

By: Reynolds

H.B. No. 2232

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 53.001, Occupations Code, is amended to read as follows:

Sec. 53.001. ~~[APPLICABILITY OF CERTAIN]~~ DEFINITIONS. Except as otherwise provided by this chapter, in this chapter:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of this state or a political subdivision of this state that issues a license. [The definitions provided by Chapter 2001, Government Code, apply to this chapter.]

SECTION 2. Subchapter A, Chapter 53, Occupations Code, is amended by adding Sections 53.003, 53.004, 53.005, 53.006, 53.007, 53.008, and 53.009 to read as follows:

Sec. 53.003. USE OF CERTAIN CRIMINAL HISTORY RECORD INFORMATION. Notwithstanding any other law, this state, an agent of this state, or a political subdivision of this state may not use,

1 distribute, or disseminate, in connection with an application for a
2 license, criminal history record information regarding:

3 (1) an offense that did not result in a conviction or
4 for which the conviction was overturned on appeal;

5 (2) a conviction for which the applicant received an
6 order of nondisclosure or an expunction or was pardoned;

7 (3) a conviction for a misdemeanor punishable by a
8 fine only;

9 (4) a conviction for a misdemeanor, other than a
10 misdemeanor described by Subdivision (3), that was committed less
11 than three years before the date of the application, excluding any
12 term of incarceration for the misdemeanor;

13 (5) a conviction for a felony that was committed less
14 than five years before the date of the application, excluding any
15 term of incarceration for the felony;

16 (6) placement of the applicant on deferred
17 adjudication community supervision for an offense;

18 (7) participation by the applicant in a pretrial
19 diversion program; or

20 (8) an adjudication of delinquent conduct.

21 Sec. 53.004. CLASSIFICATION OF OFFENSE COMMITTED OUTSIDE
22 THIS STATE. An offense committed outside this state shall be
23 classified in the same manner as an offense committed in this state
24 based on the maximum penalty that may be imposed for the offense in
25 the location where the offense is committed.

26 Sec. 53.005. CRIMINAL HISTORY ON LICENSE APPLICATION.
27 Notwithstanding any other law, a license application form may not

1 include a requirement that an applicant disclose the applicant's
2 criminal history record information.

3 Sec. 53.006. CONSIDERATION OF CRIMINAL HISTORY RECORD
4 INFORMATION FOR QUALIFIED APPLICANT. Notwithstanding any other
5 law, a licensing authority:

6 (1) may not inquire into or consider an applicant's
7 criminal history record information until after the authority has
8 determined that the applicant is otherwise qualified for the
9 license; and

10 (2) after making the determination under Subdivision
11 (1), may inquire into and consider only an offense committed by the
12 applicant that:

13 (A) directly relates to the licensed occupation;
14 and

15 (B) appears on the list of offenses prepared by
16 the authority under Section 53.022.

17 Sec. 53.007. CONSIDERATION OF MORAL CHARACTER. In
18 considering the moral character or other similar attribute of a
19 person in a decision to suspend, revoke, or deny a person's license
20 or deny a person the opportunity to be examined for the license, a
21 licensing authority may consider the person's criminal history
22 record information only in the manner prescribed by this chapter.

23 Sec. 53.008. RECORDS; STATISTICS. (a) A licensing
24 authority shall retain records related to the suspension,
25 revocation, or denial of a license or the denial of an opportunity
26 to take a licensing examination on the grounds that the person has
27 been convicted of an offense directly related to the licensed

1 occupation until at least the third anniversary of the date of the
2 suspension, revocation, or denial.

3 (b) A licensing authority shall:

4 (1) maintain a record of the number of:

5 (A) applicants for each license issued by the
6 authority;

7 (B) applicants for each license issued by the
8 authority for which the authority requests criminal history record
9 information; and

10 (C) applicants for each license issued by the
11 authority who have been convicted of an offense directly related to
12 the licensed occupation, including:

13 (i) the number of applicants who received a
14 notice of intent under Section 53.0501;

15 (ii) the number of applicants who provided
16 evidence of mitigation or rehabilitation as described by Section
17 53.0221; and

18 (iii) the number of applicants who appealed
19 a denial under Section 53.052;

20 (2) maintain a record of the final disposition and
21 demographic information of each applicant described by
22 Subdivisions (1)(C)(i), (ii), and (iii); and

23 (3) make the records maintained under this subsection
24 available to the public on the authority's Internet website in a
25 form that maintains the confidentiality of applicants.

