

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 705

5 By: Senator A. Clark
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE FRESH START ACT OF 2021; TO HELP
9 INDIVIDUALS WITH CRIMINAL RECORDS REENTER AND MOVE TO
10 THE WORKFORCE AND STAY OUT OF PRISON; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 TO CREATE THE FRESH START ACT OF 2021;
15 AND TO HELP INDIVIDUALS WITH CRIMINAL
16 RECORDS REENTER AND MOVE TO THE WORKFORCE
17 AND STAY OUT OF PRISON.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

SECTION 1. Title.

23 This act shall be known and may be cited as the "Fresh Start Act of
24 2021".
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27 SECTION 2. Arkansas Code § 17-3-102 is amended to read as follows:
28 17-3-102. Licensing restrictions based on criminal records.

29 ~~(a) An individual is not eligible to receive or hold a license issued~~
30 ~~by a licensing entity if that individual has pleaded guilty or nolo~~
31 ~~contendere to or been found guilty of any of the following offenses by any~~
32 ~~court in the State of Arkansas or of any similar offense by a court in~~
33 ~~another state or of any similar offense by a federal court, unless the~~
34 ~~conviction was lawfully sealed under the Comprehensive Criminal Record~~
35 ~~Sealing Act of 2013, § 16-90-1401 et seq., or otherwise previously sealed,~~
36 ~~pardoned or expunged under prior law.~~



- 1 ~~(1) Capital murder as prohibited in § 5-10-101;~~
- 2 ~~(2) Murder in the first degree and second degree as prohibited~~
- 3 ~~in §§ 5-10-102 and 5-10-103;~~
- 4 ~~(3) Manslaughter as prohibited in § 5-10-104;~~
- 5 ~~(4) Negligent homicide as prohibited in § 5-10-105;~~
- 6 ~~(5) Kidnapping as prohibited in § 5-11-102;~~
- 7 ~~(6) False imprisonment in the first degree as prohibited in § 5-~~
- 8 ~~11-103;~~
- 9 ~~(7) Permanent detention or restraint as prohibited in § 5-11-~~
- 10 ~~106;~~
- 11 ~~(8) Robbery as prohibited in § 5-12-102;~~
- 12 ~~(9) Aggravated robbery as prohibited in § 5-12-103;~~
- 13 ~~(10) Battery in the first degree as prohibited in § 5-13-201;~~
- 14 ~~(11) Aggravated assault as prohibited in § 5-13-204;~~
- 15 ~~(12) Introduction of a controlled substance into the body of~~
- 16 ~~another person as prohibited in § 5-13-210;~~
- 17 ~~(13) Aggravated assault upon a law enforcement officer or an~~
- 18 ~~employee of a correctional facility as prohibited in § 5-13-211, if a Class Y~~
- 19 ~~felony;~~
- 20 ~~(14) Terroristic threatening in the first degree as prohibited~~
- 21 ~~in § 5-13-301;~~
- 22 ~~(15) Rape as prohibited in § 5-14-103;~~
- 23 ~~(16) Sexual indecency with a child as prohibited in § 5-14-110;~~
- 24 ~~(17) Sexual extortion as prohibited in § 5-14-113;~~
- 25 ~~(18) Sexual assault in the first degree, second degree, third~~
- 26 ~~degree, and fourth degree as prohibited in §§ 5-14-124—5-14-127;~~
- 27 ~~(19) Incest as prohibited in § 5-26-202;~~
- 28 ~~(20) Offenses against the family as prohibited in §§ 5-26-303—~~
- 29 ~~5-26-306;~~
- 30 ~~(21) Endangering the welfare of an incompetent person in the~~
- 31 ~~first degree as prohibited in § 5-27-201;~~
- 32 ~~(22) Endangering the welfare of a minor in the first degree as~~
- 33 ~~prohibited in § 5-27-205;~~
- 34 ~~(23) Permitting the abuse of a minor as prohibited in § 5-27-~~
- 35 ~~221;~~
- 36 ~~(24) Engaging children in sexually explicit conduct for use in~~

1 ~~visual or print media, transportation of minors for prohibited sexual~~
2 ~~conduct, pandering or possessing visual or print media depicting sexually~~
3 ~~explicit conduct involving a child, or use of a child or consent to use of a~~
4 ~~child in a sexual performance by producing, directing, or promoting a sexual~~
5 ~~performance by a child, as prohibited in §§ 5-27-303—5-27-305, 5-27-402,~~
6 ~~and 5-27-403;~~

7 ~~(25) Computer child pornography as prohibited in § 5-27-603;~~

8 ~~(26) Computer exploitation of a child in the first degree as~~
9 ~~prohibited in § 5-27-605;~~

