

HOUSE BILL 635

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9lr0473

By: Delegates Levi, Anderson, Barnes, Burns, Carr, Carter, Conaway, Dumais,
Gutierrez, Healey, Reznik, Riley, Robinson, Ross, Schuler, F. Turner,
and Valderrama

Introduced and read first time: February 6, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 23, 2009

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Occupational Licenses or Certificates – ~~Issuance of a~~**
3 **~~Certificate of Employability~~ Criminal Conviction**

4 FOR the purpose of ~~requiring a certain parole and probation agent, at the request of a~~
5 ~~sentencing court, to provide a certain report on granting a certain certificate of~~
6 ~~employability to a certain offender;~~ establishing the policy of the State to
7 encourage the employment of nonviolent ex-offenders and to ~~provide a process~~
8 ~~for ex-offenders~~ remove barriers to their ability to demonstrate fitness for
9 occupational licenses or certificates required by the State; ~~requiring certain~~
10 ~~State departments, boards, and commissions that issue certain occupational~~
11 ~~licenses or certificates to follow certain procedures in deciding whether to issue~~
12 ~~a license or certificate to a certain applicant who presents a certain certificate of~~
13 ~~employability; providing that this Act does not apply to certain licenses;~~
14 ~~authorizing a circuit court, the District Court, or the Maryland Parole~~
15 ~~Commission, on the request of a certain offender, to issue a certain certificate to~~
16 ~~an offender convicted of a nonviolent offense; authorizing a court to issue a~~
17 ~~certain certificate or to order the Division of Parole and Probation to conduct an~~
18 ~~investigation and recommend whether the court should issue a certain~~
19 ~~certificate to an eligible offender; authorizing the Commission to issue a certain~~
20 ~~certificate if an offender is on parole or mandatory supervision or if the eligible~~
21 ~~offender was released without conditions or has satisfied certain conditions of~~
22 ~~release; authorizing the Commission, under certain circumstances, to issue a~~
23 ~~certain certificate of employability to an offender who is under the supervision~~
24 ~~of the Commission through the authority of the Interstate Compact on Adult~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



~~Offender Supervision; establishing certain requirements for a court or the Commission to consider in issuing a certain certificate; authorizing a court or the Commission to limit the scope of a certain certificate; authorizing a court to issue a new certificate expanding the scope of a certain certificate; authorizing a court or the Commission to revoke the certificate under certain conditions; requiring an offender to surrender a revoked certificate on written notification by the issuing court or the Commission; establishing that a certain certificate is a temporary certificate until a certain offender is discharged from parole or mandatory supervision; authorizing the Commission to revoke a temporary certificate for certain violations after providing certain notice and after holding a certain hearing on the violation; requiring the Commission to issue a permanent certificate on discharge of the eligible offender from parole or mandatory supervision under certain conditions; establishing the offense of the knowing use of a revoked certificate; establishing certain penalties; requiring certain State departments, boards, and commissions to follow, notwithstanding any other provision of law, certain procedures in the consideration of an application for an occupational license or certificate of an applicant who has been convicted of a felony or misdemeanor under federal or State law; prohibiting a department, board, or commission from denying an occupational license or certificate to a certain applicant who has a certain certificate of employability, with certain exceptions; authorizing a department, board, or commission to deny an occupational license or certificate to an applicant with a certain certificate under certain circumstances; requiring a department, board, or commission to consider certain factors in making a certain determination; requiring a department, board, or commission to follow certain procedures to give an applicant notice and an opportunity to be heard before the department, board, or commission denies a certain applicant an occupational license or certificate under certain circumstances; prohibiting certain departments of State government from denying an occupational license or certificate to a certain applicant solely on the basis that the applicant has previously been convicted of a crime, with certain exceptions; requiring certain departments to consider certain factors when making a certain determination; providing that this Act does not apply to certain persons; defining a certain ~~terms~~ term; and generally relating to occupational licenses or certificates and the issuance of a certificate of employability.~~

