

Neutral Testimony for Senate Bill 366

An Act concerning occupational regulation; relating to occupational licenses for certain applicants; amending K.S.A. 2019 Supp. 48-3406 and repealing the existing section.

**Presented to the Senate Committee on Commerce
By David Yocum, Chairperson of the Kansas Board of Cosmetology**

February 17, 2020

Chairperson Lynn and Members of the Committee:

Thank you for letting me provide neutral testimony on behalf of the Kansas Board of Cosmetology (Board) on SB 366.

The Board's mission is to protect the health and safety of the consuming public by licensing qualified individuals and enforcing standards of practice and sanitation. The Board licenses over 27,000 individual practitioners, instructor/trainers, apprentices, and holders of temporary permits in cosmetology, electrology, esthetics, nail technology, and tattooing and body piercing.

This bill would provide for the Board to ease reciprocity requirements for applicants applying for cosmetology and body art licensure in Kansas with training and/or licensure obtained in another state or jurisdiction.

Currently, the statute applies only to military service members and their spouses which is a small class of applicants of about 2 individuals annually. Under the bill, the "applicant" would be defined as a military servicemember or their spouse, and an individual who has established or *intends to establish residency* in Kansas. We believe SB 366, as introduced, would expand K.S.A. 2019 Supp. 48-3406 expedited procedure to applicants for original licensure, reciprocity, or reinstatement which would have an impact on the Board operations. That class of applicants is about 215 or 19% of the Board's licensure of individuals annually.

If it is the Committee's will to pass this bill out of Committee, we ask that:

- the bill be limited to residents of Kansas to ensure that non-resident applicants from out of state are not given preference to Kansas residents applying for licensure;
- the current 60-day timeframe be maintained or increased to 90 days to allow members of the Board and counsel enough time to review and approve applications that cannot be immediately approved;
- that the Kansas Administrative Procedure Act apply to K.S.A. 48-3406 to facilitate more expedient processing of applications that require Board approval; and
- We also request that corrections be made to possible technical or mechanical defects as provided below.

It is important to understand that the Board is made up of volunteers, appointed by the Governor, who give their expertise and time freely to the State because they are passionate about improving their professions. Board members perform executive, legislative, and judicial functions all while maintaining full time jobs or running businesses. Board members are not in the Board office daily and rely on the Board staff to carry out the decisions that the Board has made. The Board staff is charged with the responsibility of administering the decisions of the Board. The Board staff may not exercise any discretion. Although

passage of this will would affect all three functions of the Board and will exponentially increase the amount of time the volunteer Board members will need to devote to implementing and enforcing the new law, we believe our requested changes to limit the application to residents of Kansas, to leave or increase the timeframe to 60 or 90 days, and to apply KAPA would make the expedited approval process manageable for our Board.

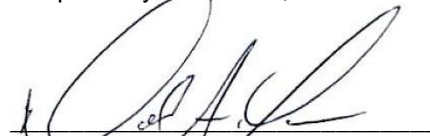
By way of explanation for our position on the 10-business day turnaround requirement, the Board would be required to restructure its application disapproval process to accommodate the expedited 10 business day requirement. The bill does not affect the application that would have been approved under the current process because we already approve those applications as quickly as possible. We want qualified applicants to practice their profession as soon as possible, too. The bill would require the Board's applications committee to be on-call and assemble to make decisions about each application that cannot be immediately approved. Currently, the Kansas Administrative Procedure Act (KAPA)¹ is applicable to applications and these statutes are designed to ensure procedural due process for each applicant. KAPA authorizes a state agency up to 90 days, when practicable, to approve or deny a completed application.² KAPA requires the Board to issue an order denying the application that contains findings of facts and conclusions of law so that the applicant is informed of exactly what the Board has determined to be legally insufficient or disqualifying in the application.

We suggest the following language may have technical or mechanical defects in the bill:

- The terms "occupation" and "profession" are both used interchangeably throughout the bill and are undefined.
- Page 2, line 5, the phrase "more favorable" is not clear, as is the phrase "less favorable" on page 2, line 11.
- Page 3, lines 42 and 43, and page 4, line 1 use the term "government certification" which is undefined.
- Since the Kansas Administrative Procedure Act is not specifically referenced in this statute, it does not apply.³ That means if an applicant wishes to appeal a final decision of the Board, the appeal would be directly to the district court pursuant to the Kansas Judicial Review Act.⁴

On behalf of the Board, I thank you for your time and consideration of our testimony as we continue to protect the consuming public.

Respectfully Submitted,



David Yocum, Chairperson
Kansas Board of Cosmetology

¹ See K.S.A. 77-501 *et seq.*

² K.S.A. 2019 Supp. 77-511.

³ K.S.A. 2019 Supp. 77-503.

⁴ See K.S.A. 77-601 *et seq.*