

Collateral Consequences in Occupational Licensing Act (CCOLA) Model Legislation

August 4, 2021

A bill for an act to reduce offenders' disqualifications from occupational regulations; to provide a pre-recognition petition regarding the same; and proposing coding for new law as _____, chapter _____.

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

100.01 Definitions. For purposes of this chapter, the words defined in this section have the meaning given.

Subd. 1. **Board.** The "board" means a government agency responsible for granting, denying, diminishing, limiting, suspending, revoking, refusing to renew, and otherwise withholding state recognition.

Subd. 2. **Executive director.** The "executive director" means the government employee responsible for the enforcement of state recognition or the government employee to whom the executive director delegates specific authority to perform responsibilities under this chapter.

Subd. 3. **Government certification.** "Government certification" means a voluntary, government-granted, and nontransferable recognition to an individual who meets personal qualifications related to a lawful occupation. Upon the government's initial and continuing approval, the individual may use "government certified" or "state certified" as a title. A non-certified individual also may 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 synonymous with "occupational license." It also does not include credentials, such as those used for medical-board certification or held by a certified public accountant, that are prerequisites to working lawfully in an occupation.

Subd. 4. **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. 5. **Occupational license.** "Occupational license" means a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications. 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. 6. **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. 7. **Personal qualifications.** “Personal qualifications” are criteria related to an individual’s personal background and characteristics. They may include one or more of the following: completion of an approved educational program, satisfactory performance on an examination, work experience, apprenticeship, other evidence of attainment of requisite skills or knowledge, criminal record, and completion of continuing education.

Subd. 8. **State recognition.** “State recognition” means the government’s grant or renewal of an occupational title or authorization to work in a lawful occupation. It includes government certification, an occupational license, and other recognition of an individual’s personal qualifications.

100.02 Fundamental right. The right of an individual to pursue a lawful occupation is a fundamental right.

100.03 Consideration of criminal records.

Subd. 1. **Scope.** Notwithstanding any other law, executive directors and boards will use only this chapter to deny, diminish, limit, suspend, revoke, refuse to renew, or otherwise withhold state recognition because of a criminal conviction or question of character.

Subd. 2. **No automatic bar.** Neither the executive director or board will automatically bar an individual from state recognition because of a criminal record but will provide individualized consideration of the individual’s criminal record and current circumstances under section 100.05.

Subd. 3. **Included criminal records.** The executive director and the board may consider only a conviction of a non-excluded crime that is a felony or violent misdemeanor.

Subd. 4. **Excluded criminal records.** Neither the executive director nor the board will consider, nor require an individual to disclose:

1. a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
2. a conviction for which no sentence of incarceration can be imposed;

3. a conviction that has been sealed, annulled, dismissed, expunged or pardoned;
4. a juvenile adjudication;
5. a non-violent misdemeanor; or
6. a conviction older than three years for which the individual was not incarcerated, or a conviction for which the individual's incarceration ended more than three years before the date of the board's consideration except for a conviction of a felony related to:
 - a. a criminal sexual act;
 - b. criminal fraud or embezzlement;
 - c. aggravated assault;
 - d. aggravated robbery;
 - e. aggravated abuse, neglect or endangerment of a child;
 - f. arson;
 - g. carjacking;
 - h. kidnapping; or
 - i. manslaughter, homicide, and murder.

100.04 Authority. Without further review from the board, the executive director has the authority to (a) grant state recognition or (b) choose to not deny, diminish, limit, suspend, revoke, refuse to renew or otherwise withhold state recognition because of a criminal conviction or question of character.

100.05 Test. (a) The executive director or the board shall deny, diminish, limit, suspend, revoke, refuse to renew, or otherwise withhold state recognition only if it is determined that:

1. The individual's non-excluded criminal record directly and specifically relates to the duties and responsibilities of the occupation; and
2. Granting the individual state recognition would pose a direct and substantial risk to public safety because the individual has not been rehabilitated, per the criteria in (b), to safely perform the duties and responsibilities of the occupation.

(b) To determine if an individual has not been rehabilitated, the individual's current circumstances and mitigating factors shall be considered, including:

1. the age of the individual when the individual committed the offense;
2. the time elapsed since the offense;

3. the circumstances and nature of the offense;
4. the completion of the criminal sentence;
5. a certificate of rehabilitation or good conduct;
6. completion of, or active participation in, rehabilitative drug or alcohol treatment;
7. testimonials and recommendations, which may include a progress report from the individual's probation or parole officer;
8. other evidence of rehabilitation;
9. education and training;
10. employment history;
11. employment aspirations;
12. the individual's current family responsibilities;
13. whether the individual will be bonded in the occupation; and
14. other information the individual submitted to the board.

(c) The executive director and the board have the burden of making any adverse decision with clear and convincing evidence.

(d) The executive director and the board shall not use a vague term in its consideration and decision including:

1. good moral character;
2. moral turpitude; or
3. character and fitness.

(e) An ambiguity in an occupational regulation relating to the board or executive director's use of an individual's criminal record will be resolved in favor of the individual.

