

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 637 Session of 2019

INTRODUCED BY DiSANTO, SCHWANK, BAKER, GORDNER, MENSCH, COLLETT, MARTIN, A. WILLIAMS, PHILLIPS-HILL, FARNESE, LEACH, BREWSTER, BARTOLOTTA, TARTAGLIONE, K. WARD, KILLION, BLAKE, HAYWOOD AND IOVINO, MAY 13, 2019

AS AMENDED ON SECOND CONSIDERATION, NOVEMBER 18, 2019

AN ACT

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

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

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

10 § 9124. Use of records by licensing agencies.

11 (a) [State agencies.--Except as provided by this chapter]
12 Permissible use of information.--

13 (1) Except as provided in subsection (e), a board,
14 commission or department of the Commonwealth, when
15 determining eligibility for licensing, certification,
16 registration or permission to engage in a trade, profession
17 or occupation, may consider convictions of the applicant of
18 crimes but the convictions shall not automatically preclude

1 the issuance of a license, certificate, registration or
2 permit.

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

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

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

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

18 (3) Convictions of a summary offense.

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

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

24 (6) Adjudications of delinquency.

25 (c) State action authorized.--[Boards,] Except as provided
26 in subsection (e), boards, commissions or departments of the
27 Commonwealth authorized to license, certify, register or permit
28 the practice of trades, occupations or professions may refuse to
29 grant or renew, or may suspend or revoke any license,
30 certificate, registration or permit for the following causes:

1 (1) Where the applicant has been convicted of a felony.

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

6 * * *

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

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

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

30 (3) A board or commission under the Bureau of

1 Professional and Occupational Affairs may refuse to grant or
2 renew, or may suspend, revoke or otherwise discipline a
3 license, certificate, registration or permit of an individual
4 based in whole or in part on a conviction of a crime if all
5 of the following apply:

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

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

23 (4) A board or commission under the Bureau of
24 Professional and Occupational Affairs may not refuse to grant
25 or renew and may not suspend, revoke or otherwise discipline
26 a license, certificate, registration or permit under
27 paragraph (3) if the individual can present evidence of the
28 particular facts and circumstances surrounding the crime, and
29 the individual's overall criminal history record, which
30 demonstrates that the individual does not pose an

1 unacceptable risk to people with whom the individual would
2 interact in the conduct of the profession or occupation, or <--
3 AND if the individual can show rehabilitation and fitness to <--
4 perform the duties, functions and responsibilities in the
5 practice of the profession or occupation. Where the crime is
6 directly related to the duties, functions and
7 responsibilities in the practice of the profession or
8 occupation, the board or commission shall consider relevant
9 proof of any factor that would show that the individual does
10 not pose an unacceptable risk, demonstrate rehabilitation or
11 establish fitness to perform the duties of the profession or
12 occupation, including:

13 (i) Facts or circumstances regarding the crime.

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

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

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

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

24 (vi) Participation in education and training
25 activities.

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

29 (viii) Any other factor that would show the
30 individual does not pose an unacceptable risk, is capable

1 of being rehabilitated or is fit to perform the duties of
2 the profession or occupation.

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

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

24 (ii) In the event that the board or commission
25 determines a conviction on the petitioner's criminal
26 history record is directly related to the duties,
27 functions and responsibilities in the practice of the
28 profession or occupation, the notice of the preliminary
29 decision shall inform the petitioner that the
30 determination is not final or binding as to whether the

1 petitioner qualifies for a license, certificate,
2 registration or permit, and that the petitioner has the
3 opportunity to present evidence of the factors specified
4 in paragraph (4) in connection with any subsequent formal
5 application for a license, certificate, registration or
6 permit.

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

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

27 (6) Each board or commission under the Bureau of
28 Professional and Occupational Affairs shall provide, on their
29 publicly accessible Internet website, a standardized form for
30 an applicant to petition for a preliminary review and shall

1 issue preliminary decisions upon promulgating final
2 regulations in accordance with paragraph (9) or within 18
3 months, whichever is sooner.

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

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

25 (9) Each board or commission under the Bureau of
26 Professional and Occupational Affairs shall, within 18 months
27 from the effective date of this section, promulgate final
28 regulations, following public notice and comments, regarding
29 the consideration of criminal history records as part of the
30 determination of whether to grant, deny, renew, suspend,

1 revoke or otherwise discipline a license, certificate,
2 registration or permit. The regulations shall include the
3 prescribed petition fee, as well as an explanation of the
4 convictions the board or commission has determined are
5 directly related to the duties, functions and
6 responsibilities in the practice of the profession or
7 occupation regulated by the board or commission.

8 Section 2. Repeals are as follows:

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

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

13 (i) The penultimate and last sentence of section
14 3(c) of the act of May 1, 1933 (P.L.216, No.76), known as
15 The Dental Law, which read as follows: "The board shall
16 not issue a license to an applicant who has been
17 convicted of a felony under the act of April 14, 1972
18 (P.L.233, No.64), known as 'The Controlled Substance,
19 Drug, Device and Cosmetic Act,' or of an offense under
20 the laws of another jurisdiction which if committed in
21 this Commonwealth would be a felony under 'The Controlled
22 Substance, Drug, Device and Cosmetic Act,' unless: (1) at
23 least ten (10) years have elapsed from the date of
24 conviction, (2) the applicant satisfactorily demonstrates
25 to the board that he has made significant progress in
26 personal rehabilitation since the conviction such that
27 licensure of the applicant should not be expected to
28 create a substantial risk of harm to the health and
29 safety of his patients or the public or a substantial
30 risk of further criminal violations, and (3) the

1 applicant otherwise satisfies the qualifications
2 contained in or authorized by this act. As used in this
3 section the term 'convicted' shall include a judgment, an
4 admission of guilt or a plea of nolo contendere."

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

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

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

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

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

30 (3) the applicant otherwise satisfies the

1 qualifications contained in or authorized by this
2 act.

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

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

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

15 (vii) Section 9(b)(4) of the act of December 27,
16 1974 (P.L.995, No.326), known as the Veterinary Medicine
17 Practice Act.

18 (viii) The penultimate and last sentence of section
19 6(a) of the act of October 10, 1975 (P.L.383, No.110),
20 known as the Physical Therapy Practice Act, which read as
21 follows: "The board shall not issue a license to an
22 applicant who has been convicted of a felony under the
23 act of April 14, 1972 (P.L.233, No.64), known as 'The
24 Controlled Substance, Drug, Device and Cosmetic Act,' or
25 of an offense under the laws of another jurisdiction
26 which, if committed in this Commonwealth, would be a
27 felony under 'The Controlled Substance, Drug, Device and
28 Cosmetic Act,' unless:

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

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

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

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

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

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

20 (xi) The penultimate and last sentence of section
21 22(b) of the act of December 20, 1985 (P.L.457, No.112),
22 known as the Medical Practice Act of 1985, which read as
23 follows: "The board shall not issue a license or
24 certificate to an applicant who has been convicted of a
25 felony under the act of April 14, 1972 (P.L.233, No.64),
26 known as The Controlled Substance, Drug, Device and
27 Cosmetic Act, or of an offense under the laws of another
28 jurisdiction which, if committed in this Commonwealth,
29 would be a felony under The Controlled Substance, Drug,
30 Device and Cosmetic Act, unless:

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

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

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

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

16 (xii) Section 501(a)(7) of the act of December 16,
17 1986 (P.L.1646, No.188), known as the Chiropractic
18 Practice Act.

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

23 (xiv) Section 502(c)(1) of the act of October 9,
24 2008 (P.L.1363, No.100), known as the Crane Operator
25 Licensure Act.

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

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

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