

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 Committee on Appropriations

BILL: CS/CS/SB 1272

INTRODUCER: Appropriations Committee; Regulated Industries Committee; and Senators Brandes and Stargel

SUBJECT: Professional Regulation

DATE: April 17, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Favorable</u>
3.	<u>Davis</u>	<u>Hansen</u>	<u>AP</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1272 creates the “Occupational Opportunity Act,” which grants new and expands existing exemptions from professional licensure application and renewal requirements by certain boards and programs in the Department of Business and Professional Regulation (DBPR) for current and former active duty members of the U.S. Armed Forces¹ and certain spouses and surviving spouses of such members.

Eligible spouses and surviving spouses in good standing with a DBPR board or program who are absent from the state due to the active duty member’s duties with the Armed Forces are exempted from licensure renewal provisions. The period of time that active duty members remain in good standing after discharge from active duty is expanded from six months to two years.

The DBPR is required to issue a professional license to an applicant who holds a valid professional license issued by another state or jurisdiction and is or was an active duty member of the Armed Forces, is the spouse of an active duty member, or is the surviving spouse of a member who died while on active duty. An applicant who was an active duty member must have received an honorable discharge from the Armed Forces. The bill specifies additional application

¹ The term “Armed Forces” includes “the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.” See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

requirements for such licensure including fingerprints for state and federal criminal history checks and compliance with any insurance bonding requirements.

Additionally, the bill requires the DBPR, or the appropriate board, to waive the initial licensure fee for applicants who are active duty members of the Armed Forces, certain spouses and surviving spouses of active duty members, and low-income individuals.

With the waiver of professional licensure fees and other charges of the professional boards, the bill is expected to reduce the revenue raising authority of DBPR, resulting in a negative fiscal impact on DBPR trust funds and the General Revenue Fund (based on reduced general revenue service charges). In addition, the bill appropriates a nonrecurring sum of \$31,000 from the Administrative Trust Fund for Fiscal Year 2017-2018 to the DBPR to implement this act. *See* Section V, Fiscal Impact Statement.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the Department of Business and Professional Regulation (DBPR), and provides for 12 divisions.²

Fifteen boards and programs exist within the Division of Professions,³ two boards are within the Division of Real Estate,⁴ and one board exists in the Division of Certified Public Accounting.⁵

The boards and programs within the Division of Professions, noted with the respective chapter in Florida Statutes concerning each, are the:

- Board of Architecture and Interior Design, part I of ch. 481;
- Florida Board of Auctioneers, part VI of ch. 468;
- Barbers' Board, ch. 476;
- Florida Building Code Administrators and Inspectors Board, part XII of ch. 468;
- Construction Industry Licensing Board, part I of ch. 489;
- Board of Cosmetology, ch. 477;
- Electrical Contractors' Licensing Board, part II of ch. 489;
- Board of Employee Leasing Companies, part XI of ch. 468;
- Board of Landscape Architecture, part II of ch. 481;
- Board of Pilot Commissioners, ch. 310;
- Board of Professional Engineers, ch. 471;
- Board of Professional Geologists, ch. 492;

² The divisions in the DBPR are: Administration, Alcoholic Beverages and Tobacco, Certified Public Accounting, Drugs, Devices, and Cosmetics, Florida Condominiums, Timeshares, and Mobile Homes, Hotels and Restaurants, Pari-mutuel Wagering, Professions, Real Estate, Regulation, Service Operations, and Technology.

³ *See* s. 20.165(4)(a), F.S.

⁴ *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.

⁵ *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.

- Board of Veterinary Medicine, ch. 474;
- Home Inspection Services Licensing Program, part XV of ch. 468; and
- Mold-related Services Licensing Program, part XVI of ch. 468, F.S.⁶

The boards within the Division of Real Estate are the Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and the Florida Real Estate Commission, created under part I of ch. 475, F.S.⁷

The board within the Division of Certified Public Accounting is the Board of Accountancy, created under ch. 473, F.S.⁸

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.⁹ The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law pursuant to parts I and III of ch. 450, F.S.

