

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 770
Committee Substitute Favorable 4/29/19
Committee Substitute #2 Favorable 5/2/19
PROPOSED SENATE COMMITTEE SUBSTITUTE H770-PCS40487-BH-22

Short Title: Freedom to Work/OLB Reform.

(Public)

Sponsors:

Referred to:

April 16, 2019

A BILL TO BE ENTITLED

AN ACT TO CLARIFY AND SIMPLIFY A LICENSEE'S QUALIFICATIONS FOR
LICENSURE AND TO REQUIRE RECOGNITION BY LICENSING BOARDS OF
CERTAIN APPRENTICESHIP AND TRAINING EXPERIENCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-173.2(d) reads as rewritten:

"(d) Unless modified or revoked, a Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding ~~may~~ shall consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification."

SECTION 2. G.S. 93B-1 reads as rewritten:

§ 93B-1. Definitions.

As used in this ~~Chapter~~ Chapter, the following definitions apply:

~~"License" means any~~

(1) License. – Any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

~~"Occupational licensing board" means any~~

(2) Occupational licensing board. – Any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, ~~and/or~~ and the conduct of persons within, a particular profession or occupation, and which is authorized to issue ~~licenses;~~ licenses. The phrase "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.

(3) State agency licensing board. – Any State agency staffed by full-time State employees, which as part of their regular functions issue licenses. The following is a nonexclusive list of State agency licensing boards and the profession or occupation for which the board, agency, or officer may issue licenses:

a. The Department of Agriculture and Consumer Services.



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1. Commissioner of Agriculture.
 - I. Scale Technician. Article 6 of Chapter 81A of the General Statutes.
 - II. Seed Dealer. Article 31 of Chapter 106 of the General Statutes.
 - III. Livestock Dealer. Article 35B of Chapter 106 of the General Statutes.
2. North Carolina Pesticide Board.
 - I. Pesticide Applicators and Pesticide Dealers. Parts 3 and 4 of Article 52 of Chapter 143 of the General Statutes.
3. North Carolina Board of Agriculture.
 - I. Boarding Kennel Operator and Pet Shop Owner. Article 3 of Chapter 19A of the General Statutes.
 - II. Poultry, Hatcheries, and Chick Dealers. Article 40 of Chapter 106 of the General Statutes.
4. Structural Pest Control Committee.
 - I. Exterminator and Structural Pest Control Applicator. Article 4C of Chapter 106 of the General Statutes.
- b. The Department of Environmental Quality.
 1. Well Contractors Certification Commission.
 - I. Well Contractor. Article 7A of Chapter 87 of the General Statutes.
- c. The Department of Health and Human Services.
 1. North Carolina Medical Care Commission.
 - I. Ambulance Attendant, Emergency Medical Technician. Article 7 of Chapter 131E of the General Statutes.
- d. The Department of Insurance.
 1. Commissioner of Insurance.
 - I. Bail Bond Runner, Professional Bondsman, Surety Bondsman. Article 71 of Chapter 58 of the General Statutes.
 - II. Insurance Agent, Insurance Company Adjuster, Motor Vehicle Damage Appraiser, Self-Employed Insurance Adjuster. Article 33 of Chapter 58 of the General Statutes.
 2. Code Officials Qualifications Board.
 - I. Building Inspector, Code Enforcement Official, Electrical Inspector, Fire Inspector, Mechanical Inspector, Plumbing Inspector. Article 9C of Chapter 58 of the General Statutes.
 3. Home Inspection Licensure Board.
 - I. Home Inspector. Article 9F of Chapter 143 of the General Statutes.
 4. Manufactured Housing Board.
 - I. Manufactured Housing Salesperson. Article 9A of Chapter 143 of the General Statutes.
- e. The Department of Justice.
 1. North Carolina Sheriffs' Education and Training Standards Commission.
 - I. Justice Officer. Chapter 17E of the General Statutes.

