

2019 Regular Session

HOUSE BILL NO. 503

BY REPRESENTATIVE EDMONDS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LICENSING: Provides relative to licensing qualifications

1 AN ACT

2 To enact Chapter 1-E of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 37:51 through 57 and to repeal Chapter 1-C of Title 37 of the Louisiana
4 Revised Statutes of 1950 comprised of R.S. 37:31 through 36, relative to
5 professional licenses; to create the Fresh Start Act of 2019; to provide with respect
6 to licensing for persons convicted of crimes; to provide for definitions; to provide
7 exceptions; to provide an effective date; to repeal the "Licenses for Ex-Offenders
8 Act"; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 1-E of Title 37 of the Louisiana Revised Statutes of 1950,
11 comprised of R.S. 37:51 through 57, is hereby enacted to read as follows:

12 CHAPTER 1-E. THE FRESH START ACT OF 2019

13 §51. Short title

14 This Act shall be known and may be cited as the "Fresh Start Act of 2019".

15 §52. Legislative findings; purpose

16 The legislature hereby finds all of the following:

17 (1) Studies have shown that an unemployed individual with a criminal record
18 is more likely to re-offend than an employed individual.

19 (2) A higher occupational level, such as being a part of a profession, is likely
20 to be related to a lower risk of recidivism.

1 (3) Removing any obstacles to employment after an individual has repaid his
2 debt to society is in the best interest of the state of Louisiana as a whole and for the
3 individual wishing to rejoin the workforce.

4 §53. Definitions

5 For purposes of this Chapter, the following words or phrases shall be defined
6 as follows:

7 (1) "Crime of violence" means any crime of violence as enumerated in R.S.
8 14:2(B).

9 (2) "Criminal record" means any type of felony or misdemeanor conviction.

10 (3) "License" means a certification from a professional board or commission
11 or from a political subdivision necessary to work in a specific profession.

12 (4) "Licensing entity" means a professional board or commission or political
13 subdivision which issues a license to practice a profession.

14 (5) "Sex offense" means any sex offense as defined by R.S. 15:541.

15 §54. Anti-discrimination; licensing; criminal record; exceptions

16 No person shall be disqualified from pursuing, practicing, or engaging in any
17 occupation for which a license is required solely or in part because of a prior
18 criminal record, unless the crime for which the person was convicted directly relates
19 to the duties and responsibilities for the licensed occupation, is a crime of violence,
20 or is a sex offense.

21 §55. Directives to licensing entity

22 A. Every state licensing entity shall revise existing licensing requirements to
23 explicitly list the specific criminal convictions that may disqualify an applicant from
24 receiving a license. Licensing entities shall not use vague or generic terms including
25 but not limited to "moral turpitude" and "good character" or consider any arrest
26 without a subsequent conviction. Each licensing entity shall only list disqualifying
27 criminal records that are specific and directly related to the duties and
28 responsibilities for the licensed occupation.

1 B. The licensing entity shall use the clear and convincing standard of
2 evidence in examining the factors to determine whether an applicant with a
3 disqualifying criminal record will be denied a license. The licensing entity shall
4 make the determination based on the following factors:

5 (1) The nature and seriousness of the crime for which the individual was
6 convicted.

7 (2) The passage of time since the commission of the crime.

8 (3) The relationship of the crime to the ability, capacity, and fitness to
9 perform the duties and discharge the responsibilities of the occupation.

10 (4) Any evidence of rehabilitation or treatment undertaken by the individual
11 that may mitigate against a direct relation.

12 C. If an individual has a criminal record for a crime that could disqualify him
13 from receiving a license, the disqualification shall not last longer than five years
14 from the date of conviction, provided that the conviction is not for a crime of
15 violence or a sex offense, and the individual has not been convicted of any other
16 crime during the five-year disqualification period.

17 D. The potential disqualification period may last longer if an applicant with
18 a disqualifying criminal record was incarcerated for a crime at any time during the
19 previous five years. In that case, the disqualification shall last no longer than five
20 years from the date the individual was released from incarceration, if the offense was
21 not a crime of violence or a sex crime.

22 §56. Application for consideration; decision; documentation

23 A. An individual with a criminal record may apply to a licensing entity at
24 any time for a determination of whether his criminal record will disqualify him from
25 obtaining a license. This application shall include details regarding the individual's
26 criminal record. The licensing entity shall inform the individual of his standing
27 within thirty days of receiving the application. The licensing entity may charge a fee
28 to recoup its costs up to twenty-five dollars for each application.

1 B. If a licensing entity denies an individual a license solely or in part because
2 of his criminal record, the licensing entity shall notify the individual in writing of the
3 following:

- 4 (1) The reasons and explanation for the denial or disqualification.
5 (2) That the individual has the right to a hearing to challenge the decision.
6 (3) The earliest date the individual may reapply for a license.
7 (4) That evidence of rehabilitation may be considered upon reapplication.

