

1-1 By: Leach, et al. (Senate Sponsor - Hinojosa) H.B. No. 1342  
 1-2 (In the Senate - Received from the House May 8, 2019;  
 1-3 May 10, 2019, read first time and referred to Committee on Business  
 1-4 & Commerce; May 17, 2019, reported favorably by the following vote:  
 1-5 Yeas 7, Nays 0; May 17, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to a person's eligibility for an occupational license;  
 1-20 providing an administrative penalty.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 51.355, Occupations Code, is amended to  
 1-23 read as follows:

1-24 Sec. 51.355. LICENSE ELIGIBILITY OF PERSON WHOSE LICENSE  
 1-25 HAS BEEN REVOKED. (a) Except as otherwise provided by this  
 1-26 section, a [A] person whose license has been revoked by order of the  
 1-27 commission or executive director is not eligible for a new license  
 1-28 until the first anniversary of the date of the revocation.

1-29 (b) Notwithstanding Subsection (a), a person whose license  
 1-30 has been revoked by order of the commission or executive director is  
 1-31 eligible to apply for a new license before the first anniversary of  
 1-32 the date of the revocation if:

1-33 (1) the revocation was based solely on the person's  
 1-34 failure to pay an administrative penalty; and

1-35 (2) the person:  
 1-36 (A) has paid the administrative penalty in full;

1-37 or

1-38 (B) is paying the administrative penalty under a  
 1-39 payment plan with the department and is in good standing with  
 1-40 respect to that plan.

1-41 SECTION 2. Subchapter G, Chapter 51, Occupations Code, is  
 1-42 amended by adding Sections 51.357 and 51.358 to read as follows:

1-43 Sec. 51.357. RESTRICTED LICENSES FOR CERTAIN OCCUPATIONS.

1-44 (a) As an alternative to denying, revoking, suspending, or  
 1-45 refusing to issue or renew a license under Section 51.356 or  
 1-46 51.4012(a) or Chapter 53, the commission or executive director may  
 1-47 issue a restricted license to an applicant for a license under:

1-48 (1) Chapter 1302; or

1-49 (2) Chapter 1305.

1-50 (b) The department may impose reasonable conditions on a  
 1-51 holder of a restricted license, including requiring the license  
 1-52 holder to:

1-53 (1) limit the scope or location of the license holder's  
 1-54 practice;

1-55 (2) be supervised; and

1-56 (3) report to the department, including notifying the  
 1-57 department promptly of any change in the license holder's  
 1-58 supervision.

1-59 (c) The department may:

1-60 (1) include on the face of a license and in the  
 1-61 department's records a statement:

2-1 (A) that the license is restricted; and  
 2-2 (B) of any condition of the restricted license;  
 2-3 and  
 2-4 (2) use a distinctive design for a restricted license.  
 2-5 (d) A license holder who supervises the holder of a  
 2-6 restricted license shall use reasonable care to ensure that the  
 2-7 license holder complies with any condition imposed under this  
 2-8 section.  
 2-9 (e) The commission or executive director may impose an  
 2-10 administrative penalty or other sanction on the holder of a  
 2-11 restricted license or on a license holder who supervises the person  
 2-12 for a violation of this section.  
 2-13 Sec. 51.358. RESTRICTED LICENSE TERM. (a) A restricted  
 2-14 license issued under Section 51.357 is valid for the term provided  
 2-15 for an unrestricted license of the same type.  
 2-16 (b) A restricted license may be renewed by complying with  
 2-17 the requirements for the renewal of an unrestricted license of the  
 2-18 same type.  
 2-19 (c) On the expiration of the term of a restricted license  
 2-20 and the receipt by the department of a license renewal application,  
 2-21 there is a rebuttable presumption that the applicant is entitled to  
 2-22 issuance by the department of an unrestricted license.  
 2-23 (d) The presumption under Subsection (c) may be rebutted by  
 2-24 the department's determination that:  
 2-25 (1) the applicant failed to comply with any condition  
 2-26 imposed under Section 51.357;  
 2-27 (2) the applicant is not in good standing with the  
 2-28 department; or  
 2-29 (3) issuing an unrestricted license to the applicant  
 2-30 would result in an increased risk of harm to any person or property.  
 2-31 SECTION 3. Section 51.4041, Occupations Code, is amended by  
 2-32 adding Subsection (a-1) to read as follows:  
 2-33 (a-1) Notwithstanding any other law, the alternative means  
 2-34 adopted under Subsection (a) may include accepting as sufficient  
 2-35 evidence of a person's eligibility for a license relevant  
 2-36 education, training, or experience obtained while the person was  
 2-37 imprisoned if the person:  
 2-38 (1) previously held a license of the same type for  
 2-39 which the person is applying and the license was revoked under  
 2-40 Section 53.021(b);  
 2-41 (2) has not been convicted of, placed on deferred  
 2-42 adjudication for, or entered a plea of guilty or nolo contendere to:  
 2-43 (A) an offense listed in Article 42A.054, Code of  
 2-44 Criminal Procedure;  
 2-45 (B) a sexually violent offense, as defined by  
 2-46 Article 62.001, Code of Criminal Procedure; or  
 2-47 (C) an offense under Chapter 21 or 43, Penal  
 2-48 Code; and  
 2-49 (3) while imprisoned, maintained a record of good  
 2-50 behavior and:  
 2-51 (A) successfully participated in a program  
 2-52 acceptable to the department to prepare the person for reentry into  
 2-53 the workforce in the occupation for which the person seeks a  
 2-54 license; or  
 2-55 (B) performed work on a regular basis in the  
 2-56 occupation for which the person seeks a license.  
 2-57 SECTION 4. Subchapter A, Chapter 53, Occupations Code, is  
 2-58 amended by adding Section 53.003 to read as follows:  
 2-59 Sec. 53.003. LEGISLATIVE INTENT; LIBERAL CONSTRUCTION OF  
 2-60 SUBCHAPTER. (a) It is the intent of the legislature to enhance  
 2-61 opportunities for a person to obtain gainful employment after the  
 2-62 person has:  
 2-63 (1) been convicted of an offense; and  
 2-64 (2) discharged the sentence for the offense.  
 2-65 (b) This chapter shall be liberally construed to carry out  
 2-66 the intent of the legislature.  
 2-67 SECTION 5. Section 53.021(a), Occupations Code, is amended  
 2-68 to read as follows:  
 2-69 (a) Subject to Section 53.0231, a [A] licensing authority

