

Senate Engrossed House Bill

occupational licenses; criminal offense; prohibition

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2308

AN ACT

AMENDING SECTION 41-1093.04, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 6, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1093.08; RELATING TO BOARD LICENSURE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1093.04, Arizona Revised Statutes, is amended
3 to read:

4 41-1093.04. Occupational license, permit or certificate or
5 other state recognition rights; petition for
6 review of criminal record; annual report

7 A. A person with a criminal record may petition an agency, at any
8 time, including before obtaining any required education or experience,
9 taking any examination or paying any fee, for a determination of whether
10 the person's criminal record disqualifies the person from obtaining a
11 license, permit, certificate or other state recognition.

12 B. In the petition, the person shall include:

13 1. The person's complete criminal history record or authorization
14 for the agency to obtain the person's criminal history record.

15 2. Any additional information about the person's current
16 circumstances, including the time since the offense was committed and the
17 sentence was completed, the payment of any court-ordered restitution,
18 evidence of rehabilitation, testimonials, employment history and
19 employment aspirations.

20 C. The agency shall determine whether the person's criminal record
21 disqualifies the person from obtaining a license, permit, certificate or
22 other state recognition.

23 D. Notwithstanding any other law or rule, the agency may determine
24 that the person's criminal record disqualifies the person from obtaining a
25 license, permit, certificate or other state recognition only if the agency
26 concludes that the state has an important interest in protecting public
27 safety that is superior to the person's right and either of the following
28 applies:

29 1. The person was convicted of any of the following, the conviction
30 occurred within seven years before the date of the petition, excluding any
31 period of time that the person was imprisoned in the custody of the state
32 department of corrections, and the conviction has not been set aside:

33 (a) A felony offense.

34 (b) A violent crime as defined in section 13-901.03.

35 (c) An offense included in title 13, chapter 20, 21 or 22 or
36 section 13-2310 or 13-2311 if the license, permit, certificate or other
37 state recognition is for an occupation in which the applicant would owe a
38 fiduciary duty to a client.

39 2. The person was, at any time, convicted of either of the
40 following:

41 (a) An offense that a law specifically requires the agency to
42 consider when issuing a license, permit, certificate or other state
43 recognition and the conviction has not been set aside.

44 (b) A dangerous offense as defined in section 13-105, a serious
45 offense as defined in section 13-706, a dangerous crime against children

1 as defined in section 13-705 or an offense included in title 13, chapter
2 14 or 35.1, and the conviction has not been set aside.

3 E. To conclude that the state has an important interest in
4 protecting public safety that is superior to the person's right, as
5 required by subsection D of this section, the agency must determine by
6 clear and convincing evidence at the time of the petition that both of the
7 following apply:

8 1. The specific offense that the person was convicted of:

9 (a) FOR AN OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR A HEALTH
10 PROFESSION REGULATORY BOARD, SUBSTANTIALLY RELATES TO THE OCCUPATION OR
11 APPROVAL WOULD POSE A REASONABLE THREAT TO PUBLIC HEALTH AND SAFETY AS
12 PRESCRIBED BY SECTION 41-1093.08.

13 (b) FOR ALL OTHER AGENCIES, substantially relates to the state's
14 interest and specifically and directly relates to the duties and
15 responsibilities of the occupation, except offenses involving moral
16 turpitude.

17 2. The person, based on the nature of the specific offense that the
18 person was convicted of and the person's current circumstances, including
19 the passage of time since the person committed the ~~CRIME~~ OFFENSE and any
20 evidence of rehabilitation or treatment, is more likely to reoffend by
21 virtue of having the license, permit, certificate or other state
22 recognition than if the person did not have the license, permit,
23 certificate or other state recognition.

24 F. In determining if a person's criminal record disqualifies the
25 person from obtaining a license, permit, certificate or other state
26 recognition, the agency may not consider negatively any of the following:

27 1. Nonconviction information, including information related to a
28 deferred adjudication, participation in a diversion program or an arrest
29 that was not followed by a conviction.

30 2. A conviction that has been sealed, dismissed, expunged or
31 pardoned.

32 3. A juvenile adjudication.

33 4. A nonviolent misdemeanor.

34 G. The agency shall issue a determination on the petition within
35 ninety days after the agency receives the petition. The determination on
36 the petition must be in writing and include all of the following:

37 1. Findings of fact and conclusions of law.

38 2. The grounds and reasons for the determination if the person's
39 criminal history disqualifies the person.

40 H. If the agency determines that the state's interest to protect
41 public safety is superior to the person's right, the agency may advise the
42 person of the actions that the person may take to remedy the
43 disqualification, including:

44 1. An appeal of the determination as provided in title 12, chapter
45 7, article 6.

1 2. The earliest date the person may submit a new petition to the
2 agency, which must be not later than two years after the final
3 determination of the initial petition.

4 I. SUBJECT TO SECTION 41-1093.08, IF APPLICABLE, the agency shall
5 rescind the determination any time after the determination is made but
6 before issuing a license, permit, certificate or other state recognition
7 if the person is convicted of an additional offense that is included in
8 subsection D of this section.

9 J. Subsection D and subsection F, paragraphs 1, 2 and 4 of this
10 section do not apply to any of the following:

11 1. Any law enforcement agency or the Arizona peace officer
12 standards and training board.

13 2. Any license or registration certificate that is issued pursuant
14 to title 32, chapter 24 or 26.

15 3. Any certification, license or permit that is issued pursuant to
16 title 15.

17 4. Statutory requirements for a fingerprint clearance card issued
18 pursuant to chapter 12, article 3.1 of this title.

19 5. Any criteria for license, permit or certificate eligibility that
20 is established by an interstate compact.

