AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, in criminal history record information, further providing for use of records by licensing agencies; and making related repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 9124(a), (b) and (c) of Title 18 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding a subsection to read:

§ 9124. Use of records by licensing agencies.

(a) [State agencies.--Except as provided by this chapter]

Permissible use of information.--

(1) Except as provided in subsection (e), a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not automatically preclude
the issuance of a license, certificate, registration or permit.

(2) This subsection shall not apply to the Supreme Court, or an entity of the Supreme Court, in its capacity to govern the practice, procedure and conduct of all courts, the admission to the bar, the practice of law, the administration of all courts and supervision of all officers of the judicial branch.

(b) Prohibited use of information.--The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

(1) Records of arrest if there is no conviction of a crime based on the arrest.

(2) Convictions which have been annulled, expunged or subject to limited access under sections 9122.1 (relating to petition for limited access) and 9122.2 (relating to clean slate limited access).

(3) Convictions of a summary offense.

(4) Convictions for which the individual has received a pardon from the Governor.

(5) Convictions which do not relate to the applicant's suitability for the license, certificate, registration or permit.

(6) Adjudications of delinquency.

(c) State action authorized.--[Boards,] Except as provided in subsection (e), boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:
Where the applicant has been convicted of a felony.

Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

* * *

(e) Bureau of Professional and Occupational Affairs.--

(1) A board or commission under the Bureau of Professional and Occupational Affairs in the Department of State, when determining eligibility for licensure, certification, registration or permission to engage in a profession or occupation, may consider convictions of the applicant of crimes only in accordance with this section. Convictions shall not automatically preclude the issuance of a license, certificate, registration or permit.

(2) Notwithstanding any other provision of law concerning licensing, certification, registration or permitting in the various practice acts, in addition to the restrictions in subsection (b), a board or commission under the Bureau of Professional and Occupational Affairs shall not consider a conviction which does not directly relate to the duties, functions and responsibilities in the practice of the profession or occupation for which the license, certificate, registration or permit is sought, unless it is proven by the prosecutor for the board or commission by a preponderance of the evidence and based on the individualized assessment required by paragraph (3) that the applicant poses an unacceptable risk to the people with whom the applicant would interact in the conduct of the profession or occupation.

(3) A board or commission under the Bureau of
Professional and Occupational Affairs may refuse to grant or renew, or may suspend, revoke or otherwise discipline a license, certificate, registration or permit of an individual based in whole or in part on a conviction of a crime if all of the following apply:

(i) The individual has been convicted of a felony or misdemeanor which directly relates to the duties, functions and responsibilities in the practice of the profession or occupation or which, based on the facts and circumstances of the particular crime, demonstrates that the individual poses an unacceptable risk to the people with whom the individual would interact in the practice of the profession or occupation.

(ii) The board or commission has conducted an individualized assessment of the relation of the conviction to the individual's overall suitability to engage in the profession or occupation. An individualized assessment conducted under this subparagraph shall include a consideration of the particular facts or circumstances surrounding the crime, the length of time since the crime occurred and the grade and seriousness of the crime.

(4) A board or commission under the Bureau of Professional and Occupational Affairs may not refuse to grant or renew and may not suspend, revoke or otherwise discipline a license, certificate, registration or permit under paragraph (3) if the individual can present evidence of the particular facts and circumstances surrounding the crime, and the individual's overall criminal history record, which demonstrates that the individual does not pose an
unacceptable risk to people with whom the individual would interact in the conduct of the profession or occupation, or
AND if the individual can show rehabilitation and fitness to perform the duties, functions and responsibilities in the practice of the profession or occupation, Where the crime is directly related to the duties, functions and responsibilities in the practice of the profession or occupation, the board or commission shall consider relevant proof of any factor that would show that the individual does not pose an unacceptable risk, demonstrate rehabilitation or establish fitness to perform the duties of the profession or occupation, including:

(i) Facts or circumstances regarding the crime.

(ii) Number of offenses for which the individual was convicted.

(iii) Increase in age and maturity of the individual since the date of the conviction for the crime or release from a correctional institution.

(iv) The individual's criminal history, or lack of criminal history, after the date of the crime while engaged in the same or similar profession or occupation.

(v) Length and consistency of employment history before and after the date of the crime.

(vi) Participation in education and training activities.

(vii) Employment or character references and any other information regarding fitness for practice in the profession or occupation.

