

Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, KS 66612



phone: 785-296-7413
fax: 785-368-7102
1-888-886-7205
www.ksbha.org

Kathleen Selzler Lippert
Executive Director

Sam Brownback, Governor

To: House Veterans / Military / Homeland Security Committee
Representative Mario Goico, Chair

From: Kathleen Selzler Lippert, Executive Director
Kansas State Board of Healing Arts

Date: January 31, 2013

Subject: HB 2077

Neutral testimony

The Kansas Board of Healing Arts (KSBHA) appreciates the opportunity to provide neutral testimony on HB 2077. The KSBHA presently licenses and regulates 14 health care professions. The mission of the KSBHA is to safeguard the public and strengthen the healing arts – public protection. Public protection encompasses several critical components, including ensuring the character and competence of an applicant before granting licensure and remediating or disciplining licensees who violate their practice act.

A vital function of the KSBHA is licensing qualified individuals to practice in Kansas so our citizens have health care providers. This bill recognizes the valuable training and experience gained by military service members and how they can help serve the health care needs of Kansans.

In the military, as in any employment setting, there are terms-of-art that carry very specific meaning. The current bill language defines 'applicant' and 'military service member' as anyone who has separated 'under conditions other than dishonorable'. This term-of-art would allow individuals who have engaged in serious misconduct to be eligible for licensure when they might not otherwise qualify. Please see Attachment 1 for additional details on this issue.

Current statutory language for many professions describes what educational degree is required for licensure. Some licensing agencies may accredit educational programs but not all licensing agencies are endowed with those capabilities. Flexibility is critical to prompt implementation. There are entities that regularly engage in educational accreditation or the 'translation' of educational credits. This is typically done in the educational world as a college student transfers from a community college to a state university. ACE, American Council on Education, has a military guide and can translate military education to equivalent civilian education. Alternatively, a military training or educational program can certify that it meets recognized industry standards. Current language in the bill provides

BOARD MEMBERS: GARY L. COUNSELMAN, DC, PRESIDENT, Topeka • KIMBERLY J. TEMPLETON, MD, VICE PRESIDENT, Leawood • EUSTAQUIO O. ABAY II, MD, Wichita
MICHAEL J. BEEZLEY, MD, Lenexa • RAY N. CONLEY, DC, Overland Park • FRANK K. GALBRAITH, DPM, Wichita • ANNE HODGDON, PUBLIC MEMBER, Lenexa
M. MYRON LEINWETTER, DO, Rossville • RICHARD A. MACIAS, JD, PUBLIC MEMBER, Wichita • GAROL
JOHN F. SETTICH, PH.D., PUBLIC MEMBER, Atchison • CAROLINA M. SORIA, DO, WI
• TERRY L. WEBB, DC, Hutchinson • NANCY J. WELSH, MD, Topeka • RONALD N. WHITMER

Veteran/Military/Homeland Security Comm

Date: JAN 31, 2013

Attachment #: 6

TTY (Hearing Impaired) 711 or 1.800.766.3777 voice/TTY • e-mail: healir

that, "unless such licensing body determines that such education, training or service is not substantially equivalent" creates hurdles to implementation for any licensing agency that does not regularly accredit educational programs as part of its functions.

Another challenge in putting the burden on the licensing agency is lack of universal terminology and resulting confusion. For instance, the Army and Air Force have assigned specialty codes that are given to a military service member's specific occupation and skill level. For example a 68P30 in the Army is an experienced radiological technologist. However, in the Navy and Marines they seem to have broad job assignments such as 'health care sciences or hospital corpsman'; which encompasses a medical records clerk, respiratory therapist, surgical tech and dental hygienist. Confusion may arise for the category of combat medic because an analysis must determine whether their training is comparable to a physician assistant, advance practice registered nurse, licensed practical nurse, or some other profession.

Military employment, like civilian employment, can change drastically over the course of time after initial education is received. For example, an Airman may initially be trained, credentialed and certified as a radiological technologist but then due to military need they are then trained as a paralegal and work most of their military career as a paralegal as opposed to a radiological technologist. While the initial educational training certainly made them eligible for an LRT license, years of work in another field may indicate a need for additional continuing education.

While each agency can develop regulations to address specific requirements for the professions they license, KSBHA desires to have as much clarity in HB 2077 as possible to direct applicants and agencies in the process of considering military education, training and experience towards license qualifications. KSBHA hopes the information in attachment 1 and the bill comments that highlight some of the areas where we believe additional elements or further clarifications are necessary.

We are available to respond to any questions. Thank you for your consideration.

