

SENATE, No. 942

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JANUARY 27, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/10/2020)

1 AN ACT concerning criminal history records and professional or
2 occupational boards, and amending and supplementing
3 P.L.1978, c.73.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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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 relating adversely]**
28 that has a direct or substantial relationship to the activity regulated by
29 the board or is of a nature such that certification, registration or
30 licensure of the person would be inconsistent with the public's
31 safety, provided that the board shall make this determination in a
32 manner consistent with section 2 of P.L. , c. (C.) (pending
33 before the Legislature as this bill). For the **[purpose]** purposes of
34 this subsection a judgment of conviction or a plea of guilty, non
35 vult, nolo contendere or any other such disposition of alleged
36 criminal activity shall be deemed a conviction;

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

40 h. Has violated or failed to comply with the provisions of any
41 act or regulation administered by the board;

42 i. Is incapable, for medical or any other good cause, of
43 discharging the functions of a licensee in a manner consistent with
44 the public's health, safety and welfare;

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.

1 j. Has repeatedly failed to submit completed applications, or
2 parts of, or documentation submitted in conjunction with, such
3 applications, required to be filed with the Department of
4 Environmental Protection;

5 k. Has violated any provision of P.L.1983, c.320 (C.17:33A-
6 1 et seq.) or any insurance fraud prevention law or act of another
7 jurisdiction or has been adjudicated, in civil or administrative
8 proceedings, of a violation of P.L.1983, c.320 (C.17:33A-1 et seq.)
9 or has been subject to a final order, entered in civil or
10 administrative proceedings, that imposed civil penalties under that
11 act against the applicant or holder;

12 l. Is presently engaged in drug or alcohol use that is likely to
13 impair the ability to practice the profession or occupation with
14 reasonable skill and safety. For purposes of this subsection, the
15 term "presently" means at this time or any time within the previous
16 365 days;

17 m. Has prescribed or dispensed controlled dangerous substances
18 indiscriminately or without good cause, or where the applicant or
19 holder knew or should have known that the substances were to be
20 used for unauthorized consumption or distribution;

21 n. Has permitted an unlicensed person or entity to perform an
22 act for which a license or certificate of registration or certification
23 is required by the board, or aided and abetted an unlicensed person
24 or entity in performing such an act;

25 o. Advertised fraudulently in any manner.

26 The division is authorized, for purposes of facilitating
27 determinations concerning licensure eligibility, to require the
28 fingerprinting of each applicant in accordance with applicable State
29 and federal laws, rules and regulations. Each applicant shall submit
30 the applicant's name, address, and written consent to the director for
31 a criminal history record background check to be performed. The
32 division is authorized to receive criminal history record information
33 from the State Bureau of Identification in the Division of State
34 Police and the Federal Bureau of Investigation. Upon receipt of
35 such notification, the division shall forward the information to the
36 appropriate board which shall make a determination regarding the
37 issuance of licensure. The applicant shall bear the cost for the
38 criminal history record background check, including all costs of
39 administering and processing the check, unless otherwise provided
40 for by an individual enabling act. The Division of State Police shall
41 promptly notify the division in the event an applicant or licensee,
42 who was the subject of a criminal history record background check
43 pursuant to this section, is convicted of a crime or offense in this
44 State after the date the background check was performed.

45 For purposes of this act:

46 "Completed application" means the submission of all of the
47 information designated on the checklist, adopted pursuant to section

1 1 of P.L.1991, c.421 (C.13:1D-101), for the class or category of
2 permit for which application is made.

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

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7 2. (New section) a. Notwithstanding any law, rule or
8 regulation to the contrary, a board shall not disqualify a person from
9 obtaining or holding any certificate, registration or license issued by
10 a board solely because the person has been convicted of or engaged in
11 acts constituting any crime or offense, unless the crime or offense
12 has a direct or substantial relationship to the activity regulated by
13 the board or is of a nature such that certification, registration or
14 licensure of the person would be inconsistent with the public's
15 safety. For the purposes of this section, a judgment of conviction or
16 a plea of guilty, non vult, nolo contendere or any other such
17 disposition of alleged criminal activity shall be deemed a
18 conviction. In making this determination, a board shall consider the
19 following:

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

22 (2) the relationship of the crime or offense to the purposes of
23 regulating the profession or occupation regulated by the board;

24 (3) any evidence of rehabilitation of the person in the period of
25 time following the prior conviction that may be made available to
26 the board; and

27 (4) the relationship of the crime or offense to the ability,
28 capacity, and fitness required to perform the duties and discharge
29 the responsibilities of the profession or occupation regulated by the
30 board.

31 b. A board shall not disqualify a person from obtaining or
32 holding a certificate, registration or license issued by the board
33 because of a person's prior conviction of a crime or offense unless
34 it provides the person with a written notice that the board has
35 determined that the conviction may disqualify the person, and an
36 explanation for the preliminary determination that the crime or offense
37 has a direct or substantial relationship to the activity regulated by the
38 board or is of a nature such that certification, registration or licensure
39 of the person would be inconsistent with the public's safety, and
40 affords the person an opportunity to be heard before the board prior
41 to the board making a final decision on whether to disqualify the
42 person. The person shall be afforded an opportunity to be heard
43 before the board no later than 30 days after receiving the written
44 notice of potential disqualification. If, after the person is afforded
45 the opportunity to be heard before the board, the person is
46 disqualified for a certificate, registration or license, the board shall
47 notify the person, no later than 30 days after the hearing, in writing
48 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,
3 registration or license; and
4 (3) that additional evidence of rehabilitation may be considered
5 upon reapplication.

