government certifications, including 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 an occupation, as determined by the private organization.
- “Scope of practice” means the procedures, actions, processes, and work that an individual may perform under an occupational license or government certification issued in Florida.

Universal Licensing if Licensed by Another Licensing Entity; License Requirements

Under the bill, notwithstanding any other law, a board must issue a universal license to an applicant licensed by another licensing entity, if all of the following apply (the universal license requirements):

- The applicant holds a current and valid occupational license or government certification issued by another licensing entity in a lawful occupation with a similar scope of practice, as determined by a Florida board.
- The applicant has held the occupational license or government certification issued by another licensing entity for at least one year.
- A board for the other licensing entity required the applicant to pass an examination or meet education, training, or experience standards.
- A board for the other licensing entity holds the applicant in good standing.
- The applicant does not have a disqualifying criminal record, as determined by a Florida board.
- A board for another licensing entity has not revoked the applicant’s occupational license or government certification because of negligence or intentional misconduct related to the applicant’s work in the occupation.

⁴¹ Section 455.01(6), F.S., defines the term “profession” to include any activity, occupation, profession, or vocation regulated by the DBPR in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation, and s. 456.001(6), F.S., defines the term “profession” to include any occupation regulated by the DOH in the MQA.

⁴² The term “license” is defined in ch. 120, F.S., Florida’s Administrative Procedure Act as “a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.” See s. 120.52, F.S.

- The applicant 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 applicant's work in the occupation in another state or in the military.
- The applicant does not have a complaint, allegation, or investigation formally pending before a board for another licensing entity which relates to unprofessional conduct or an alleged crime; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

If another licensing entity issued the applicant a government certification, but Florida requires an occupational license to work, a board must issue an occupational license to the applicant if the applicant otherwise satisfies the universal license requirements described above.

Universal Licensing Based on Work Experience in Another State or the Military

Under the bill, notwithstanding any other law, a board must issue a universal license to an applicant based on work experience outside of Florida or in the military, if all of the following apply:

- The applicant worked in a state that does not issue an occupational license or government certification to regulate a lawful occupation or was a member of the military, but an occupational license or government certification is required in Florida for an occupation with a similar scope of practice, as determined by the board.
- The applicant worked for at least three years in the lawful occupation.
- The applicant does not have a disqualifying criminal record as determined by a Florida board.
- A board for another licensing entity has not revoked the applicant's occupational license or government certification because of negligence or intentional misconduct related to the applicant's work in the occupation.
- The applicant 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 applicant's work in the occupation outside of Florida or in the military.
- The applicant 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; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

Universal Licensing Based on Private Certification with Work Experience in a Non-licensing State or the Military

Under the bill, notwithstanding any other law, a board must issue a universal license to an applicant based on the applicant holding a private certification and having work experience outside of Florida or in the military, if all of the following apply:

- The applicant holds a private certification and worked in a state that does not issue an occupational license or government certification to regulate a lawful occupation or was a member of the military, but Florida issues an occupational license or government certification to regulate a lawful occupation with a similar scope of practice, as determined by the board.
- The applicant worked for at least two years in the lawful occupation.
- The applicant holds a current and valid private certification in the lawful occupation.
- The private certification organization holds the applicant in good standing.
- The applicant does not have a disqualifying criminal record as determined by a Florida board.
- A board for another licensing entity has not revoked the applicant's occupational license or government certification because of negligence or intentional misconduct related to the applicant's work in the occupation.
- The applicant 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 applicant's work in the occupation outside of Florida or in the military.
- The applicant 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; while such a matter is pending, a board may not issue or deny a universal license to the applicant until the complaint, allegation, or investigation is resolved or the applicant otherwise meets the criteria for a universal license in Florida to the satisfaction of a Florida board.
- The applicant pays all applicable fees in Florida.

Requirements for Issuance of Universal Licenses in Florida

Examinations on Florida Law

Under the bill, a board may require an applicant to pass an examination specific to relevant Florida laws that regulate the occupation, if an occupational license or government certification under ch. 455, F.S., relating to the regulation of professions by the DBPR or ch. 456, F.S., relating to the regulation of professions by the DOH, requires such examination.

