

BILL ANALYSIS

C.S.H.B. 1747
By: Leach
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the system of occupational licensing in Texas requires individuals to be approved by a state regulatory board before working in certain professions. This system often leads to people with criminal records struggling to obtain employment. According to data from a 2018 study, "Work and Opportunity Before and After Incarceration," by the Brookings Institution, roughly half of former prisoners in the United States have no reported earnings in the first or fourth year after their release. In testimony before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security on February 27, 2020, Jesse Wiese of Prison Fellowship cited research indicating that approximately one in three adults have a criminal record and face almost 44,000 government-imposed restrictions on their ability to work. C.S.H.B. 1747 seeks to address these issues by ensuring that licensing laws are marked by clear evaluation guidelines, fair processes, and public reporting, which will help create more opportunities for Texans who have served their time to contribute to the workforce in high-skilled, high-demand professions, thereby reducing the probability of recidivism and breaking cycles of crime and incarceration. This legislation ensures a clear focus on meaningful reoffending risks and streamlining of the licensing review processes by excluding certain offenses from board consideration if five years have passed since the end of incarceration or conviction, whichever is later. However, the legislation allows licensing authorities to suspend or revoke a license, disqualify a person from receiving or renewing a license, or deny the opportunity for them to take a licensing examination if the person has been convicted of certain offenses and applied for the license before or after a specific period of time.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1747 amends the Occupations Code to revise provisions relating to the consequences of a criminal conviction on a person's eligibility for certain occupational licenses. The bill conditions the authority of an applicable licensing authority to suspend or revoke a person's license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to take a licensing examination, if the person has been convicted of an applicable offense, on the person having applied for the license or to take the examination at a certain time as follows:

- before the fifth anniversary of either the date of conviction for the offense or, if the person's sentence for the offense included confinement, the person's release from confinement, whichever is later;

- after that anniversary if the person has been convicted of another offense after the initial offense; or
- at any time if the person is convicted of the following offenses:
 - an offense ineligible for judge-ordered community supervision;
 - an offense that requires sex offender registration;
 - criminal solicitation of a minor;
 - manslaughter, criminally negligent homicide, or kidnapping;
 - certain second degree felony assault committed against a peace officer or judge;
 - assault involving family violence that causes bodily injury;
 - indecent assault;
 - aggravated assault;
 - an applicable felony offense for injury to a child or elderly or disabled individual;
 - repeated violation of certain court orders or bond conditions in certain types of cases;
 - continuous violence against the family; or
 - taking or attempting to take a weapon from certain law enforcement or security officers or correctional officers, employees, or officials.

A revocation of a license due to imprisonment following a felony conviction, felony, community supervision revocation, revocation of parole, or revocation of mandatory supervision does not prohibit a licensing authority from accepting an application from an inmate imprisoned in the Texas Department of Criminal Justice. The bill clarifies that the authority to disqualify a person who has been convicted of an applicable offense from receiving a license includes the authority to disqualify a person from renewing a license.

C.S.H.B. 1747 prohibits a licensing authority from determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation for purposes of revoking, suspending, or denying a license unless the authority finds by a preponderance of the evidence that consideration of the statutorily prescribed factors relating to the crime that the authority must consider supports that determination. The bill changes the determination made by a licensing authority that triggers its duty to consider additional factors in determining whether to take such a disciplinary action from a determination that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation to a determination that a person has been convicted of an offense that is grounds for the authority to take such a disciplinary action. The bill removes from the additional factor relating to the person's rehabilitation or rehabilitative effort the specification that the effort is while incarcerated or after release and prohibits a licensing authority from taking an authorized disciplinary action unless the authority finds by a preponderance of the evidence that consideration of the additional factors supports taking that action. These provisions apply only to an applicable disciplinary action taken by a licensing authority that occurs on or after January 1, 2024.

C.S.H.B. 1747 places on a licensing authority, in a hearing on the administrative appeal or judicial review of a licensing authority's decision to take such an authorized disciplinary action, the burden of proving the following by a preponderance of the evidence:

- the offense for which the person was convicted is grounds for the authority to take the action; and
- consideration of the additional factors supports the authority's decision to take the action.

This provision applies only to a proceeding commenced on or after January 1, 2024.

C.S.H.B. 1747 requires an applicable licensing authority to include a notice in the application form for each type of license issued by the authority and on the authority's website stating the following:

- that an applicant's prior criminal conviction may be grounds for disqualifying the applicant from receiving a license;
- the statutorily prescribed factors used to determine whether a prior criminal conviction constitutes grounds for denying an applicant a license; and

- the right of certain students enrolled in educational programs that prepare a person for a license or licensing examination to request a criminal history evaluation letter.

The bill requires an authority to make changes to its applications and website as soon as practicable after the bill's effective date to implement this requirement.

C.S.H.B. 1747 requires an applicable licensing authority to maintain a record of the total number, for each type of license issued, of applications received, approved, or denied for any reason, applications denied because of a prior criminal conviction or placement on deferred adjudication community supervision, and the criminal history evaluation letters for each type of license issued by the authority. The bill requires each applicable licensing authority, not later than January 15 of each year, to prepare a report of such information for the preceding calendar year, submit the report to the legislature, and publish the report on the authority's website. The initial report must be submitted not later than January 15, 2025.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 1747 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes the following criminal offenses among the offenses for which a licensing authority may, at any time, suspend or revoke a person's license, disqualify a person from receiving or renewing a license, or deny a person the opportunity to take a licensing examination, if the person has been convicted of the offense and applied for a license or to take the examination:

- criminal solicitation of a minor;
- indecent assault; and
- an applicable felony offense for injury to a child or elderly or disabled individual.

The substitute includes the following provisions that were not in the introduced:

- a provision establishing that a revocation of a license due to imprisonment following a felony conviction, felony, community supervision revocation, revocation of parole, or revocation of mandatory supervision does not prohibit a licensing authority from accepting an application from an inmate imprisoned in the Texas Department of Criminal Justice; and
- a clarification that the authority to disqualify a person who has been convicted of an applicable offense from receiving a license includes the authority to disqualify a person from renewing the license.