26 Sec. 53.009. CONFLICT WITH OTHER LAW. This chapter
27 prevails to the extent of a conflict between this chapter and any

1 other law.

2 SECTION 3. Sections 53.021(a) and (a-1), Occupations Code,
3 are amended to read as follows:

4 (a) A licensing authority may suspend or revoke a license [~~7~~
5 ~~disqualify a person from receiving a license,~~] or deny to a person a
6 license or the opportunity to take a licensing examination on the
7 grounds that the person has been convicted of an offense only if the
8 offense:

9 (1) [~~an offense that~~] directly relates to the [~~duties~~
10 ~~and responsibilities of the~~] licensed occupation; and

11 (2) appears on the list of offenses prepared by the
12 authority under Section 53.022 [~~an offense that does not directly~~
13 ~~relate to the duties and responsibilities of the licensed~~
14 ~~occupation and that was committed less than five years before the~~
15 ~~date the person applies for the license,~~

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

18 [~~(4) a sexually violent offense, as defined by Article~~
19 ~~62.001, Code of Criminal Procedure~~].

20 (a-1) Subsection (a) does not apply to a person who submits
21 evidence to the licensing authority under Section 53.0221 of
22 sufficient mitigation or rehabilitation and present fitness to
23 perform the duties of the occupation [~~has been convicted only of an~~
24 ~~offense punishable as a Class C misdemeanor unless:~~

25 [(1) ~~the person is an applicant for or the holder of a~~
26 ~~license that authorizes the person to possess a firearm, and~~

27 [(2) ~~the offense for which the person was convicted is~~

1 ~~a misdemeanor crime of domestic violence as that term is defined by~~
2 ~~18 U.S.C. Section 921].~~

3 SECTION 4. 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 each occupation licensed
10 by the authority; and

11 (2) on conviction of which the licensing authority
12 may, subject to Section 53.003, take an action authorized by
13 Section [53.021](#)(a).

14 (b) In determining whether an offense ~~[a criminal~~
15 ~~conviction]~~ directly relates to an occupation, the licensing
16 authority shall consider:

17 (1) the policy of this state, as expressed in this
18 chapter, to encourage the licensure of individuals with criminal
19 and arrest histories ~~[nature and seriousness of the crime];~~

20 (2) whether the elements of the offense are directly
21 related to the specific duties and responsibilities of
22 [relationship of the crime to the purposes for requiring a license
23 to engage in] the occupation;

24 (3) the extent to which the occupation offers the ~~[a~~
25 ~~license might offer an]~~ opportunity for the same or a similar
26 offense to occur ~~[to engage in further criminal activity of the same~~
27 ~~type as that in which the person previously had been involved];~~

1 ~~[and]~~

2 (4) the relationship of the offense ~~[crime]~~ to the
3 state's purposes for regulating the occupation; and

4 (5) the length of time since the date the offense was
5 committed ~~[ability, capacity, or fitness required to perform the~~
6 ~~duties and discharge the responsibilities of the licensed~~
7 ~~occupation].~~

8 SECTION 5. Subchapter B, Chapter 53, Occupations Code, is
9 amended by adding Section 53.0221 to read as follows:

10 Sec. 53.0221. EVIDENCE OF MITIGATION OR REHABILITATION;
11 EVIDENCE OF PRESENT FITNESS. A licensing authority may not suspend
12 or revoke a license or deny to a person a license or the opportunity
13 to take a licensing examination on the grounds that the person has
14 been convicted of an offense that directly relates to the licensed
15 occupation if the person submits to the licensing authority:

16 (1) proof that:

17 (A) at least one year has elapsed since the date
18 of the person's release from any correctional institution; and

19 (B) the person is in compliance with any terms of
20 community supervision, parole, or mandatory supervision to which
21 the person is subject; or

22 (2) evidence of sufficient mitigation or
23 rehabilitation and present fitness of the person to perform the
24 duties of the occupation, including:

25 (A) circumstances related to the offense,
26 including mitigating circumstances or social conditions
27 surrounding the commission of the offense;

1 (B) the age of the person at the time the offense
2 was committed;

3 (C) the length of time since the date the offense
4 was committed;

5 (D) the person's work history, particularly any
6 training or work experience related to the relevant occupation; or

7 (E) letters of reference written by persons who
8 have been in contact with the person since the date of the person's
9 release from any correctional institution.