The bill provides that a board, in addition to the above examination, must require an applicant seeking to be licensed as a general contractor, building contractor, residential contractor, roofing contractor, specialty structure contractor, or glass and glazing contractor to:

- Successfully complete the examination for licensure described in s. 489.113(1). F.S.; and
- Before being issued a certificate or registration, successfully complete the following continuing education courses, either in person or online:
 - The number of required hours, as determined by the Construction Industry Licensing Board, relating to laws and rules related to the construction industry in ch. 455, F.S., and

- part 1 of ch. 489, F.S., and the rules of the Construction Industry Licensing Board, and relating to wind mitigation methodology and techniques incorporated in the Florida Building Code; and
- For applicants seeking to be licensed as a general contractor, building contractor, residential contractor, or roofing contractor, a two-hour course on the Florida Building Code which includes information on wind mitigation techniques.

Presumption of Qualification; Time Frame for Board Action; Appeal

Under the bill, unless a board can demonstrate a substantial difference between licensure or certification requirements of another licensing entity and those in Florida, 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 issued an occupational license for a lawful occupation, and is in good standing in another state is qualified for an occupational license or government certification in Florida and must be approved by the board.

The bill requires a board to provide an applicant with a written decision on the application within 90 days after receipt of a complete application. The applicant may appeal to the Division of Administrative Hearings any of the board's determinations relating to the issuance of a license pursuant to s. 455.2135, F.S., as created by the bill, including:

- Denial of an occupational license or government certification;
- Determination of the validity of an occupational license or government certification;
- Determination of the similarity of the scope of practice of the occupational license or government certification held by the applicant; or
- Determination of a disqualifying criminal record.

Jurisdiction; Exceptions; Construction

An applicant who obtains an occupational license or a government certification pursuant to s. 455.2135, F.S., is subject to Florida laws regulating the occupation and the jurisdiction of the applicable Florida board.

Section 455.2135, F.S., does not apply to an occupation regulated by the Florida Supreme Court or any occupation regulated under ch. 473, F.S. (certified public accountants).

Under the bill, an occupational license or a government certification issued pursuant to s. 455.2135, F.S., is valid only in Florida, and such license or certification does not make the individual eligible to work outside this state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

The act may not be construed to:

- Prohibit an individual from applying for an occupational license or a government certification under another law or rule.
- Prevent the State of Florida from entering into a licensing compact or reciprocity agreement with another state, United States territory, foreign province, foreign country, international organization, or other entity.

- Prevent boards in the State of Florida from recognizing occupational licenses or governmental certifications issued by a private certification organization, foreign province, foreign country, international organization, or other entity.
- Require a private certification organization to grant or deny private certification to any individual.

Governor’s Licensing Authority During State of Emergency

The bill provides that, during a state of emergency declared by the Governor,⁴³ the Governor may:

- Order the recognition of occupational licenses from other licensing entities;
- Expand any occupational license’s scope of practice; and
- Authorize licensees to provide services in Florida in person, telephonically, or by other means for the duration of the emergency.

Annual Report

The bill requires each board 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 pursuant to s. 455.2135, F.S., the number of submitted applications that were denied, and the reason for each denial.

Rulemaking

The bill requires the DBPR and the DOH, for the boards under their jurisdiction, to adopt rules to administer the act.

Health Professions; Notice to Applicants and Boards

The bill creates s. 456.0365, F.S., noting the applicability of the act to professions regulated by the DOH.

Effective Date

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁴³ See ss. 252.31-252.60, F.S., known as the “State Emergency Management Act, and s. 252.36, F.S., relating to emergency management powers of the Governor.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals seeking to work in the state may be eligible under the additional pathways created by the bill to obtain a license to work in specified occupations and professions in Florida.

C. Government Sector Impact:

CS/SB 1364 appears to impact state government due to the additional pathways created by the bill for eligible individuals to obtain a license to work in specified occupations and professions in Florida.

Specifically, this bill will have a significant negative fiscal impact to the Department of Business and Professional Regulation (DBPR) and the Department of Health (DOH). CS/SB 1366 is linked to this bill and authorizes licensing boards to charge a fee to applicants for an occupational license or government certification, in order to recoup a board's costs, not to exceed \$100 for each application. There will be up-front costs associated with implementing the bill; however, in future years, fees may offset costs incurred by the DBPR and the DOH.

The DBPR indicates in its analysis⁴⁴ that the fiscal impact on revenues and expenditures is indeterminate, as the number of individuals who will apply for licensure under the provisions of the bill is unknown. However, the DBPR estimates it will incur additional expenses related to the number of full-time employees (FTE) required to handle the workload needed to implement the bill. The DBPR estimates it will need 43 additional staff and associated costs of \$4,656,085 for Fiscal Year 2023-2024.⁴⁵

⁴⁴ See Department of Business and Professional Regulation, *2023 Agency Legislative Bill Analysis for CS/SB 1364* at 6 (Mar. 21, 2023, received by the Regulated Industries Committee on Apr. 3, 2023) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

⁴⁵ *Id.* at 13.

