

By: Hinojosa

S.B. No. 734

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. Subchapter A, Chapter 53, Occupations Code, is amended by adding Sections 53.004 and 53.005 to read as follows:

Sec. 53.004. NOTICE TO LICENSING APPLICANTS. A licensing authority to which this chapter applies shall include a notice in the application form for each type of license issued by the authority and on the authority's Internet website stating:

(1) that an applicant's prior criminal conviction may be grounds for disqualifying the applicant from receiving a license;

(2) the factors listed in Sections 53.022 and 53.023 for determining whether a prior criminal conviction constitutes grounds for denying an applicant from receiving a license; and

(3) 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 under Section 53.102.

Sec. 53.005. REPORTING. (a) A licensing authority to which this chapter applies shall maintain a record of the total number of each of the following for each type of license issued by the authority:

- 1 (1) applications received;
- 2 (2) applications approved;
- 3 (3) applications denied for any reason;
- 4 (4) applications denied because of the applicant's
5 prior criminal conviction or placement on deferred adjudication
6 community supervision; and
- 7 (5) criminal history evaluation letters requested
8 under Section 53.102.

9 (b) Not later than January 15 of each year, each licensing
10 authority shall prepare a report of the information maintained
11 under Subsection (a) for the preceding calendar year and shall:

- 12 (1) submit the report to the legislature; and
- 13 (2) publish the report on the authority's Internet
14 website.

15 SECTION 2. Section 53.021(a), Occupations Code, is amended
16 to read as follows:

17 (a) Subject to Section 53.0231, a licensing authority may
18 suspend or revoke a license, disqualify a person from receiving a
19 license, or deny to a person the opportunity to take a licensing
20 examination on the grounds that the person:

- 21 (1) has been convicted of:
 - 22 (A) [~~(1)~~] an offense that directly relates to the
23 duties and responsibilities of the licensed occupation;
 - 24 (B) [~~(2)~~] an offense listed in Article 42A.054,
25 Code of Criminal Procedure; or
 - 26 (C) [~~(3)~~] a sexually violent offense, as defined
27 by Article 62.001, Code of Criminal Procedure; and

1 (2) applied for the license or to take the licensing
2 examination:

3 (A) before the fifth anniversary of the later of
4 the date of conviction or the person's release from confinement if
5 the person's sentence for the offense included a term of
6 confinement;

7 (B) after the period described by Paragraph (A)
8 if the person has been convicted of another offense committed after
9 the offense described by Subdivision (1); or

10 (C) at any time if the offense of which the person
11 was convicted:

12 (i) is listed in Article 42A.054, Code of
13 Criminal Procedure;

14 (ii) requires registration as a sex
15 offender under Chapter 62, Code of Criminal Procedure;

16 (iii) is under Section 19.04, Penal Code
17 (manslaughter);

18 (iv) is under Section 19.05, Penal Code
19 (criminally negligent homicide);

20 (v) is under Section 20.03, Penal Code
21 (kidnapping);

22 (vi) is under Section 22.01(a)(1), Penal
23 Code (assault), and the offense:

24 (a) is punishable as a felony of the
25 second degree under Subsection (b-2) of that section; or

26 (b) involves family violence as
27 defined by Section 71.004, Family Code;

1 (vii) is under Section 22.02, Penal Code
2 (aggravated assault);

3 (viii) is under Section 25.072, Penal Code
4 (repeated violation of certain court orders or conditions of bond
5 in family violence, child abuse or neglect, sexual assault or
6 abuse, indecent assault, stalking, or trafficking case);

7 (ix) is under Section 25.11, Penal Code
8 (continuous violence against the family); or

9 (x) is under Section 38.14, Penal Code
10 (taking or attempting to take weapon from peace officer, federal
11 special investigator, employee or official of correctional
12 facility, parole officer, community supervision and corrections
13 department officer, or commissioned security officer).

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

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

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

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

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

27 (4) the relationship of the crime to the ability or

1 capacity required to perform the duties and discharge the
2 responsibilities of the licensed occupation; and

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

5 (b) A licensing authority may not determine under
6 Subsection (a) that a conviction relates to the duties and
7 responsibilities of the licensed occupation for purposes of taking
8 an action authorized by Section 53.021 unless the authority finds
9 by a preponderance of the evidence that consideration of the
10 factors listed in Subsection (a) supports that determination.

11 SECTION 4. The heading to Section 53.023, Occupations Code,
12 is amended to read as follows:

13 Sec. 53.023. ADDITIONAL FACTORS FOR LICENSING AUTHORITY TO
14 CONSIDER [~~AFTER DETERMINING CONVICTION DIRECTLY RELATES TO~~
15 ~~OCCUPATION~~].

16 SECTION 5. Section 53.023, Occupations Code, is amended by
17 amending Subsection (a) and adding Subsection (c) to read as
18 follows:

19 (a) If a licensing authority determines [~~under Section~~
20 ~~53.022~~] that a person has been convicted of an offense that is
21 grounds for the authority to take an action authorized by Section
22 53.021 [~~criminal conviction directly relates to the duties and~~
23 ~~responsibilities of a licensed occupation~~], the [~~licensing~~]
24 authority shall consider the following in determining whether to
25 take an action authorized by Section 53.021:

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

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

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

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

6 (5) evidence of the person's rehabilitation or
7 rehabilitative effort [~~while incarcerated or after release~~];

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

11 (7) other evidence of the person's fitness, including
12 letters of recommendation.

13 (c) In making a determination under this section, a
14 licensing authority may not take an action authorized by Section
15 53.021 unless the authority finds by a preponderance of the
16 evidence that consideration of the factors listed in Subsection (a)
17 supports taking that action.

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

20 Sec. 53.053. BURDEN OF PROOF. In a hearing on the
21 administrative appeal or judicial review of a licensing authority's
22 decision to take an action authorized by Section 53.021, the
23 licensing authority has the burden of proving by a preponderance of
24 the evidence that:

25 (1) the offense for which the person was convicted is
26 grounds for the authority to take the action; and

27 (2) consideration of the factors required by Section

1 53.023(a) supports the authority's decision to take the action.

2 SECTION 7. (a) Sections 53.021, 53.022, and 53.023,
3 Occupations Code, as amended by this Act, apply only to an action
4 taken by a licensing authority to suspend or revoke a license,
5 disqualify a person from receiving a license, or deny to a person
6 the opportunity to take a licensing examination that occurs on or
7 after January 1, 2024. An action taken by a licensing authority
8 before that date is governed by the law in effect immediately before
9 the effective date of this Act, and the former law is continued in
10 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, 2024.
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 SECTION 8. As soon as practicable after the effective date
17 of this Act, each licensing authority subject to Chapter 53,
18 Occupations Code, as amended by this Act, shall make changes to the
19 authority's license applications and Internet website as necessary
20 to implement Section 53.004, Occupations Code, as added by this
21 Act.

22 SECTION 9. Not later than January 15, 2025, each licensing
23 authority subject to Chapter 53, Occupations Code, as amended by
24 this Act, shall submit the initial report required by Section
25 53.005, Occupations Code, as added by this Act.

26 SECTION 10. This Act takes effect September 1, 2023.