

Regular Session, 2014

HOUSE BILL NO. 1273 (Substitute for House Bill No. 911 by Representative Leger)

BY REPRESENTATIVE LEGER

LICENSIN: Provides relative to the issuance of provisional licenses to ex-offenders in order to work in certain fields

1 AN ACT

2 To enact Chapter 1-B of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 37:31 through 36, relative to licenses to engage in certain fields of work for  
4 persons convicted of certain offenses; to permit persons convicted of certain offenses  
5 to apply for and hold provisional and regular licenses to engage in certain fields of  
6 work; to provide for exceptions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 1-B of Title 37 of the Louisiana Revised Statutes of 1950,  
9 comprised of R.S. 37:31 through 36, is hereby enacted to read as follows:

10 CHAPTER 1-B. PROVISIONAL LICENSES FOR EX-OFFENDERS

11 §31. Short title

12 This Chapter shall be known and may be cited as the "Provisional Licenses  
13 for Ex-Offenders Act".

14 §32. Issuance of licenses to ex-offenders

15 Notwithstanding any provision of law or rule adopted and promulgated by  
16 any state department, agency, board, commission, or authority to the contrary, an  
17 entity issuing licenses, except for those listed in R.S. 37:36(E), for persons to engage  
18 in certain fields of work pursuant to state law shall issue either of the following to  
19 an otherwise qualified applicant who has been convicted of an offense or offenses,  
20 except those described in R.S. 37:36(A) through (C):

1           (1) The license for which the applicant applied if the applicant meets all  
2           other requirements of the licensing qualifications except those pertaining to former  
3           offenses.

4           (2) A provisional license for which the applicant applied if the applicant  
5           meets all other requirements of the licensing qualifications except those pertaining  
6           to former offenses (herein referred to as "applicant" or "holder").

7           §33. Provisional license; issuance; term; probation or parole

8           A.(1) An ex-offender may apply to any entity issuing licenses to engage in  
9           certain fields of work pursuant to state law for a provisional license to engage in the  
10           particular field of work for which the entity issues licenses.

11           (2) The licensing entity shall issue the provisional license for which the  
12           applicant applied.

13           B. The licensing entity issuing the provisional license shall determine the  
14           term for which the provisional license shall be valid; however, in no event shall a  
15           provisional license issued pursuant to this Chapter be valid for fewer than ninety  
16           days or more than three hundred sixty days.

17           C. The licensing entity may require up to two years to have passed since an  
18           applicant's last conviction or release from incarceration in order for the applicant to  
19           qualify for the provisional license.

20           D.(1) An applicant who is on community supervision and who is issued a  
21           provisional license pursuant to this Chapter shall provide the licensing entity the  
22           name and contact information of the person at the Department of Public Safety and  
23           Corrections, division of probation or parole, to whom he reports. If the applicant  
24           reports to the probation or parole department of another state, he shall provide the  
25           licensing entity the name and contact information of the person at that particular  
26           department to whom he reports.

27           (2) The licensing entity shall notify the probation or parole division or  
28           department and court in which the holder's offense was adjudicated that a provisional  
29           license has been issued to the applicant.

1       §34. Provisional license; revocation

2               A. The licensing entity may revoke the provisional license issued pursuant  
3 to this Chapter if the holder commits any of the following:

4                   (1) A new offense.

5                   (2) An act or omission that causes the holder of a provisional license  
6 community supervision, mandatory supervision, or parole to be revoked.

7                   (3) A violation of law or rules governing the practice of the field of work for  
8 which the provisional license was issued.

9               B. A probation or parole department or division shall notify the licensing  
10 entity if the community supervision of the holder of a provisional license is revoked.

11               C. A court shall notify the licensing entity if the holder of the provisional  
12 license is charged with a new offense.

13               D. If a licensing entity revokes a provisional license pursuant to this Section:

14                   (1) The holder shall not be entitled to receive another provisional license or  
15 regular license for which the applicant originally applied, even if otherwise qualified.

16                   (2) The ability of the holder to subsequently obtain another provisional  
17 license from another licensing entity in the future is within the sole discretion of the  
18 issuing entity.