~~BY repealing and reenacting, with amendments,
Article — Correctional Services
Section 6 — 112(a)(1)
Annotated Code of Maryland
(2008 Replacement Volume and 2008 Supplement)~~

~~BY repealing and reenacting, without amendments,
Article — Criminal Law
Section 14 — 101(a)
Annotated Code of Maryland
(2002 Volume and 2008 Supplement)~~

1 BY adding to
2 Article – Criminal Procedure
3 Section ~~6-301 through 6-307~~ to be under the new subtitle “Subtitle 3,
4 Certificate of Employability” 1-209
5 Annotated Code of Maryland
6 (2008 Replacement Volume)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
8 MARYLAND, That the Laws of Maryland read as follows:

9 ~~Article – Correctional Services~~

10 ~~6-112.~~

11 ~~(a) (1) On request of a court, a parole and probation agent of the Division~~
12 ~~shall:~~

13 ~~(i) provide the court with a presentence investigation report~~
14 ~~THAT MAY INCLUDE A REPORT ON GRANTING THE DEFENDANT A CERTIFICATE~~
15 ~~OF EMPLOYABILITY IN ACCORDANCE WITH TITLE 6, SUBTITLE 3 OF THE~~
16 ~~CRIMINAL PROCEDURE ARTICLE;~~

17 ~~(ii) conduct other investigations; and~~

18 ~~(iii) perform other probationary services.~~

19 ~~Article – Criminal Law~~

20 ~~14-101.~~

21 ~~(a) In this section, “crime of violence” means:~~

22 ~~(1) abduction;~~

23 ~~(2) arson in the first degree;~~

24 ~~(3) kidnapping;~~

25 ~~(4) manslaughter, except involuntary manslaughter;~~

26 ~~(5) mayhem;~~

27 ~~(6) maiming, as previously proscribed under former Article 27, §§ 385~~
28 ~~and 386 of the Code;~~

29 ~~(7) murder;~~

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- 1 ~~(8) rape;~~
- 2 ~~(9) robbery under § 3-402 or § 3-403 of this article;~~
- 3 ~~(10) earjacking;~~
- 4 ~~(11) armed earjacking;~~
- 5 ~~(12) sexual offense in the first degree;~~
- 6 ~~(13) sexual offense in the second degree;~~
- 7 ~~(14) use of a handgun in the commission of a felony or other crime of~~
8 ~~violence;~~
- 9 ~~(15) child abuse in the first degree under § 3-601 of this article;~~
- 10 ~~(16) sexual abuse of a minor under § 3-602 of this article if:~~
- 11 ~~(i) the victim is under the age of 13 years and the offender is an~~
12 ~~adult at the time of the offense; and~~
- 13 ~~(ii) the offense involved:~~
- 14 ~~1. vaginal intercourse, as defined in § 3-301 of this~~
15 ~~article;~~
- 16 ~~2. a sexual act, as defined in § 3-301 of this article;~~
- 17 ~~3. an act in which a part of the offender's body~~
18 ~~penetrates, however slightly, into the victim's genital opening or anus; or~~
- 19 ~~4. the intentional touching, not through the clothing, of~~
20 ~~the victim's or the offender's genital, anal, or other intimate area for sexual arousal,~~
21 ~~gratification, or abuse;~~
- 22 ~~(17) an attempt to commit any of the crimes described in items (1)~~
23 ~~through (16) of this subsection;~~
- 24 ~~(18) continuing course of conduct with a child under § 3-315 of this~~
25 ~~article;~~
- 26 ~~(19) assault in the first degree;~~
- 27 ~~(20) assault with intent to murder;~~
- 28 ~~(21) assault with intent to rape;~~

