

Collateral Consequences in Occupational Licensing Act. (CCOLA)

Model Legislation

October 20, 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. **Government certification.** "Government certification" is a voluntary program in which the state grants nontransferable recognition to an individual who meets personal qualifications established by the legislature. Upon receiving initial and continuing approval from the government, the individual may use "government certified" or "state certified" as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "government certified" or "state certified." In this chapter, the term "government certification" is not intended to be synonymous with "occupational license" or to reflect credentials, such as those used for medical board certification or held by a certified public accountant, which are prerequisites to working lawfully in an occupation

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 government 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 character, 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 the right of the individual with a criminal record to petition the state to obtain a government certification, occupational license, or other state recognition of the individual's personal qualifications (hereafter "state recognition").

Subd. 3. **No automatic bar.** A board, agency, department or other state agency (hereafter "board") will not automatically bar an individual from state recognition because of a criminal record but will offer a process to petition the board for individualized consideration.

Subd. 4. **Petition.** An individual with a criminal record may petition a board at any time, including before obtaining any required education or training, for a decision of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 5. **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. 6. **Additional content.** The individual may include additional information about the individual's current circumstances, including the (a) time since the offense, (b) completion of the criminal sentence, (c) a certificate of rehabilitation or good conduct, (d) completion of, or active participation in, rehabilitative drug or alcohol treatment, (e) testimonials and recommendations including a progress report from the individual’s probation or parole officer, (f) other evidence of rehabilitation, (g) training, (h) employment history, (i) employment aspirations, and (j) personal information including the age of the individual when the individual committed the offense and the individual’s current family responsibilities.

Subd. 7. **Excluded information.** The board will not consider:

1. Non-conviction information including information related to a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
2. A conviction that has been sealed, dismissed, expunged or pardoned;
3. A juvenile adjudication;

4. A non-violent misdemeanor; or
5. A conviction that occurred more than three years before the date of the petition except for a conviction of:
 - a. A felony crime of violence as defined by statute section ____; or
 - b. A felony related to a criminal sexual act as defined by statute section _____.

Subd. 8. **Hearing.** The board will hold a public hearing, should the individual request one, pursuant to section ____ of the state's administrative procedure act.

Subd. 9. **Board action.** The board will decide whether the individual's criminal record disqualifies the individual from obtaining state recognition.

Subd. 10. **Test.** (a) In making its decision on the petition, the board will consider the individual's current circumstances in subdivision 6.

(b) The board will find the individual's criminal record disqualifies the individual from state recognition only if the board determines the state has an important interest in protecting public safety by denying the petition that is superior to the individual's fundamental right to pursue a lawful occupation.

(c) The board may deny the petition only if it establishes by clear and convincing evidence that:

1. The individual was convicted of a felony or violent misdemeanor, not excluded by subdivision 7, which is directly, substantially and adversely related to the state's interest in protecting public safety; and
2. The granting of state recognition will put the individual in a position where the individual is more likely than not to reoffend and cause harm.

Subd. 11. **Rule of Lenity.** (a) An ambiguity in an occupational regulation relating to a board's use of an individual's criminal record will be resolved in favor of the individual.

(b) The board will not use an undefined term in an occupational regulation relating to the individual's moral character, including (i) a crime of moral turpitude or (ii) character and fitness, to disqualify an individual from state recognition.

Subd. 12. **Decision.** The board will issue its decision no later than 90 days after the board receives the petition. The decision will be in writing and include the criminal record, findings of fact and conclusions of law.

Subd. 13. **Alternative advisory decision.** If the board decides the state's interest in protecting public safety is superior to the individual's fundamental right to pursue a lawful occupation, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisory decision.

Subd. 14. **Appeal.** The individual may appeal the board's decision in subdivision 12 as provided for in the state's administrative procedure act.

Subd. 15. **Reapply.** The individual may submit a new petition to the board not before one year following a final judgment on the initial petition.

Subd. 16. **Reversal.** The board may rescind a favorable decision at any time if the individual is convicted of an additional offense that causes the Board to change its decision in subdivision 9.

Subd. 17. **Cost.** The board may charge a fee to recoup its costs not to exceed \$100 for each petition.

Subd. 18. **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. Limitation. Nothing in the chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

100.04. Effective date. This chapter is effective on _____.

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