

By: Guillen

H.B. No. 70

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the issuance of an occupational license to certain
3 applicants with criminal convictions.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 53.002, Occupations Code, is amended to
6 read as follows:

7 Sec. 53.002. APPLICABILITY OF CHAPTER. This chapter does
8 not apply to:

9 (1) the Supreme Court of Texas, a person licensed
10 under the court's authority on behalf of the judicial department of
11 government, or an applicant for a license issued under the court's
12 authority on behalf of the judicial department of government;

13 (2) a peace officer or an applicant for a license as a
14 peace officer described by Article 2.12, Code of Criminal
15 Procedure, or to a reserve law enforcement officer, a county
16 jailer, or a public security officer licensed or applying for a
17 license under Chapter 1701; or

18 (3) a person who:

19 (A) is licensed by the Texas Medical [~~State~~]
20 Board [~~of Medical Examiners~~], the Texas State Board of Pharmacy,
21 the State Board of Dental Examiners, the Texas State Board of
22 Examiners of Psychologists, the Texas Board of Nursing, the Texas
23 Optometry Board, or the State Board of Veterinary Medical
24 Examiners; and

1 (B) has been convicted of a felony under Chapter
2 481 or 483 or Section 485.033, Health and Safety Code.

3 SECTION 2. Section 53.021(a), Occupations Code, is amended
4 to read as follows:

5 (a) A licensing authority may suspend or revoke a license,
6 disqualify a person from receiving a license, or deny to a person
7 the opportunity to take a licensing examination on the grounds that
8 the person has been convicted of:

9 (1) a felony or misdemeanor that directly relates to
10 the duties and responsibilities of the licensed occupation that was
11 committed less than five years before the date the person applies
12 for the license;

13 (2) an offense listed in Section 3g, Article 42.12,
14 Code of Criminal Procedure;

15 (3) a sexually violent offense, as defined by Article
16 62.001, Code of Criminal Procedure; or

17 (4) an offense for which the licensing authority finds
18 that the person's status as a license holder enabled the person to
19 commit the offense, if the person currently holds or is applying for
20 the same type of license.

21 SECTION 3. Chapter 53, Occupations Code, is amended by
22 adding Subchapter D to read as follows:

23 SUBCHAPTER D. PROVISIONAL LICENSING OF CERTAIN APPLICANTS WITH
24 PRIOR CRIMINAL CONVICTIONS

25 Sec. 53.101. ISSUANCE OF LICENSE OR PROVISIONAL LICENSE.

26 (a) Notwithstanding any other law and if the applicant is otherwise
27 qualified for the license, a licensing authority:

1 (1) may issue to an applicant who has been convicted of
2 an offense described by Section 53.021(a):

3 (A) the license for which the applicant applied;
4 or

5 (B) a provisional license under this subchapter;
6 and

7 (2) shall issue to an applicant who has been convicted
8 of an offense other than an offense described by Section 53.021(a):

9 (A) the license for which the applicant applied;
10 or

11 (B) a provisional license under this subchapter.

12 (b) Notwithstanding Subsection (a)(1) and if the applicant
13 is otherwise qualified for the license, a licensing authority shall
14 issue to an applicant who has been convicted of only one offense and
15 the offense was a misdemeanor, was not committed in the scope of
16 employment in any job, and did not involve harm to a child or fraud:

17 (1) the license for which the applicant applied; or

18 (2) a provisional license under this subchapter.

19 Sec. 53.102. PROVISIONAL LICENSE TERM. A licensing
20 authority may issue a provisional license under this subchapter for
21 a term not to exceed:

22 (1) five years to an applicant who has been convicted
23 of a felony; or

24 (2) three years to an applicant who has been convicted
25 of a misdemeanor only.

26 Sec. 53.103. LIMITATIONS ON PRACTICE. A licensing authority
27 may limit the practice by a holder of a provisional license under

1 this subchapter in a manner determined necessary by the licensing
2 authority to protect the public. The limitations may continue in
3 effect after the date the person is issued a license under Section
4 53.104.

5 Sec. 53.104. ISSUANCE OF LICENSE ON EXPIRATION OF
6 PROVISIONAL LICENSE. The licensing authority shall issue the
7 license for which the applicant originally applied to a provisional
8 license holder on the expiration of the provisional license term if
9 the provisional license was not revoked under Section 53.105 and
10 the applicant is otherwise qualified for the license.

11 Sec. 53.105. REVOCATION OF PROVISIONAL LICENSE. The
12 licensing authority:

13 (1) shall revoke a provisional license if the
14 provisional license holder:

15 (A) commits a new offense; or

16 (B) commits an act or omission that causes the
17 person's community supervision, mandatory supervision, or parole
18 to be revoked, if applicable; and

19 (2) may revoke a provisional license if the
20 provisional license holder:

21 (A) violates a law or rule governing the practice
22 of the occupation for which the provisional license is issued; or

23 (B) violates a condition of the person's
24 community supervision, mandatory supervision, or parole that does
25 not result in the revocation of the person's community supervision,
26 mandatory supervision, or parole, if applicable.

