

18104679D

HOUSE BILL NO. 1135

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact § 54.1-204 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 2 of Title 54.1 a section numbered 54.1-205, relating to professions and occupations; prior criminal history.

Patron—Peace

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 54.1-204 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 54.1 a section numbered 54.1-205 as follows:

§ 54.1-204. Prior convictions not to abridge rights; review by regulatory board or department; burden of proof.

A. A person shall not be refused a license, certificate or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate or registration is sought. ~~However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession.~~

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;
2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;
5. The extent and nature of the person's past criminal activity;
6. The age of the person at the time of the commission of the crime;
7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

8. The conduct and work activity of the person prior to and following the criminal activity; and

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

C. A regulatory board or department may require any applicant for registration, licensure or certification to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Such applicant shall pay the cost of the fingerprinting or a criminal records check or both.

The regulatory board or department may enter into a contract to obtain the fingerprints and descriptive information as required for submission to the Central Criminal Records Exchange in a manner and format approved by the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the regulatory board or department or their designee, who must belong to a governmental entity. If an applicant is denied a registration, license or certificate because of the information appearing in his criminal history record, the regulatory board or department shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The information shall not be disseminated except as provided for in this section.

D. A regulatory board or department shall consider the criminal information as contained in the applicant's state or national criminal history in lieu of the applicant providing certified copies of such court records in determining whether a criminal conviction directly relates to an occupation or profession ~~or if an applicant is unfit or unsuited to engage in an occupation or profession~~. The regulatory board or department may request additional information from the applicant in making such determination.

E. If a regulatory board or department denies an applicant a license, certificate, or registration, solely or in part because of the applicant's prior conviction of a crime, the regulatory board or department shall notify the applicant in writing of the following:

INTRODUCED

HB1135

59 1. The grounds and reasons for denial or disqualification;
60 2. That the individual has the right to a hearing to challenge the decision;
61 3. The earliest date on which the applicant may reapply for a license, certificate, or registration; and
62 4. That evidence of rehabilitation may be considered upon reapplication.
63 F. The regulatory board or department shall have the burden of proving by clear and convincing
64 evidence that an applicant's prior criminal conviction directly relates to the occupation or profession for
65 which the license, certificate, or registration is sought.
66 G. Any determination by a regulatory board or department that an applicant's criminal conviction is
67 specifically listed as a disqualifying conviction and directly relates to the occupation or profession for
68 which the license, certificate, or registration is sought shall be documented in written findings for each
69 of the preceding factors under subsection B.
70 **§ 54.1-205. Petition for determination of disqualification.**
71 A. A person with a criminal record may petition a regulatory board or department at any time for a
72 determination of whether the person's criminal record will disqualify the person from obtaining a
73 license, certificate, or registration. The petition shall include details on the person's criminal record.
74 B. The regulatory board or department shall respond to such petition within 30 days of receipt of the
75 petition and shall comply with the notice provisions of subsection E § 54.1-204.
76 C. The regulatory board or department may charge a fee to recoup the costs of complying with such
77 petition not to exceed \$25.