

ARKANSAS REGISTER

Proposed Rule Cover Sheet



Secretary of State
John Thurston
500 Woodlane Street, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



Name of Department _____

Agency or Division Name _____

Other Subdivision or Department, If Applicable _____

Previous Agency Name, If Applicable _____

Contact Person _____

Contact E-mail _____

Contact Phone _____

Name of Rule _____

Newspaper Name _____

Date of Publishing _____

Final Date for Public Comment _____

Location and Time of Public Meeting _____

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WILLIAM H. TRICE III (1946-2014)

March 18, 2020

Via email and U.S. Mail
suttonj@blr.arkansas.gov

Ms. Jessica Sutton, Committee Staff
Bureau of Legislative Research
State Capitol Building, Room 315
Little Rock, AR 72201

**RE: My Client: Arkansas State Board of Optometry
Proposed Amendment to Chapter I, Article IV – Reciprocity, Licensure by
Endorsement, Military Personnel**

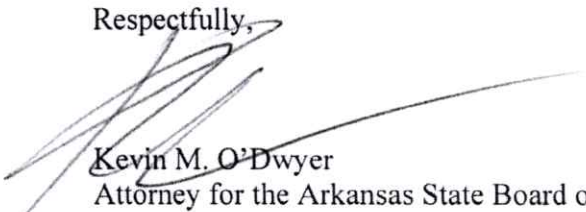
Dear Jessica:

Enclosed please find the following:

1. Proposed Rule Cover Sheet
2. Two copies of the completed Questionnaire and Financial Impact Statement.
3. Two copies of the Mark-Up Amendment.
4. Two copies of the Proposed Amendment (clean copy).
5. Two copies of a Summary.
6. Two copies of the Notice of Hearing that is being published, setting forth the public hearing for April 23, 2020 with e-mail from the Daily Record.

Please let me know if you need anything further at this time.

Respectfully,



Kevin M. O'Dwyer
Attorney for the Arkansas State Board of Optometry

KMO:ena
Enclosures

cc w/encl.: Arkansas Secretary of State, register@sos.arkansas.gov
Howard E. Flippin, O.D., Executive Director aroptometry@sbcglobal.net
Suba Desikan, Legislative Attorney desikans@blr.arkansas.gov
Matt Gilmore (matt.gilmore@arkansas.gov)

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT/AGENCY Department of Health
DIVISION Division of Health Related Boards and Commissions/Arkansas State Board of Optometry
DIVISION DIRECTOR Matt Gilmore, ADH Boards and Commissions
CONTACT PERSON Howard F. Flippin, O.D., Executive Director
ADDRESS Post Office Box 512, Searcy, AR 72145
PHONE NO. 501-268-4351 FAX NO. 501-268-4361 E-MAIL kodwyer@htolaw.com
NAME OF PRESENTER AT COMMITTEE MEETING Kevin M. O'Dwyer
PRESENTER E-MAIL kodwyer@htolaw.com

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Jessica Sutton
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Chapter I, Article IV – Reciprocity, Licensure by Endorsement, Military Personnel

2. What is the subject of the proposed rule? Amend the section for Licensure for Active Military Personnel

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes No

If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?
Yes No

5. Is this a new rule? Yes No
If yes, please provide a brief summary explaining the regulation. N/A.

Does this repeal an existing rule? Yes No
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes No
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 248 of 2017; A.C.A. § 17-1-106(g)

7. What is the purpose of this proposed rule? Why is it necessary? To allow a temporary license to be automatic.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.aoptometry.org

9. Will a public hearing be held on this proposed rule? Yes No
If yes, please complete the following:

Date: April 23, 2020

Time: 1:30 p.m.

323 Center Street, 2nd Floor

Place: Little Rock AR 72201

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
April 16, 2020

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
Unknown

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the publication of said notice. Proof of publication will be provided as soon as it is received.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). Will provide after approval by Governor.

14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. Arkansas State Board of Optometry; Arkansas Optometric Association.

(b) What is the additional cost of the state rule?

Current Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

Next Fiscal Year

General Revenue N/A
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

\$ N/A

Next Fiscal Year

\$ N/A

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;

- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

**PROPOSED AMENDED ARTICLE
MARKUP**

CHAPTER I, ARTICLE IV – Reciprocity, Licensure by Endorsement, Military Personnel

A. Reciprocity

Section 1 –

An application for licensure by reciprocity pursuant to Subchapter 3 of Section 17-90-302 of Act 397 of 1991, shall be filed with the Secretary of the Board and shall set forth the name, address, date of birth, and the place or places where the applicant has engaged in the practice of optometry for the three (3) years immediately preceding the application. This application shall contain the names of at least three persons not related to the applicant with whom the applicant has been associated in the last five years. Such application shall also state whether or not the applicant has ever been convicted of a crime, or has ever had his license to practice optometry in other states revoked or suspended.

Section 2 –

Such application shall also set forth the educational and professional qualifications of the applicant.

Section 3 –

The application shall contain a statement by the applicant that he is willing to abide by the laws of this State and the rules and regulations of this Board, and such application shall be subscribed by the applicant and sworn to by him before an officer qualified to administer oaths by the laws of this State.

Section 4 –

The application shall be accompanied with a fee of \$400.00. It shall be understood by the applicant that the application fee is to cover the cost of investigation and examination felt necessary by the Board.