~~(22) assault with intent to rob;~~

~~(23) assault with intent to commit a sexual offense in the first degree;~~

and

~~(24) assault with intent to commit a sexual offense in the second degree.~~

Article – Criminal Procedure

~~SUBTITLE 3. CERTIFICATE OF EMPLOYABILITY.~~

~~6-301. 1-209.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

~~(B) “COMMISSION” MEANS THE MARYLAND PAROLE COMMISSION.~~

~~(C) “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.~~

~~(D) (1) “DEPARTMENT” MEANS:~~

(A) (1) IN THIS SECTION, “DEPARTMENT” MEANS:

(I) THE DEPARTMENT OF AGRICULTURE;

(II) THE DEPARTMENT OF THE ENVIRONMENT;

(III) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE;

(IV) THE DEPARTMENT OF HUMAN RESOURCES;

(V) THE DEPARTMENT OF LABOR, LICENSING, AND
REGULATION; OR

(VI) THE DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONAL SERVICES; OR

~~(VII) THE DEPARTMENT OF STATE POLICE.~~

(2) “DEPARTMENT” INCLUDES ANY UNIT OF A DEPARTMENT
SPECIFIED IN PARAGRAPH (1) OF THIS SUBSECTION.

~~(E) "ELIGIBLE OFFENDER" MEANS A PERSON WHO HAS BEEN CONVICTED OF A CRIME THAT IS NOT A CRIME OF VIOLENCE.~~

~~(F) "EMPLOYABILITY" MEANS THE PERMANENT OR PROVISIONAL REMOVAL OF A BAR TO LICENSURE OR CERTIFICATION FOR AN OCCUPATION REQUIRING A LICENSE OR CERTIFICATE ISSUED BY A DEPARTMENT, BOARD, OR COMMISSION.~~

~~6-302.~~

(B) THIS SECTION DOES NOT APPLY TO A PERSON WHO WAS PREVIOUSLY CONVICTED OF A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.

(C) IT IS THE POLICY OF THE STATE TO ENCOURAGE THE EMPLOYMENT OF NONVIOLENT EX-OFFENDERS AND, TOWARD THAT END, TO PROVIDE A PROCESS THROUGH WHICH NONVIOLENT EX-OFFENDERS MAY REMOVE BARRIERS TO THEIR ABILITY TO DEMONSTRATE FITNESS FOR OCCUPATIONAL LICENSES OR CERTIFICATIONS REQUIRED BY THE STATE.

~~6-303.~~

~~(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SUBTITLE APPLIES TO AN APPLICATION FOR A LICENSE OR CERTIFICATE TO PRACTICE AN OCCUPATION OR PROFESSION THAT IS ISSUED BY A DEPARTMENT, BOARD, OR COMMISSION.~~

~~(2) THIS SUBTITLE DOES NOT APPLY TO AN APPLICATION FOR A LICENSE ISSUED UNDER TITLE 11, SUBTITLE 5 OR SUBTITLE 6 OF THE FINANCIAL INSTITUTIONS ARTICLE.~~

~~(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF AN APPLICANT FOR A LICENSE OR CERTIFICATE PRESENTS TO A DEPARTMENT, BOARD, OR COMMISSION A CERTIFICATE OF EMPLOYABILITY, THE DEPARTMENT, BOARD, OR COMMISSION SHALL FOLLOW THE PROCEDURES SET FORTH IN § 6-307 OF THIS SUBTITLE IN DECIDING WHETHER TO GRANT THE LICENSE OR CERTIFICATE TO THE APPLICANT.~~

~~6-304.~~

~~(A) (1) ON REQUEST OF AN ELIGIBLE OFFENDER AND SUBJECT TO SUBSECTION (B) OF THIS SECTION, A CERTIFICATE OF EMPLOYABILITY MAY BE ISSUED TO THE ELIGIBLE OFFENDER BY:~~