21 K. Each agency shall submit a report on or before July 1 of each
22 year to the governor and the legislature and provide a copy of this report
23 to the secretary of state. The report shall include the following
24 information for the previous calendar year:

25 1. The number of applicants who petitioned the agency for a
26 determination.

27 2. The number of petitions that were granted and the types of
28 offenses at issue.

29 3. The number of petitions that were denied and the types of
30 offenses at issue.

31 4. The number of determinations that were rescinded.

32 L. An agency shall adopt forms for petitions as prescribed in
33 subsections A and B of this section.

34 Sec. 2. Title 41, chapter 6, article 11, Arizona Revised Statutes,
35 is amended by adding section 41-1093.08, to read:

36 41-1093.08. Occupational or professional licensing boards;
37 health profession regulatory boards; denial,
38 suspension or revocation; prior criminal
39 offense; review; procedures; notice;
40 definitions

41 A. NOTWITHSTANDING ANY OTHER LAW, AN OCCUPATIONAL OR PROFESSIONAL
42 LICENSING BOARD OR HEALTH PROFESSION REGULATORY BOARD MAY NOT DENY,
43 SUSPEND OR REVOKE A LICENSE, REGISTRATION OR CERTIFICATE FOR AN
44 APPLICANT'S, LICENSEE'S, REGISTRANT'S OR CERTIFICATE HOLDER'S PRIOR
45 CRIMINAL OFFENSE UNLESS EITHER:

1 1. THE OFFENSE IS SUBSTANTIALLY RELATED TO THE OCCUPATION.
2 2. APPROVING OR NOT IMPOSING DISCIPLINARY ACTION AGAINST THE
3 LICENSE, REGISTRATION OR CERTIFICATE WOULD POSE A REASONABLE THREAT TO
4 PUBLIC HEALTH AND SAFETY.
5 B. IN ADDITION TO OTHER AVAILABLE REMEDIES, AN APPLICANT, LICENSEE,
6 REGISTRANT OR CERTIFICATE HOLDER MAY PETITION THE OFFICE OF ADMINISTRATIVE
7 HEARINGS TO REQUEST A REVIEW OF A DENIAL, SUSPENSION OR REVOCATION OF A
8 LICENSE, REGISTRATION OR CERTIFICATE FOR A PRIOR CRIMINAL OFFENSE. A
9 PETITION SUBMITTED PURSUANT TO THIS SUBSECTION MAY NOT BE MORE THAN FIVE
10 DOUBLE-SPACED PAGES. REVIEW HEARINGS SHALL BE CONFIDENTIAL AND CONDUCTED
11 IN AN INFORMAL MANNER. ARTICLE 10 OF THIS CHAPTER DOES NOT APPLY TO
12 REVIEWS REQUESTED PURSUANT TO THIS SUBSECTION.
13 C. ON RECEIPT OF A PROPERLY SUBMITTED PETITION PURSUANT TO
14 SUBSECTION B OF THIS SECTION, THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL
15 REVIEW THE DENIAL, SUSPENSION OR REVOCATION AND DETERMINE WHETHER THE
16 OFFENSE IS SUBSTANTIALLY RELATED TO THE APPLICANT'S, LICENSEE'S,
17 REGISTRANT'S OR CERTIFICATE HOLDER'S OCCUPATION OR IF APPROVING OR NOT
18 IMPOSING A DISCIPLINARY ACTION AGAINST THE LICENSE, REGISTRATION OR
19 CERTIFICATE WOULD POSE A REASONABLE THREAT TO PUBLIC HEALTH AND SAFETY.
20 QUESTIONS FROM THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL BE LIMITED TO
21 ONLY MATTERS SPECIFIED IN THE PETITION.
22 D. EACH OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR HEALTH
23 PROFESSION REGULATORY BOARD SHALL POST PROMINENTLY ON THE BOARD'S WEBSITE
24 AND ON EACH LICENSE, REGISTRATION OR CERTIFICATE DENIAL A NOTICE OF AN
25 INDIVIDUAL'S RIGHT TO PETITION THE OFFICE OF ADMINISTRATIVE HEARINGS FOR
26 REVIEW PURSUANT TO THIS SECTION.
27 E. THIS SECTION DOES NOT IMPACT A PERSON'S RIGHT TO PETITION AN
28 AGENCY FOR A CRIMINAL RECORD REVIEW PURSUANT TO SECTION 41-1093.04 OR AN
29 AGENCY'S REQUIREMENT TO DETERMINE WHETHER THE PERSON'S CRIMINAL RECORD
30 DISQUALIFIES THE PERSON FROM OBTAINING A LICENSE, PERMIT, CERTIFICATE OR
31 OTHER STATE RECOGNITION.
32 F. FOR THE PURPOSES OF THIS SECTION:
33 1. "HEALTH PROFESSION REGULATORY BOARD" HAS THE SAME MEANING
34 PRESCRIBED IN SECTION 32-3201.
35 2. "REASONABLE THREAT" MEANS THE CRIMINAL CONDUCT THE PERSON WAS
36 CONVICTED OF INVOLVED AN ACT OR THREAT OF HARM AGAINST ANOTHER PERSON AND
37 HAS A DIRECT BEARING ON THE PERSON'S ABILITY TO SAFELY SERVE THE PUBLIC OR
38 WORK WITH OTHERS IN THE OCCUPATION.
39 3. "SUBSTANTIALLY RELATED" MEANS HAS A DIRECT BEARING ON THE
40 ABILITY TO PERFORM ANY DUTIES OR RESPONSIBILITIES RELATED TO THE
41 OCCUPATION.