B. Licensure by Endorsement

Section 1 –

Any person from another state desiring to engage in the practice of optometry in this state may be issued a licensure by endorsement at the sole discretion of the State Board of Optometry upon satisfactory proof that he or she:

1. Is qualified under this chapter;
2. Has been issued a certificate or license to practice optometry by a state, territory, the District of Columbia, or Canada having standards of proficiency at least equal to the standards of Arkansas:

**PROPOSED AMENDED ARTICLE
MARKUP**

3. Has engaged in the lawful practice of optometry for a period of three years of the past four years in the other state, territory, the District of Columbia, or Canada and has complied with the requirements of the Arkansas licensure law at the time of application; and
4. Has passed an Arkansas jurisprudence examination as approved by the Board.

Section 2 –

The applicant shall pay a fee to the State Board of Optometry of \$400.00 (equal to the fee of a new applicant) to cover the administrative costs of the application process.

Section 3 –

An application for licensure by endorsement shall be accompanied by:

1. The fee described in Section 2;
2. Certification from all states or territories in which the applicant has practiced;
3. A certificate of good standing from each authority which issued the license, setting forth the applicant's moral reputation and character, history with the authority, professional ability, continuing education compliance, and other information or data as the State Board of Optometry may deem necessary or expedient;
4. A copy of the therapeutic license held by the applicant and current photo;
5. A copy of the cardiopulmonary resuscitation certification held by the applicant;
6. Transcripts from all colleges or universities attended by the applicant; and an accredited school or college of optometry;
7. Proof of completion of all parts of the National Board of Examiners in Optometry examination required at the time of graduation for initial licensure sent directly to the State Board of Optometry;
8. Information on past medical malpractice claims and any disciplinary actions;
9. Application to the Identification Bureau of the Department for Arkansas State Police for a state and national criminal background check, to be conducted by the Federal Bureau of Investigation; and
10. Appear in person before the State Board of Optometry for an interview.

**PROPOSED AMENDED ARTICLE
MARKUP**

Section 4 –

Upon furnishing satisfactory proof of fitness, the State Board of Optometry in its discretion may issue a license to practice optometry to the applicant without further cost except as otherwise provided in the Rules and Regulations for the renewal of licenses.

C. Licensure for Active Military Members

1. Definitions:

- a. As used in this section, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

2. Licensure:

- a. Pursuant to Act 248 of 2017, the Arkansas State Board of Optometry shall allow the following individuals to secure employment with a temporary **automatic** license, certificate, or permit while completing the application process for full licensure or certification or permitting if the individual is the holder in good standing of a substantially equivalent license, certificate, or permit issued by another state:
 - (1) An active duty military service member stationed in the State of Arkansas;
 - (2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or
 - (3) The spouse of a person under subdivisions (b)(1) and (2) of this section.
- b. The Arkansas State Board of Optometry shall expedite the process and procedures for full licensure, certification, or permitting for the following individuals:
 - (1) An active duty military service member stationed in the State of Arkansas;
 - (2) A returning military veteran applying within one (1) year of his or her discharge from active duty; or
 - (3) The spouse of a person under subdivisions (c)(1) and (2) of this section.
- c. When considering an application for full licensure, certification, or permitting for an active duty military service member stationed in the State of Arkansas or a returning military veteran applying within one (1) year of his or her discharge from active duty, the Arkansas State Board of Optometry:

**PROPOSED AMENDED ARTICLE
MARKUP**

- (1) Shall consider whether or not the applicant's military training and experience in the area of licensure, certification, or permitting is substantially similar to experience or education required for licensure, certification, or permitting; and
 - (2) Shall accept the applicant's military training and experience in the area of licensure, certification, or permitting in lieu of experience or education required for licensure, certification, or permitting if the state board or commission determines the military training and experience is a satisfactory substitute for the experience or education required for licensure, certification, or permitting.
- d. A license required to enable the holder to lawfully engage in a profession, trade, or employment in this state held by an active duty military service member deployed outside the State of Arkansas or his or her spouse shall not expire until one hundred eighty (180) days following the active duty military service member's or spouse's return from active deployment.
- e. (1) The Arkansas State Board of Optometry shall allow a full or partial exemption from continuing education required as part of licensure, certification, or permitting for a profession, trade, or employment in this state for the following individuals:
- (A) An active duty military service member deployed outside of the State of Arkansas;
 - (B) A returning military veteran within one (1) year of his or her discharge from active duty; or
 - (C) The spouse of a person under subdivisions (f)(1) and (2) of this section.
- (2) If the Arkansas State Board of Optometry allows a full or partial exemption from continuing education required under subdivision (f)(1) of this section, the Board may require evidence of completion of continuing education before issuing the individual a subsequent license, certificate, or permit or authorizing the renewal of a license, certificate, or permit.

**PROPOSED AMENDED ARTICLE
CLEAN COPY**

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2. Has been issued a certificate or license to practice optometry by a state, territory, the District of Columbia, or Canada having standards of proficiency at least equal to the standards of Arkansas:

PROPOSED AMENDED ARTICLE
CLEAN COPY

3. Has engaged in the lawful practice of optometry for a period of three years of the past four years in the other state, territory, the District of Columbia, or Canada and has complied with the requirements of the Arkansas licensure law at the time of application; and
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PROPOSED AMENDED ARTICLE
CLEAN COPY

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 - (2) Shall accept the applicant's military training and experience in the area of licensure, certification, or permitting in lieu of experience or education required for licensure, certification, or permitting if the state board or commission determines the military training and experience is a satisfactory substitute for the experience or education required for licensure, certification, or permitting.
- d. A license required to enable the holder to lawfully engage in a profession, trade, or employment in this state held by an active duty military service member deployed outside the State of Arkansas or his or her spouse shall not expire until one hundred eighty (180) days following the active duty military service member's or spouse's return from active deployment.
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CHAPTER 1, ARTICLE IV

Summary

Proposed amendment to Chapter 1, Article IV – Reciprocity, Licensure by Endorsement,
Military Personnel – defines and explains licensure requirements for active military members.