

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2066**

As Amended by Senate Committee of the Whole

Brief*

Sub. for HB 2066, as amended, would shorten the period of time in which regulatory bodies are required to issue occupational credentials to military servicemembers or military spouses seeking to establish residency in Kansas and provide for expedited credentialing of non-military prospective residents.

The bill would expand and clarify conditions on expedited occupational credentialing and permit temporary credentialing during states of emergency and the use of electronic credentials.

The bill would be in effect upon publication in the *Kansas Register*.

Expedited Credentialing

The bill would require licensing bodies to issue the appropriate credential to a military servicemember or spouse within 15 days from the date of the submission of a "complete application," as defined by the bill, or within 45 days for all other applicants. Currently, credentials are to be issued to military servicemembers and spouses within 60 days.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Probationary Credentialing

Current law requires expedited out-of-state credentials to be issued for a six-month probationary period for military servicemembers and military spouses who do not qualify under the applicable Kansas law by endorsement, reinstatement, or reciprocity statutes, but meet certain other requirements. The bill would modify this provision by giving discretion to licensing bodies to grant credentials to applicants and would also modify the qualifications for credentialing, such that any applicant would be required to:

- Hold a valid out-of-state current credential from another state, district, or territory of the United States that authorizes a similar scope of practice, as defined by the bill. Current law requires the credential to be equivalent to that established by the relevant Kansas licensing body;
- Have worked for at least one year in the relevant occupation;
- Not have a disqualifying criminal record; and
- Show proof of solvency, financial standing, bonding, or insurance as required by the licensing body.

The bill would define “scope of practice” as procedures, actions, processes, and work a person may perform under a government-issued credential.

The bill would provide for probationary credentialing on the basis of work experience. Licensing bodies would be granted discretion to issue a probationary credential to an applicant who:

- Worked in an occupation that was not a regulated profession in the other state for at least three of the four immediately preceding years; and

- Does not hold a valid out-of-state current credential from another state, district, or territory of the United States that authorizes a similar scope of practice, but who otherwise meets the requirements for probationary credentialing.

The bill would also provide for probationary credentialing on the basis of “private certification” as defined by the bill.

Licensing bodies would be granted discretion to issue a probationary credential to an applicant who:

- Holds a current and valid private certification;
- Worked in an occupation that was not a regulated profession in the other state for at least two years;
- Is in good standing by the organization that issued the private certification; and
- Otherwise meets the requirements for probationary credentialing.

The bill would grant the right to deny probationary credentials based on private certification or work experience if the licensing body finds on specific grounds that issuing a credential would jeopardize the health and safety of the public.

Temporary Permits

The bill would provide for licensing bodies to issue temporary occupational permits to applicants whose out-of-state credential, private certification, or work experience is determined by the licensing body to not authorize a similar scope of practice, provided that doing so would not jeopardize the health and safety of the public.

Temporary occupational permits would allow applicants to lawfully practice their occupation while completing any specific requirements to practice in Kansas that were not required in the other state.

Provided that an applicant meets all other qualifications:

- If the applicant is a military servicemember or spouse, a licensing body would be required to issue such permits, or
- If the applicant is not a military servicemember or spouse, a licensing body would have discretion to issue such permits.

State of Emergency Credentialing

The bill would permit licensing bodies to grant temporary licenses to practice during a state of emergency declared by the Legislature, if the licensing body determines the applicant's qualifications are sufficient to protect the health and safety of the public.

Electronic Credentialing

The bill would grant licensing bodies the ability to issue credentials that are valid for verification purposes when displayed electronically. Licensing bodies would be able to determine the format and requirements for the use of such credentials, including the use of third-party systems.

General Provisions

The bill would allow licensing bodies to allow an applicant who has not worked in their occupation for the preceding two years to complete additional testing, training, monitoring, or continuing education necessary to establish the applicant's ability to practice in a manner that protects the

health and safety of the public. However, the bill would limit additional requirements to matters required by Kansas law that are materially different from the laws of the other state.

