86R1175 BEE-D

By:  White H.B. No. 1153

A BILL TO BE ENTITLED

AN ACT

relating to the consequences of a criminal conviction on a person's eligibility for an occupational license; charging a fee.

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

SECTION 1.  Section 53.021(a), Occupations Code, is amended to read as follows:

(a)  A licensing authority may not suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense unless the offense:

(1)  is on the list prepared by the licensing authority under Section 53.022(a) [~~an offense that directly relates to the duties and responsibilities of the licensed occupation;~~

[~~(2)  an offense that does not directly relate to the duties and responsibilities of the licensed occupation~~] and [~~that was committed less than five years before the date~~] the person applies for the license before the later of the fifth anniversary of the date of:

(A)  conviction; or

(B)  the person's release from confinement if the person's sentence for the offense included a term of confinement;

(2)  is [~~(3)  an offense~~] listed in Article 42A.054, Code of Criminal Procedure; or

(3)  is [~~(4)~~]  a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

SECTION 2.  Section 53.022, Occupations Code, is amended to read as follows:

Sec. 53.022.  LICENSING AUTHORITY DETERMINATION OF [~~FACTORS IN DETERMINING~~] WHETHER CONVICTION RELATES TO OCCUPATION. (a) A licensing authority shall prepare and make available to the public a list of offenses:

(1)  that directly relate to the duties and responsibilities of each occupation licensed by the authority; and

(2)  on conviction of which the licensing authority may take an action authorized by Section 53.021(a).

(b)  In preparing the list of offenses under Subsection (a), the licensing authority:

(1)  must list specific offenses; and

(2)  may not use nonspecific terms to describe offenses, including the terms "moral turpitude" and "good character."

(c)  In determining whether an offense [~~a criminal conviction~~] directly relates to the duties and responsibilities of an occupation, the licensing authority shall consider:

(1)  the nature and seriousness of the offense [~~crime~~];

(2)  the relationship of the offense [~~crime~~] to the purposes for requiring a license to engage in the occupation;

(3)  the extent to which a license might offer an opportunity to engage in further criminal activity of the same type [~~as that in which the person previously had been involved~~]; and

(4)  the relationship of the offense [~~crime~~] to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

SECTION 3.  Section 53.023(a), Occupations Code, is amended to read as follows:

(a)  In determining whether to take an action authorized by Section 53.021(a) with respect to [~~the fitness to perform the duties and discharge the responsibilities of the licensed occupation of~~] a person who has been convicted of an offense that appears on a list prepared under Section 53.022(a) [~~a crime~~], the licensing authority shall consider, in addition to the factors listed in Section 53.022(c) [~~53.022~~]:

(1)  the extent and nature of the person's past criminal activity;

(2)  the age of the person when the offense [~~crime~~] was committed;

(3)  the amount of time that has elapsed since the person's last criminal activity;

(4)  the conduct and work activity of the person before and after the criminal activity;

(5)  evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

(6)  other evidence of the person's fitness, including letters of recommendation from:

(A)  prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B)  the sheriff or chief of police in the community where the person resides; and

(C)  any other person in contact with the convicted person.

SECTION 4.  Section 53.025, Occupations Code, is amended to read as follows:

Sec. 53.025.  PUBLICATION OF LIST AND GUIDELINES. (a) Each licensing authority shall issue guidelines relating to the practice of the licensing authority under this chapter. The guidelines must state the reasons a particular offense [~~crime~~] is on the list prepared by the authority under Section 53.022(a) [~~considered to relate to a particular license~~] and any other criterion that affects the decisions of the licensing authority.

(b)  A state licensing authority [~~that issues guidelines under this section~~] shall file the guidelines and list of offenses with the secretary of state for publication in the Texas Register.

(c)  A local or county licensing authority [~~that issues guidelines under this section~~] shall post the guidelines and list of offenses at the courthouse for the county in which the licensing authority is located or publish the guidelines and list in a newspaper having countywide circulation in that county.

(d)  Amendments to the guidelines or list of offenses, if any, shall be issued annually.

SECTION 5.  Subchapter C, Chapter 53, Occupations Code, is amended by adding Section 53.053 to read as follows:

Sec. 53.053.  BURDEN OF PROOF. In an administrative appeal or a judicial review of a decision by a licensing authority to take an action authorized by Section 53.021(a), the authority has the burden of proving by clear and convincing evidence that:

(1)  the offense that the person has been convicted of directly relates to the duties and responsibilities of the licensed occupation; and

(2)  after consideration of the relevant factors as required by Section 53.023(a), the person lacks the fitness to perform the duties and discharge the responsibilities of the licensed occupation.

SECTION 6.  Section 53.102(a), Occupations Code, is amended to read as follows:

(a)  A person may request a licensing authority to issue a criminal history evaluation letter regarding the person's eligibility for a license issued by that authority if the person [~~:~~

[~~(1)  is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and~~

[~~(2)~~]  has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

SECTION 7.  Section 53.104(c), Occupations Code, is amended to read as follows:

(c)  A licensing authority must provide notice under Subsection (a) or issue a letter under Subsection (b) not later than the 30th [~~90th~~] day after the date the authority receives the request.

SECTION 8.  Section 53.105, Occupations Code, is amended to read as follows:

Sec. 53.105.  FEES. A licensing authority may charge a person requesting an evaluation under this subchapter a reasonable fee adopted by the authority[~~. Fees adopted by a licensing authority under this subchapter must be in an amount sufficient~~] to cover the cost of administering this subchapter, not to exceed $25 for each request.

SECTION 9.  Section 53.152(a), Occupations Code, is amended to read as follows:

(a)  An entity that provides an educational program to prepare an individual for issuance of an initial occupational license shall notify each applicant to and enrollee in the educational program of:

(1)  the potential ineligibility of an individual who has been convicted of an offense for issuance of an occupational license on completion of the educational program;

(2)  the [~~current~~] guidelines and list of offenses issued under Section 53.025 by any licensing authority that may issue an occupational license to an individual who completes the educational program; and

(3)  [~~any other state or local restriction or guideline used by a licensing authority described by Subdivision (2) to determine the eligibility of an individual who has been convicted of an offense for an occupational license issued by the licensing authority; and~~

[~~(4)~~]  the right to request a criminal history evaluation letter under Section 53.102.

SECTION 10.  Sections 53.021(a-1) and (b) and 53.0211, Occupations Code, are repealed.

SECTION 11.  (a) Section 53.021, Occupations Code, as amended by this Act, applies only to an action taken by a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on or after January 1, 2020. An action taken by a licensing authority before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(b)  Section 53.053, Occupations Code, as added by this Act, applies only to a proceeding commenced on or after January 1, 2020. A proceeding commenced before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(c)  Sections 53.104(c) and 53.105, Occupations Code, as amended by this Act, apply only to a request received by a licensing authority under Subchapter D, Chapter 53, Occupations Code, as amended by this Act, on or after January 1, 2020. A request received before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 12.  Not later than December 31, 2019, a licensing authority shall publish or post the guidelines and list of offenses as required by Section 53.025, Occupations Code, as amended by this Act.

SECTION 13.  This Act takes effect September 1, 2019.