

ASSEMBLY, No. 1393

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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Assemblywoman McKnight and Assemblyman Verrelli

SYNOPSIS

Requires certain standards for professional and occupational boards considering applicants with criminal history records.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning criminal history records and professional or
2 occupational boards, and amending and supplementing P.L.1978,
3 c.73.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 8 of P.L.1978, c.73 (C.45:1-21) is amended to read
9 as follows:

10 8. A board may refuse to admit a person to an examination or
11 may refuse to issue or may suspend or revoke any certificate,
12 registration or license issued by the board upon proof that the
13 applicant or holder of such certificate, registration or license:

14 a. Has obtained a certificate, registration, license or
15 authorization to sit for an examination, as the case may be, through
16 fraud, deception, or misrepresentation;

17 b. Has engaged in the use or employment of dishonesty, fraud,
18 deception, misrepresentation, false promise or false pretense;

19 c. Has engaged in gross negligence, gross malpractice or gross
20 incompetence which damaged or endangered the life, health,
21 welfare, safety or property of any person;

22 d. Has engaged in repeated acts of negligence, malpractice or
23 incompetence;

24 e. Has engaged in professional or occupational misconduct as
25 may be determined by the board;

26 f. Has been convicted of, or engaged in acts constituting, any
27 crime or offense **【involving moral turpitude or】** relating
28 **【adversely】** directly to the activity regulated by the board, except
29 that a board, when considering whether crimes or offenses are
30 directly related to the activity regulated by the board, shall consider
31 convictions in a manner consistent with section 2 of
32 P.L. , c. (C.) (pending before the Legislature as this bill). For
33 the **【purpose】** purposes of this subsection, and section 2 of
34 P.L. , c. (C.) (pending before the Legislature as this bill), a
35 judgment of conviction or a plea of guilty, non vult, nolo
36 contendere or any other such disposition of alleged criminal activity
37 shall be deemed a conviction;

38 g. Has had his authority to engage in the activity regulated by
39 the board revoked or suspended by any other state, agency or
40 authority for reasons consistent with this section;

41 h. Has violated or failed to comply with the provisions of any
42 act or regulation administered by the board;

43 i. Is incapable, for medical or any other good cause, of
44 discharging the functions of a licensee in a manner consistent with
45 the public's health, safety and welfare;

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

- 1 j. Has repeatedly failed to submit completed applications, or
2 parts of, or documentation submitted in conjunction with, such
3 applications, required to be filed with the Department of
4 Environmental Protection;
- 5 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1
6 et seq.) or any insurance fraud prevention law or act of another
7 jurisdiction or has been adjudicated, in civil or administrative
8 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.)
9 or has been subject to a final order, entered in civil or
10 administrative proceedings, that imposed civil penalties under that
11 act against the applicant or holder;
- 12 l. Is presently engaged in drug or alcohol use that is likely to
13 impair the ability to practice the profession or occupation with
14 reasonable skill and safety. For purposes of this subsection, the
15 term "presently" means at this time or any time within the previous
16 365 days;
- 17 m. Has prescribed or dispensed controlled dangerous substances
18 indiscriminately or without good cause, or where the applicant or
19 holder knew or should have known that the substances were to be
20 used for unauthorized consumption or distribution;
- 21 n. Has permitted an unlicensed person or entity to perform an
22 act for which a license or certificate of registration or certification
23 is required by the board, or aided and abetted an unlicensed person
24 or entity in performing such an act;
- 25 o. Advertised fraudulently in any manner.
- 26 The division is authorized, for purposes of facilitating
27 determinations concerning licensure eligibility, to require the
28 fingerprinting of each applicant in accordance with applicable State
29 and federal laws, rules and regulations. Each applicant shall submit
30 the applicant's name, address, and written consent to the director for
31 a criminal history record background check to be performed. The
32 division is authorized to receive criminal history record information
33 from the State Bureau of Identification in the Division of State
34 Police and the Federal Bureau of Investigation. Upon receipt of
35 such notification, the division shall forward the information to the
36 appropriate board which shall make a determination regarding the
37 issuance of licensure. The applicant shall bear the cost for the
38 criminal history record background check, including all costs of
39 administering and processing the check, unless otherwise provided
40 for by an individual enabling act. The Division of State Police shall
41 promptly notify the division in the event an applicant or licensee,
42 who was the subject of a criminal history record background check
43 pursuant to this section, is convicted of a crime or offense in this
44 State after the date the background check was performed.
- 45 For purposes of this act:
- 46 "Completed application" means the submission of all of the
47 information designated on the checklist, adopted pursuant to section

1 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
2 permit for which application is made.

