

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

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

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

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

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

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

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

15 (1) must list specific offenses; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 Sec. 53.053. BURDEN OF PROOF. In an administrative appeal
27 or a judicial review of a decision by a licensing authority to take

1 an action authorized by Section 53.021(a), the authority has the
2 burden of proving by clear and convincing evidence that:

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

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

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

12 (a) A person may request a licensing authority to issue a
13 criminal history evaluation letter regarding the person's
14 eligibility for a license issued by that authority if the person [+
15

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

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

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

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

SECTION 8. Section 53.105, Occupations Code, is amended to

1 read as follows:

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

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

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

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

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

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

26 [~~4~~] the right to request a criminal history
27 evaluation letter under Section 53.102.

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

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

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

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

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

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