

An Act

ENROLLED SENATE
BILL NO. 1691

By: Taylor, Rader, and Jech of
the Senate

and

Boles, Lepak, Mize,
McDugle, Munson, Stark,
Hilbert, West (Tammy),
Talley, Provenzano, and
Roberts (Eric) of the House

An Act relating to occupational licensing and certification; amending 59 O.S. 2021, Section 4000.1, which relates to determination for granting or denying licensing; providing for terms of denial of a state license or certification; allowing a licensing or certification authority to consider certain conditions before determination; preventing denial of licensure from a licensing or certification authority under certain conditions; requiring written notice to applicant from authority before determination; providing for notice of denial to be presented to applicant and allow for appeal and reapplication; removing terms of determination; providing for terms of disqualification during application process if subsequently convicted, has pending charges, or undisclosed convictions; allowing for rescindment of determination under certain conditions; requiring a licensing or certification authority to provide and publish certain information with applications; requiring distribution of information on website and to the Legislature each year; providing agency exceptions; and providing an effective date.

SUBJECT: Occupational licensing and certification

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2021, Section 4000.1, is amended to read as follows:

Section 4000.1. A. As used in this section:

1. "Substantially relate" means the nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation; and

2. "Pose a reasonable threat" means the nature of the criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.

B. Notwithstanding any other provision of law, a conviction, plea of guilty or nolo contendere, or pending criminal charge of a crime may be grounds for the denial of an applicant for a state license or state certification to practice an occupation only if the underlying offense substantially relates to the duties and responsibilities of the occupation and poses a reasonable threat to public safety, health, or welfare. When making a determination pursuant to this subsection, a licensing or certification authority shall consider:

1. The nature and seriousness of the offense;

2. The amount of time that has passed since the offense;

3. The age of the person at the time the offense was committed;

4. Evidence relevant to the circumstances of the offense including any aggravating or mitigating circumstances of social conditions surrounding the commission of the offense;

5. The nature of the specific duties and responsibilities for which the license or certification is required; and

6. Any evidence of rehabilitation submitted by the applicant including, but not limited to, evidence related to the person's compliance with any conditions of community supervision, parole, or

mandatory supervision, the conduct and work activity of the person, programming, or treatment undertaken by the person, and testimonials or personal reference statements.

C. Notwithstanding any other provision of law, a licensing or certification authority shall not deny a state license or state certification to practice an occupation due to:

1. An arrest that was not followed by a valid plea of guilty or nolo contendere unless charges are currently pending;

2. A conviction that has been sealed, or expunged;

3. A conviction or plea of guilty or nolo contendere for which more than five (5) years have elapsed since the date of conviction, plea, or release from incarceration, whichever is later, so long as the person has not been convicted of a new crime. This paragraph shall not apply to any conviction or plea of guilty or nolo contendere for:

a. an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes,

b. a felony involving domestic assault, domestic assault and battery, or domestic abuse as defined in Section 644 of Title 21 of the Oklahoma Statutes,

c. an offense that would require registration as a sex offender pursuant to the Sex Offenders Registration Act, or

d. any equivalent law enumerated in this paragraph from another jurisdiction; or

4. A finding that an applicant lacks good character or fails to meet any other similarly vague standard where a criminal conviction is the basis for the finding.

D. Before a state licensing or state certification authority makes a final determination that a criminal conviction, plea of guilty or nolo contendere, or pending criminal charge may disqualify

an applicant for licensure, that authority shall provide written notice of:

1. The specific offense that is the basis for the intended denial;

2. The reasons the offense was determined to substantially relate to the duties and responsibilities of the occupation and posed a reasonable threat to public safety, health, or welfare, including findings for each of the factors in subsection B of this section that the licensing or certification authority deemed relevant to the determination; and

3. The right to submit additional evidence relevant to each of the factors listed in subsection B of this section within thirty (30) days, which the licensing or certification authority shall consider before issuing a final determination.

E. A final determination that a criminal conviction, plea of guilty or nolo contendere, or pending criminal charge may prevent a person from receiving a license shall be in writing and include notice of the right to appeal the determination pursuant to the Administrative Procedures Act, or a more specific statutory authority, and notice of the earliest date the applicant may reapply for a license.

