

Delaware Falls Short in Accommodating Deployed Service Members and Military Spouses

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

1.8—Relationship between USERRA and other laws/policies

9.0--Miscellaneous

Joe Smith holds a professional license issued by the State of Delaware and is a member of the Army Reserve. Joe was called to active duty and deployed to Afghanistan for a year and has recently been released from active duty and has returned home to Delaware. While Joe was deployed, he was unable to complete the required continuing professional education (CPE) requirements or to renew his Delaware professional license.³ The expiration of Joe's professional license has immensely complicated Joe's return to gainful civilian employment, especially if he is self-employed.⁴

Delaware's Division of Professional Regulation recently issued an "Instruction Sheet" about Delaware's laws and regulations permitting a service member to apply for and obtain a "provisional" professional license. We are attaching a copy of this instruction sheet at the end of this article. The sheet provides that a service member may apply for a provisional license if he or she meets *all* of the following conditions:

You are a member of the active duty military, National Guard or military reserve who has been reassigned to a duty station in Delaware or who has been deployed by the President of the United States or the Governor of Delaware.

¹ We invite the reader's attention to www.servicemembers-lawcenter.org. You will find more than 1,300 "Law Review" articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997.

² Captain Wright was the Director of ROA's Service Members Law Center from June 2009 to May 2015.

³ While Joe was serving our country in Afghanistan, it was most important that he maintain his entire focus on his military duties, to keep himself and his colleagues safe. It would have been tragic if Joe had allowed himself to be distracted by the need to meet Delaware CPE requirements in order to facilitate his return to civilian employment.

⁴ If Joe is an employee, and if he meets the simple eligibility criteria under the Uniformed Services Employment and Reemployment Rights Act (USERRA), Joe's pre-service employer is required to reemploy him *even if doing so would violate Delaware law*. Under section 4302(b) of USERRA [38 U.S.C. 4302(b)], USERRA supersedes and overrides a state law that imposes additional prerequisites to the exercise of USERRA rights. Under Article VI, Clause 2 of the United States Constitution (commonly called the "Supremacy Clause"), a federal statute like USERRA trumps a conflicting state statute or even a state constitution. But USERRA does not help Joe if he is self-employed.

You hold a *current*⁵ license in good standing to practice your profession in at least one other jurisdiction (state, U.S. territory or District of Columbia) **and**⁶ there is no unresolved complaint, review procedure or disciplinary proceeding against any license you hold.

You are simultaneously filing or have already filed an application for a professional license and that application is still pending with the Division.

This provision would likely help Major Alice Adams, an Air Force physician who was recently transferred (Permanent Change of Station) from an Air Force Base (AFB) in another state to Dover AFB in Delaware. Alice does not need a Delaware medical license to practice medicine in Delaware as part of her military duties.⁷ If Alice wants to “moonlight” as a physician at a civilian hospital in Delaware, she will need a Delaware medical license, and this provision for a provisional license could be useful in such a situation.

This provision does not help Joe Smith, who was licensed by Delaware not another state and his Delaware professional license expired during his recent deployment. He does not have a *current* professional license in any state, and that is an absolute prerequisite to obtaining a Delaware provisional professional license.

The Delaware provision also does not help Mary Jones, the wife of Captain Robert Jones, USAF. Robert was recently transferred to Dover AFB, and Mary accompanied him in order to continue the marriage. Mary has a professional license issued by California, where she has lived with Robert for the last three years before his recent transfer to Delaware. Delaware has made no provision for a person like Mary to obtain a provisional professional license in this circumstance.

Delaware was at least thinking about service members when it recently provided for provisional professional licenses. It is most unfortunate that we (ROA) did not have the opportunity to offer input so that a more productive regulation might have been drafted and promulgated.

Especially after the recent staff cuts, the ROA headquarters staff has its hands full trying to monitor and affect what goes on in Congress and the Pentagon. We simply do not have the “band width” to monitor what is happening in 50 state capitals. There is a great need for ROA departments and chapters to fill this gap.

> [Download Delaware Military Provisional License Application](#) (pdf)

⁵ Emphasis in original.

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⁷ Under the Supremacy Clause of the United States Constitution, Delaware has no authority to regulate federal facilities and activities in Delaware.