- 1 2. North Carolina Criminal Justice Education and Training
- 2 Standards Commission.
- 3 I. Law Enforcement Officer. Article 1 of Chapter 17C of
- 4 the General Statutes.
- 5 f. The Department of Labor.
- 6 1. Boiler Safety Bureau.
- 7 I. Boiler Inspector. Article 7A of Chapter 95 of the
- 8 General Statutes.
- 9 g. The Department of Public Instruction.
- 10 1. State Board of Education.
- 11 I. Teacher, Principal, Superintendent. Article 71E of
- 12 Chapter 115C of the General Statutes.
- 13 h. The Department of Public Safety.
- 14 1. Alcohol Law Enforcement Branch.
- 15 I. Boxer, Kickboxer, Mixed Martial Arts, Promoter.
- 16 Article 8 of Chapter 143 of the General Statutes.
- 17 2. The Alcohol Beverage Control Board.
- 18 I. Alcoholic Beverage Distributor. Article 9 of Chapter
- 19 18B.
- 20 3. Private Protective Services Board.
- 21 I. Counter Intelligence Licensee, Guard Dog Service
- 22 Operator, Polygraph Examiner, Private Investigator,
- 23 Psychological Stress Evaluator, Security Guard, and
- 24 Patrol Licensee. Article 1 of Chapter 74C of the
- 25 General Statutes.
- 26 i. The Department of the Secretary of State.
- 27 1. The Secretary of State.
- 28 I. Athletic Agent. Article 9 of Chapter 78C of the General
- 29 Statutes.
- 30 II. Investment Advisor. Article 3 of Chapter 78C of the
- 31 General Statutes.
- 32 III. Securities Broker, Securities Dealer, Security
- 33 Salesman. Article 5 of Chapter 78A of the General
- 34 Statutes.
- 35 IV. Professional Solicitor. Article 3 of Chapter 131F of the
- 36 General Statutes.
- 37 j. The Department of Transportation.
- 38 1. Division of Motor Vehicles.
- 39 I. New and Used Motor Vehicle Dealer, Motor Vehicle
- 40 Sales Representative, Distributor, Distributor Branch,
- 41 Distributor Representative, Wholesaler. Article 12 of
- 42 Chapter 20 of the General Statutes.
- 43 II. Commercial Driver, Truck Driver. Article 2 of Chapter
- 44 20 of the General Statutes.
- 45 III. Safety Inspection Mechanic. Article 3A of Chapter 20
- 46 of the General Statutes."

47 **SECTION 3.** G.S. 93B-2 reads as rewritten:

48 "(a) No later than October 31 of each year, each occupational licensing board shall file

49 electronically with the Secretary of State, the Attorney General, and the Joint Legislative

50 Administrative Procedure Oversight Committee an annual report containing all of the following

51 information:

1 ...

2 (9a) The number of applicants for a license and, of that number, the number
3 granted a license.

4 (9b) The number of applicants with a conviction record and, of that number, the
5 number granted a license, denied a license for any reason, and denied a license
6 because of a conviction.

7 ...

8 (e) No later than October 31 of each year, each State agency licensing board shall file
9 electronically with the Secretary of State, the Attorney General, and the Joint Legislative
10 Administrative Procedure Oversight Committee an annual report containing all of the following
11 information:

12 (1) The number of applicants for a license and, of that number, the number
13 granted a license.

14 (2) The number of applicants with a conviction record and, of that number, the
15 number granted a license, denied a license for any reason, and denied a license
16 because of a conviction."

17 **SECTION 4.** G.S. 93B-8.1 reads as rewritten:

18 **"§ 93B-8.1. Use of criminal history records.**

19 (a) The following definitions apply in this section:

20 (1) Applicant. – A person who makes application for licensure from an
21 occupational licensing board.

22 (2) Board. – An occupational licensing board or a State agency licensing board as
23 defined in G.S. 93B-1.

24 (3) Criminal history record. – A State or federal history of conviction of a crime,
25 whether a misdemeanor or felony, that bears upon an applicant's or a licensee's
26 fitness to be licensed or disciplined.

27 (4) Licensee. – A person who has obtained a license to engage in or represent
28 himself or herself to be a member of a particular profession or occupation.

