

REFERENCE TITLE: prohibition; criminal history; occupational regulation

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1436

Introduced by
Senator Burges

AN ACT

AMENDING SECTION 13-904, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1093.04; RELATING TO STATE LICENSING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-904, Arizona Revised Statutes, is amended to
3 read:

4 13-904. Suspension of civil rights and occupational
5 disabilities

6 A. A conviction for a felony suspends the following civil rights of
7 the person sentenced:

- 8 1. The right to vote.
- 9 2. The right to hold public office of trust or profit.
- 10 3. The right to serve as a juror.

11 4. During any period of imprisonment any other civil rights the
12 suspension of which is reasonably necessary for the security of the
13 institution in which the person sentenced is confined or for the
14 reasonable protection of the public.

- 15 5. The right to possess a gun or firearm.

16 B. Persons sentenced to imprisonment shall not thereby be rendered
17 incompetent as witnesses ~~upon~~ ON the trial of a criminal action or
18 proceeding, or incapable of making and acknowledging a sale or conveyance
19 of property.

20 C. A person sentenced to imprisonment is under the protection of
21 the law, and any injury to his person, not authorized by law, is
22 punishable in the same manner as if ~~such~~ THE person was not convicted and
23 sentenced.

24 D. The conviction of a person for any offense shall not work
25 forfeiture of any property, except if a forfeiture is expressly imposed by
26 law. All forfeitures to the state, unless expressly imposed by law, are
27 abolished.

28 E. A person shall not be disqualified from employment by this state
29 or any of its agencies or political subdivisions, ~~nor shall a person whose~~
30 ~~civil rights have been restored be disqualified to engage in any~~
31 ~~occupation for which a license, permit or certificate is required to be~~
32 ~~issued by this state~~ solely because of a prior conviction for a felony or
33 misdemeanor within or without this state. A person may be denied
34 employment by this state or any of its agencies or political subdivisions
35 ~~or a person who has had his civil rights restored may be denied a license,~~
36 ~~permit or certificate to engage in an occupation~~ by reason of the prior
37 conviction of a felony or misdemeanor if the offense has a reasonable
38 relationship to the functions of the employment ~~or occupation for which~~
39 ~~the license, permit or certificate is~~ sought.

40 F. Subsection E of this section is not applicable to any law
41 enforcement agency.

42 G. Any complaints concerning a violation of subsection E of this
43 section shall be adjudicated in accordance with the procedures set forth
44 in title 41, chapter 6 and title 12, chapter 7, article 6.

1 H. A person who is adjudicated delinquent under section 8-341 for a
2 felony does not have the right to carry or possess a gun or firearm.

3 Sec. 2. Title 41, chapter 6, article 11, Arizona Revised Statutes,
4 is amended by adding section 41-1093.04, to read:

5 41-1093.04. Occupational license, permit or certificate or
6 other state recognition rights; petition for
7 review of criminal record; annual report

8 A. A PERSON'S FUNDAMENTAL RIGHT TO PURSUE AN OCCUPATION INCLUDES
9 BOTH OF THE FOLLOWING:

10 1. THE RIGHT OF A PERSON WITH A CRIMINAL RECORD TO ENGAGE IN AN
11 OCCUPATION FOR WHICH A LICENSE, PERMIT, CERTIFICATE OR OTHER STATE
12 RECOGNITION, OTHER THAN A PROVISIONAL LICENSE AS PRESCRIBED IN SECTION
13 32-4701, IS REQUIRED TO BE ISSUED BY THIS STATE.

14 2. THE RIGHT TO NOT HAVE THIS STATE USE A CRIMINAL RECORD AS AN
15 AUTOMATIC PERMANENT BAR TO A PERSON RECEIVING A LICENSE, PERMIT,
16 CERTIFICATE OR OTHER STATE RECOGNITION.

17 B. A PERSON WITH A CRIMINAL RECORD MAY PETITION A STATE AGENCY OR
18 BOARD, AT ANY TIME, INCLUDING BEFORE OBTAINING ANY REQUIRED EDUCATION OR
19 EXPERIENCE, TAKING ANY EXAMINATION OR PAYING ANY FEE FOR A DETERMINATION
20 OF WHETHER THE PERSON'S CRIMINAL RECORD DISQUALIFIES THE PERSON FROM
21 OBTAINING A LICENSE, PERMIT, CERTIFICATE OR OTHER STATE RECOGNITION.

22 C. IN THE PETITION, THE PERSON SHALL INCLUDE:

23 1. THE PERSON'S COMPLETE CRIMINAL HISTORY RECORD OR AUTHORIZE THE
24 STATE AGENCY OR BOARD TO OBTAIN THE PERSON'S COMPLETE CRIMINAL HISTORY
25 RECORD.

26 2. ANY ADDITIONAL INFORMATION ABOUT THE PERSON'S CURRENT
27 CIRCUMSTANCES, INCLUDING THE TIME SINCE THE OFFENSE WAS COMMITTED AND THE
28 SENTENCE WAS COMPLETED, THE PAYMENT OF ANY COURT ORDERED RESTITUTION,
29 EVIDENCE OF REHABILITATION, TESTIMONIALS, EMPLOYMENT HISTORY AND
30 EMPLOYMENT ASPIRATIONS.

