Sponsored by:
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District 7 (Burlington)
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District 34 (Essex and Passaic)

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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.
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] [directly] [substantially] that has a direct or substantial relationship to the activity regulated by the board, except that a board, when considering whether crimes or offenses are [directly] [substantially] related to the activity regulated by the board, shall consider convictions 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). For the purposes of this subsection and section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), 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;

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:

Senate SCM committee amendments adopted January 17, 2019.
Senate SBA committee amendments adopted February 7, 2019.
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;

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

(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 2(of a prior conviction of a] the person has
been convicted of or engaged in acts constituting any\2 crime or
offense\1, unless the crime \2[directly] or offense \2[substantially\1
relates to the profession or occupation] has a direct or substantial
relationship to the activity\2 regulated by the board \2or 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\2. In \2(determining if a prior
conviction\2 \2[directly]\2 \2[substantially\1 relates to the profession or
occupation] making this determination\2, a board shall consider the
following:

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

(2) the relationship of the crime \1or offense\1 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 \2that may be made available to
the board\2; and

(4) the relationship of the crime \1or offense\1 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 \1or offense\1
unless it provides the person with a written notice that the board has
determined that the conviction may disqualify the person,
2[demonstrates the connection between the conviction and the
profession or occupation regulated by the board] 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.  

1. 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. (1) the grounds and reasons for the denial or disqualification;
2. (2) the earliest date the person may reapply for the certificate, registration or license; and
3. (3) 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 a direct or substantial relationship exists between the crime or offense and the profession or occupation 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.