

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 54.1-204 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 54.1-204.1 and 54.1-2408.01, relating to Department of Professional and Occupational Regulation; Department of Health Professions; predetermination for licensing eligibility; prior convictions.

[S 826]

Approved

Be it enacted by the General Assembly of Virginia:
1. That § 54.1-204 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 54.1-204.1 and 54.1-2408.01 as follows:

§ 54.1-204. Prior convictions not to abridge rights.

A. A person shall not be refused a license, certificate, or registration to practice, pursue, or engage in any regulated occupation or profession solely because of a prior criminal conviction, unless the criminal conviction directly relates to the occupation or profession for which the license, certificate, or registration is sought. ~~However, the regulatory board shall have the authority to refuse a license, certificate or registration if, based upon all the information available, including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such occupation or profession. A regulatory board shall not use vague or arbitrary terms, including "good moral character" or "moral turpitude" to refuse a license, certificate, or registration.~~

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;
2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;
3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;
4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;
5. The extent and nature of the person's past criminal activity;
6. The age of the person at the time of the commission of the crime;
7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;
8. The conduct and work activity of the person prior to and following the criminal activity; and
9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

C. A regulatory board ~~or department~~ may require any applicant for registration, licensure, or certification to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant. Such applicant shall pay the cost of the fingerprinting or a criminal records check or both.

The regulatory board ~~or department~~ may enter into a contract to obtain the fingerprints and descriptive information as required for submission to the Central Criminal Records Exchange in a manner and format approved by the Central Criminal Records Exchange.

The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the regulatory board ~~or department~~ or ~~their~~ its designee, who must belong to a governmental entity. If an applicant is denied a registration, license, or certificate because of the information appearing in his criminal history record, the regulatory board ~~or department~~ shall notify the applicant ~~that information obtained from the Central Criminal Records Exchange in writing of the specific offense or offenses that contributed to such denial, how the criminal history directly relates to the occupation pursuant to subsection B, and how the regulatory board weighed the rehabilitation factors in subsection B when making its decision.~~ The information shall not be disseminated except as provided for in this section.

D. A regulatory board ~~or department~~ shall consider the criminal information as contained in the applicant's state or national criminal history in lieu of the applicant providing certified copies of such court records in determining whether a criminal conviction directly relates to an occupation or profession or if an applicant is unfit or unsuited to engage in an occupation or profession. The regulatory board ~~or department~~ may request additional information from the applicant in making such determination.

§ 54.1-204.1. Predetermination process for licensing eligibility.

A. An individual with a criminal record may request a predetermination from a regulatory board within the Department of Professional and Occupational Regulation or from the Department concerning whether

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57 *his criminal record would disqualify him from obtaining a license, certificate, registration, or other authority*
58 *to engage in a particular occupation, trade, or profession in the Commonwealth.*

59 *B. The licensing authority shall provide a written determination, indicating whether the individual's*
60 *criminal record would disqualify him from obtaining the license, certificate, registration, or other authority.*
61 *Such determination shall be binding unless the individual's criminal record changes after the determination*
62 *or the individual provides false information.*

63 *C. No licensing authority shall require an individual to complete any educational or training*
64 *requirements prior to submitting a request for predetermination.*

65 **§ 54.1-2408.01. Prior convictions not to abridge rights.**

66 *The provisions of § 54.1-204 shall apply to all persons who are licensed, certified, registered, or*
67 *permitted by any of the boards within the Department of Health Professions.*