

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 596 (Senator Carter)

Education, Energy, and the Environment

**Business Occupations and Professions - Occupational Licenses and Certificates -
Criminal History**

This bill prohibits any board or commission established under the Business Occupations and Professions Article from requiring an applicant for an occupational license or certificate to disclose as part of an application specified information relating to the applicant's prior criminal history. It also establishes a predetermination review process under which an individual can request a board to review the individual's criminal history to determine whether that criminal history would disqualify the individual from obtaining the occupational license or certificate being sought. The bill requires, within one year of the bill's enactment, each board and commission and the Maryland Department of Labor (MDL) to update their regulations, forms, websites, and other public documents to describe the provisions and processes established under the bill.

Fiscal Summary

State Effect: Special fund expenditures increase by \$105,900 in FY 2024 for MDL to implement the bill; future years reflect annualization and inflation. Special fund revenues increase minimally from criminal history review and licensing fees.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	-	-	-	-
SF Expenditure	\$105,900	\$132,300	\$134,300	\$136,400	\$138,500
Net Effect	(\$105,900)	(\$132,300)	(\$134,300)	(\$136,400)	(\$138,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Board” means any board or commission established in the Business Occupations and Professions Article that issues an occupational license or certificate.

The bill specifies 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.

A board may not require an applicant for an occupational license or certificate to disclose the following as a part of an application: (1) a deferred adjudication; (2) participation in a diversion program; (3) an arrest not followed by a conviction; (4) a conviction for which no term of imprisonment may be imposed; (5) a conviction that has been sealed, vacated, dismissed, expunged, or pardoned; (6) an adjudication of a delinquent act as a juvenile; (7) a conviction for a misdemeanor that did not involve physical harm to another individual; (8) a conviction for which a period of three years has passed since the applicant completed serving the sentence if the sentence did not include a term of imprisonment; or (9) unless the conviction was for a crime of violence as defined under § 14-101 of the Criminal Law Article, a conviction for which three years have passed since the end of the individual’s term of imprisonment.

A board 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, unless the board 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 a direct and substantial threat to public safety or specific individuals or property.

In making the determination, the board must generally consider specified situations and information, including the factors summarized in the Current Law section below, and the applicant’s education, training, and employment history before, during and after the applicant’s term of imprisonment. The board must also consider whether the occupational license or certificate requires the applicant to be bonded.

An individual may file a request with a board for review of the individual’s criminal history to determine whether that criminal history would disqualify the individual from obtaining the occupational license or certificate being sought. This predetermination must be binding on the board unless there is a subsequent direct and material adverse change to the individual’s criminal history. If, during this predetermination process, a board determines that an occupational license or certificate would be denied to the individual, the board must, if applicable, advise the individual of actions that may be taken to remedy the disqualification. An individual may submit a revised request for a predetermination, as

specified, that includes the completion of any recommended remedial actions. An individual may submit a revised predetermination request the earlier of one year after the individual received the initial predetermination or on completion of the board's recommended remedial actions.

A board may charge a fee of up to \$100 to conduct a criminal history review under this process, but the fee must be waived if the individual's income is at or below 300% of the federal poverty level, as determined by the District Court.

MDL must adopt regulations to implement the bill. By September 1 each year, MDL must submit a report to the General Assembly on specified information regarding each board subject to the bill's requirements, including the number of applicants denied a license or certificate and the offenses related to predetermination requests. The report must be published on MDL's website in a searchable format.

Current Law: As established under the Criminal Procedure Article, 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. Under relevant statute, "department" means (1) the Department of Agriculture; (2) the Department of the Environment; (3) the Maryland Department of Health; (4) the Department of Human Services; (5) MDL; or (6) the Department of Public Safety and Correctional Services.

A department 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, 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.

In making a determination, the department must consider (1) the policy of the State described in the Criminal Procedure Article; (2) the specific duties and responsibilities required of a licensee or certificate holder; (3) 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; (4) the age of the applicant at the time of the conviction and the amount of time that has elapsed since the conviction; (5) the seriousness of the offense for which the applicant was convicted; (6) other information provided by the applicant or on the applicant's behalf with regard to the applicant's rehabilitation and good conduct; and (7) the legitimate interest of the department in protecting property and the safety and welfare of specific individuals or the general public.

The existing statute 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. Also, with the exception of a crime for which registration on the sex offender registry is required, if at least seven years have passed since an applicant completed serving the sentence for a crime, including all imprisonment, mandatory supervision, probation, and parole, and the applicant has not been charged with another crime other than a minor traffic violation during that time, a department may not deny an occupational license or certificate to the applicant solely on the basis that the applicant was previously convicted of the crime.

State Fiscal Effect: Special fund expenditures increase by \$105,871 in fiscal 2024 which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring one part-time contractual employee to manage administrative functions for the predetermination process (including salary, fringe benefits, one-time start-up costs, and ongoing operating expenses associated with the employee), as well as legal fees.

Contractual Position	0.5
Salary and Fringe Benefits	\$16,359
Legal Fees	82,500
Operating Expenses	<u>7,012</u>
Total FY 2024 State Expenditures	\$105,871

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

MDL's Division of Occupational and Professional Licensing processes over 110,000 licenses each year. According to MDL, if 0.5% (550) of applicants request a predetermination review of their criminal history, the costs for legal fees associated with these reviews total \$110,000 annually and a part-time administrative support position will be required to manage administrative functions for the process.

Small Business Effect: The bill may have a meaningful effect on small business employers that are able to find licensed or certified employees as a result of the bill.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Governor's Office of Crime Prevention, Youth, and Victim Services; Maryland Department of Labor; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2023
km/jkb

Analysis by: Thomas S. Elder

Direct Inquiries to:

(410) 946-5510

(301) 970-5510