The DOH estimates it will need \$2.5 million in additional resources including 13 FTE positions for increased workload to process applicants, handle complaints, investigations, and prosecutions, gather information and produce annual reports, increased board meeting costs, contracted service costs for processing of initial applications and related fees, costs for queries to the National Practitioner Data Bank, and to contract for development and administration of required exams.⁴⁶ The estimated cost includes:

- Salary and Benefits - \$1,132,663/Recurring;
- Salary Rate – 795,118;
- Expense - \$431,552/Recurring and \$62,907/Non-Recurring;
- OPS - \$18,400;
- Contracted Services - \$640,756/Recurring and \$222,480/Non-Recurring; and
- Human Resources - \$4,442/Recurring.

In reviewing the authority related to occupational licensing granted to the Governor during a state of emergency, the Division of Emergency Management has indicated that there is no fiscal impact.⁴⁷

According to the Division of Administrative Hearings, the potential additional workload can be handled within existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Professions in the DBPR notes the following concerns about the bill's impact on operational issues:

[The bill states] that a board may not issue or deny an occupational license/government certification to any person with a pending complaint, allegation, or investigation until such matter is resolved. This conflicts with Section 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 this chapter or the respective professional practice acts, until such time as the investigation is complete. Additionally, it is unclear if the provisions of Section 120.60(1), [F.S.] that deem an application approved for failure to issue a 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.

⁴⁶ See Department of Health, *2023 Agency Legislative Bill Analysis for SB 1364* at 21 (Mar. 8, 2023, received by the Regulated Industries Committee on Mar. 21, 2023) (on file with the Senate Committee on Regulated Industries).

⁴⁷ See Division of Emergency Management, *2023 Agency Legislative Bill Analysis for SB 1364* at 3 (Mar. 13, 2023) (on file with the Senate Committee on Regulated Industries).

It is unclear if the presumption of approval [in] the bill places the burden on the department or applicable board to affirmatively obtain evidence that the applicant is not qualified for licensure. If an applicant refuses or otherwise fails to submit proof of meeting the requirements set out in the bill, is the department or applicable board required to obtain such evidence such as another licensing entity's laws or rules to illustrate a substantial difference in requirements before denying licensure?

It is unclear whether [the bill provides] applicants a separate point of entry from what is already provided in Chapter 120, Florida Statutes, including a possible direct appeal to DOAH regardless of whether there is a dispute of material fact. All applications for licensure under the department are already subject to the provisions of Chapter 120, Florida Statutes, relating to time requirements for processing and granting/denying applications for licensure (90 days), and points of entry to appeal such decisions, including requesting for formal hearings before DOAH.

[The annual reports] to be provided by each board require that the number of applications that were denied, including the reasons for denial, be included in the annual report. It is unclear if this requires a line item of each application and the reason for denial, which could become expansive depending on the number of applications that are received and denied. It is not possible to estimate how many applications will be received under the provisions of this bill.

The professional practice acts for most of the occupations/professions that would be impacted by this bill already contain one or more endorsement methods specific to that occupation/profession. The endorsement provisions in this bill would apply to all professions regardless of how its requirements compare to the endorsement requirements of each of the professional practice acts. The impact to the health, safety, and welfare of Florida citizens cannot be determined as the licensure or certification requirements of other states or private organizations may be substantially different from Florida's requirements.

Certain professions have additional requirements other than completing Florida-specific exams, such as completing Florida-specific courses and demonstrating financial responsibility, or providing proof of compliance with insurance or bonding requirements. These requirements also apply to individuals applying via endorsement, but individuals applying under the provisions of this bill would not be required to fulfill such requirements.

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.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 455.2135 and 456.0365.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries Committee on March 21, 2023:

The CS:

- Clarifies definitions and revises other language in the bill for consistency;
- Identifies more specifically those individuals who are not covered by the universal licensing requirement created by the bill;
- Revises the definition of “other licensing entity” to specify all the jurisdictions and entities outside the state that may have issued an occupational license or government certification;
- Requires certain contractor applicants for a universal license to successfully complete continuing education courses on the rules and laws related to the construction industry, and on wind mitigation methodology.
- Requires the DBPR and the DOH to adopt rules to implement the act;
- Provides notice of the applicability of the act to the health professions regulated in ch. 456, F.S.; and
- Includes technical drafting changes and conforming changes.

B. Amendments:

None.