3-1 may suspend or revoke a license, disqualify a person from receiving  
3-2 a license, or deny to a person the opportunity to take a licensing  
3-3 examination on the grounds that the person has been convicted of:

3-4 (1) an offense that directly relates to the duties and  
3-5 responsibilities of the licensed occupation;

3-6 (2) ~~[an offense that does not directly relate to the~~  
3-7 ~~duties and responsibilities of the licensed occupation and that was~~  
3-8 ~~committed less than five years before the date the person applies~~  
3-9 ~~for the license;~~

3-10 ~~[(3)]~~ an offense listed in Article 42A.054, Code of  
3-11 Criminal Procedure; or

3-12 (3) ~~[(4)]~~ a sexually violent offense, as defined by  
3-13 Article 62.001, Code of Criminal Procedure.

3-14 SECTION 6. Section 53.022, Occupations Code, is amended to  
3-15 read as follows:

3-16 Sec. 53.022. FACTORS IN DETERMINING WHETHER CONVICTION  
3-17 DIRECTLY RELATES TO OCCUPATION. In determining whether a criminal  
3-18 conviction directly relates to the duties and responsibilities of a  
3-19 licensed [an] occupation, the licensing authority shall consider  
3-20 each of the following factors:

3-21 (1) the nature and seriousness of the crime;

3-22 (2) the relationship of the crime to the purposes for  
3-23 requiring a license to engage in the occupation;

3-24 (3) the extent to which a license might offer an  
3-25 opportunity to engage in further criminal activity of the same type  
3-26 as that in which the person previously had been involved; ~~and~~

3-27 (4) the relationship of the crime to the ability or ~~[7]~~  
3-28 capacity ~~[, or fitness]~~ required to perform the duties and  
3-29 discharge the responsibilities of the licensed occupation; ~~and~~

3-30 (5) any correlation between the elements of the crime  
3-31 and the duties and responsibilities of the licensed occupation.

3-32 SECTION 7. The heading to Section 53.023, Occupations Code,  
3-33 is amended to read as follows:

3-34 Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO  
3-35 CONSIDER AFTER DETERMINING CONVICTION DIRECTLY RELATES TO  
3-36 OCCUPATION.

3-37 SECTION 8. Sections 53.023(a) and (b), Occupations Code,  
3-38 are amended to read as follows:

3-39 (a) If a licensing authority determines under Section  
3-40 53.022 that a criminal conviction directly relates to the duties  
3-41 and responsibilities of a licensed occupation, [In determining the  
3-42 fitness to perform the duties and discharge the responsibilities of  
3-43 the licensed occupation of a person who has been convicted of a  
3-44 crime,] the licensing authority shall consider the following in  
3-45 determining whether to take an action authorized by Section 53.021  
3-46 [, in addition to the factors listed in Section 53.022]:

3-47 (1) the extent and nature of the person's past criminal  
3-48 activity;

3-49 (2) the age of the person when the crime was committed;

3-50 (3) the amount of time that has elapsed since the  
3-51 person's last criminal activity;

3-52 (4) the conduct and work activity of the person before  
3-53 and after the criminal activity;

3-54 (5) evidence of the person's rehabilitation or  
3-55 rehabilitative effort while incarcerated or after release; ~~and~~

3-56 (6) evidence of the person's compliance with any  
3-57 conditions of community supervision, parole, or mandatory  
3-58 supervision; and

3-59 (7) other evidence of the person's fitness, including  
3-60 letters of recommendation ~~[from:~~

3-61 ~~[(A) prosecutors and law enforcement and~~  
3-62 ~~correctional officers who prosecuted, arrested, or had custodial~~  
3-63 ~~responsibility for the person;~~

3-64 ~~[(B) the sheriff or chief of police in the~~  
3-65 ~~community where the person resides; and~~

3-66 ~~[(C) any other person in contact with the~~  
3-67 ~~convicted person].~~

3-68 (b) The applicant has the responsibility, to the extent  
3-69 possible, to obtain and provide to the licensing authority the

4-1 recommendations described [of the prosecution, law enforcement,  
 4-2 and correctional authorities as required] by Subsection (a)(7)  
 4-3 [~~(a)(6)~~].