19       §35. Regular license; issuance

20               A. A licensing entity shall issue the regular license for which the provisional  
21 license was issued on the expiration of the provisional license term if the holder of  
22 the provisional license does not commit acts described in R.S. 37:34(A).

23               B. Nothing in this Chapter shall be implicitly interpreted to preclude an  
24 entity from exercising its existing discretion to issue a license to individuals not  
25 covered under this Chapter, except where precluded by another law.

26       §36. Exemptions; prohibitions

27               A. A licensing entity shall not be required to issue a provisional license to  
28 any person convicted of any of the following:

29                   (1) R.S. 14:20, Justifiable homicide.

1           (2) Any grade of homicide enumerated in R.S. 14:29, Homicide.

2           (3) A "crime of violence" as enumerated in R.S. 14:2(B).

3           (4) A "sex offense" as defined by R.S. 15:541.

4           B. A licensing entity shall not be required to issue a provisional license to  
5           any person convicted of an offense involving fraud if the licensed field of work is  
6           one in which the licensee owes a fiduciary duty to a client.

7           C. A licensing entity shall not be required to issue a provisional license to  
8           an applicant whose conviction directly relates to the position of employment sought,  
9           or to the specific field for which the license is required, or profession for which the  
10          provisional license is sought.

11          D. A provisional license holder who supervises children or individuals who  
12          lack mental capacity shall not do so without another licensee in the room at all times.

13          E.(1) This Chapter shall not apply to the following licensing entities:

14          (a) Any law enforcement agency.

15          (b) The Louisiana State Board of Medical Examiners.

16          (c) The Louisiana State Board of Dentistry.

17          (d) The Louisiana State Board of Nursing.

18          (e) The Louisiana State Board of Practical Nurse Examiners.

19          (f) The State Racing Commission.

20          (g) The State Athletic Commission.

21          (h) The Louisiana State Board of Pharmacy.

22          (i) The Louisiana State Supreme Court.

23          (j) The Louisiana Professional Engineering and Land Surveying Board.

24          (k) The Louisiana State Board of Architectural Examiners.

25          (l) The Louisiana State Board of Private Investigator Examiners.

26          (m) The Louisiana State Board of Embalmers and Funeral Directors.

27          (n) The Louisiana State Board of Elementary and Secondary Education.

28          (o) The Office of Financial Institutions.

29          (p) The Louisiana Physical Therapy Board.

1           (q) The Louisiana Board of Massage Therapy.

2           (r) The office of alcohol and tobacco control of the Department of Revenue.

3           (2) Nothing in this Subsection shall be construed to preclude the licensing  
4           entity, in its discretion, from adopting the provisions of this Chapter as policies or  
5           administrative rules.

6           F. If a licensing entity believes that another exemption not provided herein  
7           is necessary in a specific case to protect the public from a clear and imminent  
8           danger, the entity may seek declaratory relief in district court through a judicial order  
9           finding that the applicant shall not be issued a provisional or regular license because  
10          it would pose such a danger.

11          Section 2. This Act shall become effective upon signature by the governor or, if not  
12 signed by the governor, upon expiration of the time for bills to become law without signature  
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
15 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Leger

HB No. 1273

**Abstract:** Requires certain state entities issuing licenses to persons to work in certain fields to issue provisional licenses to certain ex-offenders and full license privileges upon certain conditions.

Proposed law provides that an entity, with certain exceptions, issuing licenses for persons to engage in certain fields of work pursuant to state law shall issue either a full license or a provisional license to an otherwise qualified applicant who has been convicted of a certain offense or offenses.

Proposed law provides that the licensing entity issuing a provisional license shall determine the term for which the provisional license shall be valid; however, in no event shall a provisional license issued pursuant to proposed law be valid for fewer than 90 days or more than 360 days.

Proposed law provides that the licensing entity may require up to two years to have passed since an applicant's last conviction or release from incarceration in order for the applicant to qualify for the provisional license.

