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SENATE BILL NO. 409

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 7, 2022)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 54.1-114 and 54.1-204 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; effect of criminal convictions on licensure; data to be included in biennial report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-114 and 54.1-204 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-114. Biennial report.

A. The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1.

B. The Department of Professional and Occupational Regulation's biennial report shall include, with respect to all licenses, certificates, and registrations made:

1. The total number of applicants and, of that number, the number of those granted a license and the number of those denied;

2. The total number of examinations administered and, of that number, the number of applicants who were successful and the number of applicants who were unsuccessful in passing the examination requirements;

3. The number of initial applicants and renewal applicants with a criminal record and, of those numbers, the number of times each board acted to grant the application or to deny, diminish, suspend, revoke, withhold, or refuse to renew or otherwise limit the requested license, certificate, or registration due at least in part to an individual's criminal conviction;

4. The number of each offense category for which each board acted in subdivision 3, whether that offense be property-related, person-related, or drug-related;

5. The number of guidance documents filed by each board under subsection F of § 54.1-204; and

6. Any other data, as determined by the Department to be (i) relevant and helpful to inform the Governor and General Assembly of the impact of criminal convictions on professional or occupational licensure or (ii) necessary to accurately account for all totals requested.

§ 54.1-204. Prior convictions not to abridge rights.

A. A person shall not be refused a license, certificate, or registration to practice, pursue, or engage in any regulated occupation or profession regulated by the Department of Professional and Occupational Regulation 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 until the regulatory board completes an individualized assessment of the individual's criminal record and current circumstances and determines that the criminal conviction directly relates to the occupation or profession for which the license, certificate, or registration is sought, as assessed pursuant to subsection C. 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. The regulatory board must complete the individualized assessment prior to refusing a license, certificate, or registration within 90 days of receiving an application.

B. The regulatory board shall not require an applicant to disclose an excluded record, and an excluded record shall not be the basis for the refusal of a license, certificate, or registration by the board. An excluded record is any conviction that has been sealed, annulled, dismissed, expunged, or pardoned.

60 A regulatory board or department review of a person's criminal history record shall be limited to
61 any conviction, finding of guilt, or plea of guilty open to disclosure pursuant to § 19.2-389.3, regardless
62 of whether the sentence is imposed, suspended, or executed. Any plea of nolo contendere shall be
63 considered a conviction for the purposes of this section. No regulatory board shall consider information
64 in a criminal history record related solely to an arrest or charge.

65 B. C. In determining whether a *non-excluded* criminal conviction directly relates to an occupation or
66 profession, the regulatory board shall consider the following criteria:

67 1. The nature and ~~seriousness~~ *circumstances* of the crime;
68 2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
69 3. The extent to which the occupation or profession might ~~offer an opportunity~~ *present a substantial*
70 *risk* to engage in further criminal activity of the same type as that in which the person had been
71 involved; and

72 4. The relationship of the crime to the ~~ability, capacity or fitness~~ *qualifications* required to ~~perform~~
73 ~~the duties and discharge the responsibilities of practice~~ the occupation or profession; *in a competent*
74 *manner*.

75 5. The extent and nature of the person's past criminal ~~activity~~ *convictions*;

76 6. The age of the person at the time of the commission of the crime;

77 7. The amount of time that has elapsed since the person's ~~last involvement in the commission of a~~
78 ~~crime~~ *most recent conviction*;

79 8. *The reasonable progress made toward the completion of the sentence, whether the setting of that*
80 *sentence be probation, parole, or a term of incarceration*;

81 9. *The successful completion of treatment for drugs or alcohol abuse if ordered, recommended, or*
82 *assigned by a court or as a condition of probation or any community supervision program*;

83 10. *The successful completion of rehabilitative programming in the context of a term of incarceration*
84 *or as a condition of probation, drug court, mental health court, diversion opportunity, or any community*
85 *supervision program*;

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

87 9. ~~Evidence~~ 12. Any other evidence of the person's rehabilitation or rehabilitative effort while
88 incarcerated or following release *that may mitigate against the relationship of past criminal conduct to*
89 *the practice of the occupation or profession, including testimony or recommendations from correctional,*
90 *probation, or parole officers, community or faith leaders, counselors or peer recovery specialists,*
91 *employers, or other individuals as deemed relevant by the board.*

92 C. D. The board shall consider the criminal information contained in the applicant's state or
93 national criminal records in lieu of the applicant providing certified copies of such court records and
94 may request additional information from the applicant in determining whether a criminal conviction
95 directly relates to an occupation or profession. If an applicant is denied a license, certificate, or
96 registration because of the information appearing in his criminal history record, the regulatory board or
97 department shall notify the applicant in writing of the specific offense or offenses that contributed to
98 such denial, how the criminal history directly relates to the occupation, and how the factors provided in
99 subsection C contributed to the board's decision. The information shall not be disseminated except as
100 provided for in this section.

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

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

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

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

121 E. All regulatory boards shall develop and publish on their website guidance documents that inform

122 *prospective applicants of the types of criminal offenses that may impede licensure, including specific*
123 *convictions and application of the factors provided in subsection C.*
124 **2. That the provisions of the first enactment of this act amending § 54.1-114 of the Code of**
125 **Virginia shall become effective on July 1, 2025.**