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, Professions, Real Estate, and Regulation.”¹⁰

Under Florida law, regulation of professions is undertaken “only for the preservation of the health, safety, and welfare of the public under the police powers of the state.”¹¹ 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.¹²

However, “neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention,” or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.¹³

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.¹⁴

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.¹⁵

⁶ See s. 20.165(4)(a), F.S.

⁷ See s. 20.165(4)(b), F.S.

⁸ See s. 20.165(4)(c), F.S.

⁹ Section 548.003(1), F.S.

¹⁰ Section 455.01(6), F.S.

¹¹ Section 455.201(2), F.S.

¹² *Id.*

¹³ Section 455.201(4)(b), F.S.

¹⁴ 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.

¹⁵ Sections 455.01(4) and (5), F.S.

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 administrative rule¹⁶ the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.¹⁷

A licensee may practice a profession only if the licensee has an active status license.¹⁸ Generally, most licensees who practice a profession without an active status license¹⁹ are subject to the imposition of discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.²⁰

Each board, or the department when there is no board (board),²¹ must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.²² An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).²³

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.²⁴

The DBPR may, at its discretion, reinstate a license that has become void (except public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.²⁵

¹⁶ The administrative rules of the DBPR and of each Board are available through the DBPR's website at <http://www.myfloridalicense.com/dbpr/divisions.html> (last visited Mar. 10, 2017).

¹⁷ Section 455.219(1), F.S.

¹⁸ Section 455.271(1), F.S.

¹⁹ Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

²⁰ See s. 455.273, F.S.

²¹ Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. See e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

²² The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. See s. 455.271(11), F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Section 455.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status.

United States Armed Forces

The term “Armed Forces” is defined in Florida law as the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.²⁶ The term “active duty” means full-time duty in active military service of the United States, and includes other federal duty such as full-time training, annual training, and attendance at a service school²⁷ while a person is in active military service. The term also includes the period during which a person in active military service is absent from duty as a result of illness, being wounded, being on leave, or other lawful cause, but does not mean full-time duty in the National Guard.²⁸

Pursuant to s. 455.02(1), F.S., active duty members of the Armed Forces of the United States who, at the time they became active duty members, held a license in good standing with any state administrative board, must be kept in good standing and are exempted from performing any required act or paying any fee, during the period of active duty service and for six months after discharge from active duty. If the licensee engages in the licensed profession or vocation in the private sector for profit, the exemption does not apply.

Boards within the DBPR must adopt rules exempting a spouse of an active duty member of the Armed Forces from licensure renewal requirements, but only if the spouse is absent from the state due to the active duty member’s duties with the Armed Forces.²⁹

A six-month, nonrenewable temporary license may be issued to a spouse of an active duty member of the Armed Forces.³⁰ The application for such a license must be accompanied by the application fee and fingerprints for criminal history checks, with proof that the applicant:

- Is married to an active duty member of the Armed Forces;
- Holds a valid license issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction; and
- The applicant’s spouse is assigned to a duty station in Florida.³¹

Section 455.213(12), F.S. provides that the DBPR must waive the initial licensing fee, the initial application fee, and the initial unlicensed activity fee for a military veteran or his or her spouse at the time of discharge, if application for a license is made within 60 months after the veteran is honorably discharged. Eligibility for the waiver is conditioned upon the veteran having been honorably discharged.

²⁶ See s. 250.01(4), F.S., and 5 U.S. Code § 2101 and 10 U.S. Code § 101(a)(4).

²⁷ See s. 250.01(1), F.S.; service schools must be designated by law or by the secretary of the applicable military department.

²⁸ *Id.*

²⁹ See s. 455.02(2), F.S.

³⁰ See s. 455.02(3)(a), F.S.

