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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2394

03/11/2019 Authored by Dehn, Gomez, Lee and Lesch
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to occupational licensing; to provide a prerecognition petition for offenders
1.3 seeking state occupational licensing; proposing coding for new law in Minnesota
1.4 Statutes, chapter 214.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. [214.50] DEFINITIONS.

1.7 Subdivision 1. Scope. For the purposes of this chapter, the words defined in this section
1.8 have the meaning given.

1.9 Subd. 2. Board. "Board" includes all state licensing boards or an agency or department
1.10 that issues an occupational license.

1.11 Subd. 3. Government certification. "Government certification" means a voluntary,
1.12 government-granted, and nontransferable recognition to an individual who meets personal
1.13 qualifications related to a lawful occupation. Upon the government's initial and continuing
1.14 approval, the individual may use "government certified" or "state certified" as a title.

1.15 Subd. 4. Lawful occupation. "Lawful occupation" means a course of conduct, pursuit,
1.16 or profession that includes the sale of goods or services that are not themselves illegal to
1.17 sell irrespective of whether the individual selling them is subject to an occupational
1.18 regulation.

1.19 Subd. 5. Occupational license. "Occupational license" means a nontransferable
1.20 authorization in law for an individual to perform exclusively a lawful occupation for
1.21 compensation based on meeting personal qualifications. In an occupation for which a license

2.1 is required, it is illegal for an individual who does not possess a valid occupational license
2.2 to perform the occupation for compensation.

2.3 Subd. 6. **Occupational regulation.** "Occupational regulation" means a statute, rule,
2.4 practice, policy, or other state law that allows an individual to use an occupational title or
2.5 work in a lawful occupation. It includes a government certification and occupational license.
2.6 It excludes a business license, facility license, building permit, or zoning and land use
2.7 regulation except to the extent those state laws regulate an individual's personal qualifications
2.8 to perform a lawful occupation.

2.9 Subd. 7. **Personal qualifications.** "Personal qualifications" means criteria related to an
2.10 individual's personal background and characteristics. Personal qualifications may include
2.11 one or more of the following: completion of an approved educational program, satisfactory
2.12 performance on an examination, work experience, apprenticeship, other evidence of
2.13 attainment of requisite skills or knowledge, criminal record, and completion of continuing
2.14 education.

2.15 Subd. 8. **State recognition.** "State recognition" means the government's grant or renewal
2.16 of an occupational title or authorization to work in a lawful occupation. It includes
2.17 government certification, an occupational license, and other recognition of an individual's
2.18 personal qualifications.

2.19 Sec. 2. **[214.51] FUNDAMENTAL RIGHT.**

2.20 The right of an individual to pursue a lawful occupation is a fundamental right.

2.21 Sec. 3. **[214.52] REVIEW OF CRIMINAL RECORD.**

2.22 Subdivision 1. **Application.** This chapter supersedes any other statute or rule that denies,
2.23 diminishes, suspends, revokes, withholds, or otherwise limits state recognition because of
2.24 a criminal conviction.

2.25 Subd. 2. **No automatic bar.** A board must not automatically bar an individual from state
2.26 recognition because of a criminal record and must provide individualized consideration.

2.27 Subd. 3. **Information from a criminal record to be considered.** When considering
2.28 state recognition, a board may only consider a conviction of a nonexcluded crime that is a
2.29 felony or violent misdemeanor.

2.30 Subd. 4. **Excluded information from a criminal record.** When considering state
2.31 recognition, a board must not consider:

- 3.1 (1) nonconviction information from the criminal justice system including information
3.2 related to a deferred adjudication, participation in a diversion program, or an arrest not
3.3 followed by a conviction;
- 3.4 (2) a conviction for which no sentence of incarceration can be imposed;
- 3.5 (3) a conviction that has been sealed, dismissed, expunged, or pardoned;
- 3.6 (4) a juvenile adjudication;
- 3.7 (5) a nonviolent misdemeanor; or
- 3.8 (6) a conviction that occurred more than three years before the date of the board's
3.9 consideration except for a conviction of:
- 3.10 (i) a felony crime of violence under section 624.712, subdivision 5;
- 3.11 (ii) a felony criminal sexual conduct under sections 609.341 to 609.3451; or
- 3.12 (iii) a felony related to fraud or embezzlement under section 609.52, 609.527, 609.611,
3.13 609.631, 609.82, or 609.821.
- 3.14 Subd. 5. **Rule of lenity.** (a) Any ambiguity in an occupational regulation relating to a
3.15 board's use of an individual's criminal record will be resolved in favor of the individual.
- 3.16 (b) The board must not use vague terms in its consideration and decision including but
3.17 not limited to:
- 3.18 (1) good moral character;
- 3.19 (2) moral turpitude; or
- 3.20 (3) character and fitness.
- 3.21 Subd. 6. **Included information.** When considering state recognition, the board shall
3.22 consider the individual's current circumstances including:
- 3.23 (1) the age of the individual when the individual committed the offense;
- 3.24 (2) the time since the offense;
- 3.25 (3) the completion of the criminal sentence;
- 3.26 (4) a certificate of rehabilitation or good conduct;
- 3.27 (5) completion of, or active participation in, rehabilitative drug or alcohol treatment;
- 3.28 (6) testimonials and recommendations including a progress report from the individual's
3.29 probation or parole officer;

