

## **BILL ANALYSIS**

C.S.H.B. 70  
By: Guillen  
Licensing & Administrative Procedures  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law authorizes a licensing authority to suspend or revoke an occupational license or disqualify a person from receiving an occupational license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the occupation. However, because each state agency determines whether an offense directly relates to the occupation the agency regulates, problems may arise if an agency views nearly all offenses as directly relating to the occupation the agency regulates. According to the Federal Bureau of Prisons, research shows that ex-offenders who are employed are three to five times less likely to re-offend.

C.S.H.B. 70 allows certain ex-offenders to obtain a provisional or occupational license depending on the license for which the ex-offender applies and the nature of the crime committed.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 70 amends the Occupations Code to include in the entities and persons exempt from general provisions relating to criminal convictions and the issuance of an occupational license by a licensing authority a reserve law enforcement officer; a county jailer; a public security officer or applicant; a person licensed or applying for a license issued by the Texas Board of Public Accountancy; a person licensed or applying for a license issued under the Mortgage Broker License Act; and a person licensed or applying for a license issued by the Texas State Board of Examiners of Psychologists, the Texas Board of Nursing, the Texas Optometry Board, the Texas State Board of Podiatric Medical Examiners, or the Texas Board of Chiropractic Examiners and who has been convicted of a felony relating to controlled substances, dangerous drugs, inhalant paraphernalia or an offense under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970, an offense that is not eligible for judge-ordered community supervision, an offense involving theft from or fraud against a state or federal health care program, or a sexually violent offense.

C.S.H.B. 70 amends the provision relating to the grounds upon which a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination. The bill specifies the grounds for such licensing authority action relating to a conviction of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation must be an offense committed within the five years preceding the date the person applies for the license.

C.S.H.B. 70 requires a licensing authority, unless the applicant has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the licensed occupation and excepting the licensing authorities mentioned above that issue licenses for medical occupations,

to issue to an otherwise qualified applicant who has been convicted of an offense a license for which the applicant applied or a provisional license, and authorizes the licensing authority to issue a provisional license for a term of six months to an applicant who has been convicted of an offense. The bill authorizes those licensing authorities mentioned above that issue licenses for medical occupations to issue to an otherwise qualified applicant who has been convicted of an offense a provisional license for a term determined by the authority. The bill sets out grounds and procedures for the licensing authority to revoke a provisional license and provides that revocation of a provisional license disqualifies the holder from receiving the license for which the applicant originally applied. The bill requires the licensing authority to issue the license for which the applicant originally applied to a provisional license holder on the expiration of the provisional license term if the provisional license holder does not engage in conduct that warrants the revocation of the provisional license.

C.S.H.B. 70 requires a license applicant who is on community supervision, mandatory supervision, or parole and who is issued a provisional license to provide to the licensing authority the name and contact information of the probation or parole department to which the person reports. The bill requires the licensing authority to notify the probation or parole department that a provisional license has been issued and requires the probation or parole department to notify the licensing authority if the person's community supervision, mandatory supervision, or parole supervision is revoked during the term of the provisional license.

### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 70 differs from the original by expanding the list of entities and persons exempt from general provisions relating to criminal convictions and the issuance of an occupational license by a licensing authority to include a person licensed or applying for a license issued by the Texas Board of Public Accountancy or under the Mortgage Broker License Act. The substitute, in that portion of the list relating to persons licensed by an authority that issues licenses for medical occupations, differs from the original by adding the Texas State Board of Podiatric Medical Examiners and the Texas Board of Chiropractic Examiners to those authorities and by also applying the provision to a person applying for a license from those authorities, whereas the original applied only to a person already licensed. The substitute, in the offenses relating to a person licensed or applying for a license from those medical licensing authorities, differs from the original by including a felony under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and an offense involving theft from or fraud against a state or federal health care program. The substitute differs from the original by including in those offenses an offense that is not eligible for judge-ordered community supervision and a sexually violent offense, whereas the original includes those offenses in the grounds for suspending or revoking a license, disqualifying a person from receiving a license, or denying the opportunity to take a licensing exam, as well as an offense for which the licensing authority finds that the person's status as a license holder enabled the person to commit the offense, if the person currently holds or is applying for the same type of license, which is omitted in the substitute. The substitute changes language in the original to clarify that the authorization to suspend or revoke a license on the grounds of a conviction of a felony or misdemeanor that directly relates to the duties of the licensed occupation applies only to a conviction within the five years preceding the date the person applies for the license. The substitute removes a provision from the original that provides grounds for removal of a license for convictions of other offenses not specifically related to the duties of the licensed occupation.

C.S.H.B. 70 differs from the original by requiring a licensing authority, other than a licensing authority that issues licenses for medical occupations, to issue either the license for which the

applicant applied or a provisional license unless the applicant has been convicted of an offense for which a license may be suspended or revoked, whereas the original authorizes a licensing authority to issue such licenses to a person who committed certain felony and misdemeanor offenses if the applicant is otherwise qualified for the license. The substitute adds a provision not in the original authorizing a licensing authority that issues licenses for medical occupations to issue a provisional license to an otherwise qualified applicant who has been convicted of an offense. The substitute removes a provision from the original requiring a licensing authority to issue either the license for which an applicant applied or a provisional license to a person who has been convicted of an offense other than an offense specifically listed in the original. The substitute removes a provision from the original requiring a licensing authority to issue either the license for which the applicant applied or a provisional license to an applicant who was convicted of only one offense if the offense was a misdemeanor and was not committed in the scope of employment in any job and did not involve harm to a child or fraud.

C.S.H.B. 70 differs from original by authorizing a licensing authority other than a licensing authority that issues licenses for medical occupations to issue a provisional license for a term of six months to an applicant who has been convicted of an offense, whereas the original specifies a provisional license term of either five years or three years depending on the class of the offense of which the applicant was convicted. The substitute adds a provision not in the original, authorizing a licensing authority that issues licenses for medical occupations to issue a provisional license for a term determined by the authority to an applicant who has been convicted of an offense.

C.S.H.B. 70 removes a provision from the original authorizing a licensing authority to limit the practice of a holder of a provisional license. The substitute differs from the original by specifying that the license for which an applicant originally applied may only be issued to a provisional license holder if the provisional license holder does not engage in conduct that warrants the revocation of the provisional license, whereas the original specifies that such a license may only be issued if the provisional license was not revoked and the applicant is otherwise qualified for the license. The substitute differs from the original by requiring a licensing authority to revoke a provisional license if the provisional license holder violates the law or rules governing the practice of the occupation for which the provisional license is issued, whereas the original authorizes the revocation of a provisional license for such a violation. The substitute removes a provision from the original authorizing a licensing authority to revoke a provisional license if the provisional license holder violates a condition of the person's community supervision, mandatory supervision, or parole that does not result in the revocation of the person's community supervision, mandatory supervision, or parole, if applicable.

C.S.H.B. 70 differs from the original by disqualifying a provisional license holder whose provisional license was revoked by the licensing authority from receiving the license for which the applicant originally applied, whereas the original disqualifies the provisional license holder from receiving the license for which the person originally applied for a period prescribed by the licensing authority and provides that a provisional license holder is permanently disqualified from receiving the license for which the person originally applied if the licensing authority does not prescribe a period of disqualification. The substitute removes a provision from the original that authorizes a person whose provisional license is revoked to appeal the revocation of the provisional license. The substitute removes provisions from the original regarding limitations on liability for hiring a license holder who has been convicted of an offense and removes a provision regarding the applicability of those provisions.