SLS 22RS-161

ORIGINAL

2022 Regular Session

SENATE BILL NO. 303

BY SENATOR FOIL

FEES/LICENSES/PERMITS. Provides for occupational or professional licensure of a person with a criminal history. (8/1/22)

1	AN ACT
2	To amend and reenact Chapter 1-C of Title 37 of the Louisiana Revised Statues of 1950,
3	comprised of R.S. 37:31 through 36, and to repeal R.S. 37:2950, relative to
4	occupational or professional licenses for ex-offenders; to provide for access to
5	occupational or professional licensure; to provide for employment restrictions; to
6	provide for requirements applicable to the issuance of licences to ex-offenders; to
7	provide for the definition of licensing entity; and to provide for related matters.
8	Be it enacted by the Legislature of Louisiana:
9	Section 1. Chapter 1-C of Title 37 of the Louisiana Revised Statues of 1950,
10	comprised of R.S. 37:31 through 36, is hereby amended and reenacted to read as follows:
11	CHAPTER 1-C. LICENSES FOR EX-OFFENDERS
12	§31. Short title
13	This Chapter shall be known and may be cited as the "Licenses for
14	Ex-Offenders Act".
15	§32. Issuance of licenses to ex-offenders Criminal record effect on trade and
16	occupational and professional licensing
17	Notwithstanding any provision of law or rule adopted and promulgated by

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1	any state department, agency, board, commission, or authority to the contrary, an
2	entity issuing licenses, except for those listed in R.S. 37:36(E), for persons to engage
3	in certain fields of work pursuant to state law shall issue to an otherwise-qualified
4	applicant who has been convicted of an offense or offenses, except those described
5	in R.S. 37:36(A) through (C), the license for which the applicant applied if the
6	applicant meets all other requirements of the licensing qualifications, except those
7	pertaining to former offenses.
8	A. As used in this Chapter the term "licensing entity" means any
9	professional or occupational board or commission established in this Title that
10	is authorized to issue a permit, license, certificate, or registration to a person
11	engaged in an occupation or profession.
12	B.(1) Notwithstanding any other provisions of law to the contrary, a
13	person shall not be disqualified, or held ineligible to practice or engage in any
14	occupation or profession for which a license, permit, certificate, or registration
15	is required to be issued by the state or any agency or political subdivision of the
16	state, solely or partly because of a prior criminal record, except in cases in
17	which a conviction directly relates to the position of employment sought, or to
18	the occupation or profession for which the license, permit, certificate, or
19	registration is sought.
20	(2) In determining whether a conviction directly relates to the position
21	of employment sought, or the occupation or profession for which the license,
22	permit, certificate, or registration is sought, a licensing entity shall consider all
23	of the following:
24	(a) The nature and seriousness of the offense.
25	(b) The nature of the specific duties and responsibilities for which the
26	license, permit, certificate, or registration is required.
27	(c) The amount of time that has passed since the conviction.
28	(d) The age of the person at the time the offense was committed.
29	(e) Evidence relevant to the circumstances of the offense, including any

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1	aggravating or mitigating circumstances or social conditions surrounding the
2	commission of the offense.
3	(f) Evidence of rehabilitation or treatment undertaken by the person
4	since the conviction.
5	C. Except as provided in Subsection B of this Section, a person shall not
6	be disqualified, or held ineligible, to practice or engage in any occupation or
7	profession for which a license, permit, certificate, or registration is required to
8	be issued by the state or any agency or political subdivision of the state for any
9	of the following reasons:
10	(1) An arrest that was not followed by a conviction, unless charges are
11	currently pending.
12	(2) A juvenile court adjudication.
13	(3) A conviction that has been pardoned, sealed, or expunged.
14	(4) A conviction for a misdemeanor not involving violence.
15	(5) A conviction for which more than ten years have elapsed since the
16	date of conviction or release from incarceration, whichever occurred later,
17	provided the person has not been convicted of a crime other than a non-violent
18	misdemeanor in the previous ten years.
19	D. Any complaints concerning violations of this Section shall be
20	adjudicated in accordance with procedures set forth for administrative and
21	judicial review, contained in Title 49 of the Louisiana Revised Statutes of 1950.
22	E. The provisions of Paragraphs (C)(4) and (5) of this Section shall not
23	be applicable to the following:
24	(1) The Louisiana State Board of Medical Examiners.
25	(2) The Louisiana State Board of Dentistry.
26	(3) The Louisiana State Board of Nursing.
27	(4) The Louisiana State Board of Practical Nurse Examiners.
28	(5) The Louisiana Board of Pharmacy.
29	(6) The Louisiana State Bar Association.