UPDATE—JUNE 2026

Congress Has Definitively Addressed a Problem Suffered by Spouses of Active-Duty Service Members. Their Occupational Licenses Are Now Fully Portable among the 50 States and DC.

By Captain Samuel F. Wright, JAGC, USN (Ret.)

Career members of the uniformed services are frequently transferred from one State to another by the services of which they are members. When this occurs, the service member's spouse will usually move with the service member to the new State. This necessary move often complicates the civilian career of the spouse because the occupational license issued by the former State of residence may not be recognized by the new State.

In 2023 and 2024, Congress addressed this problem by enacting and later amending a new provision of the Servicemembers Civil Relief Act, as follows:

(a) In general

If a servicemember or the spouse of a servicemember has a covered license and relocates residence because such servicemember receives military orders for military service in a State other than the State of the licensing authority that issued the covered license, such covered license shall be considered valid for the scope of practice in the State of the new residence if such servicemember or spouse submits to the licensing authority of such State an application described in subsection (c).

(b) Temporary licenses

If a licensing authority is required to consider a covered license valid under subsection (a) but cannot carry out such requirement during the

30 days after receiving an application described in subsection (c), the licensing authority may issue to the applicant a temporary license that confers the same rights, privileges, and responsibilities as a permanent license.

(c) Application

An application described in this subsection includes the following:

(1)

Proof of military orders described in subsection (a).

(2)

If the applicant is the spouse of a servicemember, a copy of the marriage certificate.

(3)A notarized affidavit affirming, under the penalty of law, that—

(A)

the applicant is the person described and identified in the application;

(B)

all statements made in the application are true and correct and complete;

(C)

the applicant has read and understands the requirements to receive a license, and the scope of practice, of the State of the licensing authority;

(D)

the applicant certifies that the applicant meets and shall comply with requirements described in subparagraph (C); and

(E)

the applicant is in good standing in all States in which the applicant holds or has held a license.

(d) Background checks

A licensing authority that receives an application described in subsection (b) may conduct a background check of the applicant before carrying out subsection (a) or (b).

(e) Interstate compacts

If a servicemember or spouse of a servicemember has a covered license to operate in multiple States pursuant to an interstate compact described in section 1784 of title 10—

(1)

The servicemember or spouse of a servicemember shall be subject to the requirements of such compact or the applicable provisions of law of the applicable State; and

(2)

this section shall not apply to such servicemember or spouse of a servicemember.

(f) Definitions

In this section:

(1)The term “covered license” means a professional license that, with respect to a scope of practice—

(A)

is in good standing with the licensing authority that issued such [license](#);

(B)

has not been revoked or had discipline imposed by any State;

(C)

does not have an investigation relating to unprofessional conduct pending in any State relating to it; and

(D)

has not been voluntarily surrendered while under investigation for unprofessional conduct in any State.

(2)

The term “license” means any license, certificate, or other evidence of qualification that an individual is required to obtain before the individual may engage in, or represent himself or herself to be a member of, a particular profession.

(3)The term “licensing authority” means any State board, commission, department, or agency that—

(A)

is established in the State for the primary purpose of regulating the entry of persons into or the conduct of persons within, a particular profession; and

(B)

is authorized to issue licenses.

(4)

The term “military orders” has the meaning given such term in section 3955 of this title.

(5)

The term “scope of practice” means the defined parameters of various duties or services that may be provided by an individual under a [license](#).

50 U.S.C. section 4025a.

As first enacted in 2023, this provision did not apply to licenses to practice law. As amended in 2024, this provision applies to all occupational licenses, including law licenses.

Bravo Zulu to the Military Spouse JD Network (MSJDN), an organization of military spouses who have earned law degrees. On its website, that organization states:

Since 2011, MSJDN has led the national movement to remove licensing barriers for military spouse attorneys. What began as a state-by-state campaign, starting with Idaho, the first state to approve a military spouse licensing accommodation, has become one of the most successful professional mobility initiatives in the licensing arena, culminating in the enactment of federal law requiring licensing recognition.¹

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

¹ <https://msjdn.org/rule-change/>.

Join the Organization That Fights for You.

This article is one of more than 2,000 "Law Review" articles available at www.roa.org/lawcenter — a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files *amicus curiae* ("friend of the court") briefs in the Supreme Court and other courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service

members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants and spouses, widows, and widowers of past or present service members, so families can stand with those who serve. Join online at roa.org/memberoptions or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002