

2019 -- H 5863

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- LICENSING

Introduced By: Representatives Slater, Williams, Edwards, Diaz, and Blazejewski

Date Introduced: March 15, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 28-5.1-14 of the General Laws in Chapter 28-5.1 entitled "Equal  
2 Opportunity and Affirmative Action" is hereby amended to read as follows:

3           **28-5.1-14. State licensing and regulatory agencies.**

4           (a) State agencies shall not discriminate by considering race, color, religion, sex, sexual  
5 orientation, gender, identity or expression, age, national origin, or disability in granting, denying,  
6 or revoking a license or charter, nor shall any person, corporation, or business firm which is  
7 licensed or chartered by the state unlawfully discriminate against or segregate any person on these  
8 grounds. All businesses licensed or chartered by the state shall operate on a nondiscriminatory  
9 basis, according to equal employment treatment and access to their services to all persons, except  
10 unless otherwise exempted by the laws of the state. Any licensee, charter holder, or retail sales  
11 permit holder who fails to comply with this policy is subject to any disciplinary action that is  
12 consistent with the legal authority and rules and regulations of the appropriate licensing or  
13 regulatory agency. State agencies which have the authority to grant, deny, or revoke licenses or  
14 charters will cooperate with the state equal opportunity office to prevent any person, corporation,  
15 or business firm from discriminating because of race, color, religion, sex, sexual orientation,  
16 gender, identity or expression, age, national origin, or disability or from participating in any  
17 practice which may have a disparate effect on any protected class within the population. The state  
18 equal opportunity office shall monitor the equal employment opportunity activities and  
19 affirmative action plans of all such organizations.

1 (b) The state agencies, licensing boards, and commissions covered by this section shall  
2 include, but not be limited to, those departments enumerated in § 42-6-1 and the state agencies,  
3 licensing boards and commissions under the jurisdiction of those departments.

4 (c) Notwithstanding any other provision of law to the contrary, no person shall be  
5 disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or  
6 business for which a license, permit, certificate or registration is required to be issued by the state  
7 or any of its agencies or any state licensing board or commission, solely or in part, because of a  
8 prior conviction of a crime or crimes unless the underlying crime or crimes directly relate to the  
9 occupation to which the license applies.

10 (d) Notwithstanding any other provision of law to the contrary, no license, permit,  
11 certificate, or registration issued by the state or any of its agencies or any state licensing board or  
12 commission shall be suspended or revoked, solely or in part, because of a prior conviction of a  
13 crime or crimes unless the underlying crime or crimes directly relate to the occupation to which  
14 the license applies.

15 (e) In determining if a conviction directly relates to the occupation for which the license  
16 is sought, the licensing authority shall consider:

17 (1) The state's legitimate interest in equal access to employment for individuals who have  
18 had past contact with the criminal justice system;

19 (2) The relationship of the crime or crimes to the purposes of regulating the occupation  
20 for which the license is sought; and

21 (3) The relationship of the crime or crimes to the ability, capacity, and fitness required to  
22 perform the duties and discharge the responsibilities of the position of employment or occupation.

23 (f) A person who has been convicted of a crime or crimes which directly relate to the  
24 occupation for which a license is sought shall not be disqualified from the occupation if the  
25 person can show competent evidence of sufficient rehabilitation and present fitness to perform the  
26 duties of the occupation for which the license is sought. The licensing authority shall consider the  
27 time elapsed since the conviction when determining sufficient rehabilitation, as well as any  
28 evidence presented by the applicant regarding:

29 (1) Completion of a period of two (2) years after release from imprisonment, or two (2)  
30 years after the sentencing date for a probation sentence not accompanied by incarceration,  
31 without subsequent conviction or pending criminal charge;

32 (2) The nature and relevance of the crime or crimes for which convicted;

33 (3) All circumstances relative to the crime or crimes, including mitigating circumstances  
34 or social conditions surrounding the commission of the crime or crimes;

- 1           (4) The age of the person at the time the crime or crimes were committed;
- 2           (5) Claims that the criminal record information is in error or inadmissible under  
3 subsection (g) of this section; and
- 4           (6) All other competent evidence of rehabilitation and present fitness presented,  
5 including, but not limited to, letters of reference by persons who have been in contact with the  
6 applicant since the applicant's release from any state or federal correctional institution.
- 7           (g) The following criminal records may not be used in connection with any application  
8 for a license, permit, certificate, or registration:
- 9           (1) Juvenile adjudications;
- 10           (2) Records of arrest not followed by a valid conviction;
- 11           (3) Convictions which have been, pursuant to law, annulled or expunged;
- 12           (4) Misdemeanor convictions for which no jail sentence can be imposed;
- 13           (5) A conviction that is not related to the occupation for which a license is being sought,  
14 as determined by subsection (e) of this section.
- 15           (h) If a licensing authority intends to deny, suspend, or revoke a license, permit, or  
16 certificate solely or in part because of the individual's prior conviction of a crime, the licensing  
17 authority shall notify the individual in writing of the following prior to the final decision:
- 18           (1) The specific conviction(s) that form the basis for the potential denial, suspension, or  
19 revocation and the rationale for deeming the conviction directly related to the occupation;
- 20           (2) A copy of the conviction history report, if any, on which the licensing authority relies;
- 21           (3) A statement that the applicant may provide evidence of mitigation or rehabilitation, as  
22 described in subsection (f) of this section; and
- 23           (4) Instructions on how to respond to the potential denial, suspension, or revocation.
- 24           (i) After receiving the notice of potential denial, suspension, or revocation, the individual  
25 shall have thirty (30) business days to respond.
- 26           (j) If a licensing authority denies, suspends, or revokes a license, permit, or certificate  
27 solely or in part because of the applicant's directly-related conviction, the licensing authority shall  
28 issue a final written decision that addresses each of the factors enumerated in subsection (e) of  
29 this section and which also includes, but is not limited to, the following:
- 30           (1) The final decision, including the directly related conviction(s) that form the basis for  
31 denial, suspension, or revocation and the rationale for occupation relatedness;
- 32           (2) The process for appealing the decision in accordance with chapter 35 of title 42  
33 enumerated in subsection (f) of this section; and
- 34           (3) The earliest date the person may reapply for a license, permit, or certificate, which

1 shall not be longer than two (2) years from the date of the final decision.

2 (k) Each state agency or licensing body shall issue a report to be made publicly available  
3 on the agency or licensing body website one year after the passage of this section and by January  
4 31 of each year thereafter, indicating the following:

5 (1) The number of initial applicants for every license, permit, or certificate under their  
6 jurisdiction within the preceding calendar year, including the number of applicants granted  
7 licenses, the number of applicants denied licenses for any reason, and, to the extent available, the  
8 demographic breakdown of the applicants, including race, ethnicity, and gender, and city or town  
9 of residence; and

10 (2) The number of applicants denied solely, or in part, because of a criminal conviction.

11 (l) Unless specifically exempted by reference to this section or otherwise contrary to  
12 federal law, any existing or future state law or regulation that disqualifies an individual from an  
13 occupation, trade, vocation, profession or business for which a state license, permit, certificate or  
14 registration is required, because of a prior conviction of a crime or crimes shall be subject to the  
15 conditions and procedures established by this section.

16 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO LABOR AND LABOR RELATIONS -- LICENSING

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1           This act would create a new process with standards to be utilized when deciding whether  
2 an applicant's past criminal contacts' convictions should disqualify them from receiving a  
3 government issued license.

4           This act would take effect upon passage.

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