Attachment 1: Dishonorable conduct discharge terminology:

- (1) *"Applicant" means a person who entered into military service and separated from such military service under conditions other than dishonorable;*

As written, HB 2077 would be applicable to individuals who have received any discharge characterization, except a dishonorable discharge. A dishonorable discharge and an honorable discharge are not the only types of discharge characterizations that a military service member may receive upon exit of the military. There are two different categories of discharges that a military service member may receive, punitive and administrative. A punitive discharge is a criminal penalty that may only be given as part of a sentence to a criminal conviction during a general or special court-martial and an administrative discharge may only be given through a military service's administrative separation process.

There are three types of punitive discharges: 1. Dishonorable Discharge, 2. Dismissal and 3. Bad-Conduct Discharge. Pursuant to Rules for Courts-Martial (RCM) 1003(b)(8)(B) "A dishonorable discharge applies only to enlisted persons and warrant officers who are not commissioned and may be adjudged only by a general court-martial." A dishonorable discharge is not a separation characterization that is available to officers, commissioned warrant officers, cadets, or midshipmen; but rather, they may only receive a dismissal from their military service. Pursuant to RCM 1003(b)(8)(A), An officer, commissioned warrant officer, cadet, and midshipmen may only receive a dismissal as a criminal punishment at a general court-martial. Pursuant to RCM 1003(b)(8)(C), "[a] bad-conduct discharge [also] applies only to enlisted persons and may be adjudged by a general court-martial [or] a special court-martial...A bad-conduct discharge is less severe than a dishonorable discharge and is designed as a punishment for bad-conduct rather than as a punishment for serious offenses of either a civilian or military nature. It is also appropriate for an accused who has been convicted repeatedly of minor offenses and whose punitive separation appears to be necessary." Some examples of military crimes that only have a bad-conduct discharge available and not a dishonorable discharge available as a punitive discharge are child endangerment by culpable negligence resulting in harm to the child, reckless endangerment, and assault consummated by a battery. Furthermore, many military crimes that have a dishonorable discharge available as a punishment also have a bad-conduct discharge that could be adjudged instead. For example, assault with intent to commit murder or rape, maiming, aggravated sexual assault, and murder all have a bad-conduct discharge as an available option to be adjudged as part of the convicted military member's sentence.

The military also has an administrative separation process to address military service members who need to be separated voluntarily or involuntarily. Through that process, a military service member will receive one of three discharge characterizations: 1. Honorable, 2. Under Honorable Conditions (General), or 3. Under Other Than Honorable Conditions. According to Air Force Instruction 36-3208 para. 1.18.1., a military service member should receive an honorable discharge if "[t]he quality of the [military service member's] service generally has met [military] standards of acceptable conduct and performance of duty or when a member's service is otherwise so meritorious that any other characterization would be inappropriate." AFI 36-3208 para. 1.18.2. states an under honorable conditions (General) discharge is warranted "[i]f a [military service member's] service has been honest

and faithful, this characterization is warranted when significant negative aspects of the [military service member's] conduct or performance of duty outweigh positive aspects of the [military service member's] military record." AFI 36-3208 para. 1.18.2. states an under other than honorable conditions discharge is appropriate "[w]hen basing the reason for separation on a pattern of behavior or one or more the acts or omission that constitute a significant departure from the conduct expected of [military service members]." Some of the examples of conduct that would be sufficient to warrant an under other than honorable conditions administrative discharge would be the "use of force or violence to produce serious bodily injury or death...abuse of a special position of trust...acts or omissions that seriously endanger the health and safety of other persons." See AFI 36-3208 para. 1.18.2.

By allowing military service members with a discharge characterization of something other than honorable to utilize their military training and education to become licensed, is creating a situation where a military service member who has committed wrongful conduct that has caused them to be separated from their military service with something other than a honorable discharge would be able to benefit from a service to their country that was less than completely honorable. An individual who receives a less than honorable discharge is receiving that discharge characterization for a reason and that reason should be evaluated to determine whether it has an impact upon their ability to practice their occupation in the State of Kansas.

HOUSE BILL #2077

By Committee on Veterans, Military and Homeland Security

I-23

1 AN ACT concerning licensing bodies, relating to licensure and military
2 service members; amending K.S.A. 2012 Supp. 48-3406 and repealing
3 the existing section.
4

5 Be it enacted by the Legislature of the State of Kansas:

6 New Section 1. (a) For the purposes of this section:

7 (1) "Applicant" means a person who entered into military service and
8 separated from such military service under conditions other than
9 dishonorable;

10 (2) "licensing body" has the meaning ascribed thereto in K.S.A. 74
11 -146, and amendments thereto; and

12 (3) "military service" means the army, navy, marine corps, air force,
13 air or army national guard of any state, coast guard or any branch of the
14 military reserves of the United States.