10 SECTION 6. Section 53.025, Occupations Code, is amended to
11 read as follows:

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

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

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

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

3 SECTION 7. The heading to Subchapter C, Chapter 53,
4 Occupations Code, is amended to read as follows:

5 SUBCHAPTER C. NOTICE AND REVIEW OF SUSPENSION, REVOCATION, OR
6 DENIAL; REAPPLICATION [~~OF LICENSE~~]

7 SECTION 8. Subchapter C, Chapter 53, Occupations Code, is
8 amended by adding Sections 53.0501 and 53.0502 to read as follows:

9 Sec. 53.0501. NOTICE OF INTENT TO SUSPEND, REVOKE, OR DENY.

10 (a) Notwithstanding any other law, a licensing authority may not
11 suspend or revoke a person's license or deny a person a license or
12 the opportunity to be examined for a license because of the person's
13 prior conviction of an offense unless the licensing authority:

14 (1) gives the person written notice of the agency's
15 intent to suspend or revoke the license or deny the person a license
16 or the opportunity to be examined for a license because of the
17 person's criminal history; and

18 (2) allows the person not less than 30 days to:

19 (A) challenge the accuracy of the person's
20 criminal history record information; and

21 (B) submit evidence of sufficient mitigation or
22 rehabilitation and present fitness to perform the duties of the
23 occupation as described by Section 53.0221.

24 (b) The notice required under Subsection (a)(1) must:

25 (1) identify the criminal conviction that is the basis
26 for the potential suspension, revocation, or denial;

27 (2) include a copy of the person's criminal history

1 record information; and

2 (3) include examples of evidence of mitigation or
3 rehabilitation that the applicant may voluntarily submit under
4 Section 53.0221.

5 Sec. 53.0502. INDIVIDUAL ASSESSMENT. A licensing authority
6 that receives evidence from a person under Section 53.0501(a)(2)(B)
7 may not suspend or revoke the person's license or deny the person a
8 license or the opportunity to be examined for a license unless the
9 authority completes an individual assessment of the evidence
10 submitted.

11 SECTION 9. Section 53.051, Occupations Code, is amended to
12 read as follows:

13 Sec. 53.051. NOTICE OF SUSPENSION, REVOCATION, OR DENIAL.
14 A licensing authority that suspends or revokes a license or denies a
15 person a license or the opportunity to be examined for a license
16 because of the person's prior conviction of an offense that is
17 directly related to the [~~a crime and the relationship of the crime~~
18 ~~to the~~] license shall notify the person in writing of:

19 (1) the reason for the suspension, revocation, or
20 denial, including:

21 (A) any offense of which the person has been
22 convicted that directly relates to the licensed occupation; and

23 (B) the authority's rationale for determining
24 that the offense directly relates to the licensed occupation [~~or~~
25 ~~disqualification~~];

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

27 and

1 (3) the earliest date the person may:

2 (A) appeal the action of the licensing authority;

3 or

4 (B) reapply for the license or examination.

5 SECTION 10. Subchapter C, Chapter 53, Occupations Code, is
6 amended by adding Section 53.053 to read as follows:

7 Sec. 53.053. REAPPLICATION. Notwithstanding any other law,
8 a person whose license is suspended or revoked or who is denied a
9 license or the opportunity to be examined for a license by a
10 licensing authority may reapply for the license or opportunity to
11 be examined for the license on or after the second anniversary of
12 the date of the suspension, revocation, or denial.

