

**Sec. 1. Policy.**

The Legislature finds and declares that reducing barriers to employment for people with arrest and conviction records, and decreasing unemployment in communities with concentrated numbers of people with records, are matters of statewide concern. The Legislature further finds and declares that increasing employment opportunities for people with records will reduce recidivism and improve economic stability in our communities.

**Sec. 2. Availability and use of criminal record information.**

(a) The information listed in subsections (1)-(6) shall not be used, distributed, or disseminated by the State, its agents, or political subdivisions in connection with an application for a license or certification. ~~The information listed in subsections (5)-(6) shall not be automatically disqualify any individual from approval of an application to the State, its agents, or political subdivisions for a license.~~ Offenses committed outside the State shall be classified as offenses committed within the State based on the maximum penalty that could have been imposed for such act under the laws of such foreign jurisdiction.

- (1) Non-conviction information, including information related to a deferred adjudication, participation in a diversion program, an arrest not followed by a valid conviction, or infraction; [or other state- specific non-criminal offense]
- (2) Conviction which has been sealed, dismissed, expunged, or pardoned; [or other state-specific record-clearing terminology]
- (3) Juvenile adjudication;
- (4) Misdemeanor conviction for which no jail sentence can be imposed; [or other state-specific low-level conviction]
- (5) Misdemeanor conviction older than three years, excluding any period of incarceration or custody; and
- (6) Felony conviction older than five years, excluding any period of incarceration or custody.

**Sec. 3. No disqualification from licensed occupations.**

(a) No person shall be disqualified from pursuing, practicing, or engaging in any occupation for which a license or government-issued certification is required, solely or in part because of a prior conviction, unless the conviction is directly related to the occupation for which the license is sought.

**Commented [1]:** We oppose prohibitions on private certification organizations verifying information provided to them by applicants.

**Commented [2]:** The first three categories of criminal record information are, by their nature, not equivalent to a conviction record. We also do not oppose eliminating from licensure consideration petty offenses deemed so minor as to carry no possibility of jail time.

The last two categories are conviction records for offenses that carry jail terms, and the PCC opposes blanket prohibitions of any consideration of that factual history. We believe there should be no prohibition at all on private certification organizations considering these records. Private certification organizations have a First Amendment right to establish the standards for earning their "seal of approval." In addition, the conduct requirements of private professional certifications often overlap with legal requirements that carry criminal penalties. Because a criminal conviction necessarily provides the defendant with substantial due process and carries a high burden of proof, private certification organizations should be able to rely on those factual determinations about an individual's conduct.

As to licensing authorities, we oppose sweeping prohibitions on considering criminal history, regardless of the nature of the crime and the nature of the licensed profession. We do not oppose requiring a licensing agency to conduct an individualized review of each applicant's circumstances. We expect, however, that no licensing agency will grant a financial investment advisor license to an individual who has a conviction for embezzlement or securities fraud, even if the conviction was pled down to a misdemeanor offense or occurred six years prior. Likewise, for physicians or child care workers with convictions for child sexual abuse, a categorical prohibition on use of criminal conviction records based simply on the passage of time goes too far.

**Commented [3]:** This should not reach private certification organization's decisions. Alternatively, delete "or certification."

(b) The applicant who has been convicted of an offense which directly relates to the occupation for which a license is sought shall not be disqualified from the occupation if the applicant can show sufficient mitigation or rehabilitation and present fitness to perform the duties of the occupation for which the license is sought, as determined per Section (6).

~~(b)~~(c) Nothing in this chapter shall be construed to alter a governmental board's authority to enforce other conditions of state recognition, such as eligibility requirements not directly addressing criminal conviction history or compliance with board regulations.

**Commented [4]:** Because Section 3(a) uses the phrasing "solely or in part because," this provision is necessary in order not to create loopholes in otherwise applicable neutral eligibility requirements. If a certification or attainment of an educational degree is required for licensure, for example, the state should be able to reject a license application for failure to meet those requirements, even if an applicant's criminal convictions had some relation to not meeting the eligibility requirement. For example, if an applicant was expelled from – or never admitted – to law school because of a criminal conviction, the state should not be required to admit the individual as a licensed lawyer because the disqualification is, indirectly, "in part because of a prior conviction." This provision is also needed because of the language in Section 9 stating that the statute prevails over other licensing laws.

#### Sec. 4. Consideration of only directly related conviction history.

- (a) Licensing applications shall not include an inquiry about an applicant's conviction history.
- (b) A licensing authority shall not inquire into or consider the conviction history of an applicant for licensing until after an applicant is found to be otherwise qualified for the license.
- (c) After an applicant is found to be otherwise qualified for the license, a licensing authority may inquire into and consider only the directly related conviction history of an applicant as determined pursuant to Section (5).

#### Sec. 5. Determination of directly related convictions.

- (a) A licensing authority shall limit inquiries into an applicant's conviction history to only those convictions determined to be directly related to the occupation for which the license is sought and shall make this enumerated list available to the public and provide a copy to each licensing applicant. A licensing authority shall not inquire into or consider any conviction history beyond the scope of directly related convictions.
- (b) Within six months after this statute takes effect, each licensing authority shall establish a narrowly tailored list of directly related convictions by considering each of the following:
  - (1) The public policy of this State, as expressed in this act, to encourage the licensure of people with arrest and conviction records;
  - (2) Whether the elements of the offense are directly related to the specific duties and responsibilities of that occupation;
  - (3) Whether the occupation offers the opportunity for the same or a similar offense to occur; and
  - (4) The relationship of the offense to the purposes of regulating the occupation for which the license is sought; and

- (5) The length of time since the offense occurred.

