

By: Leach, Allen, Toth, Johnson of Harris,
Rose, et al.

H.B. No. 1342

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HAS BEEN REVOKED.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section, a [A] person whose license has been revoked by order of the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has been revoked by order of the commission or executive director is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

1 amended by adding Sections 51.357 and 51.358 to read as follows:

2 Sec. 51.357. RESTRICTED LICENSES FOR CERTAIN OCCUPATIONS.

3 (a) As an alternative to denying, revoking, suspending, or
4 refusing to issue or renew a license under Section 51.356 or
5 51.4012(a) or Chapter 53, the commission or executive director may
6 issue a restricted license to an applicant for a license under:

7 (1) Chapter 1302; or

8 (2) Chapter 1305.

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

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

14 (2) be supervised; and

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

18 (c) The department may:

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

21 (A) that the license is restricted; and

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

23 and

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

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

1 section.

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

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

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

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

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

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

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

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

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

26 (a-1) Notwithstanding any other law, the alternative means
27 adopted under Subsection (a) may include accepting as sufficient

1 evidence of a person's eligibility for a license relevant
2 education, training, or experience obtained while the person was
3 imprisoned if the person:

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

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

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

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

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

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

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

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

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

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

1 person has:

2 (1) been convicted of an offense; and

3 (2) discharged the sentence for the offense.

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

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

8 (a) Subject to Section 53.0231, a [A] licensing authority
9 may suspend or revoke a license, disqualify a person from receiving
10 a license, or deny to a person the opportunity to take a licensing
11 examination on the grounds that the person has been convicted of:

12 (1) an offense that directly relates to the duties and
13 responsibilities of the licensed occupation;

14 ~~(2) [an offense that does not directly relate to the~~
15 ~~duties and responsibilities of the licensed occupation and that was~~
16 ~~committed less than five years before the date the person applies~~
17 ~~for the license,~~

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

20 (3) ~~[(4)]~~ a sexually violent offense, as defined by
21 Article 62.001, Code of Criminal Procedure.

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

24 Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION
25 DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal
26 conviction directly relates to the duties and responsibilities of a
27 licensed ~~an~~ occupation, the licensing authority shall consider

1 each of the following factors:

2 (1) the nature and seriousness of the crime;

3 (2) the relationship of the crime to the purposes for
4 requiring a license to engage in the occupation;

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

8 (4) the relationship of the crime to the ability or ~~[7]~~
9 capacity ~~[, or fitness]~~ required to perform the duties and
10 discharge the responsibilities of the licensed occupation; and

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

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

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

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

20 (a) If a licensing authority determines under Section
21 53.022 that a criminal conviction directly relates to the duties
22 and responsibilities of a licensed occupation, [In determining the
23 ~~fitness to perform the duties and discharge the responsibilities of~~
24 ~~the licensed occupation of a person who has been convicted of a~~
25 ~~crime,~~] the licensing authority shall consider the following in
26 determining whether to take an action authorized by Section 53.021
27 ~~[, in addition to the factors listed in Section 53.022]:~~

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

3 (2) the age of the person when the crime was committed;

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

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

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

10 (6) evidence of the person's compliance with any
11 conditions of community supervision, parole, or mandatory
12 supervision; and

13 (7) other evidence of the person's fitness, including
14 letters of recommendation ~~[from:~~

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

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

20 ~~[(C) any other person in contact with the~~
21 ~~convicted person].~~

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

27 SECTION 9. Subchapter B, Chapter 53, Occupations Code, is

1 amended by adding Sections 53.0231 and 53.026 to read as follows:

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

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

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

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

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

17 (2) a statement that:

18 (A) the final decision of the licensing authority
19 to deny the person a license or the opportunity to be examined for
20 the license will be based on the factors listed in Section
21 53.023(a); and

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

25 Sec. 53.026. APPLICANT BEST PRACTICES GUIDE. (a) The state
26 auditor shall, in collaboration with licensing authorities,
27 develop a guide of best practices for an applicant with a prior

1 conviction to use when applying for a license. The state auditor
2 shall publish the guide on the state auditor's Internet website.

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

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

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

13 (1) the reason for the suspension, revocation, denial,
14 or disqualification, including any factor considered under Section
15 53.022 or 53.023 that served as the basis for the suspension,
16 revocation, denial, or disqualification;

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

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

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

23 (b) If a licensing authority determines that the requestor
24 is ineligible for a license, the licensing authority shall issue a
25 letter setting out each basis for potential ineligibility,
26 including any factor considered under Section 53.022 or 53.023 that
27 served as the basis for potential ineligibility, and the

1 authority's determination as to eligibility. In the absence of new
2 evidence known to but not disclosed by the requestor or not
3 reasonably available to the licensing authority at the time the
4 letter is issued, the authority's ruling on the request determines
5 the requestor's eligibility with respect to the grounds for
6 potential ineligibility set out in the letter.

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

9 SECTION 13. Not later than September 1, 2020, the state
10 auditor shall develop and publish the guide as required by Section
11 53.026, Occupations Code, as added by this Act.

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

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