100.06 Process for an adverse decision. (a) The executive director and the board may deny, diminish, limit, suspend, revoke, refuse to renew, or otherwise withhold state recognition based in whole or in part on an individual's criminal record only by using the test in section 100.05 in the following process:

1. the executive director issues a preliminary adverse decision;
2. the board makes a final written decision; and
3. the individual has the right to appeal the board's final decision.

(b) The executive director must first issue a preliminary adverse decision to deny, diminish, limit, suspend, revoke, refuse to renew or otherwise withhold state recognition prior to the board's consideration.

1. The executive director must request an informal meeting with the individual prior to issuing the preliminary adverse decision.
2. The individual may have family members, friends, prospective employers, probation or parole officers, rehabilitation counselors, and other character witnesses offer their verbal or written support at the informal meeting.
3. The informal meeting may be held in person, by remote video, or by teleconference.
4. In circumstances of an individual applying for state recognition, the informal meeting shall be held within 60 days after receiving an individual's application.
5. The executive director shall not make an adverse inference from an individual's decision not to attend an informal meeting or to not include witnesses at the meeting.
6. The executive director shall promptly issue a decision in writing as to whether to (a) approve state recognition or decline to take adverse action against the individual's state recognition or (b) issue a preliminary adverse decision.
7. The executive director shall issue the decision within 60 days after the complete submission of the issue for consideration or the informal meeting, whichever is later.
8. The executive director shall submit any preliminary adverse decision to the board for its consideration.

(c) A preliminary adverse decision shall not become final without consideration and ratification by the board.

1. If the individual receives a preliminary adverse decision by the executive director, the individual may request the board overturn that preliminary decision. The request to the board may include additional or revised information.
2. The individual is entitled to a hearing before the board, including witnesses. The hearing shall be compliant with section _____ of the state's administrative procedure act.
3. The board shall issue a final written decision.

(d) The individual may appeal the board's decision as provided for in section _____ of the state's administrative procedure act. The board must inform the individual of the right to appeal the decision by the board to deny, diminish, limit, suspend, revoke, refuse to renew or otherwise withhold state recognition.

100.07 Pre-Determination Process Prior to Obtaining Personal Qualifications.

Subd. 1. **Petition.** An individual with a criminal record may petition at any time, including while incarcerated or before obtaining any required personal qualifications, for a decision as to whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 2. **Content.** The individual will include in the petition the individual's criminal record or authorize the executive director and the board to obtain the individual's criminal record.

Subd. 3. **Process.** The executive director and the board will make its decision using the test in section 100.05 and process in section 100.06.

Subd. 4. **Binding effect.** A decision concluding that state recognition should be granted or granted under certain conditions is binding on the executive director and the board in any later ruling on state recognition of the petitioner unless there is a material and adverse change that is directly and specifically related to the petitioner's criminal record.

Subd. 5. **Alternative advisory decision.** If the board decides that state recognition should not be granted, the board shall advise the petitioners of any actions the petitioner may take to remedy the disqualification.

Subd. 6. **Reapplication.** The petitioner may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisory decision.

Subd. 8. **Reapply.** The petitioner may submit a new petition to the board not before one year following a final judgment on the initial petition or upon obtaining the required personal qualifications, whichever is earlier.

Subd. 9. **Cost.** The board may charge a fee to the petitioner to recoup its costs not to exceed \$100 for each petition. If the applicant's income at the time of application is at or below 300 percent of the federal poverty level used to determine indigency by the district court of the state, the fee shall be waived.

100.08 Reporting. (a) The Department of _____ will establish an annual reporting requirement of the:

1. the number of applicants for each state recognition, and of that number, the number granted state recognition and the number denied state recognition;
2. the number of candidates for each state recognition examination, and of that number, the number who passed and the number who failed the examination;
3. the number of applicants for each state recognition or recognition renewal with a criminal record, and of that number, the number of times that each board acted to grant the application or to deny, diminish, suspend, revoke, withhold, refuse to renew or otherwise limit state recognition because of an individual's criminal conviction;
4. offenses for which each board acted in subparagraph 3;
5. number of applicants petitioning each board under section 100.07,
6. numbers of each board's approvals and denials under section 100.07,
7. offenses for which each board approved or denied petitions under section 100.07, and
8. other data the Department determines.

(b) The Department will compile and publish annually a report on a searchable public website.

100.09 Standardization. Within one year of enactment of this act, all boards must update their regulations, forms, and all other public-facing documents, explain on their website the new law and availability of a pre-determination process, and eliminate language that conflicts with or contradicts this act.

100.10 Limitations. (a) Nothing in this chapter shall be construed to change a board’s authority to enforce other conditions of state recognition, including the personal qualifications required to obtain recognition or compliance with other regulations.

(b) Nothing in this chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.

100.11 Effective date. This chapter is effective on _____.

Contact information:

Lee McGrath
Senior Legislative Counsel
lmcgrath@ij.org

Meagan Forbes
Legislative Counsel
mforbes@ij.org

Institute for Justice
520 Nicollet Mall-Suite 550
Minneapolis MN 55402-2626
Office: (612) 435-3451
Website: www.ij.org/legislation