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IMPLEMENTATION GUIDE

HB 1342

Implementation Guide for Licensing Boards 86th Texas Legislative Session

HB 1342 (Authors: Leach, Allen, Toth, Jarvis Johnson, Rose | Sponsor: Hinojosa): *Relating to a person's eligibility for an occupational license; providing an administrative penalty. – Effective September 1, 2019*

OCCUPATIONAL LICENSING RESTRICTIONS HAVE HAD A SEVERE IMPACT ON TEXANS SEEKING WORK

Texas requires occupational licenses for more than 25 percent of professions – impacting one in three working Texans, and creating especially difficult barriers for the four in ten Texans who have an arrest or conviction record.¹

Automatic exclusions, vague disqualifying criteria, and broad criminal record inquiries have made occupational licensure difficult to obtain for individuals with criminal records.²

Furthermore, while licensing authorities *can* approve license applications from certain people with criminal records, many people with records assume they should not apply. According to the Texas Department of Licensing and Regulation, only about 500 people with criminal records submit requests for a criminal history evaluation letter each year, the first step toward determining if their record will prevent them from entering one of Texas' 41 licensed occupations.³

WHAT DOES HB 1342 DO?

[House Bill 1342](#) went into effect on September 1, 2019. The bill provides direction from the Legislature to licensing authorities to remove unnecessary barriers to skilled professions and maximize licensing opportunities for people with criminal records. More specifically, the intention is to reduce the practice of automatically denying someone with a criminal record from obtaining a license based on their conviction or arrest history, and to instead ensure that licensing boards are making individualized determinations of eligibility. The legislation outlines narrow and specific criteria that a licensing board may consider when making a determination about whether an offense directly relates to a particular occupation.

Goals of HB 1342

1. Reduce the number of people denied an occupational licensing opportunity due to their criminal history.
2. Increase the number of people with criminal records pursuing careers in licensed occupations.

Importantly, HB 1342 also amends the provisions of code related to notice when a licensing authority denies a license or determines that an individual is ineligible for a license based on criminal history. Rather than issuing a general denial or disqualification, licensing authorities are required to state the specific offense and additional factors considered in making its determination, like the date of last conviction, completion of rehabilitative programming, and letters of reference.

This will provide the applicant or prospective applicant with a roadmap for addressing disqualifying factors, and it will send a clear message to other prospective applicants that criminal history considerations are made on an individualized basis. A key goal of HB 1342 is to increase the number of prospective applicants applying for criminal history evaluation letters, overcoming the presumption that people with criminal records need not apply.

Stable and meaningful employment for people with a criminal record will promote economic stability, keep communities safe by reducing recidivism, and contribute to strong families. House Bill 1342 is intended to increase the number of qualified workers, helping Texas maintain its vibrant economy.

HOW CAN LICENSING BOARDS IMPLEMENT HB 1342?

- 1. Maximize the number of eligibility determinations and licensing applications approved for people with criminal records.** HB 1342 gives very clear legislative intent, directing licensing authorities to interpret their authority to deny a license based on criminal histories as narrowly as possible.
- 2. Provide a very clear reason for license ineligibility or denial.** HB 1342 requires licensing boards to inform prospective applicants and those denied licensure of the offense factors and additional factors considered in making their determination. It is crucial that licensing boards be specific in their denials or ineligibility determinations due to criminal histories: Vague or generalized denials will send a message to people with criminal records who may be eligible that they need not apply.
- 3. Unless there is a law prohibiting a licensing authority from granting a license to someone with a specific offense, modify administrative rules to eliminate offenses that might exclude someone from consideration.** Even if the licensing authority's list of offenses primarily provides examples of the types of offenses for which a person may be denied (*see below*), that is not how vocational schools and colleges interpret the list; they tell prospective students with list-based offenses that they need not bother to proceed. Consequently, few people with criminal records even request a criminal history evaluation letter.

EXAMPLES OF PROBLEMATIC LANGUAGE IN ADMINISTRATIVE RULES

The Medical Radiologic Technology regulation⁴ states:

(3) The following felonies and misdemeanors apply to any certificate, registration, or other approval because these criminal offenses indicate an inability or a tendency to be unable to perform as a holder of a certificate, registration, or other approval:

(A) the misdemeanor of knowingly or intentionally acting as a certificate holder without a certificate under the Act;

(B) any misdemeanor and/or felony offense defined as a crime of moral turpitude by statute or common law;

(C) a misdemeanor or felony offense involving:

(i) forgery;

(ii) tampering with a governmental record;

(iii) delivery, possession, manufacturing, or use of controlled substances and dangerous drugs;

(D) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(i) Title 5 concerning offenses against the person;

(ii) Title 7 concerning offenses against property;

(iii) Title 9 concerning offenses against public order and decency;

(iv) Title 10 concerning offenses against public health, safety, and morals; and

(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this section.

The Texas Board of Physical Therapy Examiners regulation⁵ states:

(a) The board may revoke or suspend an existing valid license, disqualify a person from receiving or renewing a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the practice of physical therapy. Those crimes which the board considers to be directly related to the duties and responsibilities of a licensed physical therapist or physical therapist assistant shall include, but are not limited to:

- (1) any felony which involves an act of fraud, dishonesty, or deceit;
- (2) any criminal violation of the Physical Therapy Practice Act or other statutes regulating or pertaining to physical therapy or the medical profession;
- (3) any crime involving moral turpitude;
- (4) murder;
- (5) assault;
- (6) burglary;
- (7) robbery;
- (8) theft;
- (9) rape or sexual abuse;
- (10) patient/client abuse;
- (11) injury to an elderly person;
- (12) child molestation, abuse, endangerment, or neglect;
- (13) felony conviction for driving while intoxicated, driving under the influence of alcohol or drugs, or driving while ability is impaired;
- (14) sale, distribution, or illegal possession of narcotics, controlled substances, or dangerous drugs;
- (15) tampering with a governmental record;
- (16) offenses which include attempting or conspiring to commit any of the offenses in this subsection.

¹ Maurice Emsellem, *Fair Chance Hiring: Reducing Criminal Records Barriers to Employment Improves Public Safety and Builds Stronger Communities*, 2014, <https://law.utexas.edu/wp-content/uploads/sites/27/Fair-Chance-Hiring-Presentation-by-Maurice-Emsellem.pdf>.

See also: Texas Occupations Code §53.023.

² Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction.

³ Data obtained from Texas Department of Licensing and Regulation, September 2019.

⁴ Texas Administrative Code, Title 22 [Examining Boards], Part 9 [Texas Medical Board], Chapter 194.

⁵ Texas Administrative Code, Title 22 [Examining Boards], Part 16.