(viii) Any other factor that would show the individual does not pose an unacceptable risk, is capable
of being rehabilitated or is fit to perform the duties of
the profession or occupation.

(5) An applicant with a criminal history who, based on a
review of the regulations published by the board or
commission under paragraph (9) is unable to determine whether
the applicant's criminal record would preclude the issuance
of a license, certificate, registration or permit, may file a
petition for preliminary review with the board or commission
under the Bureau of Professional and Occupational Affairs
seeking a preliminary decision on whether the applicant's
criminal history would disqualify the applicant from
receiving a license, certificate, registration or permit,
subject to the following:

   (i) If the petition is filed separately from a
formal application for a license, certificate,
registration or permit, the board or commission shall
issue a preliminary decision within 45 days. The
preliminary decision shall be limited to a declaration of
whether a conviction on the petitioner's criminal history
record falls within the set of convictions that the board
or commission has previously determined may be directly
related to the profession or occupation over which the
board or commission has authority.

   (ii) In the event that the board or commission
determines a conviction on the petitioner's criminal
history record is directly related to the duties,
functions and responsibilities in the practice of the
profession or occupation, the notice of the preliminary
decision shall inform the petitioner that the
determination is not final or binding as to whether the
petitioner qualifies for a license, certificate, registration or permit, and that the petitioner has the opportunity to present evidence of the factors specified in paragraph (4) in connection with any subsequent formal application for a license, certificate, registration or permit.

(iii) The board or commission may charge a filing fee, which shall not exceed $45, to be paid for each petition for preliminary review filed. On or after January 1, 2022, the board or commission may establish by regulation reasonable fees which may not exceed an amount sufficient to reimburse the board or commission for the administrative costs associated with processing the petition for preliminary review. The board or commission shall make available forms for petitioners to request in forma pauperis status in connection with a petition. The board or commission may not unreasonably deny in forma pauperis status. A petitioner granted in forma pauperis status shall be permitted to file a petition and receive a preliminary decision without payment of the filing fee.

(iv) Except for the petitioner filing the petition, a preliminary decision issued by a board, commission or the department as a result of a petition for preliminary review shall have no precedential value and may not be relied upon by individuals applying for a license, certificate, registration or permit.

(6) Each board or commission under the Bureau of Professional and Occupational Affairs shall provide, on their publicly accessible Internet website, a standardized form for an applicant to petition for a preliminary review and shall
issue preliminary decisions upon promulgating final
regulations in accordance with paragraph (9) or within 18
months, whichever is sooner.

(7) A board or commission under the Bureau of
Professional and Occupational Affairs may not consider moral
character to make determinations of whether to grant or
renew, deny, suspend, revoke or otherwise discipline a
license, certificate, registration or permit.

(8) A board or commission under the Bureau of
Professional and Occupational Affairs may only consider
criminal history records and make determinations of whether
to grant or renew, deny, suspend, revoke or otherwise
discipline a license, certificate, registration or permit in
accordance with the limitations under this subsection. A
crime of moral turpitude may only be considered as grounds to
deny, revoke or otherwise discipline a license, certificate,
registration or permit if the board or commission has
determined that a conviction for such crime is directly
related to the duties, functions and responsibilities in the
practice of the profession or occupation OR THAT THE
INDIVIDUAL POSES AN UNACCEPTABLE RISK TO PEOPLE WITH WHOM THE
INDIVIDUAL WOULD INTERACT IN THE CONDUCT OF THE PROFESSION OR
OCCUPATION. The provisions of this section shall supersede
any law or regulation to the contrary.

(9) Each board or commission under the Bureau of
Professional and Occupational Affairs shall, within 18 months
from the effective date of this section, promulgate final
regulations, following public notice and comments, regarding
the consideration of criminal history records as part of the
determination of whether to grant, deny, renew, suspend,
revoke or otherwise discipline a license, certificate, registration or permit. The regulations shall include the prescribed petition fee, as well as an explanation of the convictions the board or commission has determined are directly related to the duties, functions and responsibilities in the practice of the profession or occupation regulated by the board or commission.

Section 2. Repeals are as follows:

(1) The General Assembly declares that the repeals under paragraph (2) are necessary to effectuate the amendment or addition of 18 Pa.C.S. § 9124(a), (b), (c) and (e).