Proposed law provides that an ex-offender who is on community supervision and who is issued a provisional license pursuant to proposed law shall provide the licensing entity the name and contact information of the probation or parole department to which he reports.

Proposed law provides that the licensing entity shall notify the probation or parole department and court in which the holder's offense was adjudicated that a provisional license has been issued to the ex-offender.

Proposed law provides that the licensing entity may revoke the provisional license issued pursuant to proposed law if the holder commits any of the following:

- (1) A new offense.
- (2) An act or omission that causes the provisional license holder's community supervision, mandatory supervision, or parole to be revoked.
- (3) A violation of law or rules governing the practice of the field of work for which the provisional license was issued.

Proposed law provides that a probation or parole department or division shall notify the licensing entity if the community supervision of the person holding a provisional license is revoked.

Proposed law provides that a court shall notify the licensing entity if the person holding a provisional license is charged with a new offense.

Proposed law provides that if a licensing entity revokes a provisional license pursuant to proposed law:

- (1) The provisional license holder shall not be entitled to receive another provisional license or regular license for which the applicant originally applied, even if otherwise qualified.
- (2) The ability of the provisional license holder to subsequently obtain another provisional license from another licensing entity in the future is within the sole discretion of the issuing agency.

Proposed law provides that a licensing entity shall issue the regular license for which the provisional license was issued on the expiration of the provisional license term if the holder of the provisional license does not commit a new offense, an act or omission that causes the provisional license holder's community supervision, mandatory supervision, or parole to be revoked, or a violation of law or rules governing the practice of the field of work for which the provisional license was issued.

Proposed law provides that nothing in proposed law shall be implicitly interpreted to preclude an agency from exercising its existing discretion to issue a license to individuals not covered under proposed law, except where precluded by another law.

Proposed law provides that a licensing entity shall not be required to issue a provisional license to a person convicted of any of the following offenses:

- (1) R.S. 14:20, Justifiable homicide.
- (2) Any grade of homicide enumerated in R.S. 14:29, Homicide.
- (3) A "crime of violence" as enumerated in R.S. 14:2(B).
- (4) A "sex offense" as defined by R.S. 15:541.

Proposed law provides that a licensing entity shall not be required to issue a provisional license to a person convicted of an offense involving fraud if the licensed field of work is one in which the licensee owes a fiduciary duty to a client.

Proposed law provides that a licensing entity shall not be required to issue a provisional license to a person whose conviction directly relates to the position of employment sought, or to the specific field for which the license is required, or profession for which the provisional license is sought.

Proposed law provides that a provisional license holder who supervises children or individuals who lack mental capacity shall not do so without another licensee in the room at all times.

Proposed law shall not apply to the following licensing entities:

- (1) Any law enforcement agency.
- (2) The Louisiana State Board of Medical Examiners.
- (3) The Louisiana State Board of Dentistry.
- (4) The Louisiana State Board of Nursing.
- (5) The Louisiana State Board of Practical Nurse Examiners.
- (6) The State Racing Commission.
- (7) The State Athletic Commission.
- (8) The Louisiana State Board of Pharmacy.
- (9) The Louisiana State Supreme Court.
- (10) The Louisiana Professional Engineering and Land Surveying Board.
- (11) The Louisiana State Board of Architectural Examiners.
- (12) The Louisiana State Board of Private Investigator Examiners.
- (13) The Louisiana State Board of Embalmers and Funeral Directors.
- (14) The Louisiana State Board of Elementary and Secondary Education.
- (15) The Office of Financial Institutions.
- (16) The Louisiana Physical Therapy Board.
- (17) The Louisiana Board of Massage Therapy.
- (18) The office of alcohol and tobacco control of the Department of Revenue.

Proposed law provides that nothing in proposed law shall be construed to preclude the exempted licensing entities, in their discretion, from adopting the provisions of proposed law as policies or administrative rules.

Proposed law provides that if a licensing entity believes that another exemption not provided in proposed law is necessary in a specific case to protect the public from a clear and imminent danger, the entity may seek declaratory relief in district court through a judicial

order finding that the applicant should not be issued a provisional or regular license because it would pose such a danger.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 37:31-36)