

Collateral Consequences Reduction Act.

Model Legislation

May 12, 2018

A bill for an act

relating to occupational regulations; establishing a process to review criminal records to reduce offenders' disqualifications from state recognition; and proposing coding for new law as _____, chapter _____.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF _____:

100.01 Definitions.

Subdivision 1. **Scope.** For the purposes of this chapter, the words defined in this section have the meaning given.

Subd. 2. **Certification.** "Certification" is a voluntary program in which the state government grants nontransferable recognition to an individual who meets personal qualifications established by the legislature. Upon approval, the individual may use "certified" as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "certified."

Subd. 3. **Lawful occupation.** "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Subd. 4. **Occupational license.** "Occupational license" is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

Subd. 5. **Occupational regulation.** "Occupational regulation" means a statute, rule, practice, policy, or other state law that allows an individual to use an occupational title or work in a lawful occupation. It includes a certification and occupational license. It excludes a business license, facility license, building permit, or zoning and land use regulation except to the extent those state laws regulate an individual's personal qualifications to perform a lawful occupation.

Subd. 6. **Personal qualifications.** "Personal qualifications" are criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral standing, criminal record and completion of continuing education.

100.02 Petition for Review of Criminal Record.

Subdivision 1. **Fundamental right.** The right of an individual to pursue a lawful occupation is a fundamental right.

Subd. 2. **Scope of right.** The fundamental right of an individual to pursue a lawful occupation includes:

1. The right of an individual with a criminal record to petition the state to obtain a certification, occupational license, or other state recognition of the individual's personal qualifications (hereafter "state recognition"); and
2. The state not using a criminal record as an automatic or mandatory permanent bar to an individual's receiving state recognition.

Subd. 3. **Petition.** An individual with a criminal record may petition a board, agency, department or other state or local issuer of certifications, occupational licenses or other certificates of occupational regulations (hereafter "board") at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 4. **Content.** The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

Subd. 5. **Additional content.** The individual may include additional information about the individual's current circumstances, including the time since the offense, completion of the criminal sentence, other evidence of rehabilitation, testimonials, employment history, employment aspirations, and relevant personal information including the individual's family responsibilities.

Subd. 6. **Board action.** The board will determine whether the individual's criminal record disqualifies the individual from obtaining state recognition.

Subd. 7. **Board review.** The board will find the individual's criminal record disqualifies the individual from obtaining state recognition only if the board concludes the state has an important interest in protecting public safety that is superior to the individual's right to pursue a lawful occupation.

Subd. 8. **Criteria.** The board will make the conclusion in subdivision 7 only if it determines, by clear and convincing evidence at the time of the petition and after weighing the individual's current circumstances in subdivision 5, that the individual will not meet the moral standards in the applicable occupational regulation because:

1. A felony or violent misdemeanor for which the individual was convicted is substantially related to the state's interest in protecting public safety; and

2. The granting of state recognition will be put the individual in a position where the individual is more likely than not to reoffend and cause harm.

Subd. 9. **Additional criteria.** In making its conclusion in subdivision 7, the board will not consider a conviction that occurred more than three years before the date of the petition except for a conviction of:

1. A felony crime of violence as defined by statute section _____;
2. An offense related to a criminal sexual act as defined by statute section _____; or
3. A subsequent felony or violent misdemeanor during the three-year period.

Subd. 10. **Rule of Lenity.** (a) An ambiguity in an occupational regulation relating to an individual's moral standing or criminal history will be resolved in favor of the individual.

(b) In no case will an undefined term in an occupational regulation relating to the individual's moral standing, including moral turpitude or good character, be used to disqualify an individual from state recognition.

Subd. 11. **Determination.** The board will issue its determination within 90 days after the board receives the petition. The determination will be in writing and include the criminal record, findings of fact and conclusions of law.

Subd. 12. **Preliminary decision.** If the board determines the state's interest is superior to the individual's right, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition reflecting the completion of the remedies at any time after 90 days following the board's judgment.

Subd. 13. Appeal. The individual may appeal the board's determination in subdivision 7 as provided for in the state's administrative procedure act.

Subd. 14. **Reapply.** The individual may submit a new petition to the board at any time after two years following a final judgment in the initial petition.

Subd. 15. **Reversal.** The board may rescind its determination at any time if the individual is convicted of an additional offense that the Board determines meets the elements in subdivision 8.

Subd. 16. **Cost.** The board may charge a fee to recoup its costs not to exceed \$100 for each petition.

Subd. 17. **Reporting.** The Department of _____ will establish an annual reporting requirement of the (a) number of applicants petitioning each board, (b) the numbers of each board's approvals and denials, (c) the type of offenses for which each board approved or denied the petitions and (d) other data the Department determines. The Department will compile and publish annually a report on a searchable public website.

100.03 Effective date. This chapter is effective on _____.

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