

HOUSE BILL NO. 282

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology

on _____)

(Patron Prior to Substitute--Delegate Coyner)

A BILL to amend and reenact §§ 54.1-100, 54.1-114, and 54.1-204 of the Code of Virginia, relating to Department of Professional and Occupational Regulation; effect of criminal convictions on licensure; data to be included in biennial report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-100, 54.1-114, and 54.1-204 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-100. Regulations of professions and occupations.

The right of every person to engage in any lawful profession, trade, or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when (i) it is clearly found that such abridgment is necessary for the protection or preservation of the health, safety, and welfare of the public and (ii) any such abridgment is no greater than necessary to protect or preserve the public health, safety, and welfare.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

- 1. The unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
- 2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;

26 3. The practice of the profession or occupation requires specialized skill or training and the public
27 needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and

28 4. The public is not effectively protected by other means.

29 No regulation of a profession or occupation shall conflict with the Constitution of the United
30 States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of
31 Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review
32 such regulations to ensure that no conflict exists.

33 It is the intent of the General Assembly to enhance opportunities of gainful employment for all
34 Virginians, including those who demonstrate rehabilitation after having been convicted of criminal
35 offenses.

36 **§ 54.1-114. Biennial report.**

37 A. The Board of Bar Examiners, the Department of Professional and Occupational Regulation and
38 the Department of Health Professions shall submit biennial reports to the Governor and General Assembly
39 on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the
40 following information for the Board of Bar Examiners and for each board within the two Departments: (i)
41 a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information
42 regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints
43 received against licensees and the procedures used to resolve the complaints, and (v) a description of any
44 action taken by the board designed to increase public awareness of board operations and to facilitate public
45 participation. The Department of Health Professions shall include, in those portions of its report relating
46 to the Board of Medicine, a compilation of the data required by § 54.1-2910.1.

47 B. The Department of Professional and Occupational Regulation's biennial report shall include,
48 with respect to all licenses, certificates, and registrations made:

49 1. The total number of applicants and of that number, the number of those granted a license and
50 the number of those denied;

51 2. The total number of examinations administered and of that number, the number of applicants
52 who were successful and the number of applicants who were unsuccessful in passing the examination
53 requirements;

54 3. The number of initial applicants and renewal applicants with a criminal record and of those
55 numbers, the number of times each board acted to grant the application or to deny, diminish, suspend,
56 revoke, withhold, or refuse to renew or otherwise limit the requested license, certificate, or registration
57 due at least in part to an individual's criminal conviction;

58 4. The number of each offense category for which each board acted in subdivision 3, whether that
59 offense be property-related, person-related, or drug-related;

60 5. The number of guidance documents filed by each board under subsection F of § 54.1-204; and

61 6. Any other data, as determined by the Department to be (i) relevant and helpful to inform the
62 Governor and General Assembly of the impact of criminal convictions on professional or occupational
63 licensure or (ii) necessary to accurately account for all totals requested.

64 **§ 54.1-204. Prior convictions not to abridge rights.**

65 A. A person shall not be refused a license, certificate, or registration to practice, pursue, or engage
66 in any ~~regulated~~ occupation or profession regulated by the Department solely because of a prior criminal
67 conviction, ~~unless the criminal conviction directly relates to the occupation or profession for which the~~
68 ~~license, certificate or registration is sought. However, the regulatory board shall have the authority to~~
69 ~~refuse a license, certificate or registration if, based upon all the information available, including the~~
70 ~~applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in such~~
71 ~~occupation or profession~~ until the regulatory board completes an individualized assessment of the
72 individual's criminal record and current circumstances and determines that (i) the criminal conviction
73 directly relates to the occupation or profession for which the license, certificate, or registration is sought,
74 as assessed pursuant to subsection C, and (ii) issuing the license, certificate, or registration presents a
75 substantial risk to the public health, safety, or welfare because the individual has not shown sufficient
76 rehabilitation to safely perform the duties and responsibilities of the occupation or profession, as assessed
77 pursuant to subsection D.

78 B. The regulatory board shall not require an applicant to disclose an excluded record, and an
79 excluded record shall not be the basis for the refusal of a license, certificate, or registration by the board.