10 ~~(27) Felony adult abuse as prohibited in § 5-28-103;~~

11 ~~(28) Theft of property as prohibited in § 5-36-103;~~

12 ~~(29) Theft by receiving as prohibited in § 5-36-106;~~

13 ~~(30) Arson as prohibited in § 5-38-301;~~

14 ~~(31) Burglary as prohibited in § 5-39-201;~~

15 ~~(32) Felony violation of the Uniform Controlled Substances Act,~~
16 ~~§ 5-64-101 et seq., as prohibited in the former § 5-64-401, and §§ 5-64-419—~~
17 ~~5-64-442;~~

18 ~~(33) Promotion of prostitution in the first degree as prohibited~~
19 ~~in § 5-70-104;~~

20 ~~(34) Stalking as prohibited in § 5-71-229;~~

21 ~~(35) Criminal attempt, criminal complicity, criminal~~
22 ~~solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202,~~
23 ~~5-3-301, and 5-3-401, to commit any of the offenses listed in this~~
24 ~~subsection; and~~

25 ~~(36) All other crimes referenced in this title.~~

26 ~~(b)(1) If an individual has been convicted of a crime listed in~~
27 ~~subsection (a) of this section, a licensing entity may waive disqualification~~
28 ~~or revocation of a license based on the conviction if a request for a waiver~~
29 ~~is made by:~~

30 ~~(A) An affected applicant for a license; or~~

31 ~~(B) The individual holding a license subject to~~
32 ~~revocation.~~

33 ~~(2) A basis upon which a waiver may be granted includes without~~
34 ~~limitation:~~

35 ~~(A) The age at which the offense was committed;~~

36 ~~(B) The circumstances surrounding the offense;~~

1 ~~(C) The length of time since the offense was committed;~~

2 ~~(D) Subsequent work history since the offense was~~
3 ~~committed;~~

4 ~~(E) Employment references since the offense was committed;~~

5 ~~(F) Character references since the offense was committed;~~

6 ~~(G) Relevance of the offense to the occupational license;~~

7 and

8 ~~(H) Other evidence demonstrating that licensure of the~~
9 ~~applicant does not pose a threat to the health or safety of the public.~~

10 ~~(c) If an individual has a valid criminal conviction for an offense~~
11 ~~that could disqualify the individual from receiving a license, the~~
12 ~~disqualification shall not be considered for more than five (5) years from~~
13 ~~the date of conviction or incarceration or on which probation ends, whichever~~
14 ~~date is the latest, if the individual:~~

15 ~~(A) Was not convicted for committing a violent or sexual~~
16 ~~offense; and~~

17 ~~(B) Has not been convicted of any other offense during the five-~~
18 ~~year disqualification period.~~

19 (a) An individual shall not be disqualified from pursuing, practicing,
20 or engaging in any occupation or profession for which licensure is required
21 solely or in part because of a prior conviction of a crime, unless the crime
22 for which the individual was convicted directly relates to the duties and
23 responsibilities of the occupation or profession.

24 ~~(d)(b)~~ A licensing entity shall not, as a basis upon which a license
25 may be granted or denied:

26 (1) Use vague or generic terms, including without limitation the
27 phrases "moral turpitude" and "good character"; or

28 (2) Consider arrests without a subsequent conviction.

29 ~~(e) Due to the serious nature of the offenses, the following shall~~
30 ~~result in permanent disqualification for licensure:~~

31 ~~(1) Capital murder as prohibited in § 5-10-101;~~

32 ~~(2) Murder in the first degree as prohibited in § 5-10-102 and~~
33 ~~murder in the second degree as prohibited in § 5-10-103;~~

34 ~~(3) Kidnapping as prohibited in § 5-11-102;~~

35 ~~(4) Aggravated assault upon a law enforcement officer or an~~
36 ~~employee of a correctional facility as prohibited in § 5-13-211, if a Class Y~~

1 felony;

2 ~~(5) Rape as prohibited in § 5-14-103;~~

3 ~~(6) Sexual extortion as prohibited in § 5-14-113;~~

4 ~~(7) Sexual assault in the first degree as prohibited in § 5-14-~~

5 ~~124 and sexual assault in the second degree as prohibited in § 5-14-125;~~

6 ~~(8) Incest as prohibited in § 5-26-202;~~

7 ~~(9) Endangering the welfare of an incompetent person in the~~
8 ~~first degree as prohibited in § 5-27-201;~~

9 ~~(10) Endangering the welfare of a minor in the first degree as~~
10 ~~prohibited in § 5-27-205;~~

11 ~~(11) Adult abuse that constitutes a felony as prohibited in § 5-~~
12 ~~28-103; and~~

13 ~~(12) Arson as prohibited in § 5-38-301.~~

14 (c)(1) On or before one hundred twenty (120) days after the effective
15 date of this chapter, a licensing entity shall revise existing rules
16 concerning licensure to explicitly list the specific criminal convictions
17 that could disqualify an applicant from receiving licensure for a particular
18 occupation or profession.

19 (2) In its rulemaking, a licensing entity shall list only
20 disqualifying criminal convictions that are specifically and directly related
21 to the duties and responsibilities for the occupation or profession.

22 (d)(1) A licensing entity shall use the preponderance of the evidence
23 standard of proof in examining the factors to determine whether an applicant
24 with a disqualifying criminal conviction will be denied licensure.

