

House Industry, Business and Labor Committee
Chairman Jonathan Warrey
Vice Chairman Jorin Johnson
Vice Chairman Mitch Ostlie
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S.B. 2395

Testimony of Nathan Svihovec

IN FAVOR

I. Introduction

Chairman Warrey, Vice Chairmen Johnson and Ostlie, and members of the House Industry, Business and Labor Committee, my name is Nathan Svihovec and I am here to present testimony in support of S.B. 2395. For background, I served as the Labor Commissioner with the North Dakota Department of Labor and Human Rights from December 2022 – December 2024. During that time, I conducted a legislative study pursuant to S.B. 2249 (2023) on occupational licensure in North Dakota.

To be clear, I am here in my personal capacity and do not represent the Department or any other entity for the purposes of this hearing. I have, however, cleared my ability to be present today with the Governor's Office, Department of Labor and Human Rights, and my current employer. I've also met with several Assistant Attorneys General to identify any concerns they had prior to my testimony. I intend to share my knowledge of occupational licensure to ensure the committee has the information it needs to make an informed decision.

Thus, to ensure the elected members of the Legislative Assembly have the most meaningful and updated information on this subject, I will be discussing the sections of the bill as well as the corresponding support – based information learned through the study.

II. Legislative Study – S.B. 2249 (2023)

The 68th Legislative Assembly passed S.B. 2249, which required the Department of Labor and Human Rights to study Title 43 boards, the Education Standards and Practices Board, and Board of Law Examiners to analyze the possibility of two areas: (1) Licensing of out-of-state practitioners within three days and (2) Revising continuing education requirements to recognize time in practice and technology advancements.

The study included Q & A sessions, a 53-question Questionnaire to each board, meetings with each board, the establishment of and utilization of an Occupational Licensure Advisory

Committee (OLAC) to help maximize efficiencies and knowledge of board processes, a high-level survey of occupational associations and unions, and a detailed analysis of 26 other states that have passed universal licensure reform. This was certainly the most comprehensive licensure study to date and the Department accomplished this with only \$50,000 in state funds that were spent entirely in-state.

In December 2024, the Department issued a 40-page report detailing the methods, findings, and recommendations pursuant to the information learned during the study. Included with the report are five appendix items: (1) Appendix A – Questionnaire Responses and Data; (2) Appendix B – Questionnaire Completion and Board Meeting Dates; (3) Appendix C – Blank Questionnaire; (4) Appendix D – Other State ULR Laws (Oct. 28, 2024); and (5) Appendix E – Conversation Notes with Other States. S.B. 2395 is supported by the report as well as the many hours of conversations with boards, staff, and other states not detailed in the report.

The boards have been subjected to multiple studies over the past 6-7 years and continue to be subjected to ongoing studies moving forward. When I met with the boards during the Department’s study, I indicated there would need to be some compromise from all interested parties to effectively bring resolution to this issue and address the ongoing workforce needs of the state. I believe S.B. 2395 is that compromise and it provides a balanced and sensible solution to the concerns of interested parties.

III. S.B. 2395 Overview

A. Definitions (Pages 2-3)

S.B. 2395 creates a new chapter under Title 43. Page 1 through the top half of Page 2 creates a definitions section. The definitions, in my opinion, are the most underrated and critical components of the bill. These give context and clarity to the operative pieces of the bill.

Subsections 1-2: For the terms “Applicant” and “Application,” the key aspects of those definitions are that they mean completed effort on the applicant. During the study, we heard time after time of boards that encountered partially complete or incorrect applications. When the boards would attempt to contact those individuals, it was not uncommon that the individuals would never respond to the boards. Thus, these definitions are intended to mean individuals have completed their end of the process.

Subsection 3: The term “Board” means Title 43 boards or commissions as well as the Education Standards and Practices Board and the Board of Law Examiners.

Subsections 4-5: The phrase “Effective interstate compact” means that being a member of an interstate compact alone is not sufficient; the compact must have had the minimum number of states necessary for it to become operative. The purpose is that the benefit to ND from a board being a member of an interstate compact is that the borders/barriers are effectively removed; so, for a board to be exempt from certain requirements, it must actually have an operating interstate compact and not just waiting for other states to pass the same compact.

Subsections 6-7: The terms “License” and “Occupations or profession” clarify the scope of this bill applies to occupational licensure only.

Subsection 8: The phrase “Out-of-state licensee” is intentionally broadly defined to encompass the varying levels of government that may license an individual. We learned in the study that several states license some professions at the local level rather than through a state board. However, we also learned that each jurisdiction has varying levels of abilities for which an individual is licensed, which is not equivalent to the level ND licenses that profession. Thus, the definition was crafted to broadly apply jurisdictionally but narrowly apply to similarly licensed individuals.

Subsection 9: The phrase “Routine application” is defined to mean an application where it’s clear upon a board’s staff’s review that the applicant meets the requirements for licensure and there are no pending or past disciplinary actions for which the board’s expertise is necessary to determine whether the individual should be licensed in ND.

B. Universal Licensure (pages 2-3)

The first key operative language is the opening line, that the conditions that follow in subsections 1-7 are not required if a board is part of an effective interstate compact, executed license transfer, existing interstate mobility, or reciprocity agreement with another state. In other words, this opening line recognizes that those forms of license portability remove barriers and allow individuals licensed in those states to seamlessly obtain licensure in North Dakota. Part of the rationale for this piece is that many of our boards utilize national systems that operate like a universal licensure hub where standards are equivalent, and

license verification is simplified. In addition, this provision encourages boards to seek and implement portability mechanisms or to begin the process of creating one if it does not exist.

