130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document **No. 1465**

H.P. 1081 House of Representatives, April 12, 2021

An Act To Remove Barriers to Occupational Licensing Due to Criminal Records

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §5301, as amended by PL 2011, c. 286, Pt. O, §1 and PL 2015, c. 429, §23, is further amended to read:

§5301. Eligibility for occupational license, registration or permit

1. Effect of criminal history record information respecting certain convictions. Subject to ~~subsection 2~~ this section and sections 5302 and 5303, in determining eligibility for the granting of any occupational license, registration or permit issued by the State, the appropriate ~~State~~ state licensing agency may take into consideration criminal history record information from Maine or elsewhere relating to certain convictions ~~which~~ that have not been set aside, dismissed, sealed or expunged or for which a full and free pardon has not been granted, but the existence of such information ~~shall~~ may not operate as an automatic bar to being licensed, registered or permitted to practice any profession, trade or occupation.

2. Criminal history record information ~~which~~ that may be considered. A licensing agency may not inquire into or consider the criminal history of an applicant until after the applicant has been found to be otherwise qualified for the license, registration or permit. A licensing agency ~~may use~~ shall consider only the following in connection with an application for an occupational license, registration or permit criminal history record information pertaining to the following:

A. Convictions for which incarceration for less than one year may be imposed and ~~which~~ that involve dishonesty or false statement;

B. Convictions for which incarceration for less than one year may be imposed and ~~which~~ that directly relate to the profession, trade or occupation for which the license or permit is sought;

~~C. Convictions for which no incarceration can be imposed and which directly relate to the trade or occupation for which the license or permit is sought;~~

D. Convictions for which incarceration for one year or more may be imposed; or

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Speech, Audiology and Hearing, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

3. Criminal history record information directly related to the profession, trade or occupation. In determining pursuant to subsection 2 whether criminal history record information is directly related to the profession, trade or occupation for which the license,

registration or permit is being sought, the licensing agency must consider the following factors:

A. Whether the conviction is directly related to the duties and responsibilities of that position or profession, trade or occupation;

B. Whether the position or profession, trade or occupation offers the opportunity for the same or a similar offense to occur;

C. Whether circumstances leading to the conduct for which the person was convicted will recur in the position or profession, trade or occupation; and

D. The length of time since the offense occurred.

4. Criminal convictions prohibited by statute. Notwithstanding subsection 2, a licensing agency may consider criminal convictions that are explicitly prohibited by statute for the license, registration or permit sought.

Sec. 2. 5 MRSA §5302, as amended by PL 1989, c. 84, §2, is further amended to read:

§5302. Denial, suspension, revocation or other discipline of licensees because of criminal record

1. Reasons for denial or disciplinary action; process. Licensing agencies may refuse to grant or renew, or may suspend, revoke or take other disciplinary action against any occupational license, registration or permit based in whole or in part on ~~the basis of~~ the criminal history record information ~~relating to convictions~~ denominated in section 5301~~, subsection 2~~, but only if the licensing agency ~~determines~~ has complied with the notice requirements of this section and after the licensing agency has properly considered a timely appeal of its preliminary determination, if any, and has determined that the applicant, licensee, registrant or permit holder so convicted has not been sufficiently rehabilitated to warrant the public trust as described in subsection 3. The applicant, licensee, registrant or permit holder ~~shall bear~~ bears the burden of proof that there exists sufficient rehabilitation to warrant the public trust.

2. ~~Reasons to be stated in writing~~ Preliminary determination. ~~The~~ Before a licensing agency may make a final decision, the licensing agency shall explicitly state in writing the reasons for a ~~decision which prohibits~~ preliminary determination that the applicant, licensee, registrant or permit holder should be prohibited from practicing the profession, trade or occupation if that decision is based in whole or in part on conviction of any crime ~~described in~~ that may be considered pursuant to section 5301~~, subsection 2~~. The licensing agency shall issue a notice containing the written preliminary determination to the applicant, licensee, registrant or permit holder. The written notice required by this subsection must include the following information:

A. The criminal conviction or convictions that are the basis for the preliminary denial;

B. A copy of the criminal history record information, if any;

C. Information about the applicant's, licensee's, registrant's or permit holder's right to appeal the preliminary determination; and

D. Any examples of mitigation or rehabilitation evidence that the applicant, licensee, registrant or permit holder may voluntarily provide.

