By: Hinojosa of Hidalgo S.B. No. 428

A BILL TO BE ENTITLED

AN ACT

relating to the consequences of a criminal conviction or placement on deferred adjudication on a person's eligibility for an occupational license and related reporting requirements for licensing authorities.

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) 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.

(b) This section does not apply to the State Securities Board.

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) applications received;

(2) applications approved;

(3) applications denied for any reason;

(4) applications denied because of the applicant's prior criminal conviction or placement on deferred adjudication community supervision; and

(5) criminal history evaluation letters requested under Section 53.102.

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

(1) submit the report to the legislature; and

(2) publish the report on the authority's Internet website.

SECTION 2. Section 53.021, Occupations Code, is amended by amending Subsection (a) and adding Subsection (b-1) to read as follows:

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

(1) has been convicted of:

(A) [~~(1)~~] an offense that directly relates to the

duties and responsibilities of the licensed occupation;

(B) [~~(2)~~] an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) [~~(3)~~] a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure; and

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

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

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

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

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

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

(iii) is under Section 15.031(a), Penal Code (criminal solicitation of a minor);

(iv) is under Section 19.04, Penal Code (manslaughter);

(v) is under Section 19.05, Penal Code (criminally negligent homicide);

(vi) is under Section 20.03, Penal Code

(kidnapping);

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

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

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

(viii) is under Section 22.012, Penal Code (indecent assault);

(ix) is under Section 22.02, Penal Code (aggravated assault);

(x) is under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual), and the offense is punishable as:

(a) a felony of the first degree under Subsection (e) of that section; or

(b) a felony of the second or third degree under Subsection (f) of that section;

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

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

(xiii) is under Section 38.14, Penal Code (taking or attempting to take weapon from peace officer, federal special investigator, employee or official of correctional

facility, parole officer, community supervision and corrections department officer, or commissioned security officer).

(b-1) Subsection (b) does not prohibit a licensing authority from accepting an application from an inmate imprisoned in the Texas Department of Criminal Justice.

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

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

(1) the nature and seriousness of the crime;

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

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

(4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and

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

(b) A licensing authority may not determine under Subsection (a) that a conviction relates to the duties and responsibilities of the licensed occupation for purposes of taking an action authorized by Section 53.021 unless the authority finds

by a preponderance of the evidence that consideration of the factors listed in Subsection (a) supports that determination.

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

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

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

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

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

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

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

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

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

(6) evidence of the person's compliance with any

conditions of community supervision, parole, or mandatory supervision; and

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

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

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

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

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

(2) consideration of the factors required by Section 53.023(a) supports the authority's decision to take the action.

SECTION 7. (a) Sections 53.021, 53.022, and 53.023, Occupations Code, as amended by this Act, apply only to an action taken by a licensing authority to suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination that occurs on or after January 1, 2028. An action taken by a licensing authority before that date is governed by the law in effect immediately before

the effective date of this Act, and the former law is continued in effect for that purpose.

(b) Section 53.053, Occupations Code, as added by this Act, applies only to a proceeding commenced on or after January 1, 2028. A proceeding commenced before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 8. As soon as practicable after the effective date of this Act, each licensing authority to which Section 53.004, Occupations Code, as added by this Act, applies shall make changes to the authority's license applications and Internet website as necessary to implement that section.

SECTION 9. Not later than January 15, 2029, each licensing authority subject to Chapter 53, Occupations Code, as amended by this Act, shall submit the initial report required by Section 53.005, Occupations Code, as added by this Act.

SECTION 10. This Act takes effect September 1, 2027.