

SESSION OF 2018

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2386**

As Amended by Senate Committee of the Whole

Brief*

Senate Sub. for Senate Sub. for HB 2386, as amended, would require any person, board, commission, or similar body (board) that determines the qualifications of individuals for licensure, certification, or registration (licensure) to revise their existing requirements to list the specific civil and criminal records (record) that could disqualify an applicant from receiving a license, certification, or registration (license). The revision would need to occur within 180 days after the effective date of the bill.

The board could only list any disqualifying records directly related to protecting the general welfare and the duties and responsibilities for such entities. In no case would non-specific terms, such as moral turpitude or good character, or any arrests that do not result in a conviction be used to disqualify an individual's application for licensure.

The bill would mandate that if an individual has a record that would disqualify the individual from receiving a license, other than a conviction for a crime that is a felony or a class A misdemeanor or any conviction for which issuing the license could conflict with federal law, and the individual has not been convicted of any other crime in the five years immediately preceding the application for a license, the record could not be used to disqualify the individual for licensure for more than five years after the person satisfied the sentence imposed.

*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>

The record could not be used to disqualify the individual for licensure for more than five years from the date of conviction unless the conviction is a class A misdemeanor, felony, sexually violent crime, or any conviction for which issuing a license would conflict with federal law.

The bill would allow any individual with a record to petition the board responsible for licensure at any time for an informal, written advisory opinion (opinion) concerning whether the individual's record would disqualify the individual from obtaining a license. The petition would include details of the record. The board would be required to issue the opinion within 120 days of receiving the petition and the opinion would be non-binding. The board would be authorized to charge up to \$50 for the review and issuance of the opinion in response to the petition.

In addition, the bill would exempt the following entities from the bill's provisions:

- Kansas Commission on Peace Officers' Standards and Training;
- Kansas Highway Patrol;
- Board of Accountancy;
- Behavioral Sciences Regulatory Board (BSRB);
- State Board of Healing Arts (Healing Arts Board);
- State Board of Pharmacy (Pharmacy Board);
- Emergency Medical Services Board;
- Board of Nursing;
- Any municipality, as defined in KSA 75-6102; and
- Any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree.

Finally, the bill would require all boards to adopt and publicly maintain all necessary rules and regulations for the implementation of the bill.

Background

The Senate Committee on Federal and State Affairs removed the contents of the first substitute bill, regarding amendments to the Kansas Expanded Lottery Act relating to racetrack gaming facilities, and replaced them with the provisions of SB 421, as amended by the Senate Committee on Federal and State Affairs, and recommended these provisions be placed in a second substitute bill.

SB 421

SB 421 was introduced by the Senate Committee on Federal and State Affairs. In the Senate Committee hearing, representatives of American Civil Liberties Union–Kansas and Opportunity Solutions Project provided proponent testimony. Written-only proponent testimony was submitted by Americans for Prosperity.

Neutral testimony was provided by a representative of the League of Kansas Municipalities. Written-only neutral testimony was submitted by the Office of the Attorney General.

Opponent testimony was provided by the Executive Secretary of the Pharmacy Board, Executive Director of the Kansas Dental Board (Dental Board), Executive Director of the Healing Arts Board, the Commission Counsel of the Kansas Commission on Peace Officers' Standards and Training, and a representative of the Kansas Association of Realtors. Written-only opponent testimony was submitted by a representative of the Board of Adult Care Home Administrators.

The Senate Committee amended the bill to:

- Increase from 120 to 180 the number of days after the effective date the board would have to revise existing requirements to list specific records that could disqualify an applicant from receiving a license;
- Add a class A misdemeanor and any conviction for which issuance of a license would conflict with federal law to those crimes, which, if committed in the previous five years, would be considered during licensure;
- Clarify that an individual can petition a board for an informal, written advisory opinion rather than a determination;
- Add language to establish the informal, written advisory opinion is non-binding and the board must respond to the petition within 120 days;
- Authorize the board to charge up to \$50 for review and issuance of the informal, written advisory opinion; and
- Exempt from the bill the Kansas Commission on Peace Officers' Standards and Training, Kansas Highway Patrol, Board of Accountancy, BSRB, any municipality as defined in current law, and any profession that has an educational requirement for licensure that requires a degree beyond a bachelor's degree.

