86R22345 BEE-F

By:  Leach, Allen, Toth, Johnson of Harris, H.B. No. 1342

     Rose, et al.

A BILL TO BE ENTITLED

AN ACT

relating to a person's eligibility for an occupational license; providing an administrative penalty.

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

SECTION 1.  Section 51.355, Occupations Code, is amended to read as follows:

Sec. 51.355.  LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE HAS BEEN REVOKED. (a) Except as otherwise provided by this section, a [~~A~~] person whose license has been revoked by order of the commission or executive director is not eligible for a new license until the first anniversary of the date of the revocation.

(b)  Notwithstanding Subsection (a), a person whose license has been revoked by order of the commission or executive director is eligible to apply for a new license before the first anniversary of the date of the revocation if:

(1)  the revocation was based solely on the person's failure to pay an administrative penalty; and

(2)  the person:

(A)  has paid the administrative penalty in full; or

(B)  is paying the administrative penalty under a payment plan with the department and is in good standing with respect to that plan.

SECTION 2.  Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.357 and 51.358 to read as follows:

Sec. 51.357.  RESTRICTED LICENSES FOR CERTAIN OCCUPATIONS. (a) As an alternative to denying, revoking, suspending, or refusing to issue or renew a license under Section 51.356 or 51.4012(a) or Chapter 53, the commission or executive director may issue a restricted license to an applicant for a license under:

(1)  Chapter 1302; or

(2)  Chapter 1305.

(b)  The department may impose reasonable conditions on a holder of a restricted license, including requiring the license holder to:

(1)  limit the scope or location of the license holder's practice;

(2)  be supervised; and

(3)  report to the department, including notifying the department promptly of any change in the license holder's supervision.

(c)  The department may:

(1)  include on the face of a license and in the department's records a statement:

(A)  that the license is restricted; and

(B)  of any condition of the restricted license; and

(2)  use a distinctive design for a restricted license.

(d)  A license holder who supervises the holder of a restricted license shall use reasonable care to ensure that the license holder complies with any condition imposed under this section.

(e)  The commission or executive director may impose an administrative penalty or other sanction on the holder of a restricted license or on a license holder who supervises the person for a violation of this section.

Sec. 51.358.  RESTRICTED LICENSE TERM. (a) A restricted license issued under Section 51.357 is valid for the term provided for an unrestricted license of the same type.

(b)  A restricted license may be renewed by complying with the requirements for the renewal of an unrestricted license of the same type.

(c)  On the expiration of the term of a restricted license and the receipt by the department of a license renewal application, there is a rebuttable presumption that the applicant is entitled to issuance by the department of an unrestricted license.

(d)  The presumption under Subsection (c) may be rebutted by the department's determination that:

(1)  the applicant failed to comply with any condition imposed under Section 51.357;

(2)  the applicant is not in good standing with the department; or

(3)  issuing an unrestricted license to the applicant would result in an increased risk of harm to any person or property.

SECTION 3.  Section 51.4041, Occupations Code, is amended by adding Subsection (a-1) to read as follows:

(a-1)  Notwithstanding any other law, the alternative means adopted under Subsection (a) may include accepting as sufficient evidence of a person's eligibility for a license relevant education, training, or experience obtained while the person was imprisoned if the person:

(1)  previously held a license of the same type for which the person is applying and the license was revoked under Section 53.021(b);

(2)  has not been convicted of, placed on deferred adjudication for, or entered a plea of guilty or nolo contendere to:

(A)  an offense listed in Article 42A.054, Code of Criminal Procedure;

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

(C)  an offense under Chapter 21 or 43, Penal Code; and

(3)  while imprisoned, maintained a record of good behavior and:

(A)  successfully participated in a program acceptable to the department to prepare the person for reentry into the workforce in the occupation for which the person seeks a license; or

(B)  performed work on a regular basis in the occupation for which the person seeks a license.

SECTION 4.  Subchapter A, Chapter 53, Occupations Code, is amended by adding Section 53.003 to read as follows:

Sec. 53.003.  LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF SUBCHAPTER. (a) It is the intent of the legislature to enhance opportunities for a person to obtain gainful employment after the person has:

(1)  been convicted of an offense; and

(2)  discharged the sentence for the offense.