8 C. Any written determination by the licensing entity that an individual's
9 criminal record is specifically listed as a disqualifying conviction and is directly
10 related to the duties and responsibilities for the licensed occupation shall be
11 documented in written findings for each by clear and convincing evidence sufficient
12 for a reviewing court.

13 D. An applicant may appeal a decision of disqualification in an
14 administrative hearing. In any administrative hearing to appeal a decision, the
15 licensing entity shall carry the burden of proof on the question of whether the
16 applicant's criminal record directly relates to the occupation for which the license is
17 sought.

18 §57. Exceptions

19 The provisions of this Chapter shall apply to every profession and occupation
20 except for provisions or laws pertaining to all of the following:

- 21 (1) Any municipal, parish, state, or federal law enforcement agency.
22 (2) The Louisiana Real Estate Appraisers Board.
23 (3) The Louisiana Real Estate Commission.
24 (4) The Louisiana Supreme Court.
25 (5) The State Board of Certified Public Accountants of Louisiana.

26 Section 2. Chapter 1-C of Title 37 of the Louisiana Revised Statutes of 1950,
27 comprised of R.S. 37:31 through 36, is hereby repealed in its entirety.

28 Section 3. This Act shall become effective on January 1, 2020.

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)]

HB 503 Engrossed

2019 Regular Session

Edmonds

Abstract: Creates the Fresh Start Act of 2019 for inclusion of persons convicted of a crime into the workforce.

Proposed law creates the Fresh Start Act of 2019 to enable persons with a criminal record to obtain occupational licenses.

Proposed law provides legislative findings which state that unemployed persons are more likely to re-offend than persons with employment, that persons with a higher occupational level have a lower rate of recidivism, and that removing obstacles to employment is in the best interest of the state.

Proposed law provides that no person shall be disqualified from obtaining an occupational license because he has been convicted of a crime unless the crime is directly related in nature to the chosen occupation, is a crime of violence, or is a sex offense as defined in present law.

Proposed law requires all state licensing entities to revise licensing provisions, enumerating which crimes are incompatible with the practice of their trade, and deleting any provision relating to vague requirements of "good moral character", or similar descriptives.

Proposed law requires a licensing entity to examine factors relating to disqualifying criminal convictions including the nature and seriousness of the crime, the passage of time since it occurred, the relationship of the crime to the objectives of the career, and any evidence of rehabilitation.

Proposed law requires that a person cannot be disqualified because of a criminal record dating back past five years if he has not been convicted of another crime in the more recent years. Proposed law allows for a longer period than the five years from the commission of the crime if he was incarcerated during the period. Proposed law requires that the disqualification cannot last longer than five years from release.

Proposed law provides the procedure for an individual to apply for consideration of a professional license. Proposed law requires the individual to disclose details regarding his criminal record and requires that the licensing entity inform him of the decision within thirty days.

Proposed law allows licensing entities to charge a fee of up to \$25 per application.

Proposed law requires that if an entity denies the license application because of a criminal record, it shall disclose the following to the individual:

- (1) The reasons and explanation for the denial or disqualification.
- (2) That the individual has the right to a hearing to challenge the decision.
- (3) The earliest date the individual may reapply for a license.
- (4) That evidence of rehabilitation may be considered upon reapplying.

Proposed law requires the licensing entity to thoroughly document why an individual was disqualified pursuant to a criminal record.

Proposed law allows an applicant to appeal a decision of disqualification in an administrative hearing. Proposed law requires that the licensing entity shall carry the burden of proof on the question of whether the applicant's criminal record directly relates to the occupation for which the license is sought.

Proposed law provides that the provisions of proposed law shall not apply to any of the following:

- (1) Any law enforcement agency.
- (2) The Louisiana Real Estate Appraisers Board.
- (3) The Louisiana Real Estate Commission.
- (4) The Louisiana Supreme Court.
- (5) The State Board of Certified Public Accountants of Louisiana.

Present law, the "Licenses for Ex-Offenders Act", requires any licensing board to consider an applicant if he has been convicted of a crime and is otherwise qualified for the position. Present law further provides an exception when the nature of the crime for which an applicant was convicted is similar or related to the occupation for which he is applying.

Present law provides that a license can be revoked if the licensee is convicted of another felony or violates any law or rule governing the practice of the field of work. Present law requires a court to notify the licensing entity upon conviction of a new offense, after which the licensee shall not be permitted to obtain another license in the same profession.

Present law gives the discretion to the licensing entity on whether or not to ultimately issue a license to a person convicted of a felony. Present law further provides a list of licensing entities excluded from the provisions of present law.

Proposed law repeals present law, the "Licenses for Ex-Offenders Act".

Effective Jan. 1, 2020.

(Adds R.S. 37:51-57; Repeals R.S. 37:31-36)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Reorganize and rewrite the legislative findings.
2. Make technical changes.
3. Exclude the Louisiana Real Estate Appraisers Board, the Louisiana Real Estate Commission, the Louisiana Supreme Court, and the State Board of Certified Public Accountants of Louisiana from the provisions of proposed law.