³¹ *Id.*

License Fee Waivers for Low-income Individuals

Waivers of application fees for professional licenses issued in Florida are not based on the income of an applicant. The United States Department of Health and Human Services (HHS) has established the following federal poverty guidelines:³²

Persons in Family/Household	Poverty Guideline for 48 Contiguous States and the District of Columbia	Poverty Guideline for Alaska	Poverty Guideline for Hawaii
1	\$12,060	\$15,060	\$13,860
2	\$16,240	\$20,290	\$18,670
3	\$20,420	\$25,520	\$23,480
4	\$24,600	\$30,750	\$28,290
5	\$28,780	\$35,980	\$33,100
6	\$32,960	\$41,210	\$37,910
7	\$37,140	\$46,440	\$42,720
8	\$41,320	\$51,670	\$47,530

The term ‘public assistance’ refers to government aid to the poor, disabled, or aged, or to dependent children.³³ One example of an income-dependent public assistance program³⁴ is the Supplemental Nutrition Assistance Program (SNAP) for nutrition assistance and benefits to low-income individuals and families. Eligibility for SNAP benefits is dependent upon meeting certain gross income and net income limits.³⁵

III. Effect of Proposed Changes:

Section 1 provides the act may be cited as the “Occupational Opportunity Act.”

Section 2 amends s. 455.02, F.S., concerning licensure of active duty members of the Armed Forces³⁶ in good standing, to require good standing status with any “of the boards or programs listed in s. 20.165, F.S.” (the DBPR boards). Under current law, the reference is to “administrative boards of the state.”

This section also provides that a member of the Armed Forces who was licensed to practice or engage in a profession regulated by the DBPR at the time of entering the military is exempt from licensure renewal provisions while on active duty and for a period of two years after discharge from the military. Current law states that this exemption applies for six months after discharge from the military.

This section also provides that a spouse married to a member of the Armed Forces during a period of active duty, or the surviving spouse of a member who was on active duty at the time of

³² See <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 24, 2017).

³³ See <http://www.dictionnaire.com/browse/public-assistance> (last visited Mar. 24, 2017).

³⁴ Comprehensive lists of available public assistance programs per state are located on the official benefits website of the United States government; see Benefits.gov, *About Us*, at <https://www.benefits.gov/about-us> (last visited Mar. 24, 2017).

³⁵ See <https://www.fns.usda.gov/snap/eligibility#Income> (last visited Mar. 24 2017).

³⁶ Section 250.01(4), F.S. The term “Armed Forces” includes the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

death, is exempted from licensure renewal provisions and must be kept in good standing, provided the spouse is in good standing with a DBPR board and is absent from the state due to the member's duties with the Armed Forces.

The section removes a current provision of law that allows the DBPR to issue a temporary professional license to the spouse of an active duty member of the Armed Forces and in its place requires the DBPR to issue a professional license to the following applicants under certain conditions:

- A current or former active duty member of the Armed Forces;
- The spouse of an active duty member of the Armed Forces; and
- The surviving spouse of a member of the Armed Forces who died while serving on active duty.

An application for a professional license under this section must include proof that the applicant:

- Is or was an active duty member of the Armed Forces, or is married to a member of the Armed Forces and was married to the member during any period of active duty, or is the surviving spouse of a member of the Armed Forces who at the time of death was serving on active duty;
- Received, if the applicant was an active duty member of the Armed Forces, an honorable discharge upon separation or discharge from the Armed Forces;
- Holds a valid license for the profession issued by another state, the District of Columbia, any possession or territory of the United States, or any foreign jurisdiction;
- Has complied with insurance or bonding requirements, if required by the specific practice act; and
- Submits a complete set of the applicant's fingerprints to the Department of Law Enforcement.

The DBPR must waive the initial licensure application fee for those applicants who apply for licensure pursuant to this section.

An applicant who is issued a license under this section may renew such license upon completion of the conditions for renewal required of license holders under the applicable practice act, including, without limitation, continuing education requirements.

Section 3 amends s. 455.219, F.S., to require the DBPR or the applicable board, to waive the initial licensure fee for the following individuals upon application:

- A member of the Armed Forces that has served on active duty;
- The spouse of a member of the Armed Forces, who is married to such member during a period of active duty;
- The surviving spouse of a member of the Armed Forces who at the time of death was serving on active duty; or
- A low-income individual.

The application must include the applicant's signature under penalty of perjury and the supporting documentation required by the DBPR.

The term “low-income individual” is defined in the bill as a person whose household income before taxes is at or below 130 percent of the federal poverty guidelines for the family’s household size by the United States Department of Health and Human Services. Proof of eligibility may be shown through enrollment in a state or federal public assistance program that requires participants to be at or below 130 percent of the federal poverty guidelines to qualify.

