

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 Regulated Industries

BILL: SB 1364

INTRODUCER: Senator Collins and others

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

DATE: March 20, 2023

REVISED: _____

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

I. Summary:

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, certified public accountants, and other credentials, such as those used for medical board certification.

Applicants may seek a universal license through one of three pathways described 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 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.

There may be an impact to state government. See Section V, Fiscal Impact Statement.

The bill is effective July 1, 2023.

II. Present Situation:

Chapter 455, F.S., provides for the regulation of professions by the DBPR, and ch. 456, F.S., provides for the regulation of health professions by the 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, 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 in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.⁵

¹ Section 548.003(1), F.S.

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

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.

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

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;

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.

¹² 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. 17, 2023).

¹³ *Id.*

- 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

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

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.

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.

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.;
- 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.;

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.

- 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.

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, 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.

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).

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.*

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

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 is 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,

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).

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.

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.

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

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).

³⁵ Today's Military, *Enlisted and Officer Paths*, at <https://www.todaysmilitary.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).

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.

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

³⁷See 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.

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.*

III. Effect of Proposed Changes:

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). Pursuant to s. 1.01(3), F.S., the term person includes “individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.”

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 other 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);
- “Government certification” means a voluntary, government-granted, and nontransferable recognition granted to an applicant who meets personal qualifications related to a lawful occupation, including a military certification, but excluding credentials,⁴⁰ such as those used for medical board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.
- “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.⁴²
- “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.

⁴⁰ 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.aa.ufl.edu/medical-credentialing-program/> (last visited Mar. 17, 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. 17, 2023).

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 language in this definition requires a technical amendment to correct a typographical error and delete the words “to sell” in parentheses. *See* section VII on page 16 of this analysis regarding consideration of an amendment.

- “Occupational license”⁴³ means a nontransferable authorization in law for an individual to exclusively⁴⁴ 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 or state in the United States other than Florida, which 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,⁴⁵ 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.
- 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 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.

⁴³ 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.

⁴⁴ The qualifier “exclusively” unnecessarily narrows the definition and should be clarified or deleted.

⁴⁵ As defined in the bill, the terms “other licensing entity” and “another licensing entity” mean any United States territory or state in the United States other than Florida, which issues occupational licenses or government certifications, including the military. *See* lines 59 to 62.

- 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, issue a universal license to an applicant based on work experience in another state or the military, if all of the following apply:

- The applicant 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 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 satisfies the universal license requirements described above for universal licensing if licensed by another licensing entity.⁴⁶

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 in another state or 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 in another state 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

⁴⁶ See section VII on page 16 of this analysis regarding consideration of an amendment.

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

Examination on Florida Law

The bill provides a board may require an applicant to pass a jurisprudential⁴⁷ 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.

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 credentialed⁴⁸ 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 occupation; or
- Determination of the similarity of the scope of practice of the occupational license or government certification held by the applicant.

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, certified public accountants, and other credentials, such as those used for medical board certification.⁴⁹

⁴⁷ The term “jurisprudential” is the adjective form of “jurisprudence,” a system or body of law. See <https://www.merriam-webster.com/dictionary/jurisprudence> (last visited Mar. 17, 2023). The qualifier “jurisprudential” unnecessarily narrows the type of examination that is required and should be clarified or deleted. See section VII on page 16 of this analysis regarding consideration of an amendment.

⁴⁸ The term “credentialed” is not defined in the bill. See *supra* note 40.

⁴⁹ The term “credentials” is not defined in the bill. See *supra* note 40.

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, foreign province, foreign country, international organization, or other entity.
- Prevent the State of Florida from recognizing occupational credentials 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.

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 in another state under an interstate compact or a reciprocity agreement unless otherwise provided in law.

Governor’s Licensing Authority During State of Emergency

The bill provides that, during a state of emergency declared by the Governor,⁵⁰ 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 Florida;
- 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.

Effective Date

The bill is effective July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵⁰ 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.

B. Public Records/Open Meetings Issues:

None.

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:

The bill may 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. 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.⁵¹

To date, with respect to fiscal impact, the Department of Business and Professional Regulation and the Department of Health have not yet provided their department's analysis of the act on their respective operations, revenue, and expenditures.

VI. Technical Deficiencies:

None.

⁵¹ 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).

VII. Related Issues:

Consideration of Amendments:

Clarification, Exceptions, and Rulemaking

The sponsor may wish to consider an amendment to address technical drafting changes and conforming changes, clarify definitions and other language for consistency within the licensing pathways, identify more specifically those individuals who are not covered by the universal licensing requirements created by the bill, and require the DBPR and the DOH to adopt rules to implement the provisions in the bill, as noted below.

Section 455.2135(6), F.S., uses the term “jurisprudential examination” in the state examination requirements. The qualifier “jurisprudential” unnecessarily narrows the type of examination that is required and should be clarified or deleted. See line 149 of the bill.

The requirements for a universal license based on work experience under s. 455.2135(4), F.S., 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 require the person to have been licensed by another licensing entity; amendment of the applicable cross-reference should be considered by the sponsor to indicate “paragraph (3)(a)5.-9., rather than the entire paragraph (3)(a). See line 128 of the bill.

The requirements for a universal license based on private certification are limited to work experience in another state or the military, and does not include other experience, such as in a United States territory; amendment of the phrase “experience in another state or the military” to “experience outside of this state or in the military” should be considered by the sponsor. See lines 133 and 134 of the bill.

Cross Reference to Act in Ch. 456, F.S.

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, including procedural requirements for the regulatory boards of the DBPR and the DBPR if there is no board. Chapter 456, F.S, provides a comparable regulatory function for professions regulated by the DOH or its boards.

The sponsor may wish to consider an amendment inserting a provision in ch. 456, F.S., noting the applicability of the act to professions regulated by the DOH, and to provide notice to eligible individuals and the affected boards of the universal licensing requirements.

VIII. Statutes Affected

This bill creates section 455.2135 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