31 D. THE STATE LICENSING AGENCY OR BOARD SHALL DETERMINE WHETHER THE
32 PERSON'S CRIMINAL RECORD DISQUALIFIES THE PERSON FROM OBTAINING A LICENSE,
33 PERMIT, CERTIFICATE OR OTHER STATE RECOGNITION.

34 E. NOTWITHSTANDING ANY OTHER LAW OR RULE, THE STATE AGENCY OR BOARD
35 MAY DETERMINE THAT THE PERSON'S CRIMINAL RECORD DISQUALIFIES THE PERSON
36 FROM OBTAINING A LICENSE, PERMIT, CERTIFICATE OR OTHER STATE RECOGNITION
37 ONLY IF BOTH OF THE FOLLOWING APPLY:

38 1. THE PERSON WAS CONVICTED OF A FELONY OR A MISDEMEANOR INVOLVING
39 VIOLENCE OR A SEXUAL OFFENSE AND THE CONVICTION HAS NOT BEEN EXPUNGED.

40 2. THE STATE AGENCY OR BOARD CONCLUDES THAT THE STATE HAS AN
41 IMPORTANT INTEREST IN PROTECTING PUBLIC SAFETY THAT IS SUPERIOR TO THE
42 PERSON'S RIGHT. THE STATE AGENCY OR BOARD MAY MAKE THIS CONCLUSION ONLY
43 IF THE STATE AGENCY OR BOARD DETERMINES, BY CLEAR AND CONVINCING EVIDENCE
44 AT THE TIME OF THE PETITION, THAT BOTH OF THE FOLLOWING APPLY:

1 (a) THE SPECIFIC OFFENSE THAT THE PERSON WAS CONVICTED OF IS
2 SUBSTANTIALLY RELATED TO THE STATE'S INTEREST.

3 (b) THE PERSON, BASED ON THE NATURE OF THE SPECIFIC OFFENSE THAT
4 THE PERSON WAS CONVICTED OF AND THE PERSON'S CURRENT CIRCUMSTANCES, IS
5 MORE LIKELY TO REOFFEND BY VIRTUE OF HAVING THE LICENSE, PERMIT,
6 CERTIFICATE OR OTHER STATE RECOGNITION THAN IF THE PERSON DID NOT HAVE THE
7 LICENSE, PERMIT, CERTIFICATE OR OTHER STATE RECOGNITION.

8 F. THE STATE AGENCY OR BOARD SHALL ISSUE A DETERMINATION ON THE
9 PETITION WITHIN NINETY DAYS AFTER THE STATE AGENCY OR BOARD RECEIVES THE
10 PETITION. THE DETERMINATION ON THE PETITION MUST BE IN WRITING AND
11 INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

12 G. IF THE STATE AGENCY OR BOARD DETERMINES THAT THE STATE'S
13 INTEREST IS SUPERIOR TO THE PERSON'S RIGHT, THE STATE AGENCY OR BOARD MAY
14 ADVISE THE PERSON OF THE ACTIONS THAT THE PERSON MAY TAKE TO REMEDY THE
15 DISQUALIFICATION, INCLUDING:

16 1. AN APPEAL OF THE DETERMINATION AS PROVIDED IN TITLE 12, CHAPTER
17 7, ARTICLE SIX.

18 2. THE SUBMISSION OF A NEW PETITION TO THE SAME STATE AGENCY OR
19 BOARD AT ANY TIME WITHIN TWO YEARS AFTER THE FINAL DETERMINATION OF THE
20 INITIAL PETITION.

21 H. THE STATE AGENCY OR BOARD SHALL RESCIND THE DETERMINATION ANY
22 TIME AFTER THE DETERMINATION IS MADE BUT BEFORE ISSUING A LICENSE, PERMIT,
23 CERTIFICATE OR OTHER STATE RECOGNITION IF THE PERSON IS CONVICTED OF AN
24 ADDITIONAL FELONY OR MISDEMEANOR INVOLVING VIOLENCE OR A SEXUAL OFFENSE.

25 I. EACH STATE AGENCY OR BOARD SHALL SUBMIT A REPORT ON OR BEFORE
26 JULY 1 OF EACH YEAR TO THE GOVERNOR AND THE LEGISLATURE AND PROVIDE A COPY
27 OF THIS REPORT TO THE SECRETARY OF STATE. THE REPORT SHALL INCLUDE THE
28 FOLLOWING INFORMATION FOR THE PREVIOUS CALENDAR YEAR:

29 1. THE NUMBER OF APPLICANTS THAT PETITION THE STATE AGENCY OR BOARD
30 FOR A DETERMINATION.

31 2. THE NUMBER OF PETITIONS THAT WERE GRANTED AND THE TYPES OF
32 OFFENSES AT ISSUE.

33 3. THE NUMBER OF PETITIONS THAT WERE DENIED AND THE TYPES OF
34 OFFENSES AT ISSUE.

35 4. THE NUMBER OF DETERMINATIONS THAT WERE RESCINDED.