The DBPR, or the appropriate board, must process an application for a fee waiver within thirty days of receiving the application. This section provides that the DBPR must adopt rules necessary to implement s. 455.219(7), F.S., created in the bill.

Section 4 appropriates a nonrecurring sum of \$31,000 from the Administrative Trust Fund for Fiscal Year 2017-2018 to the DBPR for technology infrastructure and licensing modifications.

Section 5 provides an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Department of Business and Professional Regulation (DBPR) notes that this bill will have an indeterminate impact upon fees because of the difficulty of estimating how many members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.³⁷ The DBPR indicates that other “licenses may have to assume the additional cost of processing the applications [for those exempted by the bill from paying license fees].”³⁸

³⁷ See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 615 (identical to SB 1272), dated Feb. 27, 2017, (on file with Senate Committee on Regulated Industries) at pages 4 - 5.

³⁸ *Id.* at page 5.

B. Private Sector Impact:

The DBPR indicates there is no fiscal impact to the private sector.³⁹ However, there may be an increase in the number of people in the workforce practicing their chosen professions.

C. Government Sector Impact:

The bill appropriates \$31,000 in nonrecurring funds from the Administrative Trust Fund to the DBPR in Fiscal Year 2017-2018 for technology infrastructure and licensing modifications.

The DBPR indicates that the fiscal impact on revenues is indeterminate due to the unknown number of members of the Armed Forces, their spouses, surviving spouses, and low-income persons will apply for a waiver of initial license application fees.⁴⁰

The DBPR may see an increase in the number of applications received from active military members, their spouses or surviving spouses, and low-income individuals, which may increase staff workloads. However, the fiscal impact and potential workload increase are indeterminate but could be absorbed within existing resources in Fiscal Year 2017-2018.⁴¹

According to the DBPR, the bill will require modifications to its software to address the various license types for all the professions it regulates, (Versa: Regulation (VR)), including an application to identify active duty members of the Armed Forces, their spouses, surviving spouses, as well as low-income individuals, changes to fee calculations, and changes to application and renewal requirements.⁴² According to the DBPR, these modifications can be made using existing resources.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires the initial application fee be waived for active duty members of the Armed Forces, their spouses, and surviving spouses for certain professional licenses. Under current law, honorably discharged military veterans, and their spouses at the time of such discharge, are granted a waiver of all initial licensing fees, initial application fees, and initial unlicensed activity fees, if an application for initial licensure is made within 60 months of the discharge.⁴⁴ The

³⁹ *Id.* at pages 4-5.

⁴⁰ *Id.* at page 4.

⁴¹ Telephone conference with DBPR staff on April 11, 2017.

⁴² See 2017 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for CS/CS/HB 615, dated Mar. 13, 2017 (on file with Senate Committee on Regulated Industries) at pages 4-9. See also, Agency Analysis of HB 615 and SB 1272 dated Feb. 27, 2017 (*supra* at note 37, at pages 4-8).

⁴³ *Id.*

⁴⁴ See s. 455.213(12), F.S.

different requirements for waiver of initial application and other fees for professional licensure for active duty members and certain spouses, and for honorably discharged veterans and their spouses, may cause confusion to active duty and retired members of the Armed Forces, their spouses, and the public.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 455.02 and 455.219.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 13, 2017:

The committee substitute:

- Requires an applicant for licensure who was an active duty member of the Armed Forces to have been honorably discharged upon separation or discharge from the Armed Forces;
- Conforms use of the term “Armed Forces” rather than “Armed Services”; and
- Conforms use of the term “licensure” rather than “licensing.”

CS by Regulated Industries on March 28, 2017:

The committee substitute:

- Clarifies the bill also applies to DBPR programs as well as DBPR boards;
- Requires that applicants comply with bonding or insurance requirements if required by a specific practice act;
- Clarifies the definition of the term ‘low-income individual; and
- Provides for Fiscal Year 2017-2018 a nonrecurring sum of \$31,000 to be appropriated from the Administrative Trust Fund for technology infrastructure and licensing modifications required to implement the bill.

- B. **Amendments:**

None.