

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3799/P1dn

RNK:emw

December 1, 2015

This draft provides that ss. 440.03 (1), (3m), (4), (11m), and (13) (a), (am), and (b) 75., 440.09 (2), 440.11, 440.121, 440.19, 440.20 (1), (3), (4), and (5), 440.205, 440.21, and 440.22 (ch. 440 provisions) apply to a license or other approvals issued by the Department of Safety and Professional Services (DPS) for an occupation, trade, or profession (occupational license) under chs. 101 and 145 and s. 167.10 (6m) in the same manner as they apply to credentials issued under chs. 440 to 480. Please note that these ch. 440 provisions contain language that is different than, conflicts with, or duplicates the language in other provisions of the statutes administered by DPS under chs. 101 and 145.

It is difficult to identify all of the statutes in chs. 101 and 145 under current law that may conflict with or duplicate the ch. 440 provisions. The following statutes are ones that we have identified that may require amending or repealing in order to eliminate conflicting or duplicative language: ss. 101.02 (5) (a), (c), and (d), (6), and (9), 101.122 (2) (f) and (g), 101.137 (5), 101.16 (5) (b), (c), (cg), (cm), (cn), (cr), and (d), 101.178 (5), 101.596 (2) and (3), 101.64 (1), 101.654 (5), 101.74 (1), 101.77, 101.82 (3r), 101.84 (1), 101.874, 101.88 (3), 101.951 (7) (b), 101.96 (2) (b), 101.983 (1) (c), 101.985 (4), 101.988, 145.02 (3) (f), 145.045 (2), and 145.10. Please review each of these statutes to determine whether you believe that any of them duplicate or conflict with the ch. 440 provisions. You may also find, upon your review of this draft and the relevant statutes, that there are other statutes under chs. 101 and 145 that duplicate or conflict with the ch. 440 provisions. We would be happy to meet with you to discuss how you would like all of these statutes to be harmonized in the next version of the draft.

In addition to the existence of conflicting language in the statutes identified above, there may also be statutory language in chs. 101 and 145 that conflicts with DPS *rules*. As instructed, this draft provides that DPS's rules concerning receiving, filing, and investigating complaints, commencing disciplinary proceedings, and conducting hearings apply to occupational licenses in the same manner as those rules apply to credentials issued under chs. 440 to 480. To the extent that a current *statute* in ch. 101 or 145 relating to an occupational license is specific, DPS does not have the authority to enforce a rule that conflicts with that specific statute. For example, if there is a statute in ch. 101 or 145 that specifies the manner for commencing a disciplinary proceeding against an occupational licensee, and DPS has promulgated a uniform

rule about commencing disciplinary proceedings that conflicts with that statute, the rule may not be enforced to the extent of that conflict. Please let us know whether you would like this draft to address any conflicts between statutory provisions and provisions in current or contemplated DSPS rules.

You asked that this draft repeal ss. 101.02 (20), (21), and (24) and 101.19 (1r) because of the existence of duplicative provisions in ch. 440. This version of the draft does not include those repeals because the parallel provisions in ch. 440, while very similar to the provisions in s. 101.02 (20), (21), and (24) and 101.19 (1r) are not identical. For example, ss. 101.02 (20) (a), (21) (a), and (24) (a) 2. and 101.19 (1r) identify, by list, all of the licenses that are covered by those provisions. I am not sure that those lists are inclusive of all occupational licenses issued by DSPS under chs. 101 and 145. Please also note that the lists include licenses under s. 167.10 (6m) which are not licenses issued under ch. 101. By repealing the lists, the requirements in ch. 440 will cover all of the occupational licenses that will be issued under ch. 101 including some that may not be in the lists enumerated under ss. 101.02 (20) (a), (21) (a), and (24) (a) 2. and 101.19 (1r). There are other minor differences between the provisions in ch. 101 and in ch. 440 as well. Please review all of these provisions to ensure that the repeal of ss. 101.02 (20), (21), and (24) and 101.19 (1r) as you requested will not result in unintended consequences. If, after you review these provisions, you have confirmed that you want to include the repeal of ss. 101.02 (20), (21), and (24) and 101.19 (1r), we will make that change in the next version of the draft.

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