

2020 -- S 2824 SUBSTITUTE A

LC005224/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

A N A C T

RELATING TO LABOR AND LABOR RELATIONS – EQUAL OPPORTUNITY AND
AFFIRMATIVE ACTION - LICENSING

Introduced By: Senators Metts, Quezada, Goldin, Euer, and Bell

Date Introduced: March 12, 2020

Referred To: Senate 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) As used in this section:

5 (1) "Licensing authority" means any agency, examining board, or other office with the
6 authority to impose and evaluate licensing requirements on any profession.

7 (2) "License" means and includes the whole or part of any agency permit, certificate,
8 approval, or similar form of permission required by law, but it does not include a motor vehicle
9 operator's license as required in chapter 10 of title 31.

10 (b) State agencies shall not discriminate by considering race, color, religion, sex, sexual
11 orientation, gender, identity or expression, age, national origin, or disability in granting, denying,
12 or revoking a license or charter, nor shall any person, corporation, or business firm which is licensed
13 or chartered by the state unlawfully discriminate against or segregate any person on these grounds.
14 All businesses licensed or chartered by the state shall operate on a nondiscriminatory basis,
15 according to equal employment treatment and access to their services to all persons, except unless
16 otherwise exempted by the laws of the state. Any licensee, charter holder, or retail sales permit
17 holder who fails to comply with this policy is subject to any disciplinary action that is consistent
18 with the legal authority and rules and regulations of the appropriate licensing or regulatory agency.

1 State agencies which have the authority to grant, deny, or revoke licenses or charters will cooperate
2 with the state equal opportunity office to prevent any person, corporation, or business firm from
3 discriminating because of race, color, religion, sex, sexual orientation, gender, identity or
4 expression, age, national origin, or disability or from participating in any practice which may have
5 a disparate effect on any protected class within the population. The state equal opportunity office
6 shall monitor the equal employment opportunity activities and affirmative action plans of all such
7 organizations.

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

11 (d) No person shall be disqualified to practice, pursue or engage in any occupation, trade,
12 vocation, profession or business for which an occupational license, permit, certificate or registration
13 is required to be issued by the state or any of its agencies or any state licensing board or commission,
14 solely or in part, because of a prior conviction of a crime or crimes unless the underlying crime or
15 crimes substantially relate to the occupation to which the license applies. Any other state law to
16 the contrary will be superseded by this provision.

17 (e) No occupational license, permit, certificate, or registration issued by the state or any of
18 its agencies or any state licensing board or commission shall be suspended or revoked, solely or in
19 part, because of a prior conviction of a crime or crimes unless the underlying crime or crimes
20 substantially relate to the occupation to which the license applies. Any other state law to the
21 contrary will be superseded by this provision.

22 (f) In determining if a conviction substantially relates to the occupation for which the
23 license is sought, the licensing authority shall consider:

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

26 (2) The state's legitimate interest in protecting the property and the safety and welfare of
27 specific individuals or the general public; and

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

30 (g) A person who has been convicted of a crime or crimes which substantially relate to the
31 occupation for which a license is sought shall not be disqualified from the occupation if the person
32 can show competent evidence of sufficient rehabilitation and present fitness to perform the duties
33 of the occupation for which the license is sought. The licensing authority shall consider the time
34 elapsed since the conviction when determining sufficient rehabilitation, as well as any evidence

1 presented by the applicant regarding:

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

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

6 (3) All circumstances relative to the crime or crimes, including mitigating circumstances
7 surrounding the commission of the crime or crimes;

8 (4) The age of the person at the time the crime or crimes were committed;

9 (5) Claims that the criminal record information is in error or inadmissible under subsection
10 (h) of this section; and

11 (6) All other competent evidence of rehabilitation and present fitness presented, including,
12 but not limited to, letters of reference by persons who have been in contact with the applicant since
13 the applicant's release from any state or federal correctional institution.

14 (h) The following criminal records may not be used in connection with any application for
15 a license, permit, certificate, or registration:

16 (1) Juvenile adjudications;

17 (2) Records of arrest not followed by a valid conviction;

18 (3) Convictions which have been, pursuant to law, annulled or expunged;

19 (4) Misdemeanor convictions for which no jail sentence can be imposed;

20 (5) A conviction that is not related to the occupation for which a license is being sought,
21 as determined by subsection (f) of this section.

22 (i) If a licensing authority intends to deny, suspend, or revoke an occupational license,
23 permit, or certificate solely or in part because of the individual's prior conviction of a crime, the
24 licensing authority shall notify the individual in writing of the following prior to the final decision:

25 (1) The specific conviction(s) that form the basis for the potential denial, suspension, or
26 revocation and the rationale for deeming the conviction substantially related to the occupation;

27 (2) A copy of the conviction history report, if any, on which the licensing authority relies;

28 (3) A statement that the applicant may provide evidence of mitigation or rehabilitation, as
29 described in subsection (g) of this section; and

30 (4) Instructions on how to respond to the potential denial, suspension, or revocation.

31 (j) After receiving the notice of potential denial, suspension, or revocation, the individual
32 shall have thirty (30) business days to respond.

33 (k) If a licensing authority denies, suspends, or revokes an occupational license, permit, or
34 certificate solely or in part because of the applicant's substantially related conviction, the licensing

1 authority shall issue a final written decision that addresses each of the factors enumerated in
2 subsection (f) of this section and which also includes, but is not limited to, the following:

3 (1) The final decision, including the substantially related conviction(s) that form the basis
4 for denial, suspension, or revocation and the rationale for occupation relatedness;

5 (2) The process for appealing the decision in accordance with chapter 35 of title 42
6 enumerated in subsection (g) of this section; and

7 (3) The earliest date the person may reapply for an occupational license, permit, or
8 certificate, which shall not be longer than two (2) years from the date of the final decision.

9 (l) Each state agency or licensing body shall issue a report to be made publicly available
10 on the agency or licensing body website one year after the passage of this section and by January
11 31 of each year thereafter, indicating the following:

12 (1) The number of initial applicants for every occupational license, permit, or certificate
13 under their jurisdiction within the preceding calendar year, including the number of applicants
14 granted licenses, the number of applicants denied licenses for any reason, and, to the extent
15 available, the demographic breakdown of the applicants, including race, ethnicity, and gender, and
16 city or town of residence; and

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

18 (m) Unless specifically exempted by reference to this section or otherwise contrary to
19 federal law, any existing or future state law or regulation relating to the granting, denying,
20 suspending or revoking of a license by a state agency shall be subject to the conditions and
21 procedures established by this section.

22 (n) If any provision of this section or its application to any individual or circumstances is
23 held invalid, the invalidity does not affect other provisions or applications of this section which can
24 be given effect without the invalid provision or application, and to this end the provisions of this
25 section are severable.

26 SECTION 2. This act shall take effect on January 1, 2021.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO LABOR AND LABOR RELATIONS – EQUAL OPPORTUNITY AND
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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 conviction of a crime should disqualify the applicant from receiving an
3 occupational license, permit, certificate, or registration issued by the state.

4 This act would take effect on January 1, 2021.

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