



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

SENATE BILL NO. 637

PRINTERS NO. 1815

PRIME SPONSOR: DiSanto

### COST / (SAVINGS)

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

**SUMMARY:** Provides Commonwealth licensing boards opportunities to remove certain barriers to licensure for those with criminal convictions. Sections 3112, 3112.1, 3113, 3114 and 3115 would take effect in 180 days, while the remainder of the legislation would take effect immediately.

**ANALYSIS:** Amends Titles 18 (Crimes and Offenses) and 63 (Professional and Occupations (State Licensed)) by inserting the unconsolidated Act 48 of 1993 (related to Bureau of Professional and Occupational Affairs -Duties) into Title 63 in its entirety.

The substantive language being added to Title 63 clearly provides that a criminal conviction does not automatically preclude issuance of an occupational license. The legislation also prohibits convictions that have been expunged, subject to limited access, or clean slate from being used in consideration of an application for an occupational license.

**Barbers and Cosmetologists:** Allows the Boards of Barber Examiners and of Cosmetology to issue restricted licenses for not less than one nor more than 2 years to individuals with criminal convictions who exhibited good behavior while incarcerated, and successfully completed all rehabilitative programming and education and training requirements. The Boards of Barber Examiners and State Board of Cosmetology shall impose conditions on the holder of the restrictive license, including:

- i. Limiting the scope and location of the license holder practice;
- ii. Requiring the license holder to be reasonably supervised; and
- iii. Requiring the license holder to give notice to the Board if there is a change in supervisors.

A restricted license shall be immediately revoked if the holder is convicted of a misdemeanor or felony or the holder fails to comply with any conditions. Within 30 days of the end of the term of the restricted license, the supervisor of the holder shall provide written notice to the applicable Board whether the restricted license holder complied with all conditions and if the license holder meets all qualifications. If the holder fulfills those actions, the Board must issue a full license.

**Criminal Convictions Considered by Licensing Board:** Licensing boards and commissions may always consider criminal convictions notwithstanding any other statutory provision to the contrary regarding the consideration of good moral character, crimes of moral turpitude or ethical or honest practice with respect to disqualification of licensure due to criminal conviction.

As an alternative to an outright refusal to issue or renew, suspend or revoke a license for a criminal conviction, all other licensing boards shall first determine if the conviction directly relates to the occupation. A list of such offenses will be developed.

For all applicants with a criminal conviction, the Board must determine if licensure would be a substantial risk to the health and safety of the public or a substantial risk of further criminal convictions. If the conviction is for an offense which is directly related to the occupation (specified on the list to be developed), there is a rebuttable presumption that licensure of a person is a substantial risk to public safety.

If the offense is not specified on the list of convictions, the Board must still determine if licensure would pose a substantial risk to the public or a substantial risk of further criminal convictions. However, to make that determination, the Board must conduct an individualized assessment of an applicant's criminal convictions and rehabilitation, and must consider:

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

**Special Circumstances:** Boards may not issue a license or allow an individual convicted of a sexual offense to practice as a health care practitioner.

Individuals convicted of "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 years, 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.

An individual with a conviction for the most serious drug trafficking felonies is prohibited from being issued an occupational license. (marijuana over 50 pounds, coca or coca leaves over 100 grams, heroin over 50 grams, fentanyl over 10 grams, and carfentanil over one gram).

Boards may not consider juvenile adjudications when making licensing determinations.

**Preliminary Determination:** Individuals with criminal convictions may request a preliminary determination whether the individual's criminal convictions will likely disqualify that individual from receiving a license:

- The board has 45 days to issue an advisory opinion.
- These requests are 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 but waive the fee for economic hardship.
- The determination by the licensing board shall be binding, subject to a review of criminal history record information submitted during the application process and consideration of criminal convictions.

**Best Practices Guide to be Developed:** The Department of State must collaborate with licensing boards to develop, within 180 days, a best practices guide for an applicant with a criminal conviction to use when seeking a license. The guide, free on request, must be published in English and Spanish.

**Schedule of Criminal Offenses:** Each Board must publish a schedule of criminal offenses that may constitute grounds to deny, suspend, or revoke a license. The schedule shall include offenses directly related to a particular occupation and the licensing board responsible for licensure. It shall be published in the Pennsylvania Bulletin within 180 days of the effective date of this subsection, and be provided to each applicant for a license, published in English and Spanish and included on the Department of State website.

**Reports to General Assembly:** A report to the General Assembly regarding the implementation and effectiveness of the program shall be made by the Secretary of the Commonwealth two years from the effective date of the new sections and every four years thereafter.

**FISCAL IMPACT:** According to the Department of State, it is unknown as to how many people will use the pre-decisional opinions as provided by the legislation, therefore, it is unknown if additional staff would be needed at this point. Since the legislation allows for a \$45 fee for an advisory decision and the Bureau can change it on January 1, 2022, these fees will likely cover any costs to the Bureau.

The legislation would have no adverse fiscal impact on the General Fund.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** June 24, 2020

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