80 An excluded record is any one of the following:

81 1. A conviction that has been sealed, annulled, dismissed, expunged, or pardoned;

82 2. A conviction for a misdemeanor offense if three years have elapsed since the conviction and the
83 individual has not been convicted of a new offense in that three-year period, unless such conviction
84 required proof of any nonconsensual sexual act; or

85 3. A conviction for a nonviolent felony offense if the individual's incarceration ended at least seven
86 years before the date of the board's consideration and the individual has not been convicted of a new
87 offense in that seven-year period.

88 A regulatory board or department review of a person's criminal history record shall be limited to
89 any conviction, finding of guilt, or plea of guilty open to disclosure pursuant to § 19.2-389.3, regardless
90 of whether the sentence is imposed, suspended, or executed. Any plea of nolo contendere shall be
91 considered a conviction for the purposes of this section. No regulatory board shall consider information
92 in a criminal history record related solely to an arrest or charge.

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

95 1. The nature and ~~seriousness~~ circumstances of the crime;

96 2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

97 3. The extent to which the occupation or profession might ~~offer an opportunity~~ present a substantial
98 risk to engage in further criminal activity of the same type as that in which the person had been involved;
99 and

100 4. The relationship of the crime to the ~~ability, capacity or fitness~~ qualifications required to ~~perform~~
101 ~~the duties and discharge the responsibilities of~~ practice the occupation or profession; in a competent
102 manner.

103 D. In determining whether an applicant would pose a substantial risk to public health, safety, or
104 welfare because the applicant has not shown sufficient rehabilitation to safely perform the occupation for
105 which he seeks licensure, certification, or registration, the regulatory board shall consider the following:

106 ~~5-1.~~ The extent and nature of the person's past criminal activity convictions;

107 ~~6-2.~~ The age of the person at the time of the commission of the crime, where commission of a
108 crime by a minor shall be considered a mitigating factor;

109 ~~7-3.~~ The amount of time that has elapsed since the person's last involvement in the commission of
110 a crime most recent conviction;

111 4. The reasonable progress made toward the completion of the sentence, whether the setting of that
112 sentence be probation, parole, or a term of incarceration;

113 5. The successful completion of treatment for drugs or alcohol abuse, such treatment's relation to
114 the criminal record at issue, and whether it was ordered, recommended, or assigned by a court or as a
115 condition of probation or any community supervision program;

116 6. The successful completion of rehabilitative programming in the context of a term of
117 incarceration or as a condition of probation, drug court, mental health court, diversion opportunity, or any
118 community supervision program;

119 ~~8-7.~~ The conduct and work activity of the person prior to and following the criminal activity; and

120 ~~9. Evidence~~ 8. Any other evidence of the person's rehabilitation or rehabilitative effort while
121 incarcerated or following release that may mitigate against the relationship of past criminal conduct to the
122 practice of the occupation or profession, including testimony or recommendations from correctional,
123 probation, or parole officers, community or faith leaders, counselors or peer recovery specialists,
124 employers, or other individuals as deemed relevant by the board.

125 ~~C-E.~~ The board shall consider the criminal information contained in the applicant's state or national
126 criminal records in lieu of the applicant providing certified copies of such court records and may request
127 additional information from the applicant in determining whether a criminal conviction directly relates to
128 an occupation or profession. If an applicant is denied a license, certificate, or registration because of the
129 information appearing in his criminal history record, the regulatory board or department shall notify the

130 applicant in writing of the specific offense or offenses that contributed to such denial, how the criminal
131 history directly relates to the occupation, and how the rehabilitation factors contributed to the board's
132 decision. The criminal history record information shall not be disseminated except as provided for in this
133 section.

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

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

143 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that
144 no record exists, shall make a report to the regulatory board or department or ~~their~~ its designee, who must
145 belong to a governmental entity. ~~If an applicant is denied a registration, license or certificate because of~~
146 ~~the information appearing in his criminal history record, the regulatory board or department shall notify~~
147 ~~the applicant that information obtained from the Central Criminal Records Exchange contributed to such~~
148 ~~denial. The information shall not be disseminated except as provided for in this section.~~

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

154 F. All regulatory boards shall develop and publish on their website guidance documents that inform
155 prospective applicants of the types of criminal offenses that may impede licensure, including specific
156 convictions and application of the factors provided in subsections C and D.

157 2. That the provisions of the first enactment amending § 54.1-114 of the Code of Virginia shall
158 become effective on July 1, 2025.

159 3. That the provisions of this act shall not become effective unless reenacted by the 2023 Session of
160 the General Assembly.

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