1	(7) The Louisiana Professional Engineering and Land Surveying Board.
2	(8) The Louisiana State Board of Architectural Examiners.
3	(9) The Louisiana State Board of Private Investigator Examiners.
4	(10) The Louisiana State Board of Embalmers and Funeral Directors.
5	(11) The Louisiana Physical Therapy Board.
6	(12) The Louisiana Board of Massage Therapy.
7	§33. License; application by ex-offender Pre-application eligibility
8	determination; request
9	A. An ex-offender may apply to any entity issuing licenses to engage in
10	certain fields of work pursuant to state law for a license to engage in the particular
11	field of work for which the entity issues licenses. An individual convicted of a
12	crime may request at any time, including before obtaining any required
13	education or training, that a licensing entity determine whether the individual's
14	criminal conviction disqualifies the individual from obtaining the license,
15	certificate, registration, or permit issued by the licensing entity. Each request
16	shall include details of the individual's criminal conviction, including any
17	information relevant to the factors listed at R.S. 37:32(B)(2).
18	B. The licensing entity shall issue the license for which the applicant applied
19	and is otherwise qualified to receive. Not later than thirty days after receiving a
20	request, the licensing entity, shall inform the individual in writing whether,
21	based on the criminal record information submitted, the individual is
22	disqualified from receiving or holding the license for which he inquired. A
23	determination made pursuant to this Section is binding upon a licensing entity
24	unless, at the time an application for licensure is submitted, the applicant has
25	been subsequently convicted of a crime, has pending criminal charges, or has
26	criminal convictions.
27	§34. License; revocation Pre-application determination; notice
28	A. The licensing entity may revoke the license issued pursuant to this Chapter
29	if the holder commits any of the following: Before a licensing entity makes a final

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1	determination that a criminal conviction shall result in the denial of a license,
2	the licensing entity shall provide written notice to the individual making the
3	pre-application determination of the following information:
4	(1) A new felony for which he is convicted. The specific conviction that is
5	the basis for the intended denial.
6	(2) A violation of law or rules governing the practice of the field of work for
7	which the license was issued. The reason the conviction was determined to be
8	directly related to the licensed activity, including findings for each of the factors
9	in R.S. 37:32(B)(2) that the licensing entity deemed relevant to the
10	determination.
11	(3) The right to submit additional evidence relevant to each of the factors
12	listed in R.S. 37:32(B)(2) within sixty days of the date the notice was mailed, the
13	licensing entity shall consider the additional evidence submitted before issuing
14	a final determination.
15	B. A court shall notify the licensing entity if the holder of the license is
16	charged with a new offense. A final determination that a criminal conviction shall
17	prevent a person from receiving a license shall be in writing and shall include
18	notice of the right to appeal the determination in accordance with the
19	Administrative Procedure Act and the earliest date the applicant may reapply
20	for the license.
21	C. If a licensing entity revokes a license pursuant to this Section, each of the
22	following apply:
23	(1) The holder shall not be entitled to receive another license for which the
24	applicant originally applied, even if otherwise qualified.
25	(2) The ability of the holder to subsequently obtain another license from
26	another licensing entity in the future is within the sole discretion of the issuing entity.
27	§35. License; issuance; discretion of issuer Information for applicants
28	Nothing in this Chapter shall be implicitly interpreted to preclude an entity
29	from exercising its existing discretion to issue a license to individuals not covered

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1	pursuant to the provisions of this Chapter, except where precluded by another law.
2	Each licensing entity shall include in its application for licensure and publish on
3	its public website the following information:
4	(1) Whether a criminal conviction of an applicant may be used as a basis
5	<u>for denial.</u>
6	(2) If criminal history may be used as a basis for denial, the factors listed
7	in R.S. 37:32(B)(2) that the licensing entity shall consider.
8	(3) Notice of the right to request from the licensing entity a
9	determination pursuant to the provisions of R.S. 37:33 prior to meeting the
10	general qualifications for licensure.
11	§36. Exemptions; prohibitions; records; Records; reports
12	A. A licensing entity shall not be required to issue a license to any person
13	convicted of any of the following:
14	(1) Any grade of homicide enumerated in R.S. 14:29.
15	(2) A "crime of violence" as enumerated in R.S. 14:2(B).
16	(3) A "sex offense" as defined by R.S. 15:541.
17	B. A licensing entity shall not be required to issue a license to any person
18	convicted of an offense involving fraud if the licensed field of work is one in which
19	the licensee owes a fiduciary duty to a client.
20	C. A licensing entity shall not be required to issue a license to an applicant
21	whose conviction directly relates to the position of employment sought, or to the
22	specific field for which the license is required, or profession for which the license is
23	sought.
24	D. A license holder who supervises children or individuals who lack mental
25	capacity shall not do so without another licensee in the room at all times.
26	E.(1) This Chapter shall not apply to the following licensing entities:
27	(a) Any law enforcement agency.
28	(b) The Louisiana State Board of Medical Examiners.
29	(c) The Louisiana State Board of Dentistry.

