



Texas Criminal Justice Coalition

Talking Points

Occupational Licensing for Previously Incarcerated Individuals

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Intent of Legislation

This legislative proposal is designed to do the following:

- Boost the economy by increasing employment opportunities for previously incarcerated Texans.
- Enhance public safety by lowering recidivism.
- Allow previously incarcerated Texans to become valued and valuable members of society by decreasing their stigmatization and allowing them to work in the employment areas for which they have been trained.
- Eliminate inefficiencies and waste during the occupational licensing process.

Background on Occupational Licensing in Texas

- Since 1945, the Texas Legislature has regulated 400 occupations and businesses through licensing requirements.¹ On average, between 2000 and 2007, 15 new occupations were brought under licensing requirements each legislative session.² To put these numbers into perspective, at last count, nearly 1 in 3 Texas workers was employed in a state-regulated industry.³
- Occupational regulation in Texas can occur on two fronts: performing a job may require an individual to obtain a license, or businesses in a certain field may be required to maintain a license. For example, barbers are required to maintain individual licenses to legally practice their trade in Texas.⁴ Nurses' aides, on the other hand, are not required to maintain individual licenses, but healthcare facilities in Texas must be licensed; in such a case, certain standards must be met, including particular conditions relating to who can be employed by the facility.⁵ Licensing requirements on individuals and businesses both create employment barriers for previously incarcerated individuals.
- Following Texas' 80th Legislative Session (2007), an interim charge was issued directing the House Committee on Government Reform to:

“Study and review current laws regarding licensing and regulation of professionals, as well as current laws regarding practice acts, and make recommendations on creating limitations and streamlining of licensure requirements, such as the public policy implications of the decriminalization of license-related violations.”⁶
- During the 81st Legislative Session (2009), **HB 963** (Guillen) addressed some of these issues, primarily by:
 1. Instituting a process whereby aspiring licensees can pay a \$25 fee and request a Criminal History Evaluation Letter from the licensing authority to determine potential eligibility for a license.
 2. Allowing provisional licenses to be issued to anyone not convicted of certain offenses (specifically those in Section 3g(a)(2), Article 42.12, Code of Criminal Procedure, and almost all sexually related convictions).

3. Prohibiting licensing authorities from denying licenses except for crimes “directly related” to the duties and responsibilities of the licensed occupation, or for a crime committed less than five years before application for the license.⁷
- Individual professional licensing in Texas is handled by a number of separate authorities. How these independent bodies account for convictions in licensing decisions is broadly governed by Chapter 53 of the Texas Occupations Code. Under section 53.023, each licensing board must consider:
 1. The extent and nature of a person’s past criminal activity;
 2. The age of the person when the crime was committed;
 3. The amount of time that has elapsed since the person’s last criminal activity;
 4. The person’s conduct and work activity before and after the criminal activity;
 5. Evidence of the person’s rehabilitation or rehabilitative effort while incarcerated or after release; and
 6. Other evidence of the person’s fitness, including letters of recommendation.⁸
 - Evidence has shown that many licensing agencies view nearly all crimes as “directly related” to the occupations they issue licenses for,⁹ meaning a previously incarcerated individual would be prohibited from procuring a license in that trade. For example, the boards that regulate water well drillers, auctioneers, and barbers each consider crimes involving illegal drugs to be directly related to their fields.¹⁰
 - How Texas licensing agencies account for past criminal convictions varies from job to job. For those in the healthcare field, 26 separate convictions carry a lifetime disqualification for the license needed to work in a healthcare facility, while eight carry a five-year disqualification.¹¹ Many of the prohibitive convictions listed for healthcare workers make sense: It is easy to see why someone convicted of felony sexual assault or murder should not be allowed to work with the vulnerable populations that healthcare workers serve. What is more questionable is why significantly lesser offense convictions—like obstruction or disorderly conduct—should make someone broadly ineligible to work in the Texas healthcare industry.

Steps to Obtain an Occupational License in Texas

- **OPTIONAL:** For \$25, a person can request a “Criminal History Evaluation Letter” from the licensing agency. This letter, based on a person’s criminal background, determines his or her likely eligibility for a license. The letter cannot be appealed, but it is non-binding on the licensing agency if the person later requests a license.
- The person applies for a license.
- After a full investigation into the person’s criminal background, the licensing agency approves or denies the license.
- If the agency denies the license, the person can request an administrative hearing with the State Office of Administrative Hearings (SOAH) to appeal the agency’s decision. The judge will issue a “Proposal for Decision” for consideration by the licensing agency. This Proposal is not binding on the agency.
- The licensing agency makes the final decision about license eligibility. If it denies the license, it must provide notice for the denial, as well as an appeal date.
- In the case of a license denial, the person can file a motion for rehearing with SOAH to receive an ultimate decision.

