

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 22
Economic Matters

(Delegate Sydnor)

Judicial Proceedings

Occupational Licenses or Certificates - Application Determinations - Use of
Criminal History

This bill prohibits specified executive departments from denying an application for an occupational license or certificate based solely on the applicant's prior criminal conviction if (1) a period of at least seven years has passed since the applicant completed serving the sentence for the crime, including all imprisonment, mandatory supervision, probation, and parole and (2) the applicant has not been charged with another crime, other than a minor traffic violation, during that time. The bill's provisions do not apply to a conviction of a crime of violence under § 14-101 of the Criminal Law Article or a conviction of a crime for which registration on the sex offender registry is required.

Fiscal Summary

State Effect: While the bill can be implemented with existing budgeted resources, it may present operational challenges, as discussed below. The bill is not expected to materially affect State revenues.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill applies to the Maryland Department of Agriculture (MDA); the Maryland Department of the Environment (MDE); the Maryland Department of Health (MDH); the Department of Human Services (DHS); the Department of Labor, Licensing,

and Regulation (DLLR); the Department of Public Safety and Correctional Services (DPSCS); and each unit in those departments.

Current Law: 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. Unless an applicant has been previously convicted of a “crime of violence” (as defined in the Criminal Law Article) the specified departments and each unit in the departments may not deny an occupational license or certificate to an applicant solely on the basis that the applicant has previously been convicted of a crime. This generally applies except for a departmental determination that:

- there is a direct relationship between the applicant’s previous conviction and the specific occupational license or certificate sought; or
- 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.

In making the determination above, the department must consider:

- the policy of the State regarding employment of nonviolent ex-offenders;
- 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.

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the

first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Background: Chapter 796 of 2018 required the aforementioned executive departments to report on the following information for the preceding five years by October 1, 2018:

- how many applications for an occupational license or certificate were received;
- how many applicants had a criminal record that would be applicable under the provisions of § 1-209 of the Criminal Procedure Article related to occupational license or certificate denials for nonviolent crimes;
- of the applicants with applicable criminal records, how much time had passed since the criminal conviction, and how many applications were denied on the basis that the applicant had previously been convicted of a crime; and
- of the applications denied on the basis of a previous conviction, under which exemption in current law the application was denied.

Exhibit 1 contains a summary of the information submitted in response to Chapter 796.

Exhibit 1
Information Submitted in Compliance with the Requirements of
Chapter 796 of 2018*

Department/Unit	Applications Received – Preceding 5 Years	Criminal Records under § 1-209 – Past 5 Years	Time Elapsed Since Conviction	Number of Applications Denied Based on Previous Conviction	Exemption under 1-209(d) Applicable to Denial
MDA					
Board of Veterinary Medical Examiners	926 veterinary licenses were issued between 2014 and 2018. Information is not available on the total number of applications received or the total number of applicants with a criminal history during that time period. No applicants have been denied a license based on a criminal record.				
MDH					
Acupuncture	452	0	0	0	N/A
Audiologists	2,087	0	0	0	N/A
Residential Child Care	1,642	150	All over 5 years	0	N/A
Chiropractic Examiners	749	1	1 year	1	(d)(1)
Dietetic Practice	1,000	0	0	0	N/A
Environmental Health Specialists	530	0	0	0	N/A
Massage Therapy	1,802	3	Less than 1 year (2) and 5 years (1)	3	2 – (d)(1) 1 – (d)(2)
Morticians and Funeral Directors	325	37	All over 1 year	5	(d)(1)
Nursing Home Administrators	177	2	Both over 10 years	0	N/A
Occupational Therapy	1,908	4	1 year, 5 years, 12 years, and 17 years	0	N/A
Optometry	291	Not available	Not available	0	N/A
Physical Therapy	4,227	At least 1	7 years	1	(d)(2)
Podiatric Medical Examiners	129	0	0	0	N/A
Professional Counselors and Therapists	3,467	0	0	0	N/A
Psychology	1,840	0	0	0	N/A
Social Work	7,875	10	All over 5 years	2	(d)(2)
DHS	N/A	N/A	N/A	N/A	N/A

Department/Unit	Applications Received – Preceding 5 Years	Criminal Records under § 1-209 – Past 5 Years	Time Elapsed Since Conviction	Number of Applications Denied Based on Previous Conviction	Exemption under 1-209(d) Applicable to Denial
DLLR					
Occupational and Professional Licensing	613,034	803	Not available	Not available	Not available
Racing Commission	37,253 applications received during the preceding 5 years; 567 applicants were fingerprinted; none of the fingerprinted applicants were denied a license because of a criminal background				
Financial Regulation	70,861	606	Not available	0**	N/A
DPSCS					
Division of Parole and Probation – 7 applications for Certificates of Rehabilitation; 6 completed investigations; 1 pending investigation; 3 certificates issued; 1 certificate denied for prior conviction for a crime of violence; 2 applications denied for failure to pay restitution, fines, and fees (applicants may reapply once paid).					

DHS: Department of Human Services

DLLR: Department of Labor, Licensing, and Regulations

DPSCS: Department of Public Safety and Correctional Services

MDA: Maryland Department of Agriculture

MDH: Maryland Department of Health

N/A: not applicable.

*The Department of Legislative Services did not receive any information submitted by the Maryland Department of the Environment in response to Chapter 796 of 2018.

**According to the Office of the Commissioner of Financial Regulation, there was one denial of a license that was related to criminal history. However, the office advises that the applicant was denied a license because of falsification of documents/material misstatements/misrepresentation of charges, rather than the underlying conviction.

Source: Maryland Department of Agriculture; Maryland Department of Health; Department of Human Services; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

State Expenditures: While the bill can be implemented with existing budgeted resources, it may produce some operational difficulties or challenges.

DLLR advises that there are several State statutes pertaining to licensing that conflict with the bill's provisions. For example, under § 11-605 of the Financial Institutions Article and federal law, the Commissioner of Financial Regulation must deny a mortgage loan officer

license to anyone who has been convicted of, pled guilty or *nolo contendere* to a felony crime that involved an act of fraud, dishonesty, a breach of trust or money laundering regardless of how long it has been since the conviction occurred. Additionally, according to § 11-506(c) of the Financial Institutions Article, the commissioner must deny a mortgage lender license to anyone who has been convicted of a felony crime in the 10 preceding years before the application date or any time preceding the application date if the felony involved an act of fraud, theft, or forgery.

DLLR also advises that it currently considers the complete facts and circumstances of all criminal convictions reported on an applicant's background check and considers, among other things, the passage of time between the conviction and the present time, the age and other circumstances of the applicant at the time of the conviction and at the present time, and the actions and activities of the applicant between the time of the conviction and the present time.

The Occupational and Professional Licensing Division within DLLR advises that all boards and commissions within the division are required by applicable statutes to review and assess both felony and misdemeanor convictions using the criteria set forth in the statutes, some of which may conflict with the provisions of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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