

[Second Reprint]
SENATE, No. 1589

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 5, 2018

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator NIA H. GILL

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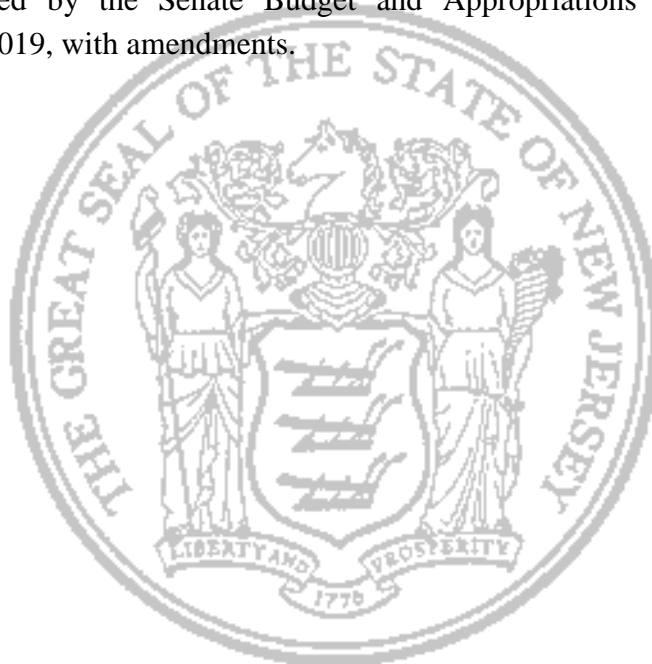
Senator Cunningham

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on February 7, 2019, with amendments.



(Sponsorship Updated As Of: 2/8/2019)

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]** ²**[relating]**²
 28 **[adversely]** ¹**[directly]** ²**[substantially]**¹ that has a direct or
 29 substantial relationship² to the activity regulated by the board ²**[,**
 30 except that a board, when considering whether crimes or offenses
 31 are]² ¹**[directly]** ²**[substantially]**¹ related to the activity regulated
 32 by the board, shall consider convictions] or is of a nature such that
 33 certification, registration or licensure of the person would be
 34 inconsistent with the public's safety, provided that the board shall
 35 make this determination² in a manner consistent with section 2 of
 36 P.L. , c. (C.) (pending before the Legislature as this bill). For
 37 the **[purpose]** purposes of this subsection ²**[,**
 38 and section 2 of P.L. , c. (C.) (pending before the Legislature
 39 as this bill),]² a judgment of conviction or a plea of guilty, non vult,
 40 nolo contendere or any other such disposition of alleged criminal
 41 activity shall be deemed a conviction;

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted January 17, 2019.

²Senate SBA committee amendments adopted February 7, 2019.

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

1 pursuant to this section, is convicted of a crime or offense in this
2 State after the date the background check was performed.

3 For purposes of this act:

4 "Completed application" means the submission of all of the
5 information designated on the checklist, adopted pursuant to section
6 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
7 permit for which application is made.

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

11

12 2. (New section) a. Notwithstanding any law, rule or
13 regulation to the contrary, a board shall not disqualify a person from
14 obtaining or holding any certificate, registration or license issued by
15 a board solely because ²[of a prior conviction of a] the person has
16 been convicted of or engaged in acts constituting any² crime ¹or
17 offense¹, unless the crime ¹[directly] or offense ²[substantially]¹
18 relates to the profession or occupation] has a direct or substantial
19 relationship to the activity² regulated by the board ²or is of a nature
20 such that certification, registration or licensure of the person would
21 be inconsistent with the public's safety. For the purposes of this
22 section, a judgment of conviction or a plea of guilty, non vult, nolo
23 contendere or any other such disposition of alleged criminal activity
24 shall be deemed a conviction². In ²[determining if a prior
25 conviction]² ¹[directly] ²[substantially]¹ relates to the profession or
26 occupation] making this determination², a board shall consider the
27 following:

28 (1) the nature and seriousness of the crime ¹or offense¹ and the
29 passage of time since its commission;

30 (2) the relationship of the crime ¹or offense¹ to the purposes of
31 regulating the profession or occupation regulated by the board;

32 (3) any evidence of rehabilitation of the person in the period of
33 time following the prior conviction ²that may be made available to
34 the board²; and

35 (4) the relationship of the crime ¹or offense¹ to the ability,
36 capacity, and fitness required to perform the duties and discharge
37 the responsibilities of the profession or occupation regulated by the
38 board.

39 b. A board shall not disqualify a person from obtaining or
40 holding a certificate, registration or license issued by the board
41 because of a person's prior conviction of a crime ¹or offense¹
42 unless it provides the person with a written notice that the board has
43 determined that the conviction may disqualify the person,
44 ²[demonstrates the connection between the conviction and the
45 profession or occupation regulated by the board] and an explanation
46 for the preliminary determination that the crime or offense has a direct

1 or substantial relationship to the activity regulated by the board or is of
 2 a nature such that certification, registration or licensure of the person
 3 would be inconsistent with the public's safety², and affords the
 4 person an opportunity to be heard before the board prior to the
 5 board making a final decision on whether to disqualify the person.
 6 ¹The person shall be afforded an opportunity to be heard before the
 7 board no later than 30 days after receiving the written notice of
 8 potential disqualification.¹ If, after the person is ²afforded the
 9 opportunity to be² heard before the board, the person is disqualified
 10 for a certificate, registration or license, the board shall notify the
 11 person ¹, no later than 30 days after the hearing,¹ in writing of the
 12 following:

- 13 (1) the grounds and reasons for the denial or disqualification;
 - 14 (2) the earliest date the person may reapply for the certificate,
 15 registration or license; and
 - 16 (3) that ²additional² evidence of rehabilitation may be
 17 considered upon reapplication.
- 18 c. If a person's prior conviction was for ¹murder, pursuant to
 19 N.J.S.2C:11-3 or an equivalent statute of another state or
 20 jurisdiction, or¹ any sex offense that would qualify the person for
 21 registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or
 22 under an equivalent statute of another state or jurisdiction, there
 23 shall be a rebuttable presumption that ²**[a]**² ¹**[direct]** ²**[substantial]**¹
 24 **relationship exists between]**² the crime ¹or offense¹ ²**[and the**
 25 **profession or occupation]** has a direct or substantial relationship to
 26 the activity² regulated by the board ²or is of such a nature that
 27 certification, registration or licensure of the person would be
 28 inconsistent with the public's safety².

29
 30 3. (New section) The Director of the Division of Consumer
 31 Affairs in the Department of Law and Public Safety shall obtain
 32 data concerning the number of, and reasons for, disqualification by
 33 any board pursuant to section 2 of P.L. , c. (C.) (pending
 34 before the Legislature as this bill), and annually submit a report to
 35 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
 36 19.1), that provides the disqualification data for each board.

37
 38 4. This act shall take effect on the 90th day next following
 39 enactment, except that the Director of the Division of Consumer
 40 Affairs in the Department of Law and Public Safety may take any
 41 anticipatory administrative action in advance as shall be necessary
 42 for the implementation of this act.