The bill would not be construed to conflict with federal law, multi-state compact, rule, regulation, reciprocal, or other statutory provision, or to prohibit a licensing body from denying a credential based upon the possible endangerment of the public health and safety. The bill would require all proceedings to be conducted in accordance with the Kansas Administrative Procedure Act and to be reviewable under the Kansas Judicial Review Act.

The bill would specify the provisions of the bill shall not be construed to be in conflict with any applicable Kansas scope of practice limitation and Kansas scopes of practice would apply to applicants receiving credentials under the provisions of the bill.

The bill would apply to all licensing bodies except those relevant to the practice of law or the regulation of attorneys. The bill specifically names the following bodies that would be subject to the provisions of the bill:

- Abstracters' Board of Examiners;
- Board of Accountancy;
- Board of Adult Care Home Administrators;
- Secretary for Aging and Disability Services (with respect to KSA 65-5901, *et seq.* and KSA 65-6503, *et seq.*);
- Kansas Board of Barbering;
- Behavioral Sciences Regulatory Board;
- Kansas State Board of Cosmetology;

- Kansas Dental Board;
- State Board of Education;
- Kansas Board of Examiners in Fitting and Dispensing of Hearing Instruments;
- Board of Examiners in Optometry;
- State Board of Healing Arts, the Secretary of Health and Environment (with respect to KSA 82a-1201, *et seq.*);
- Commissioner of Insurance (with respect to KSA 40-241 and 40-4901, *et seq.*);
- State Board of Mortuary Arts;
- Board of Nursing;
- State Board of Pharmacy;
- Kansas Real Estate Commission;
- Real Estate Appraisal Board;
- State Board of Technical Professions; and
- State Board of Veterinary Examiners.

The State Board of Healing Arts would be permitted to deny a credential or temporary license to an applicant if it is determined the individual's qualifications are not substantially equivalent to those established by the Board. This exemption would also apply to the State Board of Technical Professions, provided that an applicant is seeking a credential to practice engineering.

Starting on July 1, 2021, each licensing body listed in the bill would annually report information to the Director of Legislative Research (Director) by August 31, which would

allow for the analysis of applications by applicant type (*i.e.*, military servicemember, military spouse, or non-military) and the number of applications received, the number of applications granted, the number of applications denied, the average length of time between receipt of the application and the completion of the application, the average length of time between receipt of a complete application to the issuance of a credential (temporary or permanent), and identification by category of applicant in which the licensing body failed to meet the time limits specified in the bill and the reasons for the failure. Licensing bodies would be required to provide the information in a manner that would maintain applicants' confidentiality.

By January 15 of the succeeding year, the Director would report an analysis of the compilation to the Governor; the House Committee on Appropriations; the House Committee on Commerce, Labor and Economic Development; the Senate Committee on Commerce; and the Senate Committee on Ways and Means.

The bill would also make technical changes.

Background

The bill was introduced by Representatives Croft, Owens, Proctor, Tarwater, Thomas, and Wasinger.

[*Note:* The bill is a modified version of 2020 HB 2506, which passed the House during the 2020 Session. Supplemental notes on 2020 HB 2506 include additional background on its history.]

House Committee on Commerce, Labor and Economic Development

In the House Committee hearing, **proponent** testimony was submitted by Representative Croft and representatives of

Americans for Prosperity-Kansas, Greater Kansas City Chamber of Commerce, Institute for Justice, Kansas Chamber of Commerce, Opportunity Solutions Project, Teladoc Health, United Women's Empowerment, and Wichita Regional Chamber of Commerce; and two private citizens. Proponents of the bill indicated the expansion of expedited licensing would spur economic development by making it easier for people to move to Kansas to work.

Neutral testimony was provided by representatives of the Kansas Academy of Family Physicians, the Kansas Department of Commerce, the Kansas Medical Society, the Kansas Real Estate Commission, the Kansas Society of Professional Engineers, and the State Board of Healing Arts. These conferees noted concerns about a lack of clarity in certain provisions of the bill and potential unintended consequences if the bill is amended.

