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SENATE BILL NO. 1227

Offered January 11, 2023

Prefiled January 10, 2023

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.

Patron—Morrissey

Referred to Committee on General Laws and Technology

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, the number of those denied a license, and the number of applications for licensure pending or uncompleted;

2. 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 because of an applicant's directly-related criminal conviction;

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

4. 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 unless 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.~~

B. An excluded record shall not be the basis for the refusal of a license, certificate, or registration by the board. For purposes of this section, "excluded record" means any conviction that has been sealed, annulled, dismissed, expunged, or pardoned, or a conviction for a nonsexual misdemeanor offense if three years have lapsed since the conviction and the applicant has not been convicted of any new offense during that three-year period.

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

~~B.~~ C. In determining whether a nonexcluded criminal conviction directly relates to an occupation or

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59 profession, the regulatory board shall consider the following criteria:

- 60 1. The nature and seriousness of the crime;
61 2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
62 3. The extent to which the occupation or profession might ~~offer an opportunity~~ *present a substantial*
63 *risk of the person* to engage in further criminal activity of the same type as that in which the person had
64 been involved;
65 4. The relationship of the crime to the ability, *and* capacity ~~or fitness~~ required to perform the duties
66 and discharge the responsibilities of the occupation or profession *in a competent manner*;
67 5. The extent and nature of the person's past criminal ~~activity~~ *convictions*;
68 6. The age of the person at the time of the commission of the crime;
69 7. The amount of time that has elapsed since the person's ~~last involvement in the commission of a~~
70 ~~crime~~ *most recent conviction*;
71 8. *The applicant's reasonable efforts to fulfill the requirements of the sentence, whether the setting of*
72 *that sentence be probation, parole, or a term of incarceration*;
73 9. The conduct and work activity of the person prior to and following the criminal ~~activity~~
74 *conviction*; and
75 ~~9. Evidence~~ 10. *Any other evidence* of the person's rehabilitation or rehabilitative effort while
76 incarcerated or following release *that may mitigate the relationship of past criminal conduct to the*
77 *practice of the occupation or profession, which may include the applicant's participation in drug or*
78 *alcohol abuse treatment programs or rehabilitative programming or testimony or recommendations from*
79 *correctional, probation, or parole officers; community or faith leaders; counselors or peer recovery*
80 *specialists; employers; or other individuals as deemed relevant by the board.*

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

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

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

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

101 E. All regulatory boards shall develop and publish on their website guidance documents that inform
102 prospective applicants of the types of criminal offenses that may impede licensure, including specific
103 convictions and application of the factors provided in subsection C.

104 2. That the provisions of the first enactment of this act amending § 54.1-114 of the Code of
105 Virginia shall become effective on July 1, 2026.