15 (b) Notwithstanding any other provision of law, upon presentation of
16 satisfactory evidence by an applicant for certification or licensure, a
17 licensing body shall accept education, training or service completed in
18 military service by the applicant towards the qualifications to receive the
19 license or certification unless such licensing body determines that such
20 education, training or service is not substantially equivalent to the
21 standards required for certification or licensure in this state.

22 (c) ~~Each licensing body may adopt rules and regulations necessary to
23 implement and carry out the provisions of this section.~~

24 (d) This section shall not apply to the practice of law or the regulation
25 of attorneys pursuant to K.S.A. 7-103, and amendments thereto.

26 Sec. 2. K.S.A. 2012 Supp. 48-3406 is hereby amended to read as
27 follows: 48-3406. (a) For the purposes of this section:

28 (1) "Licensing body" has the meaning ascribed thereto in K.S.A. 74
29 -146, and amendments thereto;

30 (2) "military service" means the army, navy, marine corps, air force,
31 air or army national guard of any state, coast guard or any branch of the
32 military reserves of the United States;

33 (3) "military service member" means a member who entered into
34 military service and separated from such military service under conditions
35 other than dishonorable;

35 and(4) "military spouse" means the spouse of an individual who is

January 31, 2013

For Committee on Veterans, Military and Homeland Security
Prepared by Kathleen Selzer Lippert
Kansas State Board of Healing Arts

Proposed amended language: "with an honorable discharge"

"under conditions other than dishonorable" would allow licensure of individuals
who had been convicted of serious crimes or other bad conduct. *** See
Attachment 1 for detailed description of issue.

The language, "satisfactory evidence by an applicant" should be defined.

- An agency will have a difficult time evaluating credentials or level of education and training if only a partial application is submitted. Recommend that it be defined as, "completed application".

Consider adding the term "educational qualifications"; noting that it does not waive examination requirements.

Generally, there is an accreditation system utilized by licensing agencies to evaluate education programs.

- ACE: American Council on Education
- National Professional Accreditation entities
- Military program could certify or verify that a specific education or training program meets accreditation standards, or that an individual has completed specific components of education or training.
- Other states have used, "Any relevant instruction, as defined by the practice act, that an applicant for a license was obtained in connection with any military service, counts toward satisfying any educational requirement for licensure if the applicant demonstrates to the satisfaction of the agency that the instruction obtained is substantially equivalent to the instruction required for the license." Or "Any regulatory board may require the service member to provide such documentation of his training, education, or experience as deemed necessary by the board to determine substantial equivalency". Or "Requires the Kansas Commission on Veterans Affairs to provide technical assistance to the agency".

Interesting exclusion: The military requires all their attorneys to have graduated from an ABA accredited law school and hold licensure in at least 1 state. Because of this standardization, it seems to be a good fit for the stated goals of this bill.

Proposed amended language: "with an honorable discharge"

See notes for page 1, lines 8-9 above and Attachment 1 for detailed description of issue.

1 currently in active service in any branch of the armed forces of the United
 2 States
 3 (b) Notwithstanding any other provision of law, any licensing body, -
 4 as defined by K.S.A. 74-146, and amendments thereto, shall:
 5 (1) Upon application, issue a license to a nonresident military spouse,
 6 so that the nonresident military spouse may lawfully practice the person's
 7 occupation; and
 8 (2) upon filing of an application within six months following release
 9 from military service, issue a license to a military service member so that
 10 the military service member may lawfully practice the person's
 11 occupation.
 12 (b) (c) A military service member or nonresident military spouse shall
 13 receive a license under subsection (a)(b) of this section:
 14 (1) Pursuant to applicable licensure by endorsement or reciprocity
 15 statutes of the licensing body of this state for the profession license; or
 16 (2) if the professional practice act does not have licensure by endorsement
 17 or reciprocity statutes, then, at the time of application, the
 18 military service member or nonresident military spouse:
 19 (A) Holds a current license in another state, district or territory of the
 20 United States with licensure requirements that the licensing body
 21 determines are equivalent to those established by the licensing body of this
 22 state;
 23 (B) has not committed an act in any jurisdiction that would have
 24 constituted grounds for the limitation, suspension or revocation or that the
 25 applicant has never been censured or had other disciplinary action taken or
 26 had an application for licensure denied or refused to practice an occupation
 27 for which the military service member or nonresident military spouse
 28 seeks licensure;
 29 (C) has not been disciplined by a licensing or credentialing entity in
 30 another jurisdiction and is not the subject of an unresolved complaint,
 31 review procedure or disciplinary proceeding conducted by a licensing or
 32 credentialing entity in another jurisdiction nor has surrendered their
 33 membership on any professional staff in any professional association or
 34 society or faculty for another state or licensing jurisdiction while under
 35 investigation or to avoid adverse action for acts or conduct similar to acts
 36 or conduct which would constitute grounds for disciplinary action in a
 37 Kansas practice act;
 38 (D) pays any fees required by the licensing body of this state; and
 39 (E) submits with the application a signed affidavit stating that the
 40 application information, including necessary prior employment history, is
 41 true and accurate. Upon receiving such affidavit, the licensing body shall
 42 issue the license to the military service member or the nonresident military
 43 spouse on a probationary basis, but may revoke the license at any time if