F. A person with a criminal history record may request ~~an initial~~ a determination of whether his or her criminal history record ~~would potentially~~ may disqualify him or her from obtaining the desired license or certification in the occupation from a state licensing or state certification authority at any time, including before obtaining any required education or training for such occupation. The request shall be in writing and shall include either a copy of the person's criminal history record with explanation of each conviction mentioned in the criminal history record or a statement describing each criminal conviction including the date of each conviction, the court of jurisdiction and the sentence imposed. The person may include a statement with his or her request describing additional information for consideration by the licensing or certification authority including, but not limited to, ~~information about his or her current circumstances, the length of time since conviction and what has changed since the conviction,~~

~~evidence of rehabilitation, testimonials or personal reference statements and his or her employment aspirations relevant to any of the factors for consideration described in subsection B of this section.~~

~~C. Each state entity charged with oversight of an occupational license or certification shall list with specificity any criminal offense that is a disqualifying offense for such occupation. Any disqualifying offense shall substantially relate to the duties and responsibilities of the occupation and pose a reasonable threat to public safety as defined in subsection A of this section. Disqualifying offenses shall be provided to applicants and others upon request.~~

~~D. G. Upon receipt of a written request for consideration of a criminal history record for an occupation as provided in subsection B F of this section, the licensing or certification authority shall evaluate the request and make an initial a determination based upon the information provided in such request whether the stated conviction is a disqualifying offense for the occupation. A notice of initial the determination shall be issued to the petitioner within sixty (60) days from the date such request was received by the licensing or certification authority, except however, a licensing or certification authority regulating fifty thousand or more members in its occupation shall be allowed ninety (90) days to make its initial determination and issue notice to the requestor.~~

~~E. H. A determination made pursuant to subsection F of this subsection that a person may not be disqualified for licensure or certification due to criminal history shall be binding upon a licensing or certification authority unless, at the time a full application for a license is submitted, the applicant has subsequently pled guilty or nolo contendere to a crime, has pending criminal charges, or has previously undisclosed criminal convictions.~~

~~I. The notice of initial a determination made pursuant to subsection F of this section shall be in writing and mailed to the requestor at the address provided in his or her request, and shall contain the following statements:~~

1. Whether the person ~~appears~~ is eligible for licensure or certification in the occupation at the current time based upon the information submitted by the requestor;

2. Whether there is a disqualifying offense ~~prohibiting that would disqualify the person's engagement~~ person from engaging in the occupation at ~~any~~ the current time and a statement identifying such offense in the criminal history record or information submitted for consideration;

3. Any actions the person may take to remedy ~~what appears to be a temporary~~ disqualification, if any;

4. The earliest date the person may submit another request for consideration, if any; and

5. A statement that the ~~notice of initial determination is only an initial determination for eligibility for licensure or certification in the occupation based upon the information provided by the requestor~~ may be rescinded if, at the time a full application for a license is submitted, the applicant has subsequently pled guilty or nolo contendere to a crime, has pending criminal charges, or has previously undisclosed criminal convictions.

~~F.~~ J. A state entity charged with oversight of an occupational license or certification may promulgate forms for requests for ~~initial~~ determinations for the occupation as authorized in subsection ~~B~~ F of this section. Each state licensing or certification authority may charge a fee not to exceed Ninety-five Dollars (\$95.00) for each initial determination of eligibility it makes for the occupation based upon the information provided by the requestor.

K. Each state licensing or state certification authority shall include in its application for a license or certification and publish on its public website the following information:

1. Whether the criminal offenses of applicants may be used as a basis for denial;

2. If criminal history may be used as a basis for denial as listed in subsection B of this section, which offenses the licensing or certification authority shall consider; and

3. Notice of the right to request a determination pursuant to subsection F of this section.

L. Each state licensing or state certification authority authorized to consider the criminal conviction of an applicant shall annually provide to the Legislature, and publish on its public website, the following:

1. The number of license applications received;

2. The number of applications that resulted in a license being granted;

3. The number of applications that resulted in a license being denied;

4. The number of applications that were denied due to criminal history;

5. A list of criminal offenses reported by individuals who were granted a license;

6. A list of criminal offenses reported by individuals who were denied a license due to criminal history along with the time elapsed since the commission of the offense; and

7. The number of petitions received by the licensing or certification authority pursuant to subsection F of this section.

M. The provisions of this section shall not be construed to apply to the Council on Law Enforcement Education and Training, the Bail Bonds Division of the Oklahoma Insurance Department, the State Board of Education, or individuals applying to these authorities for licensure or certification.

SECTION 2. This act shall become effective November 1, 2022.

Passed the Senate the 10th day of May, 2022.

Presiding Officer of the Senate

Passed the House of Representatives the 20th day of April, 2022.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____