If a board is not a member of one of the portability mechanisms, they must issue a license to an out-of-state licensee after application once the conditions in subsections 1-7 have been met. Those conditions are:

1. Active use of license in 2 of the 3 preceding years;
2. Competency and education in occupation;
3. Has not committed an act that would be grounds for refusal, suspension, or revocation;
4. Has not been disciplined by a board in the previous ten years;
5. Is not currently under investigation by a licensing authority;
6. If applicable, submits to a criminal history background check; and
7. Pay fees.

These requirements provide the minimum threshold for qualifying for a license by our boards while still ensuring public safety is not jeopardized. Based on the review of the 26 other states that have passed a version of universal licensure, these minimum standards – and often additional requirements – are in effect in every state. To be clear, boards may still license individuals that may have a disciplinary past, but the timeline is not triggered for those applications.

C. Board Operations (pages 3-4)

The Board Operations section of the bill creates minimum standards, necessary authorizations, and limited reporting for our boards. A common theme for several boards during the study was a lack of technology, staff authority, and availability of interstate compacts. Additionally, boards are not held to any period in which to issue licenses, which often creates situations where an applicant is waiting several weeks – sometimes months – to receive a license.

Subsection 1: Requires boards to issue a license within ten business days to an applicant who submits a complete, unencumbered, routine application. The timeframe specifically carves out boards in an effective interstate compact but requires that they issue licenses in a timely manner.

Subsection 2: Authorizes boards to grant provisional/temporary licenses between board meetings and ensures any existing limitations on such ability to delegate authority are superseded by the authority in this bill.

Subsection 3: Requires boards to provide application forms electronically. The study determined that at least 20 boards need and would utilize modernized licensing software. However, given the cost of such an implementation, it was determined to revisit that solution at a future legislative session. This addresses the small number of boards who do not provide any option to obtain the application electronically.

Subsection 4: Many boards require North Dakota-specific jurisprudence exams to obtain a license. During the study, the boards felt it imperative that an applicant demonstrate comprehension of the nuances specific to North Dakota laws that often differ from other states. The bill recognizes this need but requires boards to offer the examination at least once per month.

Subsection 5: During the study it was impossible to reconcile the data provided by boards on licensing timeframes. Boards utilize different definitions of when certain dates are met and, in many cases, do not have any of the requested data readily available. Thus, to give the 70th Legislative Assembly an accurate assessment of whether boards are meeting the requirements of this bill, subsection 5 implements two annual reports over the next two years. The data points sought are: (1) number of licenses granted, (2) number of licenses denied, (3) number of licenses not issued within ten business days; and (4) reason for the delay for licenses issued after the ten business days.

Subsection 6: During the study, several boards indicated they had reviewed interstate compacts and decided to not seek to join an existing compact. Additionally, many of our professions have no existing compacts in which to even consider joining. To provide ongoing information that will be available to the Labor Department, Governor's Office, and Legislature, this subsection of the bill requires boards that are not currently members of an effective interstate compact to annually review available compacts to determine whether joining the compact would be in the best interest of the profession and state. It requires boards to give consideration to workforce shortages and evolving trends in licensure and technology. It also requires boards to provide the labor commissioner with a copy of the considered compact and the board's reason for its determination that joining the compact was not in the best interest of the state.

Subsection 7: Simply authorizes boards to contract administrative services out as needed.

Subsection 8: Boards overwhelmingly refuted any reduction in continuing education hours during the study. The rationale generally involved ensuring competency and safety as technology and methodologies evolve – in fact, they evolve more rapidly today than ever before given the technological world we live in. However, given the available technology, the compromise on continuing education was that boards must allow all continuing education to be completed remotely/virtually. One of the primary examples of continuing education being included in the study was that professionals spend time away from their practice attending continuing education and often at high costs. This requirement attempts to resolve some of those concerns by providing licensees with options to complete continuing education hours without having to leave town.

Subsection 9: This subsection was requested by some of the board executive directors, but my understanding is that it allows boards the authority to assist an individual attempting to get licensed by providing necessary education or training if their license is not substantially equivalent.

Subsection 10: Under the amended language, this section gives the Governor the authority to appoint and remove members of a board for cause, misconduct, incapacity, or neglect of duty. It also allows a board member to continue serving in his or her position until the Governor makes an appointment to fill the position.

Subsection 11: This subsection provides an applicant with an order of grievance resolution by first attempting to resolve issues through the board then to the Governor's Office. It further requires boards to provide contact information for the governor's office on their websites of application forms.

IV. Conclusion

Chairman Warrey, Vice Chairmen Johnson and Ostlie, and members of the House Industry, Business and Labor Committee, the study was enlightening and provided much needed context to this topic. I learned much about the high caliber professionals we have making up the boards – especially their staff. S.B. 2395 is a necessary step in resolving the occupational licensure workforce challenges to North Dakota. It requires faster licensure while

maintaining board autonomy and it standardizes the processes by which our boards license individuals. It accomplishes those goals all while ensuring public safety is not jeopardized. Thank you for your service to our state and for your consideration of this bill.