3. Appeal of preliminary determination. An applicant, licensee, registrant or permit holder may appeal a preliminary determination of a licensing agency made pursuant to subsection 2 by challenging the accuracy of the criminal history record information or by demonstrating that the applicant, licensee, registrant or permit holder is sufficiently rehabilitated to warrant the public trust. An applicant, licensee, registrant or permit holder may demonstrate sufficient rehabilitation to warrant the public trust by providing the licensing agency:

A. Evidence demonstrating that at least one year has elapsed since the applicant's, licensee's, registrant's or permit holder's release from any correctional institution without criminal conviction or arrest; or

B. Any other information or evidence of mitigation or rehabilitation and present fitness to practice the profession, trade or occupation for which the license, registration or permit is being sought, including, but not limited to, letters of reference.

If the applicant, licensee, registrant or permit holder demonstrates sufficient rehabilitation to warrant the public trust, the licensing agency may not deny the applicant, licensee, registrant or permit holder the license, registration or permit based in whole or in part on the applicant's, licensee's, registrant's or permit holder's prior criminal conviction.

After receiving notice of the preliminary denial issued pursuant to subsection 2, the applicant, licensee, registrant or permit holder must send or hand deliver the appeal within 30 business days.

4. Final determination. If the licensing agency has made a final determination that the applicant, licensee, registrant or permit holder should be prohibited from practicing the profession, trade or occupation because the applicant, licensee, registrant or permit holder has not been sufficiently rehabilitated to warrant the public trust as described in subsection 3, the licensing agency must notify the applicant, licensee, registrant or permit holder in writing of the following:

A. The final determination;

B. Information about the right to appeal pursuant to section 5304 the licensing agency's decision;

C. A statement that the applicant, licensee, registrant or permit holder may be eligible for a different license, registration or permit; and

D. The earliest date on which the applicant, licensee, registrant or permit holder may reapply with the licensing agency, if applicable.

Sec. 3. 5 MRSA §5303, as amended by PL 2017, c. 288, Pt. A, §12, is further amended to read:

§5303. Time limit on consideration of prior criminal conviction

1. Three-year limits. Except as set forth in this subsection ~~and subsection 2~~, the procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a ~~licensed~~ profession, trade or occupation ~~shall~~ requiring a license, registration or permit apply within 3 years of the applicant's ~~or~~, licensee's ~~final discharge, if any, from the correctional system~~, registrant's or permit holder's criminal conviction. Beyond the 3-year period, ex-offender applicants ~~or~~, licensees, registrants or permit holders with no additional convictions are to be considered

in the same manner as applicants ~~or~~, licensees, registrants or permit holders possessing no prior criminal record for the purposes of licensing decisions. There is no time limitation for consideration of an applicant's ~~or~~, licensee's, registrant's or permit holder's conduct ~~which~~ that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee, registrant or permit holder.

~~**2. Ten-year limits.** For applicants to and licensees and registrants of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Speech, Audiology and Hearing, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Maine Board of Pharmacy, and the Emergency Medical Services' Board and applicants for massage therapy licensure or licensed massage therapists, the following apply.~~

~~A. The procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a licensed profession, trade or occupation apply within 10 years of the applicant's or licensee's final discharge, if any, from the correctional system.~~

~~B. Beyond the 10-year period, ex-offender applicants or licensees with no additional convictions must be considered in the same manner as applicants or licensees possessing no prior criminal record for the purposes of licensing decisions.~~

~~C. There is no time limitation for consideration of a registrant's, an applicant's or licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action.~~

Sec. 4. 5 MRSA §5305 is enacted to read:

§5305. Confidential

Criminal history record information, and any other information pertaining to an applicant's, licensee's, registrant's or permit holder's background check obtained in conjunction with a screening, in the possession of a licensing agency is confidential and may not be disclosed if the information is being requested for use in connection with any application for employment or a license, registration or permit.

Sec. 5. 5 MRSA §5306 is enacted to read:

§5306. Application

The provisions of this chapter apply notwithstanding any provision of law to the contrary, except to the extent the provision of law contains additional limitations on the consideration of criminal history record information by licensing agencies.

SUMMARY

This bill adds restrictions to the use of criminal history record information in the context of licensing decisions by licensing agencies. It also makes certain criminal history record information in the possession of a licensing agency confidential.