~~(i) A CIRCUIT COURT OR THE DISTRICT COURT; OR~~

~~(H) THE COMMISSION.~~

~~(2) (I) THE COURT MAY ISSUE THE CERTIFICATE OF
EMPLOYABILITY TO AN ELIGIBLE OFFENDER:~~

~~1. AT THE TIME SENTENCE IS PRONOUNCED;~~

~~2. AT THE TIME OF THE REVIEW OF A SENTENCE; OR~~

~~3. AT ANY TIME AFTER AN EVENT SPECIFIED IN ITEM
1 OR 2 OF THIS PARAGRAPH.~~

~~(H) A COURT MAY ORDER THE DIVISION OF PAROLE AND
PROBATION TO CONDUCT AN INVESTIGATION OF AN ELIGIBLE OFFENDER IN
ACCORDANCE WITH § 6-112 OF THE CORRECTIONAL SERVICES ARTICLE AND
RECOMMEND, BASED ON THE RESULTS OF THE INVESTIGATION, WHETHER A
CERTIFICATE OF EMPLOYABILITY SHOULD BE ISSUED.~~

~~(3) SUBJECT TO § 6-305 OF THIS SUBTITLE, THE COMMISSION
MAY ISSUE A CERTIFICATE OF EMPLOYABILITY TO AN ELIGIBLE OFFENDER:~~

~~(I) WHO HAS BEEN COMMITTED TO THE JURISDICTION OF
THE DIVISION OF CORRECTION AT THE TIME THE ELIGIBLE OFFENDER IS
RELEASED FROM A CORRECTIONAL INSTITUTION UNDER CONDITIONS OF:~~

~~1. PAROLE; OR~~

~~2. MANDATORY SUPERVISED RELEASE;~~

~~(H) WHO IS RELEASED WITHOUT CONDITIONS OR WHOSE
CONDITIONS OF RELEASE HAVE BEEN SATISFIED; OR~~

~~(H) WHOSE JUDGMENT OF CONVICTION WAS RENDERED BY
A COURT OF ANOTHER JURISDICTION BUT WHO NOW RESIDES IN THIS STATE
UNDER THE SUPERVISION OF THE COMMISSION IN ACCORDANCE WITH TITLE 6,
SUBTITLE 2 OF THE CORRECTIONAL SERVICES ARTICLE.~~

~~(B) A COURT OR THE COMMISSION MAY NOT ISSUE A CERTIFICATE OF
EMPLOYABILITY UNLESS IT IS SATISFIED THAT:~~

~~(1) THE PERSON REQUESTING THE CERTIFICATE IS AN ELIGIBLE
OFFENDER AND HAS NOT BEEN CONVICTED OF A CRIME OF VIOLENCE; AND~~

~~(2) THE RELIEF GRANTED BY THE CERTIFICATE IS CONSISTENT WITH:~~

~~(I) THE REHABILITATION OF THE ELIGIBLE OFFENDER;~~
~~AND~~

~~(II) THE PUBLIC INTEREST.~~

~~(C) (1) A COURT OR THE COMMISSION MAY LIMIT THE SCOPE OF APPLICABILITY OF A CERTIFICATE OF EMPLOYABILITY TO ONE OR MORE OCCUPATIONS OR MAY RELIEVE AN ELIGIBLE OFFENDER OF ALL BARS TO OCCUPATIONAL LICENSES OR CERTIFICATES.~~

~~(2) AT ANY TIME, THE COURT OR THE COMMISSION THAT HAS ISSUED A CERTIFICATE OF EMPLOYABILITY, ON REQUEST OF AN ELIGIBLE OFFENDER, MAY ISSUE A NEW CERTIFICATE TO EXPAND THE SCOPE OF THE RELIEF PREVIOUSLY GRANTED IF THE COURT OR THE COMMISSION IS SATISFIED THAT THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION HAVE BEEN MET.~~

~~(D) (1) A COURT OR THE COMMISSION MAY REVOKE A PREVIOUSLY ISSUED CERTIFICATE OF EMPLOYABILITY AND SHALL NOTIFY AN ELIGIBLE OFFENDER IN WRITING OF THE REVOCATION IF:~~