Problems with Certain Restrictions on Occupational Licenses in Texas

Impact on Individual Productivity and Public Safety in Texas Communities

Research has shown that a key to successful reentry is helping previously incarcerated individuals find and keep a job.¹² However, increasing occupational regulation has made it harder for Texans with a criminal record to find meaningful work, enter high-growth fields, and achieve stability following reentry. This puts returning men and women at greater risk of re-offending, threatening public safety and increasing victims. With nearly 65,000 men and women released from the Texas Department of Criminal Justice (TDCJ) in 2011, reentry is an important concern for the state.

Impact on Efficiency and Resource Allocation within Texas Agencies

- The Texas Education Code mandates that the Windham School District (WSD), which offers in-prison vocational training to eligible inmates, must prioritize training that results in licensure. This mandate directly affects funding and curriculum priorities for WSD, and it results in individuals being offered training in trades for which they will likely be denied licenses.
- The phrase “directly related” – for purposes of determining the relation of an individual’s past crime to a licensed trade – is too broad. It allows licensing agencies to claim that almost any behavior and any conviction could be predictive of future behavior, and thus reason to deny licensing.

Cost-Saving and Public Safety-Driven Solutions

Proposed legislation should do the following:

1. ***Streamline procedural requirements in administrative hearings by the State Office of Administrative Hearings (SOAH).***

An applicant’s fitness for a license is often determined by letters of recommendation from officials, police, parole officers, and others with information about the nature and impact of offense. However, rules of evidence permit judges to require such individuals to be present at the hearing – which poses difficulties for people who live outside of the county or state, and jeopardizes an individual’s chance to present comprehensive information about his or her character and rehabilitative progress. All documents provided by the applicant during the SOAH hearing should be admitted as evidence if notarized or provided with affidavits, without requiring the documents’ issuers to be present during the hearing.

2. ***Amend Texas Occupations Code, Chapters 51 and 53, so that deferred adjudications successfully completed and not resulting in conviction do not have a bearing on a licensing agency’s decision to deny a license, unless those convictions were for sex offenses.***

This will expand employment opportunities for more Texans, thus improving reentry success rates.

3. ***Amend Occupations Code, Chapter 53, so that Class C misdemeanors that did not result in jail time cannot be used by a licensing agency to deny a license, while excluding those offenders who were convicted of traffic offenses from receiving licenses that require driving.***

This will likewise boost reentry success rates by opening up additional employment opportunities to returning men and women.

4. *Require that Windham School District inform all potential vocational trade students of the following:*

- Restrictions by various state agencies limiting licensing opportunities for all WSD-taught vocational courses.
- The numbers of previously incarcerated individuals who completed WSD-offered vocational courses and were denied or granted licenses during the previous three years.
- The procedures for the following: requesting a Criminal History Evaluation Letter; requesting a hearing by SOAH to appeal a license denial by the licensing agency, and the evidence needed for a positive recommendation; and the avenues of appeal if the licensing agency denies a license after a SOAH hearing. (This information is already available for free by Texas Civil Rights Project: http://www.texascivilrightsproject.org/docs/vets/pro_licenses.pdf.)

5. *Require TDCJ to expand the pool of potential trades for which it offers vocational training.*

This will better equip individuals with skill sets that will match available trades after release.

References

¹ http://www.house.state.tx.us/_media/pdf/committees/reports/80interim/GovernmentReform80th.pdf.

² *Ibid*, p. 44.

³ *Ibid*, pp. 44-45.

⁴ Texas Department of Licensing and Regulation. "Licensing Restriction Guidelines for Criminal Convictions." April 7, 2008.

⁵ Texas Health & Safety Code: <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.250.htm>.

⁶ House Committee on Government Reform, William Callegari, Chairman, "A Report to the House Representatives of the 81st Legislative Session," pp. 43-63,

http://www.house.state.tx.us/_media/pdf/committees/reports/80interim/GovernmentReform80th.pdf.

⁷ TEX. OCCUPATIONAL CODE § 53.021(1), available at

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.53.htm#53.052>

⁸ TEX. OCCUPATIONAL CODE § 53.023, available at

<http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.53.htm#53.052>

⁹ Marc Levin. (2007). "Working with Conviction: Criminal Offenses as Barriers to Entering Licensed Occupations in Texas." Texas Public Policy Foundation, Center for Effective Justice.

¹⁰ Texas Department of Licensing and Regulation. "Licensing Restriction Guidelines for Criminal Convictions." April 7, 2008.

¹¹ Texas Health & Safety Code: <http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.250.htm>

¹² Austin Goodwill Annual Report,

http://www.austingoodwill.org/_edia/literature/Annual%20Report%202007%20Web.pdf.