(2) The following acts and parts of acts are repealed:

(i) The penultimate and last sentence of section 3(c) of the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law, which read as follows: "The board shall not issue a license to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as 'The Controlled Substance, Drug, Device and Cosmetic Act,' or of an offense under the laws of another jurisdiction which if committed in this Commonwealth would be a felony under 'The Controlled Substance, Drug, Device and Cosmetic Act,' unless: (1) at least ten (10) years have elapsed from the date of conviction, (2) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations, and (3) the
applicant otherwise satisfies the qualifications
contained in or authorized by this act. As used in this
section the term 'convicted' shall include a judgment, an
admission of guilt or a plea of nolo contendere."

(ii) Section 10.1(b) of the act of May 23, 1945
(P.L.913, No.367), known as the Engineer, Land Surveyor
and Geologist Registration Law.

(iii) Section 6(c) of the act of May 22, 1951
(P.L.317, No.69), known as The Professional Nursing Law.

(iv) The antepenultimate, penultimate and last
sentence of section 5 of the act of March 2, 1956 (1955
P.L.1211, No.376), known as the Practical Nurse Law,
which read as follows: "The board shall not issue a
license or certificate to an applicant who has been
convicted of a felonious act prohibited by the act of
April 14, 1972 (P.L.233, No.64), known as 'The Controlled
Substance, Drug, Device and Cosmetic Act,' or convicted
of a felony relating to a controlled substance in a court
of law of the United States or any other state, territory
or country unless:

(1) at least ten (10) years have elapsed from
the date of conviction;

(2) the applicant satisfactorily demonstrates to
the board that he has made significant progress in
personal rehabilitation since the conviction such
that licensure of the applicant should not be
expected to create a substantial risk of harm to the
health and safety of patients or the public or a
substantial risk of further criminal violations; and

(3) the applicant otherwise satisfies the
qualifications contained in or authorized by this act.

As used in this section the term 'convicted' shall include a judgment, an admission of guilt or a plea of nolo contendere. An applicant's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction, unless the board has some evidence to the contrary."

(v) Section 3(a)(6) of the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act.

(vi) Section 6(a)(5) of the act of March 23, 1972 (P.L.136, No.52), known as the Professional Psychologists Practice Act.

(vii) Section 9(b)(4) of the act of December 27, 1974 (P.L.995, No.326), known as the Veterinary Medicine Practice Act.

(viii) The penultimate and last sentence of section 6(a) of the act of October 10, 1975 (P.L.383, No.110), known as the Physical Therapy Practice Act, which read as follows: "The board shall not issue a license to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as 'The Controlled Substance, Drug, Device and Cosmetic Act,' or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under 'The Controlled Substance, Drug, Device and Cosmetic Act,' unless:

(1) at least ten years have elapsed from the date of conviction;
(2) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations; and

(3) the applicant otherwise satisfies the qualifications contained in or authorized by this act.

As used in this subsection the term 'convicted' includes a judgment, an admission of guilt or a plea of nolo contendere."

(ix) Section 6(c) of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

(x) Section 4(d) of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act.

(xi) The penultimate and last sentence of section 22(b) of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, which read as follows: "The board shall not issue a license or certificate to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless:
(1) at least ten years have elapsed from the
date of conviction;

(2) the applicant satisfactorily demonstrates to
the board that he has made significant progress in
personal rehabilitation since the conviction such
that licensure of the applicant should not be
expected to create a substantial risk of harm to the
health and safety of his patients or the public or a
substantial risk of further criminal violations; and

(3) the applicant otherwise satisfies the
qualifications contained in or authorized by this
act.

As used in this section the term 'convicted' shall
include a judgment, an admission of guilt or a plea of
nolo contendere."

(xii) Section 501(a)(7) of the act of December 16,
1986 (P.L.1646, No.188), known as the Chiropractic
Practice Act.

(xiii) Section 7(a)(5), (d)(6), (e)(6), (f)(6) and
(g)(5) of the act of July 9, 1987 (P.L.220, No.39), known
as the Social Workers, Marriage and Family Therapists and
Professional Counselors Act.

(xiv) Section 502(c)(1) of the act of October 9,
2008 (P.L.1363, No.100), known as the Crane Operator
Licensure Act.

(xv) Section 5(a)(6) of the act of October 9, 2008
(P.L.1438, No.118), known as the Massage Therapy Law.

(xvi) The provision of any act that is inconsistent
with this act.

Section 3. This act shall take effect in 90 days.