6 c. If a person's prior conviction was for murder, pursuant to
7 N.J.S.2C:11-3 or an equivalent statute of another state or
8 jurisdiction, or any sex offense that would qualify the person for
9 registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2) or
10 under an equivalent statute of another state or jurisdiction, there
11 shall be a rebuttable presumption that the crime or offense has a
12 direct or substantial relationship to the activity regulated by the board
13 or is of such a nature that certification, registration or licensure of
14 the person would be inconsistent with the public's safety.

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16 3. (New section) The Director of the Division of Consumer
17 Affairs in the Department of Law and Public Safety shall obtain
18 data concerning the number of, and reasons for, disqualification by
19 any board pursuant to section 2 of P.L. , c. (C.) (pending
20 before the Legislature as this bill), and annually submit a report to
21 the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
22 19.1), that provides the disqualification data for each board.

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24 4. This act shall take effect on the 90th day next following
25 enactment, except that the Director of the Division of Consumer
26 Affairs in the Department of Law and Public Safety may take any
27 anticipatory administrative action in advance as shall be necessary
28 for the implementation of this act.

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STATEMENT

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33 This bill requires professional and occupational boards in the
34 Division of Consumer Affairs, when determining whether a person is
35 disqualified from certification, registration or licensure because of a
36 prior conviction of a crime or offense, to consider whether the crime or
37 offense has a direct or substantial relationship to the activity regulated
38 by the board or is of a nature such that certification, registration or
39 licensure of the person would be inconsistent with the public's safety.

40 Current law permits a board to suspend or revoke, refuse to issue,
41 or refuse to admit a person to an examination for any certificate,
42 registration or license issued by the board upon proof that the applicant
43 or holder of such certificate, registration or license has been convicted
44 of, or engaged in acts constituting, any crime or offense involving
45 moral turpitude or relating adversely to the activity regulated by the
46 board. The bill amends this standard of proof in current law to delete
47 the reference to a crime or offense involving moral turpitude, and
48 requires that the crime or offense have a direct or substantial

1 relationship to the activity regulated by the board, or to be of a nature
2 such that certification, registration or licensure of the person would be
3 inconsistent with the public's safety.

4 In addition, the bill supplements current law to provide that no
5 person will be disqualified from obtaining or holding any certificate,
6 registration or license issued by a board solely because of a prior
7 conviction of a crime or offense, unless the crime or offense has a
8 direct or substantial relationship to the activity regulated by the board,
9 or is of a nature such that certification, registration or licensure of the
10 person would be inconsistent with the public's safety. In determining
11 whether a crime or offense directly or substantially relates to the
12 activity regulated by the board, a board must consider the following:

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

15 (2) the relationship of the crime or offense to the purposes of
16 regulating the profession or occupation regulated by the board;

17 (3) any evidence of rehabilitation of the person in the period of
18 time following the prior conviction that may be made available to the
19 board; and

20 (4) the relationship of the crime or offense to the ability, capacity,
21 and fitness required to perform the duties and discharge the
22 responsibilities of the profession or occupation regulated by the board.

23 The bill provides that a board shall not disqualify a person from
24 obtaining or holding a certificate, registration or license issued by the
25 board because of a person's prior conviction of a crime or offense
26 unless it provides the person with a written notice that the board has
27 determined that the conviction may disqualify the person and an
28 explanation for the preliminary determination that the crime or offense
29 has a direct or substantial relationship to the activity regulated by the
30 board or is of a nature such that certification, registration or licensure
31 of the person would be inconsistent with the public's safety.

32 The board must also afford the person an opportunity to be heard
33 before the board prior to the board making a final decision on whether
34 to disqualify the person. The person shall be afforded an opportunity
35 to be heard before the board no later than 30 days after receiving the
36 written notice of potential disqualification. If the board's final
37 decision is to disqualify the person, the board must notify the person,
38 no later than 30 days after the hearing, in writing as to the grounds and
39 reasons for the disqualification, the earliest date upon which the person
40 may reapply, and that additional evidence of rehabilitation may be
41 considered upon reapplication.

42 The bill also provides that a person's prior conviction for murder,
43 or an equivalent statute of another state or jurisdiction, or any sex
44 offense that would qualify the person for registration under "Megan's
45 Law," or under an equivalent statute of another state or jurisdiction,
46 creates a rebuttable presumption that a substantial relationship exists
47 between the prior conviction and the profession or occupation
48 regulated by the board.

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1 The bill requires the division to obtain data concerning the number
2 of, and reasons for, disqualification by any board pursuant to the
3 provisions of the bill, and annually submit a report to the Legislature
4 that provides the disqualification data for each board.