4-4 SECTION 9. Subchapter B, Chapter 53, Occupations Code, is  
 4-5 amended by adding Sections 53.0231 and 53.026 to read as follows:

4-6 Sec. 53.0231. NOTICE OF PENDING DENIAL OF LICENSE. (a)  
 4-7 Notwithstanding any other law, a licensing authority may not deny a  
 4-8 person a license or the opportunity to be examined for a license  
 4-9 because of the person's prior conviction of an offense unless the  
 4-10 licensing authority:

4-11 (1) provides written notice to the person of the  
 4-12 reason for the intended denial; and

4-13 (2) allows the person not less than 30 days to submit  
 4-14 any relevant information to the licensing authority.

4-15 (b) A notice required under Subsection (a) must contain, as  
 4-16 applicable:

4-17 (1) a statement that the person is disqualified from  
 4-18 receiving the license or being examined for the license because of  
 4-19 the person's prior conviction of an offense specified in the  
 4-20 notice; or

4-21 (2) a statement that:

4-22 (A) the final decision of the licensing authority  
 4-23 to deny the person a license or the opportunity to be examined for  
 4-24 the license will be based on the factors listed in Section  
 4-25 53.023(a); and

4-26 (B) it is the person's responsibility to obtain  
 4-27 and provide to the licensing authority evidence regarding the  
 4-28 factors listed in Section 53.023(a).

4-29 Sec. 53.026. APPLICANT BEST PRACTICES GUIDE. (a) The state  
 4-30 auditor shall, in collaboration with licensing authorities,  
 4-31 develop a guide of best practices for an applicant with a prior  
 4-32 conviction to use when applying for a license. The state auditor  
 4-33 shall publish the guide on the state auditor's Internet website.

4-34 (b) A licensing authority shall include a link to the guide  
 4-35 on the authority's Internet website and in each notice described by  
 4-36 Section 53.051 and letter described by Section 53.104.

4-37 SECTION 10. Section 53.051, Occupations Code, is amended to  
 4-38 read as follows:

4-39 Sec. 53.051. NOTICE. A licensing authority that suspends  
 4-40 or revokes a license or denies a person a license or the opportunity  
 4-41 to be examined for a license because of the person's prior  
 4-42 conviction of an offense [~~a crime and the relationship of the crime~~  
 4-43 ~~to the license]~~ shall notify the person in writing of:

4-44 (1) the reason for the suspension, revocation, denial,  
 4-45 or disqualification, including any factor considered under Section  
 4-46 53.022 or 53.023 that served as the basis for the suspension,  
 4-47 revocation, denial, or disqualification;

4-48 (2) the review procedure provided by Section 53.052;  
 4-49 and

4-50 (3) the earliest date the person may appeal the action  
 4-51 of the licensing authority.

4-52 SECTION 11. Section 53.104(b), Occupations Code, is amended  
 4-53 to read as follows:

4-54 (b) If a licensing authority determines that the requestor  
 4-55 is ineligible for a license, the licensing authority shall issue a  
 4-56 letter setting out each basis for potential ineligibility,  
 4-57 including any factor considered under Section 53.022 or 53.023 that  
 4-58 served as the basis for potential ineligibility, and the  
 4-59 authority's determination as to eligibility. In the absence of new  
 4-60 evidence known to but not disclosed by the requestor or not  
 4-61 reasonably available to the licensing authority at the time the  
 4-62 letter is issued, the authority's ruling on the request determines  
 4-63 the requestor's eligibility with respect to the grounds for  
 4-64 potential ineligibility set out in the letter.

4-65 SECTION 12. Section 53.023(c), Occupations Code, is  
 4-66 repealed.

4-67 SECTION 13. Not later than September 1, 2020, the state  
 4-68 auditor shall develop and publish the guide as required by Section  
 4-69 53.026, Occupations Code, as added by this Act.

5-1 SECTION 14. The changes in law made by this Act apply only  
5-2 to an application for a license submitted on or after the effective  
5-3 date of this Act. An application for a license submitted before the  
5-4 effective date of this Act is governed by the law in effect on the  
5-5 date the application was submitted, and the former law is continued  
5-6 in effect for that purpose.  
5-7 SECTION 15. This Act takes effect September 1, 2019.

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