The requirement to verify that an applicant is the spouse of an individual who is currently in active service can be included in the bill or in regulations promulgated by the agency to implement after final bill is enrolled.

Proposed amended language, "completed application"

This section adds military service member, who separates within 6 months following release from military service, to the endorsement provision.

- Bill language provides 6 month window and the licensing agency will need to obtain military documents to ensure compliance. The requirements provide this information can be included in the bill or in regulations promulgated by the agency to implement after final bill is enrolled.

Consider adding the term, "reinstatement" to this list. Reinstatement is usually abbreviated; because they have previously held Kansas licensure all their original documents have already been collected and the agency just needs to reactivate their licensure. Reactivation requirements seek to ensure the 2 "C"s; character and competence. The only information needed, since expiration of Kansas licensure relates to 2 issues:

- Where have you been?
- What have you been doing?
- These questions ensure they have maintained required continuing education and have not gotten into trouble since they left Kansas.

Proposed amended language, "temporary probationary license not to exceed 3 months"; alternatively, "limited period of time" to mirror language on page 3, lines 26-27.

Consider adding the word "temporary" and a time limitation. If a temporary or probationary license is not limited by a time frame, an individual could practice for many months or a year without completing the application requirements that allow the agency to fully consider relevant qualifications.

1 the information provided in the application is found to be false.
 2 (e) (d) Any person who has not been in the active practice of the
 3 occupation during the two years preceding the application for which the
 4 applicant seeks a license may be required to complete such additional
 5 testing, training, mentoring, monitoring or education as the Kansas
 6 licensing body may deem necessary to establish the applicant's present
 7 ability to practice with reasonable skill and safety.
 8 (e) (e) A nonresident military spouse licensed under this section shall
 9 be entitled to the same rights and subject to the same obligations as are
 10 provided by the licensing body for Kansas residents, except that revocation
 11 or suspension of a nonresident military spouse's license in the nonresident
 12 military spouse's state of residence or any jurisdiction in which the
 13 nonresident military spouse held licensure shall automatically cause the
 14 same revocation or suspension of such nonresident military spouse's
 15 license in Kansas. No hearing shall be granted to a nonresident licensee
 16 where the license is subject to such automatic revocation or suspension
 17 except for the purpose of establishing the fact of revocation or suspension
 18 of the nonresident military spouse's license by the nonresident military
 19 spouse's state of residence.
 20 (e) For the purposes of this section, "military spouse" means the
 21 spouse of an individual who is currently in active service in any branch of
 22 the armed forces of the United States.
 23 (f) In the event the licensing body determines that the license
 24 currently held by the military service member under subsection (c)(2)(A)
 25 is not equivalent to those established by the licensing body of this state,
 26 the licensing body may issue a temporary permit for a limited period of
 27 time to allow the military service member to lawfully practice the person's
 28 occupation while completing any specific requirements that are required
 29 in this state for licensure that were not required in the state, district or
 30 territory of the United States in which the military service member was
 31 licensed or certified.
 32 (f) (g) This section shall not apply to the practice of law or the
 33 regulation of attorneys pursuant to K.S.A. 7-103, and amendments thereto.
 34 Sec. 3. K.S.A. 2012 Supp. 48-3406 is hereby repealed.
 35 Sec. 4. This act shall take effect and be in force from and after its
 36 publication in the statute book.

Consider adding language which allows agency to adopt rules to fit their specific professions.

See page 1, lines 22-23 which provides:

Each licensing body may adopt rules and regulations necessary to implement and carry out the provisions of this section

Expedited implementation is always desirable; however, it does not allow for adoption of necessary regulations. Consider making it effective January 2014, which would allow only 6 months for adoption of regulations.