4.1 (7) other evidence of rehabilitation;

4.2 (8) education and training;

4.3 (9) employment history;

4.4 (10) employment aspirations;

4.5 (11) the individual's current family responsibilities; and

4.6 (12) other information that the individual submitted to the board.

4.7 Subd. 7. **Totality of circumstances test.** (a) The board may deny, diminish, suspend,
4.8 revoke, withhold, or otherwise limit state recognition only if the board determines:

4.9 (1) the state has an important interest in the regulation of a lawful occupation that is
4.10 directly, substantially, and adversely impaired by the individual's nonexcluded criminal
4.11 record as mitigated by the individual's current circumstances in subdivision 6; and

4.12 (2) the state's interest outweighs the individual's fundamental right to pursue a lawful
4.13 occupation.

4.14 (b) The board has the burden of making its decision by clear and convincing evidence.

4.15 Sec. 4. **[214.53] PETITION FOR BOARD DETERMINATION PRIOR TO**
4.16 **OBTAINING PERSONAL QUALIFICATIONS.**

4.17 Subdivision 1. **Petition.** An individual with a criminal record may petition a board at
4.18 any time, including before obtaining any required personal qualifications, for a decision
4.19 whether the individual's criminal record will disqualify the individual from obtaining state
4.20 recognition.

4.21 Subd. 2. **Content.** The individual must include in the petition the individual's criminal
4.22 record or authorize the board to obtain the individual's criminal record.

4.23 Subd. 3. **Determination.** The board must make its decision under this section using the
4.24 criteria and process in section 214.52.

4.25 Subd. 4. **Decision.** The board must issue its decision under this section no later than 60
4.26 days after the board receives the petition. The decision must be in writing and include the
4.27 criminal record, findings of fact, and conclusions of law.

4.28 Subd. 5. **Binding effect.** A decision concluding that state recognition should be granted
4.29 or granted under certain conditions is binding on the board in any later ruling on state
4.30 recognition of the petitioner unless there is a relevant, material, and adverse change in the
4.31 petitioner's criminal record.

5.1 Subd. 6. **Alternative advisory decision.** If the board decides that state recognition should
5.2 not be granted, the board may advise the petitioner of actions the petitioner may take to
5.3 remedy the disqualification.

5.4 Subd. 7. **Reapplication.** The petitioner may submit a revised petition reflecting
5.5 completion of the remedial actions before a deadline the board sets in its alternative advisory
5.6 decision.

5.7 Subd. 8. **Right to request hearing.** The petitioner has the right to contest the board's
5.8 decision by requesting a hearing as provided under chapter 14. Upon receiving the petitioner's
5.9 request, the board must refer the matter to an administrative law judge for a hearing under
5.10 chapter 14. The administrative law judge must make findings of fact and conclusions of
5.11 law and issue an order. The determination must be the final decision of the board.

5.12 Subd. 9. **Appeal.** The final decision of the board may be appealed under chapter 14.

5.13 Subd. 10. **Reapply.** The petitioner may submit a new petition to the board one year
5.14 following a final decision on the initial petition or upon obtaining the required personal
5.15 qualifications, whichever is earlier.

5.16 Subd. 11. **Cost.** The board may charge a fee to the petitioner to recoup its costs not to
5.17 exceed \$100 for each petition.

5.18 **Sec. 5. [214.54] REPORTING.**

5.19 (a) The commissioner of administration must establish an annual reporting requirement
5.20 of the:

5.21 (1) number of times that each board acted to deny, diminish, suspend, revoke, withhold,
5.22 or otherwise limit state recognition from a licensed individual because of a criminal
5.23 conviction;

5.24 (2) offenses for which each board acted in clause (1);

5.25 (3) number of applicants petitioning each board under section 214.53;

5.26 (4) numbers of each board's approvals and denials under section 214.53;

5.27 (5) offenses for which each board approved or denied petitions under section 214.53;

5.28 and

5.29 (6) other data the commissioner determines applicable.

5.30 (b) The commissioner shall compile and publish annually a report on a searchable public
5.31 website.

6.1 Sec. 6. **[214.55] LIMITATION.**

6.2 Nothing in sections 214.50 to 214.54 shall be construed to require a private certification
6.3 organization to grant or deny private certification to any individual.

6.4 Sec. 7. **EFFECTIVE DATE.**

6.5 This act is effective on August 1, 2019.