

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 635

(Delegate Levi, *et al.*)

Judiciary

Judicial Proceedings

Criminal Procedure - Occupational Licenses or Certificates - Criminal
Conviction

This bill prohibits a “department” from denying an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime, other than a crime of violence, unless the department determines that (1) there is a direct relationship between the applicant’s previous conviction and the specific occupational license or certificate 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. The bill requires a department to consider specified factors when making these determinations.

Fiscal Summary

State Effect: The bill is technical in nature and does not materially affect governmental finances.

Local Effect: None. The bill applies to licenses or certificates issued by State agencies.

Small Business Effect: None.

Analysis

Bill Summary: The bill asserts that it is the policy of the State to encourage the employment of nonviolent ex-offenders and remove barriers to their ability to demonstrate fitness for occupational licenses or certifications required by the State. In making a determination concerning the issuance of an occupational license or certificate to an applicant covered under the bill, the department must consider:

- the policy of the State expressed in the bill;
- the specific duties and responsibilities required of a licensee or certificate holder;
- whether the applicant's previous conviction has any impact on the applicant's fitness or ability to perform the duties and responsibilities authorized by the license or certificate;
- the age of the applicant at the time of the conviction and the amount of time that has elapsed since the conviction;
- the seriousness of the offense for which the applicant was convicted;
- other information provided by the applicant or on the applicant's behalf with regard to the applicant's rehabilitation and good conduct; and
- the legitimate interest of the department in protecting property and the safety and welfare of specific individuals or the general public.

The bill defines "department" as the following executive agencies or any unit of the following agencies: (1) Maryland Department of Agriculture; (2) Maryland Department of the Environment; (3) Department of Health and Mental Hygiene; (4) Department of Human Resources; (5) Department of Labor, Licensing, and Regulation; or (6) Department of Public Safety and Correctional Services.

Current Law: Generally, applications for occupational licenses and certificates are issued, denied, suspended, or revoked on a discretionary basis by the applicable governing occupational boards in Maryland, based on existing and varied statutory and/or regulatory standards. Licensing boards and commissions may deny, suspend, or revoke a license or certificate based upon knowledge of a felony conviction or a misdemeanor conviction directly related to the occupation. In many instances, a licensee is barred from hiring an employee (such as assisted living program staff) with a criminal record.

If an individual is convicted of a drug crime, the court is required to determine at sentencing whether the individual holds an occupational license and, if so, obtain the licensing information and make a *prima facie* finding of fact as to whether a relationship exists between the conviction and the license, including (1) a determination of the individual's ability to perform the tasks authorized by the license; (2) a finding of whether the public will be protected if the individual continues to perform the tasks authorized by the license; (3) a finding of whether the nature and circumstances of the drug crime merit referral to the licensing authority; and (4) a finding of any other facts that the court considers relevant. (*See Criminal Law Article, § 5-810.*)

Under specified circumstances relating to a crime committed on or after January 1, 1991, upon conviction of a licensee, the clerk of the court must certify and report the conviction and the licensing information to the licensing authority. If the court makes a *prima facie*

finding of fact that a relationship between the conviction and the license does not exist, the clerk may not certify or report to a licensing authority the conviction or the licensing information.

Background: According to the Division of Occupational and Professional Licensing of the Department of Labor, Licensing, and Regulation, in fiscal 2007, over 90% of all applicants for licenses who reported a criminal conviction were reviewed by the pertinent board/commission/program and granted a license.

Additional Information

Prior Introductions: HB 1123 of 2008 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 698, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Department of Human Resources; Maryland Department of the Environment; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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