3 "Permit" has the same meaning as defined in section 1 of
4 P.L.1991, c.421 (C.13:1D-101).
5 (cf: P.L.2003, c.199, s.31)

6
7 2. (New section) a. Notwithstanding any law, rule or
8 regulation to the contrary, a board shall not disqualify a person from
9 obtaining or holding any certificate, registration or license issued by
10 a board solely because of a prior conviction of a crime, unless the
11 crime directly relates to the profession or occupation regulated by
12 the board. In determining if a prior conviction directly relates to the
13 profession or occupation, a board shall consider the following:

14 (1) the nature and seriousness of the crime and the passage of
15 time since its commission;

16 (2) the relationship of the crime to the purposes of regulating the
17 profession or occupation regulated by the board;

18 (3) any evidence of rehabilitation of the person in the period of
19 time following the prior conviction; and

20 (4) the relationship of the crime to the ability, capacity, and
21 fitness required to perform the duties and discharge the
22 responsibilities of the profession or occupation regulated by the
23 board.

24 b. A board shall not disqualify a person from obtaining or
25 holding a certificate, registration or license issued by the board
26 because of a person's prior conviction of a crime unless it provides
27 the person with a written notice that the board has determined that
28 the conviction may disqualify the person, demonstrates the
29 connection between the conviction and the profession or occupation
30 regulated by the board, and affords the person an opportunity to be
31 heard before the board prior to the board making a final decision on
32 whether to disqualify the person. If, after the person is heard before
33 the board, the person is disqualified for a certificate, registration or
34 license, the board shall notify the person in writing of the
35 following:

36 (1) the grounds and reasons for the denial or disqualification;

37 (2) the earliest date the person may reapply for the certificate,
38 registration or license; and

39 (3) that evidence of rehabilitation may be considered upon
40 reapplication.

41 c. If a person's prior conviction was for any sex offense that
42 would qualify the person for registration pursuant to section 2 of
43 P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of
44 another state or jurisdiction, there shall be a rebuttable presumption
45 that a direct relationship exists between the crime and the
46 profession or occupation regulated by the board.

1 (4) the relationship of the crime to the ability, capacity, and
2 fitness required to perform the duties and discharge the
3 responsibilities of the profession or occupation regulated by the
4 board.

5 The bill provides that a board may not disqualify a person from
6 obtaining or holding a certificate, registration or license issued by
7 the board because of a person's prior conviction of a crime unless it
8 provides the person with a written notice that the board has
9 determined that the conviction may disqualify the person,
10 demonstrates the connection between the conviction and the
11 profession or occupation regulated by the board, and affords the
12 person an opportunity to be heard before the board prior to the
13 board making a final decision on whether to disqualify the person.
14 If the board's final decision is to disqualify the person, the board
15 must notify the person in writing as to the grounds and reasons for
16 the disqualification, the earliest date upon which the person may
17 reapply, and that evidence of rehabilitation may be considered upon
18 reapplication.

19 The bill also provides that a person's prior conviction for any sex
20 offense that would qualify the person for registration under
21 "Megan's Law," or under an equivalent statute of another state or
22 jurisdiction, creates a rebuttable presumption that a direct
23 relationship exists between the prior conviction and the profession
24 or occupation regulated by the board.

25 Finally, the bill requires the division to obtain data concerning
26 the number of, and reasons for, disqualification by any board
27 pursuant to the provisions of the bill, and annually submit a report
28 to the Legislature that provides the disqualification data for each
29 board.