29 (b) ~~Unless the law governing a particular occupational licensing board provides~~
30 ~~otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal~~
31 ~~history. If the board is authorized to deny a license to an applicant on the basis of conviction of~~
32 ~~any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's~~
33 ~~verified criminal history record reveals one or more convictions of any crime, the board may~~
34 ~~deny the license if it finds that denial is warranted after consideration of the~~ Unless federal law
35 governing a particular board provides otherwise, a board may deny an applicant on the basis of
36 a conviction of a crime only if the board finds that the applicant's criminal conviction history is
37 directly related to the duties and responsibilities for the licensed occupation or the conviction is
38 for a crime that is violent or sexual in nature. Notwithstanding any other provision of law, a board
39 shall not automatically deny licensure on the basis of an applicant's criminal history, and no board
40 may deny an applicant a license based on a determination that a conviction is for a crime of moral
41 turpitude. The board shall make its determination based on the factors specified in subsection
42 (b1).

43 (b1) Before a board may deny an applicant a license due to a criminal conviction under
44 subsection (b) of this section, the board must specifically consider all of the following factors:

45 (1) The level and seriousness of the crime.

46 (2) The date of the crime.

47 (3) The age of the person at the time of the crime.

48 (4) The circumstances surrounding the commission of the crime, if known.

49 (5) The nexus between the criminal conduct and the prospective duties of the
50 applicant as a licensee.

- 1 (6) The prison, jail, probation, parole, rehabilitation, and employment records of
2 the applicant since the date the crime was committed.
- 3 (6a) The completion of, or active participation in, rehabilitative drug or alcohol
4 treatment.
- 5 (6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2.
- 6 (7) The subsequent commission of a crime by the applicant.
- 7 (8) Any affidavits or other written documents, including character references.
- 8 (b2) If the board denies an applicant a license under this section, the board shall:
- 9 (1) Make written findings specifying the factors in subsection (b1) of this section
10 the board deemed relevant to the applicant and explaining the reason for the
11 denial. The board's presiding officer must sign the findings.
- 12 (2) Provide or serve a signed copy of the written findings to the applicant within
13 60 days of the denial.
- 14 (3) Retain a signed copy of the written findings for no less than five years.
- 15 (b3) Each board shall include in its application for licensure and on its public Web site all
16 of the following information:
- 17 (1) Whether the board requires applicants to consent to a criminal history record
18 check.
- 19 (2) The factors under subsection (b1) of this section which the board shall
20 consider when making a determination of licensure.
- 21 (3) The appeals process pursuant to Chapter 150B of the General Statutes if the
22 board denies an applicant licensure in whole or in part because of a criminal
23 conviction.
- 24 (b4) If a board requires an applicant to submit a criminal history record, the board shall
25 require the provider of the criminal history record to provide the applicant with access to the
26 applicant's criminal history record or otherwise deliver a copy of the criminal history record to
27 the applicant. If an applicant's criminal history includes matters that will or may prevent the board
28 from issuing a license to the applicant, the board shall notify the applicant in writing of the
29 specific issues in sufficient time for the applicant to provide additional documentation supporting
30 the application for consideration by the board prior to any final decision to deny the application.
31 After being notified of any potential issue with licensure due to criminal conviction(s), an
32 applicant shall have 30 days to respond by either correcting any inaccuracy in the criminal history
33 record or submitting evidence of mitigation or rehabilitation for consideration by the board.
- 34 (b5) If, following a hearing, a board denies an application for licensure, the board's written
35 order shall include specific reference to any criminal conviction(s) considered as part or all of
36 any basis for the denial and the rationale for the denial, as well as a reference to the appeal process
37 and the applicant's ability to reapply. No applicant shall be restricted from reapplying for
38 licensure for more than two years from the date of the most recent application.
- 39 (b6) Notwithstanding any other provisions in the law, an individual with a criminal history
40 may petition a board at any time, including before an individual starts or completes any
41 mandatory education or training requirements, for a predetermination of whether the individual's
42 criminal history will likely disqualify the individual from obtaining a license. This petition shall
43 include a criminal history record report obtained by the individual from a reporting service
44 designated by the board, the cost of which shall be borne by the applicant. Criminal history
45 records relating to a predetermination petition shall not be considered public records under
46 Chapter 132 of the General Statutes. A board may predetermine that the petitioner's criminal
47 history is likely grounds for denial of a license only after the board has applied the requirements
48 of subsection (b) of this section. Each board shall delegate authority for such a predetermination
49 to its Executive Director or their equivalent, or a committee of the board, so that the
50 predeterminations can be made in a timely manner. No board member having served on a
51 predetermination committee for an individual shall be required to recuse in any later

1 determinations or hearings involving the same applicant. The board shall inform the individual
2 of the board's determination within 45 days of receiving the petition from the individual. The
3 board may charge a fee to recoup its costs not to exceed forty-five dollars (\$45.00) for each
4 petition. If the board determines an applicant would likely be denied licensure based on their
5 criminal history, the board shall notify the individual in writing of the following:

6 (1) The grounds and reasons for the predetermination.