**Sec. 6. Sufficient mitigation or rehabilitation and fitness for occupation.**

(a) ~~A licensing authority shall not, on the basis of an applicant's conviction record, disqualify a~~ An applicant with a directly related conviction ~~shall not be disqualified~~ from the occupation for which a license is sought if the applicant can establish sufficient mitigation or rehabilitation and fitness to perform the duties of the occupation. ~~Such evidence may include by providing either of~~ the following:

- (1) Evidence showing that at least one year has elapsed since release from any correctional institution without subsequent conviction of a crime; and evidence showing compliance with all terms and conditions of probation or parole; ~~and~~
- (2) Any other evidence of mitigation or rehabilitation and present fitness provided, including, but not limited to:
  - (i) Circumstances relative to the offense, including mitigating circumstances or social conditions surrounding the commission of the offense;
  - (ii) Age of the person at the time the offense was committed;
  - (iii) The length of time since the offense occurred;
  - (iv) Evidence of work history, particularly any training or work experience related to the occupation in question; or
  - (v) Letters of reference by persons who have been in contact with the applicant since the applicant's release from any local, state, or federal correctional institution.

~~(b) The applicant must also provide information about the applicant's activities since the conviction as well as additional information requested by the licensing authority that is relevant to the licensing authority's determination of the sufficiency of the evidence of mitigation or rehabilitation and fitness to perform the duties of the occupation. The applicant must also disclose any pending charges against the applicant at the time of the application and during the licensing authority's consideration of the application.~~

**Sec. 7. Notice of potential disqualification and opportunity to appeal.**

(a) If a licensing authority intends to disqualify an applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part ~~because on the basis~~ of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following, prior to a final decision:

**Commented [5]:** Clarifying that this restriction applies to licensing authorities and also applies to decisions made on the basis of the conviction record, not on the basis of other factors.

**Commented [6]:** The critical point here is that it is sufficient evidence. The current phrasing suggests that simply providing evidence in the listed items in Section 6(a)(2) will automatically preclude disqualification. There needs to be a determination that the evidence is sufficient, not just a submission of a letter of reference and citation to the individual's age.

**Commented [7]:** It is our view that this should not be sufficient to entitle an applicant to a license, but it should be taken into consideration. If Section 6(a)(1) is sufficient evidence of mitigation, it would preclude denial of a license if over a year has passed since an individual's release from incarceration, even if the individual is currently being prosecuted for a repeat offense.

**Commented [JJE8]:** This information will assist the licensing authority in making an evidence-based determination. The applicant may include educational programs, counseling, volunteer work, etc. In addition, it is relevant to the licensing authority's determination whether there are pending charges that may result in conviction.

- (1) Identify the directly related conviction item(s) that form the basis for the potential disqualification and the rationale for occupation relatedness;
  - (2) Provide a copy of the conviction history report, if any, on which the licensing authority relies; and
  - (3) Provide examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide, which are described in Section (6).
- (b) After receiving the notice of potential disqualification, the applicant shall have 30 (thirty) business days to respond by challenging the accuracy of the conviction history report and/or submitting evidence of mitigation or rehabilitation. The licensing authority shall make the final decision based on an individualized assessment of the information described in Section (6).
- (c) If a licensing authority disqualifies the applicant from pursuing, practicing, or engaging in any occupation for which a license is required, solely or in part because of the applicant's directly related conviction, the licensing authority shall notify the applicant in writing of the following:
- (1) The final disqualification, including a list of the directly related conviction item(s) that form the basis for the disqualification and the rationale for occupation relatedness;
  - (2) The appeal process; and
  - (3) The earliest date the applicant may reapply for the license or certification, which shall be no longer than two years from the date of the initial application.

**Sec. 8. Compliance.**

- (a) For a minimum of three years, licensing authorities shall retain application forms and other documents submitted by applicants, notices provided to applicants as required by Section (7), all other communications received from and provided to applicants, and conviction history reports of applicants.
- (b) Each licensing authority shall retain the number of applications for each license and the number of applications requiring conviction history inquiries. In addition, each licensing authority shall retain the following information:
  - (1) The number of applicants with a record who received notice of potential disqualification;
  - (2) The number of applicants with a record who provided evidence of mitigation or rehabilitation;

- (3) The number of applicants with a record who appealed the final disqualification; and
  - (4) The final disposition and demographic information of the applicants described in subsections (1)-(3).
- (c) At least annually, each licensing authority shall make available to the public the information collected pursuant to subsection (b), while ensuring confidentiality of the individual applicants.

**Sec. 9. Application.**

The provisions of these sections shall prevail over any other laws and rules, including but not limited to any specific laws and rules, which purport to govern the granting, denial, renewal, suspension, or revocation of a license. In deciding to grant, deny, revoke, suspend, or renew a license, for a lack of good moral character or the like, the licensing authority may consider evidence of conviction of an offense but only in the same manner and to the same effect as provided for in these sections. Nothing in these sections shall be construed to otherwise affect relevant proceedings involving the granting, denial, renewal, suspension, or revocation of a license.