HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

HOUSE BILL NO. 1477 **PRINTERS NO**. 3057 **PRIME SPONSOR**: Delozier

COST / (SAVINGS)

FUND	FY 2019/20	FY 2020/21
Professional Licensure Augmentation Account	**$0**	**See "Fiscal Impact"**

SUMMARY: Provides Commonwealth licensing boards with alternatives to issue licenses to individuals with criminal convictions. The legislation creates restricted licenses for barbers and cosmetologists and allows all other licensing boards to consider mitigating factors when making licensure decisions when the applicant has a criminal conviction. Sections 3112, 3112.1, 3113, 3114 and 3115 of this legislation would take effect in 180 days and the remainder would take effect immediately.

ANALYSIS: This legislation amends Title 18 (Crimes and Offenses) and Title 63 (Professions and Occupations – State Licensed) to remove barriers to licensure for those with criminal convictions and inserts Act 48 of 1993 (related to Bureau of Professional and Occupational Affairs -Duties) into Title 63 in its entirety. The major amendments within Title 63 are outlined below:

Section 3112. Provides an alternative for the State Board of Barber Examiners and State Board of Cosmetology to issue restricted licenses rather than the outright refusal of issuing licenses to individuals with criminal convictions. The restricted license may be issued for a term no less than one year and no more than two years. The board shall determine the period of time the applicant shall operate under the restricted license and the conditions of the license. The applicant must have exhibited good behavior while incarcerated, completed all rehabilitative programing and successfully completed the requisite education and training requirements. For applicants already released from prison, they must not be found in violation of probation or parole and demonstrate a commitment to a law-abiding life.

The State Board of Barber Examiners and State Board of Cosmetology shall impose conditions on the holder of the restrictive license, including limiting the scope and location of the license holder's practice, requiring the license holder to be reasonably supervised, and requiring the license holder to give notice to the Board if there is a change in supervisors. A restricted license shall be revoked if the holder is convicted of an offense graded as a misdemeanor or felony or if the holder fails to comply with any conditions. Moreover, within 30 days of the conclusion of the term of the restricted license the supervisor of the holder shall provide written notice to the State Board of Barber Examiners and State Board of Cosmetology as to whether the restricted license holder complied with all conditions. If the restricted license holder meets all other qualifications for licensure, the State Board of Barber Examiners and State Board of Cosmetology shall issue a license.

Section 3112.1. This section mirrors section 3112 but applies to other occupations to cover other occupational training that county correctional facilities or the State Department of Corrections may add in the future.

Section 3113. As an alternative to refuse to issue or renew, suspend or revoke a license, all other licensing boards shall analyze criminal convictions of applicants in a two-stage analysis. The first stage of the analysis is to determine whether the criminal conviction directly relates to the occupation. If the offense is found on the list of offenses developed under subsection 3117, the board shall determine if the licensure of the individual poses a substantial risk to the public. Even if the crime is included on the list, the applicant can still provide evidence of rehabilitation.

If the criminal conviction is not directly related to the occupation the board shall proceed to the next stage of the analysis. This stage of the analysis requires the board to determine whether the nature of the criminal conviction, licensure of the individual would pose substantial risk to the health and safety of the public or a substantial risk of further criminal convictions. The individual may present evidence to rebut the determination.

Each licensing board is required to provide individualized assessments of an applicant's criminal convictions and rehabilitation. In making determinations licensing boards shall consider:

- Whether the criminal conduct involved an act or threat of harm against another;
- Facts or circumstances surrounding the criminal conviction;
- Number of criminal convictions;
- Increase in age and maturity of the applicant since the date of the conviction;
- The individual's criminal history or lack thereof;
- Successful completion of education and training activities;
- Employment or character references;
- Progress in personal rehabilitation since conviction;
- Whether the individual meets all other licensing qualifications;
- The individual's criminal history after the date of criminal conviction while engaged in the same or similar profession or occupation; and
- Any other factors relevant to the licensing board regarding fitness of the individual.

Even if the crime is included on the list, the applicant can still provide evidence of rehabilitation except for individuals convicted of certain serious sexual offenses who may not be issued licenses to work as healthcare practitioners. However, individuals convicted of certain crimes of violence may be issued an occupational license if at least three years have elapsed since imposition of sentence or release from incarceration, the individual remains conviction free during the three-year period, the individual demonstrates significant rehabilitation, and the board determines the individual does not pose a substantial risk to the health and safety of patients, clients and the public.

In addition, certain convictions for a drug trafficking offense would prohibit an individual from being issued an occupational license. The legislation defines "drug trafficking offense" and delineates the acceptable weights and units of certain controlled substances.

Section 3114. Boards may not consider juvenile adjudications when making licensing determinations.

Section 3115. Establishes a process for individuals with criminal convictions to submit written requests to licensing boards for a preliminary nonbinding determination regarding whether the individual's criminal convictions would likely disqualify that individual from receiving a license. The request must identify the license that the individual may apply for, a detailed description of the criminal proceeding, and any other information the individual determines will assist the board in making a preliminary determination. The board has 45 days to issue advisories. A determination is neither final nor binding but may be binding when subject to a review of criminal history record information submitted during the application process and Section 3113. These requests shall be public records with the exception of identifying information. The fee for an advisory determination is $45 until January 1, 2022. Thereafter the Board shall adopt a schedule of fees to cover administrative costs as well as provide a waiver of the fee for economic hardship.

Section 3116. Requires the Department of State to collaborate with licensing boards to develop a guide of best practices for an applicant with a criminal conviction to use when seeking a license. The guide must be published in English and Spanish, summarize the law, and is free upon request.

Section 3117. The legislation requires each board to establish a published schedule of criminal offenses that may constitute grounds to deny, suspend, or revoke a license. The schedule shall include a list of offenses deemed directly related to a particular occupation and the licensing board responsible for licensure. The schedule shall be completed and published in the Pennsylvania Bulletin within 180 days of the effective date of this subsection. The schedule shall be provided in writing to each applicant for a license, published in English and Spanish and included on the Department of State website.

Section 3118. Requires a report to the General Assembly of the implementation and effectiveness of the program two years from the effective date of the new sections and every four years thereafter.

FISCAL IMPACT: According to the Department of State, any costs that would result from enactment of this legislation would depend on the number of preliminary determinations as the number of individuals who have a criminal conviction that would request such determination is unknown at this point. Any costs to the individual boards would be offset by the $45 advisory determination fee through January 1, 2022. In the event that the $45 fee did not fully cover the administrative costs, the board would have the ability to increase that fee after January 1, 2022.

PREPARED BY: Tim Rodrigo
House Appropriations Committee (R)

DATE: December 17, 2019

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.