ASSEMBLY, No. 2890

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:
Assemblywoman YVONNE LOPEZ
District 19 (Middlesex)
Assemblyman NICHOLAS CHIARAVALLOTI
District 31 (Hudson)
Assemblywoman BRITNEE N. TIMBERLAKE
District 34 (Essex and Passaic)

Co-Sponsored by:
Assemblywoman Reynolds-Jackson and Assemblyman Johnson

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/25/2021)

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

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

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

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

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

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

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

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

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

f. Has been convicted of, or engaged in acts constituting, any crime or offense **[**involving moral turpitude or relating adversely**]** <u>that has a direct or substantial relationship</u> to the activity regulated by the board <u>or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety, provided that the board shall make this determination in a manner consistent with section 2 of P.L. , c. (C.) (pending before the Legislature as this bill)</u>. For the **[**purpose**]** <u>purposes</u> of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;

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

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

i. Is incapable, for medical or any other good cause, of discharging the functions of a licensee in a manner consistent with 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 <u>thus</u> is new matter.

j. Has repeatedly failed to submit completed applications, or parts of, or documentation submitted in conjunction with, such applications, required to be filed with the Department of Environmental Protection;

k. Has violated any provision of P.L.1983, c.320 (C.17:33A-1 et seq.) or any insurance fraud prevention law or act of another jurisdiction or has been adjudicated, in civil or administrative proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.) or has been subject to a final order, entered in civil or administrative proceedings, that imposed civil penalties under that act against the applicant or holder;

l. Is presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. For purposes of this subsection, the term "presently" means at this time or any time within the previous 365 days;

m. Has prescribed or dispensed controlled dangerous substances indiscriminately or without good cause, or where the applicant or holder knew or should have known that the substances were to be used for unauthorized consumption or distribution;

n. Has permitted an unlicensed person or entity to perform an act for which a license or certificate of registration or certification is required by the board, or aided and abetted an unlicensed person or entity in performing such an act;

o. Advertised fraudulently in any manner.

The division is authorized, for purposes of facilitating determinations concerning licensure eligibility, to require the fingerprinting of each applicant in accordance with applicable State and federal laws, rules and regulations. Each applicant shall submit the applicant's name, address, and written consent to the director for a criminal history record background check to be performed. The division is authorized to receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation. Upon receipt of such notification, the division shall forward the information to the appropriate board which shall make a determination regarding the issuance of licensure. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check, unless otherwise provided for by an individual enabling act. The Division of State Police shall promptly notify the division in the event an applicant or licensee, who was the subject of a criminal history record background check pursuant to this section, is convicted of a crime or offense in this State after the date the background check was performed.

For purposes of this act:

"Completed application" means the submission of all of the information designated on the checklist, adopted pursuant to section 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of permit for which application is made.

"Permit" has the same meaning as defined in section 1 of P.L.1991, c.421 (C.13:1D-101).

(cf: P.L.2003, c.199, s.31)

2. (New section) a. Notwithstanding any law, rule or regulation to the contrary, a board shall not disqualify a person from obtaining or holding any certificate, registration or license issued by a board solely because the person has been convicted of or engaged in acts constituting any crime or offense, unless the crime or offense has a direct or substantial relationship to the activity regulated by the board or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety. For the purposes of this section, a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction. In making this determination, a board shall consider the following:

(1) the nature and seriousness of the crime or offense and the passage of time since its commission;

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

(3) any evidence of rehabilitation of the person in the period of time following the prior conviction that may be made available to the board; and

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

b. A board shall not disqualify a person from obtaining or holding a certificate, registration or license issued by the board because of a person's prior conviction of a crime or offense unless it provides the person with a written notice that the board has determined that the conviction may disqualify the person, and an explanation for the preliminary determination that the crime or offense has a direct or substantial relationship to the activity regulated by the board or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety, and affords the person an opportunity to be heard before the board prior to the board making a final decision on whether to disqualify the person. The person shall be afforded an opportunity to be heard before the board no later than 30 days after receiving the written notice of potential disqualification. If, after the person is afforded the opportunity to be heard before the board, the person is disqualified for a certificate, registration or license, the board shall

notify the person, no later than 30 days after the hearing, in writing of the following:

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

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

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

c. If a person's prior conviction was for murder, pursuant to N.J.S.2C:11-3 or an equivalent statute of another state or jurisdiction, or any sex offense that would qualify the person for registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or under an equivalent statute of another state or jurisdiction, there shall be a rebuttable presumption that the crime or offense has a direct or substantial relationship to the activity regulated by the board or is of such a nature that certification, registration or licensure of the person would be inconsistent with the public's safety.

3. (New section) The Director of the Division of Consumer Affairs in the Department of Law and Public Safety shall obtain data concerning the number of, and reasons for, disqualification by any board pursuant to section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), and annually submit a report to the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), that provides the disqualification data for each board.

4. This act shall take effect on the 90th day next following enactment, except that the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may take any anticipatory administrative action in advance as shall be necessary for the implementation of this act.

STATEMENT

This bill requires professional and occupational boards in the Division of Consumer Affairs, when determining whether a person is disqualified from certification, registration or licensure because of a prior conviction of a crime or offense, to consider whether the crime or offense has a direct or substantial relationship to the activity regulated by the board or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety.

Current law permits a board to suspend or revoke, refuse to issue, or refuse to admit a person to an examination for any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. The bill amends this standard of proof in current law to delete

the reference to a crime or offense involving moral turpitude, and requires that the crime or offense have a direct or substantial relationship to the activity regulated by the board, or to be of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety.

In addition, the bill supplements current law to provide that no person will be disqualified from obtaining or holding any certificate, registration or license issued by a board solely because of a prior conviction of a crime or offense, unless the crime or offense has a direct or substantial relationship to the activity regulated by the board, or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety. In determining whether a crime or offense directly or substantially relates to the activity regulated by the board, a board must consider the following:

(1) the nature and seriousness of the crime or offense and the passage of time since its commission;

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

(3) any evidence of rehabilitation of the person in the period of time following the prior conviction that may be made available to the board; and

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

The bill provides that a board shall not disqualify a person from obtaining or holding a certificate, registration or license issued by the board because of a person's prior conviction of a crime or offense unless it provides the person with a written notice that the board has determined that the conviction may disqualify the person and an explanation for the preliminary determination that the crime or offense has a direct or substantial relationship to the activity regulated by the board or is of a nature such that certification, registration or licensure of the person would be inconsistent with the public's safety.

The board must also afford the person an opportunity to be heard before the board prior to the board making a final decision on whether to disqualify the person. The person shall be afforded an opportunity to be heard before the board no later than 30 days after receiving the written notice of potential disqualification. If the board's final decision is to disqualify the person, the board must notify the person, no later than 30 days after the hearing, in writing as to the grounds and reasons for the disqualification, the earliest date upon which the person may reapply, and that additional evidence of rehabilitation may be considered upon reapplication.

The bill also provides that a person's prior conviction for murder, or an equivalent statute of another state or jurisdiction, or any sex offense that would qualify the person for registration under "Megan's Law," or under an equivalent statute of another state or jurisdiction, creates a rebuttable presumption that a substantial relationship exists

between the prior conviction and the profession or occupation regulated by the board.

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