25 (2) A licensing entity shall make a determination under
26 subdivision (d)(1) of this section based on the following factors:

27 (A) The nature and seriousness of the offense for which
28 the individual was convicted;

29 (B) The passage of time since the commission of the
30 offense;

31 (C) The relationship of the offense to the ability,
32 capacity, and fitness required to perform the duties and discharge the
33 responsibilities of the occupation or profession; and

34 (D) Any evidence of rehabilitation or treatment undertaken
35 by the individual that might mitigate against a direct relationship between
36 an element of the offense for which an applicant was convicted and a

1 responsibility inherent to the particular occupation or profession.

2 (e)(1) Notwithstanding any other law, if an individual has a valid
 3 criminal conviction for an offense that could disqualify the individual from
 4 receiving licensure, the disqualification shall not be considered for more
 5 than five (5) years from the date of the conviction if the individual:

6 (A) Was not convicted of an offense that was violent or
 7 sexual in nature;

8 (B) Was not convicted more than one (1) time for any
 9 felony offense and does not have a criminal background that gives reason to
 10 believe that he or she might pose a grave, serious, or substantial risk
 11 concerning public safety that gives cause for denying licensure; or

12 (C) Has not been convicted of any other offense during the
 13 five-year disqualification period.

14 (2)(A) The potential disqualification period may last longer if
 15 an applicant with a disqualifying criminal conviction was incarcerated for an
 16 offense that was violent or sexual in nature at any time during the previous
 17 five (5) years.

18 (B) If the disqualification period lasts longer than the
 19 period specified under subdivision (e)(1) of this section, the
 20 disqualification shall last no longer than five (5) years from the date that
 21 the individual was released from incarceration.

22 (f) This section shall apply to any new occupational licensure created
 23 after the effective date of this chapter.

24 ~~(f)(g)~~ This chapter does not preclude a licensing entity from taking
 25 emergency action against a licensee as authorized under § 25-15-211 for the
 26 sake of public health, safety, or welfare.

27 ~~(g) The permanent disqualification for an offense listed in subsection~~
 28 ~~(e) of this section does not apply to an individual who holds a valid license~~
 29 ~~on July 24, 2019.~~

30 (h) This section does not apply to licensure or certification:

31 (1) Of professions not governed by this title;

32 (2) Of polygraph examiners and voice stress analysis examiners
 33 under § 17-39-101 et seq.; or

34 (3) Of private investigators and private security agencies under
 35 the Private Security Agency, Private Investigator, and School Security
 36 Licensing and Credentialing Act, § 17-40-101 et seq.

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2 SECTION 3. Arkansas Code Title 17, Chapter 3, Subchapter 1, is amended
3 to add an additional section to read as follows:

4 17-3-105. Petition for review of licensing entity decisions.

5 (a)(1) An individual with a criminal record may petition a licensing
6 entity at any time for a determination of whether the criminal record of the
7 individual will disqualify the individual from licensure.

8 (2) The petition shall include details on the criminal record of
9 the individual.

10 (3) The licensing entity shall inform the individual of his or
11 her standing within thirty (30) days of receiving the petition from the
12 applicant.

13 (4) The licensing entity may charge a fee to recoup costs
14 associated with the petition not to exceed twenty-five dollars (\$25.00) for
15 each petition.

16 (b) If a licensing entity denies an individual licensure solely or in
17 part because of a prior conviction of an offense by the individual, the
18 licensing entity shall notify the individual in writing of the following:

19 (1) The grounds and reasons for the denial or disqualification;

20 (2) The right of the individual to a hearing to challenge the
21 decision of the licensing entity;

22 (3) The earliest date that the individual may reapply for
23 licensure; and

24 (4) The fact that evidence of rehabilitation may be considered
25 upon reapplication.

26 (c) A licensing entity shall document a determination that a criminal
27 conviction of an applicant is specifically listed as a disqualifying
28 conviction and is directly related to the duties and responsibilities of the
29 occupation or profession in written findings for each of the factors listed
30 in § 17-3-102 by a preponderance of the evidence sufficient for a reviewing
31 court.

32 (d) In an administrative hearing or civil litigation, the licensing
33 entity shall carry the burden of proof regarding whether the criminal
34 conviction directly relates to the occupation or profession for which
35 licensure is sought.

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SECTION 4. DO NOT CODIFY. Rules.

(a) A licensing entity shall adopt necessary rules for the implementation of this act.

(b)(1) When adopting the initial rules to implement this act, the final rule shall be filed with the Secretary of State for adoption under § 25-15-204(f):

(A) On or before January 1, 2022; or

(B) If approval under § 10-3-309 has not occurred by January 1, 2022, as soon as practicable after approval under § 10-3-309.

(2) A licensing entity shall file the proposed rule with the Legislative Council under § 10-3-309(c) sufficiently in advance of January 1, 2022, so that the Legislative Council may consider the rule for approval before January 1, 2022.