

## AMENDMENTS TO SENATE BILL NO. 637

Sponsor: SENATOR TOMLINSON

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1 Amend Bill, page 1, line 4, by inserting after "agencies"

2 ; and making related repeals

3 Amend Bill, page 1, line 9, by striking out "subsections" and

4 inserting

5 a subsection

6 Amend Bill, page 1, lines 11 and 12, by striking out all of

7 said lines and inserting

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

9 Permissible use of information.--

10 (1) Except as provided in subsection (e), a board,

11 commission or department of the Commonwealth, when

12 Amend Bill, page 1, line 16, by striking out the bracket

13 before "but"

14 Amend Bill, page 1, lines 16 and 17, by striking out "] only

15 in accordance with this chapter. Convictions"

16 Amend Bill, page 1, by inserting after line 18

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

23 Amend Bill, page 2, line 1, by striking out the bracket

24 before "The"

25 Amend Bill, page 2, lines 1 through 3, by striking out "]"

26 Notwithstanding" in line 1, all of line 2 and "registration or

1 permitting, the" in line 3

2 Amend Bill, page 2, line 15, by striking out the bracket  
3 before "relate"

4 Amend Bill, page 2, lines 17 through 19, by striking out "]"  
5 directly relate to the trade, occupation or" in line 17 and all  
6 of lines 18 and 19

7 Amend Bill, page 2, lines 21 through 23, by striking out  
8 "Notwithstanding any" in line 21, all of line 22 and  
9 "registration or permitting, the boards," in line 23 and  
10 inserting

11 Except as provided in subsection (e), boards,

12 Amend Bill, page 2, line 27, by striking out the bracket  
13 before "for"

14 Amend Bill, page 3, lines 3 through 30; page 4, lines 1  
15 through 30; page 5, lines 1 through 14; by striking out "]" based  
16 in whole or in part on a" in line 3, all of lines 4 through 30  
17 on page 3, all of lines 1 through 30 on page 4 and all of lines  
18 1 through 14 on page 5 and inserting

19 \* \* \*

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

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

29 (2) Notwithstanding any other provision of law  
30 concerning licensing, certification, registration or  
31 permitting in the various practice acts, in addition to the  
32 restrictions in subsection (b), a board or commission under  
33 the Bureau of Professional and Occupational Affairs shall not  
34 consider a conviction which does not directly relate to the  
35 duties, functions and responsibilities in the practice of the  
36 profession or occupation for which the license, certificate,

1 registration or permit is sought, unless it is proven by the  
2 prosecutor for the board or commission by a preponderance of  
3 the evidence and based on the individualized assessment  
4 required by paragraph (3) that the applicant poses an  
5 unacceptable risk to the people with whom the applicant would  
6 interact in the conduct of the profession or occupation.

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

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

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

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

50 (i) Facts or circumstances regarding the crime.

51 (ii) Number of offenses for which the individual was

1 convicted.

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

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

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

10 (vi) Participation in education and training  
11 activities.

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

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

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

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

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

1 permit.

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

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

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

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

34 (8) A board or commission under the Bureau of  
35 Professional and Occupational Affairs may only consider  
36 criminal history records and make determinations of whether  
37 to grant or renew, deny, suspend, revoke or otherwise  
38 discipline a license, certificate, registration or permit in  
39 accordance with the limitations under this subsection. A  
40 crime of moral turpitude may only be considered as grounds to  
41 deny, revoke or otherwise discipline a license, certificate,  
42 registration or permit if the board or commission has  
43 determined that a conviction for such crime is directly  
44 related to the duties, functions and responsibilities in the  
45 practice of the profession or occupation. The provisions of  
46 this section shall supersede any law or regulation to the  
47 contrary.

48 (9) Each board or commission under the Bureau of  
49 Professional and Occupational Affairs shall, within 18 months  
50 from the effective date of this section, promulgate final  
51 regulations, following public notice and comments, regarding

1 the consideration of criminal history records as part of the  
2 determination of whether to grant, deny, renew, suspend,  
3 revoke or otherwise discipline a license, certificate,  
4 registration or permit. The regulations shall include the  
5 prescribed petition fee, as well as an explanation of the  
6 convictions the board or commission has determined are  
7 directly related to the duties, functions and  
8 responsibilities in the practice of the profession or  
9 occupation regulated by the board or commission.

10 Section 2. Repeals are as follows:

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

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

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

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

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

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

1 or country unless:

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

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

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

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

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

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

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

29 (viii) The penultimate and last sentence of section  
30 6(a) of the act of October 10, 1975 (P.L.383, No.110),  
31 known as the Physical Therapy Practice Act, which read as  
32 follows: "The board shall not issue a license to an  
33 applicant who has been convicted of a felony under the  
34 act of April 14, 1972 (P.L.233, No.64), known as 'The  
35 Controlled Substance, Drug, Device and Cosmetic Act,' or  
36 of an offense under the laws of another jurisdiction  
37 which, if committed in this Commonwealth, would be a  
38 felony under 'The Controlled Substance, Drug, Device and  
39 Cosmetic Act,' unless:

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

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

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

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

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

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

10 (xi) The penultimate and last sentence of section  
11 22(b) of the act of December 20, 1985 (P.L.457, No.112),  
12 known as the Medical Practice Act of 1985, which read as  
13 follows: "The board shall not issue a license or  
14 certificate to an applicant who has been convicted of a  
15 felony under the act of April 14, 1972 (P.L.233, No.64),  
16 known as The Controlled Substance, Drug, Device and  
17 Cosmetic Act, or of an offense under the laws of another  
18 jurisdiction which, if committed in this Commonwealth,  
19 would be a felony under The Controlled Substance, Drug,  
20 Device and Cosmetic Act, unless:

21 (1) at least ten years have elapsed from the  
22 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 his patients or the public or a  
29 substantial risk of further criminal violations; and

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

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

36 (xii) Section 501(a)(7) of the act of December 16,  
37 1986 (P.L.1646, No.188), known as the Chiropractic  
38 Practice Act.

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

43 (xiv) Section 502(c)(1) of the act of October 9,  
44 2008 (P.L.1363, No.100), known as the Crane Operator  
45 Licensure Act.

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

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

50 Amend Bill, page 5, line 16, by striking out "2" and



1 inserting  
2 3  
3 Amend Bill, page 5, line 16, by striking out "60" and  
4 inserting  
5 90