7 (2) That the petitioner has the right to complete any requirements for licensure
8 and apply to the board and have their application considered by the board
9 under its application process.

10 (3) That further evidence of rehabilitation will be considered upon application.

11 (b7) A predetermination made under this section that a petitioner's criminal history would
12 likely prevent them from licensure is not a final agency decision and shall not entitle the
13 individual to any right to judicial review under Article 4 of Chapter 150B of the General Statutes.

14 (b8) A predetermination made under subsection (b6) of this section that a petitioner is
15 eligible for a license shall be binding if the petitioner applies for licensure and fulfills all other
16 requirements for the occupational license and the applicant's submitted criminal history was
17 correct and remains unchanged at the time of application for a license.

18 (c) The board may deny licensure to an applicant who refuses to consent to a criminal
19 history record check or use of fingerprints or other identifying information required by the State
20 or National Repositories of Criminal Histories.

21 (d) This section does not apply to The North Carolina Criminal Justice Education and
22 Training Standards Commission and the North Carolina Sheriffs' Education and Training
23 Standards Commission."

24 **SECTION 5.** Chapter 93B of the General Statutes is amended by adding a new
25 section to read:

26 **"§ 93B-8.6. Recognition of apprenticeships and training.**

27 (a) The following definitions shall apply in this section:

28 (1) Apprenticeship. – A program that meets the federal guidelines for registered
29 apprenticeships set out in 29 C.F.R. Part 29 and 29 U.S.C. § 50. An
30 apprenticeship can be completed under a State-licensed practitioner of that
31 occupation or at a State-licensed school.

32 (2) Career technical education. – Programs of study, clusters, and pathways
33 approved by the North Carolina State Board of Education or the State Board
34 of Community Colleges.

35 (3) Licensing. – Any required training, education, or fee to work in a specific
36 profession.

37 (b) Unless otherwise required by federal law, including requirements pertaining to
38 eligibility for federal grant funding, an occupational licensing board shall grant a license to any
39 applicant who meets the following criteria:

40 (1) Completed an apprenticeship approved by the North Carolina State
41 Approving Agency or federal Department of Labor, or otherwise permitted
42 under State or federal law.

43 (2) Passed an examination, if one is deemed to be necessary by the licensing
44 authority.

45 (3) With the exception of any prelicensing education requirements, has met any
46 other requirements for licensure set forth in the law or rules related to the
47 particular board.

48 (b1) This section shall not apply to occupational licensing boards governing professions
49 requiring advanced knowledge acquired by a prolonged course of specialized intellectual study,
50 including those requiring a bachelor's or advanced degree.

1 (c) Each occupational licensing board shall establish a passing score for the board's
2 examinations which shall not exceed the passing score that is required under the board's standard
3 licensing processes. If the relevant law or rule does not require an examination for the standard
4 licensing process, no examination may be required for applicants who complete an
5 apprenticeship in that occupation. Except as otherwise required by federal law, apprenticeships
6 for an occupation shall not be required to exceed the number of hours required by the relevant
7 licensing authority or statute for that occupation.

8 (d) Applicants for licensure shall be permitted to apply training hours earned through
9 career technical education provided by North Carolina public schools and colleges towards the
10 requirements for licensure in the same occupation in accordance with the standards and
11 procedures authorized in accordance with this Chapter.

12 (e) The State Board of Community Colleges and occupational licensing boards shall
13 adopt rules for the implementation of this section."

14 **SECTION 6.** This act becomes effective October 1, 2019, and applies to Certificates
15 of Relief granted or applications for licensure submitted on or after that date.