13 SECTION 11. Section 142.002(b), Civil Practice and Remedies
14 Code, is amended to read as follows:

15 (b) This section does not preclude a cause of action for
16 negligent hiring or the failure of an employer, general contractor,
17 premises owner, or other third party to provide adequate
18 supervision of an employee, if:

19 (1) the employer, general contractor, premises owner,
20 or other third party knew or should have known of the conviction;
21 and

22 (2) the employee was convicted of:

23 (A) an offense that was committed while
24 performing duties substantially similar to those reasonably
25 expected to be performed in the employment, or under conditions
26 substantially similar to those reasonably expected to be
27 encountered in the employment, taking into consideration the

1 factors listed in Section 53.022(b) [~~Sections 53.022 and~~
2 ~~53.023(a)~~], Occupations Code, without regard to whether the
3 occupation requires a license;

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

6 (C) a sexually violent offense, as defined by
7 Article 62.001, Code of Criminal Procedure.

8 SECTION 12. Section 19.0042, Education Code, is amended to
9 read as follows:

10 Sec. 19.0042. INFORMATION TO BE PROVIDED BY DISTRICT BEFORE
11 VOCATIONAL TRAINING PROGRAM ENROLLMENT. Before a person described
12 by Section 19.005 enrolls in a district vocational training
13 program, the district must inform the person in writing of:

14 (1) any rule or policy of a state agency that would
15 impose a restriction or prohibition on the person in obtaining a
16 certificate or license in connection with the vocational training
17 program;

18 (2) the total number of district students released
19 during the preceding 10 years who have completed a district
20 vocational training program that allows for an opportunity to apply
21 for a certificate or license from a state agency and, of those
22 students:

23 (A) the number who have applied for a certificate
24 or license from a state agency;

25 (B) the number who have been issued a certificate
26 or license by a state agency; and

27 (C) the number who have been denied a certificate

1 or license by a state agency; and

2 (3) the procedures for:

3 (A) requesting a criminal history evaluation
4 letter under Section 53.102, Occupations Code;

5 (B) providing evidence of sufficient mitigation
6 or rehabilitation and present fitness to perform the duties and
7 discharge the responsibilities of a licensed occupation for
8 purposes of Section 53.0221 [~~53.023~~], Occupations Code; and

9 (C) appealing a state agency's denial of a
10 certificate or license, including deadlines and due process
11 requirements:

12 (i) to the State Office of Administrative
13 Hearings under Subchapter C, Chapter 2001, Government Code; and

14 (ii) through any other available avenue.

15 SECTION 13. Section 411.122(c), Government Code, is amended
16 to read as follows:

17 (c) This section does not apply to an agency that is[+]

18 [~~(1)~~] specifically authorized by this subchapter or
19 Subchapter E-1 to obtain criminal history record information from
20 the department [~~, or~~

21 [~~(2) covered by Section 53.002, Occupations Code, to~~
22 ~~the extent provided by that section]~~.

23 SECTION 14. Section 51.356(b), Occupations Code, is amended
24 to read as follows:

25 (b) In making a determination under Subsection (a)(2), the
26 commission shall consider the factors set forth in Section
27 53.022(b) [~~Sections 53.022 and 53.023~~] and the guidelines issued by

1 the department under Section 53.025.

2 SECTION 15. The following provisions of the Occupations
3 Code are repealed:

- 4 (1) Section 53.002;
- 5 (2) Sections 53.021(b), (c), (d), and (e);
- 6 (3) Section 53.0211; and
- 7 (4) Section 53.023.

8 SECTION 16. Not later than March 1, 2020, a licensing
9 authority shall develop and make available to the public the list of
10 offenses required under Section 53.022, Occupations Code, as
11 amended by this Act.

12 SECTION 17. The changes in law made by this Act to Chapter
13 53, Occupations Code, apply only to an application for a license or
14 to take a licensing examination that is filed, or a proceeding to
15 revoke or suspend a license or authorization that is commenced, on
16 or after the effective date of this Act. An application that is
17 filed, or a proceeding that is commenced, before the effective date
18 of this Act is governed by the law in effect on the date the
19 application was filed or the proceeding commenced, and the former
20 law is continued in effect for that purpose.

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