~~(I) THE ELIGIBLE OFFENDER COMMITS A CRIME OF VIOLENCE; OR~~

~~(II) THE COURT OR THE COMMISSION NO LONGER IS SATISFIED THAT THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION ARE BEING MET.~~

~~(2) ON WRITTEN NOTIFICATION OF THE REVOCATION OF A CERTIFICATE OF EMPLOYABILITY, THE ELIGIBLE OFFENDER SHALL SURRENDER THE CERTIFICATE TO THE COURT OR THE COMMISSION.~~

~~6-305.~~

~~(A) IF THE COMMISSION ISSUES A CERTIFICATE OF EMPLOYABILITY TO AN ELIGIBLE OFFENDER IN ACCORDANCE WITH § 6-304 OF THIS SUBTITLE, THE CERTIFICATE OF EMPLOYABILITY:~~

~~(1) IS A TEMPORARY CERTIFICATE UNTIL THE COMMISSION DISCHARGES THE ELIGIBLE OFFENDER FROM PAROLE OR MANDATORY SUPERVISION; AND~~

1 ~~(2) MAY BE REVOKED BY THE COMMISSION FOR VIOLATIONS OF~~
2 ~~THE CONDITIONS OF PAROLE OR MANDATORY SUPERVISION IF, AFTER GIVING~~
3 ~~THE ELIGIBLE OFFENDER NOTICE OF THE HEARING, A HEARING EXAMINER~~
4 ~~CONDUCTS A HEARING AT WHICH THE ELIGIBLE OFFENDER IS GIVEN AN~~
5 ~~OPPORTUNITY TO EXPLAIN THE VIOLATION.~~

6 ~~(B) IF THE COMMISSION DOES NOT REVOKE THE CERTIFICATE OF~~
7 ~~EMPLOYABILITY UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSION~~
8 ~~SHALL REISSUE THE CERTIFICATE AS A PERMANENT CERTIFICATE ON~~
9 ~~DISCHARGE OF THE ELIGIBLE OFFENDER FROM PAROLE OR MANDATORY~~
10 ~~SUPERVISION.~~

11 ~~6-306.~~

12 ~~AN ELIGIBLE OFFENDER WHO KNOWINGLY USES OR ATTEMPTS TO USE A~~
13 ~~REVOKED CERTIFICATE OF EMPLOYABILITY IS GUILTY OF A MISDEMEANOR AND~~
14 ~~ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A~~
15 ~~FINE NOT EXCEEDING \$500 OR BOTH.~~

16 ~~6-307.~~

17 ~~(A) THIS SECTION APPLIES ONLY TO THE AUTHORITY OF A~~
18 ~~DEPARTMENT, BOARD, OR COMMISSION TO DENY A LICENSE OR CERTIFICATE~~
19 ~~TO AN APPLICANT BECAUSE OF A CONVICTION OF A FELONY OR MISDEMEANOR~~
20 ~~UNDER FEDERAL OR STATE LAW.~~

21 ~~(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A~~
22 ~~DEPARTMENT, BOARD, OR COMMISSION MAY NOT DENY AN OCCUPATIONAL~~
23 ~~LICENSE OR CERTIFICATE TO AN ELIGIBLE OFFENDER WHO PRESENTS TO THE~~
24 ~~DEPARTMENT, BOARD, OR COMMISSION A CERTIFICATE OF EMPLOYABILITY~~
25 ~~ISSUED TO THE ELIGIBLE OFFENDER UNDER THIS SUBTITLE UNLESS THE~~
26 ~~DEPARTMENT, BOARD, OR COMMISSION DETERMINES THAT:~~