Opponent testimony was provided by a representative of the State Board of Technical Professions, who stated the bill would not adequately ensure the public safety of Kansans.

The House Committee recommended the bill as a substitute bill, which was modified from its form as introduced by adopting technical changes, clarifying definitions, removing a provision providing for credentialing for out-of-state telemedicine practice, clarifying that the licensees under the bill would be limited to Kansas scopes of practice, and strengthening the ability that licensing bodies would have to deny credentials to protect public health and safety. A motion to amend the bill to include the State Board of Technical Professions in the exception given to the State Board of Healing Arts failed.

House Committee of the Whole

The House Committee of the Whole adopted an amendment to the bill to:

- Define “scope of practice,” as described above;
- Require applications to include a signed affidavit stating application information is true and accurate;
- Permit licensing bodies to exercise discretion in granting probationary credentials;
- Permit licensing bodies to exercise discretion in granting temporary credentials to non-military servicemembers or spouses;
- Extend the exemption given to the State Board of Healing Arts to deny applications to the State Board of Technical Professions, provided the applicant seeks an engineering credential; and
- Make technical changes to the bill.

Senate Committee on Federal and State Affairs

In the Senate Committee hearing, **proponent** testimony was submitted by Representative Croft and representatives of Americans for Prosperity-Kansas, the Kansas Department of Commerce, the Kansas Society of Professional Engineers, Opportunity Solutions Project, and the Wichita Regional Chamber of Commerce. Written-only proponent testimony was provided by representatives of the Greater Kansas City Chamber of Commerce, the Kansas Chamber, and the Overland Park Chamber of Commerce and by a private citizen. Proponents generally stated the bill would reduce licensing burdens for out-of-state applicants looking to relocate to Kansas, allowing new residents to gain employment faster.

Neutral testimony was provided by representatives of the Kansas Society of Land Surveyors and the State Board of Healing Arts. Written-only neutral testimony was provided by representatives of the Kansas Association of Realtors and the Kansas Medical Society. Neutral conferees generally stated

the bill would make positive changes, but is also too broad in its lack of exceptions.

Opponent testimony was provided by representatives of the American Institute of Architects in Kansas; the Behavioral Sciences Regulatory Board; the College of Architecture, Planning and Design at Kansas State University; GLMV Architecture; HTK Architects; the Kansas Society of CPAs; and the State Board of Technical Professions. Opponents indicated the bill could create loopholes for out-of-state applicants to receive licensure despite possessing substandard credentials in architecture, accountant, and mental health professions.

Senate Committee of the Whole

The Senate Committee of the Whole amended the bill by making it effective upon publication in the *Kansas Register*.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Board of Accountancy, the Kansas State Board of Cosmetology, and the Department of Health and Environment each indicated the bill would not have a fiscal effect on their respective agencies. The Kansas Insurance Department, the Kansas Board of Barbering, the State Board of Mortuary Arts, the Real Estate Appraisal Board, and the State Board of Technical Professions each indicate the bill would affect their budgets, but the fiscal effects cannot be estimated.

The following agencies indicate the bill would increase expenditures by the following estimated amounts:

- The Behavioral Sciences Regulatory Board would require a total of \$81,400 for 2.0 FTE positions and

\$5,000 for operating costs from the Behavioral Sciences Regulatory Board Fee Fund in FY 2022;

- The State Department of Education would require \$65,000 from the State General Fund for 1.0 FTE position;
- The State Board of Healing Arts would require \$14,120 in FY 2021 and \$48,485 in FY 2022 from the Healing Arts Fee Fund for 1.0 FTE position;
- The Board of Nursing would require less than \$2,000 from special revenue funds; and
- The State Board of Pharmacy would require \$35,750 for an additional 0.5 FTE position and \$7,500 in other costs.

Any fiscal effect associated with the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Occupational licensing; occupational regulation; state residency