(b)  This chapter shall be liberally construed to carry out the intent of the legislature.

SECTION 5.  Section 53.021(a), Occupations Code, is amended to read as follows:

(a)  Subject to Section 53.0231, a [~~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 on the grounds that the person has been convicted of:

(1)  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;~~

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

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

SECTION 6.  Section 53.022, Occupations Code, is amended to read as follows:

Sec. 53.022.  FACTORS IN DETERMINING WHETHER CONVICTION DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed [~~an~~] occupation, the licensing authority shall consider each of the following factors:

(1)  the nature and seriousness of the crime;

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

(5)  any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

SECTION 7.  The heading to Section 53.023, Occupations Code, is amended to read as follows:

Sec. 53.023.  ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO OCCUPATION.

SECTION 8.  Sections 53.023(a) and (b), Occupations Code, are amended to read as follows:

(a)  If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, [~~In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime,~~] the licensing authority shall consider the following in determining whether to take an action authorized by Section 53.021 [~~, in addition to the factors listed in Section 53.022~~]:

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

(2)  the age of the person when the 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)  evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7)  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~~].

(b)  The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described [~~of the prosecution, law enforcement, and correctional authorities as required~~] by Subsection (a)(7) [~~(a)(6)~~].

SECTION 9.  Subchapter B, Chapter 53, Occupations Code, is amended by adding Sections 53.0231 and 53.026 to read as follows:

Sec. 53.0231.  NOTICE OF PENDING DENIAL OF LICENSE. (a) Notwithstanding any other law, a licensing authority may not deny a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense unless the licensing authority:

(1)  provides written notice to the person of the reason for the intended denial; and

(2)  allows the person not less than 30 days to submit any relevant information to the licensing authority.

(b)  A notice required under Subsection (a) must contain, as applicable:

(1)  a statement that the person is disqualified from receiving the license or being examined for the license because of the person's prior conviction of an offense specified in the notice; or

(2)  a statement that:

(A)  the final decision of the licensing authority to deny the person a license or the opportunity to be examined for the license will be based on the factors listed in Section 53.023(a); and

(B)  it is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in Section 53.023(a).

Sec. 53.026.  APPLICANT BEST PRACTICES GUIDE. (a) The state auditor shall, in collaboration with licensing authorities, develop a guide of best practices for an applicant with a prior conviction to use when applying for a license. The state auditor shall publish the guide on the state auditor's Internet website.

(b)  A licensing authority shall include a link to the guide on the authority's Internet website and in each notice described by Section 53.051 and letter described by Section 53.104.

SECTION 10.  Section 53.051, Occupations Code, is amended to read as follows:

Sec. 53.051.  NOTICE. A licensing authority that suspends or revokes a license or denies a person a license or the opportunity to be examined for a license because of the person's prior conviction of an offense [~~a crime and the relationship of the crime to the license~~] shall notify the person in writing of:

(1)  the reason for the suspension, revocation, denial, or disqualification, including any factor considered under Section 53.022 or 53.023 that served as the basis for the suspension, revocation, denial, or disqualification;

(2)  the review procedure provided by Section 53.052; and

(3)  the earliest date the person may appeal the action of the licensing authority.

SECTION 11.  Section 53.104(b), Occupations Code, is amended to read as follows:

(b)  If a licensing authority determines that the requestor is ineligible for a license, the licensing authority shall issue a letter setting out each basis for potential ineligibility, including any factor considered under Section 53.022 or 53.023 that served as the basis for potential ineligibility, and the authority's determination as to eligibility. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the licensing authority at the time the letter is issued, the authority's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

SECTION 12.  Section 53.023(c), Occupations Code, is repealed.

SECTION 13.  Not later than September 1, 2020, the state auditor shall develop and publish the guide as required by Section 53.026, Occupations Code, as added by this Act.

SECTION 14.  The changes in law made by this Act apply only to an application for a license submitted on or after the effective date of this Act. An application for a license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

SECTION 15.  This Act takes effect September 1, 2019.