27 (D) A DEPARTMENT MAY NOT DENY AN OCCUPATIONAL LICENSE OR
28 CERTIFICATE TO AN APPLICANT SOLELY ON THE BASIS THAT THE APPLICANT
29 HAS PREVIOUSLY BEEN CONVICTED OF A CRIME, UNLESS THE DEPARTMENT
30 DETERMINES THAT:

31 (1) THERE IS A DIRECT RELATIONSHIP BETWEEN ~~ONE OR MORE~~
32 ~~OF THE ELIGIBLE OFFENDER'S~~ APPLICANT'S PREVIOUS ~~CONVICTIONS~~
33 CONVICTION AND THE SPECIFIC OCCUPATIONAL LICENSE OR CERTIFICATE
34 SOUGHT; OR

(2) THE ISSUANCE OF THE LICENSE OR CERTIFICATE WOULD INVOLVE AN UNREASONABLE RISK TO PROPERTY OR TO THE SAFETY OR WELFARE OF SPECIFIC INDIVIDUALS OR THE GENERAL PUBLIC.

~~(C)~~ (E) IN MAKING THE DETERMINATION UNDER SUBSECTION ~~(B)~~ (D) OF THIS SECTION, THE DEPARTMENT, ~~BOARD, OR COMMISSION~~ SHALL CONSIDER:

(1) THE POLICY OF THE STATE EXPRESSED IN ~~§ 6-302~~ SUBSECTION (C) OF THIS SUBTITLE SECTION;

(2) THE SPECIFIC DUTIES AND RESPONSIBILITIES REQUIRED OF A LICENSEE OR CERTIFICATE HOLDER;

(3) WHETHER THE ~~ELIGIBLE OFFENDER'S~~ APPLICANT'S PREVIOUS ~~CONVICTIONS HAVE~~ CONVICTION HAS ANY IMPACT ON THE ~~ELIGIBLE OFFENDER'S~~ APPLICANT'S FITNESS OR ABILITY TO PERFORM THE DUTIES AND RESPONSIBILITIES AUTHORIZED BY THE LICENSE OR CERTIFICATE;

(4) THE AGE OF THE ~~ELIGIBLE OFFENDER~~ APPLICANT AT THE TIME OF THE ~~LAST~~ CONVICTION AND THE AMOUNT OF TIME THAT HAS ELAPSED SINCE THE ~~LAST~~ CONVICTION;

(5) THE SERIOUSNESS OF ~~ANY PREVIOUS OFFENSES~~ THE OFFENSE FOR WHICH THE ~~ELIGIBLE OFFENDER~~ APPLICANT WAS CONVICTED;

~~(6) THE CIRCUMSTANCES AND FACTORS CONSIDERED CONCERNING THE ISSUANCE OF THE CERTIFICATE OF EMPLOYABILITY BY A COURT OR THE COMMISSION;~~

~~(7)~~ (6) OTHER INFORMATION PROVIDED BY THE ~~ELIGIBLE OFFENDER~~ APPLICANT OR ON THE ~~ELIGIBLE OFFENDER'S~~ APPLICANT'S BEHALF WITH REGARD TO THE ~~ELIGIBLE OFFENDER'S~~ APPLICANT'S REHABILITATION AND GOOD CONDUCT; AND

~~(8)~~ (7) THE LEGITIMATE INTEREST OF THE DEPARTMENT, ~~BOARD, OR COMMISSION~~ IN PROTECTING PROPERTY AND THE SAFETY AND WELFARE OF SPECIFIC INDIVIDUALS OR THE GENERAL PUBLIC.

~~(D) IN ACCORDANCE WITH ITS PROCEDURES, A DEPARTMENT, BOARD, OR COMMISSION SHALL PROVIDE TO AN ELIGIBLE OFFENDER REASONABLE NOTICE AND AN OPPORTUNITY FOR A HEARING BEFORE AN APPLICATION FOR AN OCCUPATIONAL LICENSE OR CERTIFICATE IS DENIED UNDER THIS SECTION.~~

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.