

## CHAPTER 341

### OCCUPATIONAL LICENSE DISQUALIFICATION ON BASIS OF CRIMINAL RECORD

#### §5301. Eligibility for occupational license, registration or permit

**1. Effect of criminal history record information respecting certain convictions.** Subject to subsection 2 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 licensing agency may take into consideration criminal history record information from Maine or elsewhere relating to certain convictions which have not been set aside or for which a full and free pardon has not been granted, but the existence of such information shall not operate as an automatic bar to being licensed, registered or permitted to practice any profession, trade or occupation.

[PL 1989, c. 84, §1 (AMD).]

**2. Criminal history record information which may be considered.** A licensing agency may use 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 involve dishonesty or false statement; [PL 1977, c. 287, §1 (RPR).]

B. Convictions for which incarceration for less than one year may be imposed and which directly relate to the trade or occupation for which the license or permit is sought; [PL 1977, c. 287, §1 (RPR).]

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; [PL 1989, c. 84, §1 (AMD).]

D. Convictions for which incarceration for one year or more may be imposed; or [PL 1989, c. 84, §1 (AMD).]

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. [PL 2011, c. 286, Pt. O, §1 (AMD); PL 2015, c. 429, §23 (REV).]

[PL 2011, c. 286, Pt. O, §1 (AMD); PL 2015, c. 429, §23 (REV).]

#### SECTION HISTORY

PL 1975, c. 150 (NEW). PL 1977, c. 287, §1 (RPR). PL 1989, c. 84, §1 (AMD). PL 1993, c. 600, §§B20-22 (AMD). PL 1995, c. 131, §1 (AMD). PL 1995, c. 162, §1 (AMD). PL 1995, c. 625, §A11 (AMD). PL 2005, c. 347, §A1 (AMD). PL 2007, c. 369, Pt. A, §1 (AMD). PL 2007, c. 369, Pt. C, §5 (AFF). PL 2011, c. 286, Pt. O, §1 (AMD). PL 2015, c. 429, §23 (REV).

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

**1. Reasons for disciplinary action.** Licensing agencies may refuse to grant or renew, or may suspend, revoke or take other disciplinary action against any occupational license, registration or permit 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 that the applicant, licensee, registrant or permit holder so convicted has not been sufficiently rehabilitated to warrant the public trust. The applicant, licensee, registrant or permit holder shall bear the burden of proof that there exists sufficient rehabilitation to warrant the public trust.

[PL 1989, c. 84, §2 (AMD).]

**2. Reasons to be stated in writing.** The licensing agency shall explicitly state in writing the reasons for a decision which prohibits the applicant, licensee, registrant or permit holder from practicing the profession, trade or occupation if that decision is based in whole or in part on conviction of any crime described in section 5301, subsection 2.

[PL 1989, c. 84, §2 (AMD).]

#### SECTION HISTORY

PL 1975, c. 150 (NEW). PL 1977, c. 287, §§2,3 (AMD). PL 1989, c. 84, §2 (AMD).

#### §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 apply within 3 years of the applicant's or licensee's final discharge, if any, from the correctional system. Beyond the 3-year period, ex-offender applicants or licensees with no additional convictions are to be considered in the same manner as applicants or licensees 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 conduct which gave rise to the criminal conviction if that conduct is otherwise a ground for disciplinary action against a licensee.

[PL 1989, c. 84, §3 (NEW).]

**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, for applicants to and licensees of the Department of Agriculture, Conservation and Forestry for growing, processing and transporting hemp and for 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.

[PL 1995, c. 625, Pt. A, §12 (RPR).]

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. [PL 1995, c. 625, Pt. A, §12 (RPR).]

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.

[PL 1995, c. 625, Pt. A, §12 (RPR).]

[PL 2021, c. 761, §1 (AMD).]

#### SECTION HISTORY

PL 1975, c. 150 (NEW). PL 1989, c. 84, §3 (RPR). PL 1993, c. 600, §§B20-22 (AMD). PL 1995, c. 131, §2 (AMD). PL 1995, c. 162, §2 (AMD). PL 1995, c. 625, §A12 (AMD). PL 2005, c. 347, §A2 (AMD). PL 2007, c. 369, Pt. A, §2 (AMD). PL 2007, c. 369, Pt. C, §5 (AFF). PL 2015, c. 429, §23 (REV). PL 2017, c. 288, Pt. A, §12 (AMD). PL 2021, c. 761, §1 (AMD).

#### §5304. Appeals

Any person who is aggrieved by the decision of any licensing agency in possible violation of this chapter may file a statement of complaint with the District Court designated in chapter 375. [PL 1999, c. 547, Pt. B, §14 (AMD); PL 1999, c. 547, Pt. B, §80 (AFF).]

#### SECTION HISTORY

PL 1975, c. 150 (NEW). PL 1987, c. 402, §A54 (AMD). PL 1999, c. 547, §B14 (AMD). PL 1999, c. 547, §B80 (AFF).

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