The Senate Committee then removed the contents of Senate Sub. for HB 2386, placed the amended contents of SB 331 into the bill, and adopted the bill as a Senate substitute bill.

Senate Committee of the Whole Action

The Senate Committee of the Whole amended the bill to:

- Clarify language regarding when a record could be used to disqualify an individual from receiving a license; and
- Add the Healing Arts Board, Pharmacy Board, the Emergency Medical Services Board, and the Board of Nursing to the list of agencies exempted from the provisions of the bill.

Fiscal Note

According to the fiscal note prepared by the Division of the Budget on SB 421, as introduced, the Pharmacy Board estimates the bill would increase its expenditures by \$127,600 annually for 2.0 FTE positions of administrative assistants or paralegals, including \$119,6000 for salaries and wages, \$5,000 for office space, and \$3,000 for computer equipment, software, and supplies. Additional other operating costs would include \$5,200 for two additional board meetings, \$500 to publish new rules and regulations in the Kansas Register, \$5,000 for software and website updates, and a minimum of \$125 per month for monthly meetings with its investigative member. The Pharmacy Board indicates the bill could also increase administrative and attorney costs related to additional complaints, investigations, and disciplinary actions related to impaired licensees and violations of the Pharmacy Practice Act, but an estimate of these costs is unknown. In addition, the Pharmacy Board indicates the bill could reduce annual revenues, but no estimate was provided.

The Healing Arts Board estimates SB 421 would increase annual expenditures by \$126,600, which includes \$61,100 for 1.0 legal assistant FTE position, \$47,840 for 1.0 licensure analyst FTE position, \$14,000 for additional office

and computer equipment and supplies, \$2,400 for additional phone, e-mail, and Internet lines, and \$1,260 to publish new rules and regulations in the Kansas Register. The Healing Arts Board indicates the bill could also increase administrative and attorney costs related to additional complaints, investigations, and disciplinary actions related to violations, but an estimate of these costs cannot be made. In addition, the Healing Arts Board indicates the bill could reduce annual revenues for those individuals who are disqualified from licensure under these provisions.

The BSRB indicates the requirements of SB 421 would increase its expenditures by \$53,707 annually, which includes costs for one additional staff member and for doubling the number of board meetings required to be held. In addition, the BSRB indicates the bill could increase revenues to the BSRB by increasing the number of individuals eligible for licensure.

The Kansas Board of Optometry (Optometry Board) indicates the provision in SB 421 that would require the Optometry Board to respond to petitions within 30 days of receipt could increase its expenditures by \$5,400 annually for additional board member pay, travel expenses, and legal fees, since it would double the number of board meetings required. The Optometry Board estimates the bill could also decrease revenues by \$1,500 annually for those individuals who are disqualified from licensure under these provisions.

The Dental Board indicates SB 421 would require an extensive, comprehensive legal review of the Dental Board's statutory and regulatory structure relative to current and future investigations and existing administrative litigation. It would also require the Dental Board to ascertain whether an applicant's past conviction in another state could or should be classified as a person felony or sexually violent crime under KSA 22-4902. In addition, it would require the Dental Board to support additional in-person or telephonic meetings to process each petition to pre-determine whether a civil or criminal record would disqualify the applicant from obtaining a

license. While the cost is difficult to predict, the Dental Board indicates its contract attorney rate is \$150 per hour and its contract dentist investigator has a rate of \$125 per hour. The Dental Board notes it has nine members and if it was required to make the pre-determination decisions in-person, each Dental Board member would also receive a daily rate of \$35 per day, plus mileage and hotel reimbursement. If the Dental Board could make the pre-determination decisions telephonically, each member would receive their daily rate of \$35 per day. The Dental Board currently holds only four public meetings each year with its attorney and dentist investigator.

The Real Estate Appraisal Board indicates it is unable to determine if enactment of SB 421 would have a fiscal effect on its operations.

Both the Kansas Bureau of Investigation and the Kansas Board of Accountancy indicate SB 421 would have no fiscal effect on agency operations.

This fiscal note includes fiscal effect information provided from only a sample of agencies that could be affected by the provisions in SB 421. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.