27 Sec. 53.106. EFFECT OF REVOCATION OF PROVISIONAL LICENSE.

1 If the licensing authority revokes a provisional license under
2 Section 53.105, the provisional license holder is disqualified from
3 receiving the license for which the person originally applied for a
4 period prescribed by the licensing authority. If the licensing
5 authority does not prescribe a period of disqualification, the
6 provisional license holder is permanently disqualified from
7 receiving the license for which the person originally applied.

8 Sec. 53.107. APPEAL OF REVOCATION OF PROVISIONAL LICENSE.

9 A person whose provisional license is revoked under Section 53.105
10 may appeal the revocation only to the governing body of the
11 licensing authority under procedures provided by the law governing
12 the appeal of license revocations by the licensing authority.

13 Sec. 53.108. COORDINATION WITH PROBATION OR PAROLE
14 DEPARTMENT. (a) An applicant who is on community supervision,
15 mandatory supervision, or parole and who is issued a provisional
16 license under this subchapter shall provide to the licensing
17 authority the name and contact information of the probation or
18 parole department to which the person reports.

19 (b) The licensing authority shall notify the probation or
20 parole department that a provisional license has been issued.

21 (c) The probation or parole department shall notify the
22 licensing authority if the person's community supervision,
23 mandatory supervision, or parole supervision is revoked during the
24 term of the provisional license.

25 SECTION 4. Chapter 53, Occupations Code, is amended by
26 adding Subchapter E to read as follows:

1 SUBCHAPTER E. LIMITATION ON LIABILITY FOR HIRING

2 CERTAIN LICENSE HOLDERS

3 Sec. 53.151. DEFINITIONS. In this subchapter:

4 (1) "Employee" means a person other than an
5 independent contractor who, for compensation, performs services
6 for an employer under a written or oral contract for hire, whether
7 express or implied.

8 (2) "Independent contractor" has the meaning assigned
9 by Section 91.001, Labor Code.

10 (3) "License holder" means an employee or independent
11 contractor who holds a license, including a provisional license.

12 Sec. 53.152. LIMITATION ON LIABILITY FOR HIRING LICENSE
13 HOLDER CONVICTED OF OFFENSE. (a) A cause of action may not be
14 brought against an employer, general contractor, premises owner, or
15 other third party solely for hiring a person who holds a license
16 issued by a licensing authority to which this chapter applies who
17 has been convicted of an offense.

18 (b) In a negligent hiring action against an employer,
19 general contractor, premises owner, or other third party for the
20 acts of a license holder that is based on a theory of liability
21 other than that described by Subsection (a), the fact that the
22 license holder was convicted of an offense before the license
23 holder's employment or contractual obligation with the employer,
24 general contractor, premises owner, or other third party, as
25 applicable, may not be introduced into evidence.

26 (c) This section does not preclude any existing cause of
27 action for failure of an employer or other person to provide

1 adequate supervision of a license holder, except that the fact that
2 the license holder has been convicted of a criminal offense may be
3 introduced into evidence in the suit only if:

4 (1) the employer knew of the conviction or was grossly
5 negligent in not knowing of the conviction; and

6 (2) the conviction was directly related to the nature
7 of the license holder's work and the conduct that gave rise to the
8 alleged injury that is the basis of the suit.

9 (d) The protections provided to an employer, general
10 contractor, premises owner, or third party under this section do
11 not apply in a suit concerning the misuse of funds or property of a
12 person other than the employer, general contractor, premises owner,
13 or third party, by a license holder, if, on the date the license
14 holder was hired, the license holder had been convicted of a crime
15 that includes fraud or the misuse of funds or property as an element
16 of the offense, and it was foreseeable that the position for which
17 the license holder was hired would involve discharging a fiduciary
18 responsibility in the management of funds or property.

19 (e) This section does not create a cause of action or expand
20 any existing cause of action.

21 SECTION 5. Subchapter E, Occupations Code, as added by this
22 Act, applies only to a cause of action that accrues on or after the
23 effective date of this Act. A cause of action that accrues before
24 the effective date of this Act is governed by the law in effect
25 immediately before that date, and the former law is continued in
26 effect for that purpose.

27 SECTION 6. The changes in law made by this Act apply only to

1 an application for a license filed with a licensing authority to
2 which Chapter 53, Occupations Code, applies on or after the
3 effective date of this Act. An application filed before that date
4 is governed by the law in effect on the date the application was
5 filed, and the former law is continued in effect for that purpose.

6 SECTION 7. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2009.