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1	(d) The Louisiana State Board of Nursing.
2	(e) The Louisiana State Board of Practical Nurse Examiners.
3	(f) The Louisiana State Racing Commission.
4	(g) The State Boxing and Wrestling Commission.
5	(h) The Louisiana Board of Pharmacy.
6	(i) The Louisiana Supreme Court.
7	(j) The Louisiana Professional Engineering and Land Surveying Board.
8	(k) The Louisiana State Board of Architectural Examiners.
9	(1) The Louisiana State Board of Private Investigator Examiners.
10	(m) The Louisiana State Board of Embalmers and Funeral Directors.
11	(n) The Louisiana State Board of Elementary and Secondary Education.
12	(o) The Office of Financial Institutions.
13	(p) The Louisiana Physical Therapy Board.
14	(q) The Louisiana Board of Massage Therapy.
15	(r) The office of alcohol and tobacco control of the Department of Revenue.
16	(s) The health standards section of the Louisiana Department of Health.
17	(t) The Department of Insurance.
18	(u) The Louisiana State Board of Social Work Examiners.
19	(v) The Louisiana State Board of Examiners of Psychologists.
20	(w) The Louisiana Behavior Analyst Board.
21	(x) All offices, boards, or commissions under the supervision of the deputy
22	secretary of the Department of Public Safety and Corrections, public safety services,
23	or the superintendent of the Louisiana State Police, which are not delineated in this
24	Section.
25	(y) The Louisiana Real Estate Commission.
26	(z) The Louisiana Real Estate Appraisers Board.
27	(aa) The Louisiana Licensed Professional Counselors Board of Examiners.
28	(2) Nothing in this Subsection shall be construed to preclude the licensing
29	entity, in its discretion, from adopting the provisions of this Chapter as policies or

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1	administrative rules.
2	(3)(a) A licensing entity exempt from the provisions of this Chapter \underline{A}
3	licensing entity shall keep record and compile a report of the number of licenses
4	denied by the entity, including all reasons for such denial, when the denial is of an
5	otherwise qualified applicant who has been convicted of an offense or offenses.
6	(b) Notwithstanding the exemption of licensing entities as provided in this
7	Section, any licensing entity issuing licenses in accordance with this Chapter to
8	people with criminal convictions shall keep record and compile a report of the
9	number of licenses issued and denied by the entity, including all reasons for any such
10	issuance or denial.
11	(c) B. The licensing entity shall provide the report annually to the Senate
12	Committee on Commerce, Consumer Protection and International Affairs and
13	the House Committee on Commerce no later than February first of each year.
14	F. If a licensing entity believes that another exemption not provided in this
15	Section is necessary in a specific case to protect the public from a clear and
16	imminent danger, the entity may seek declaratory relief in district court through a
17	judicial order finding that the applicant shall not be issued a license because it would
18	pose such a danger.
19	Section 2. R.S. 37:2950 is repealed in its entirety.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Xavier I. Alexander.

	DIGEST	
SB 303 Original	2022 Regular Session	Foil

<u>Present law</u> requires non-exempt licensing entities to issue an occupational or professional license to an applicant if the applicant meets all other requirements of the licensing qualifications, except those pertaining to former offenses.

<u>Present law</u> provides that an ex-offender may apply to any entity issuing an occupational or professional license and the entity shall issue a license for which the applicant applied if the applicant meets all qualifications.

<u>Present law</u> provides that a licensing entity may revoke the license issued if the offender commits a new felony or violates a rule or law associated with the field of work. <u>Present law</u> further provides that if the license is revoked the holder shall not be entitled to receive another license for which the applicant originally applied and the issuing entity has discretion in determining the holders ability to receive a license from another entity.

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Proposed law defines "licensing entity".

<u>Proposed law</u> provides that a person shall not be disqualified from receiving a license, permit, certificate, or registration, solely or partly, because of prior criminal record, except where the conviction is directly related to the employment position sought, occupation or profession sought.

<u>Proposed law</u> provides for factors to be considered for applicants with prior criminal convictions.

<u>Proposed law</u> provides that complaints concerning any violations of <u>proposed law</u> shall be adjudicated in accordance with administrative and judicial review.

Proposed law provides for licensing entities exempt from proposed law.

<u>Proposed law</u> provides relative to procedures for pre-application eligibility determination for individuals applying for occupational, or professional licenses, permits, certifications, or registrations.

<u>Present law</u> provides that a licensing entity is not required to issue a license to any person convicted of any of the following:

- (1) Any grade of homicide enumerated in R.S. 14:29.
- (2) A "Crime of violence" as enumerated in R.S. 14:2(B).
- (3) A "sex offense" as defined by R.S. 15:541.

Proposed law deletes present law.

Proposed law makes technical changes.

Effective August 1, 2022.

(Amends R.S. 37:31-36; repeals R.S. 37:2950))