

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 402

H. P. 330

House of Representatives, January 28, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Creating Uniform Standards for Disqualification of Applicants with Prior Criminal Convictions for a License or Permit to Practice a Trade or Occupation Regulated by the State.

Be it enacted by the People of the State of Maine, as follows:

5 MRSA, c. 341 is enacted to read:

CHAPTER 341

OCCUPATIONAL LICENSE DISQUALIFICATION ON BASIS
OF CRIMINAL RECORD

§ 5301. Eligibility for occupational license or permit

1. Effect of prior criminal convictions. Subject to subsection 2 and sections 5302, 5303 and 5304, in determining eligibility for the granting of any occupational license or permit issued by the State, the appropriate licensing agency may take into consideration conviction of certain crimes which have not been set aside, pardoned or expunged, but such convictions shall not operate as an automatic bar to being licensed or permitted to practice any trade or occupation.

2. Certain criminal records not to be considered. The following criminal records shall not be used, distributed or disseminated in connection with an application for a license or permit:

- A. Records of arrest not followed by a valid conviction;
- B. Convictions which have been set aside, pardoned or expunged;

C. Misdemeanor convictions not involving moral turpitude; and

D. Misdemeanor convictions for which no jail sentence can be imposed.

§ 5302. Denial or revocation of licenses because of criminal record

1. Reasons for denial, revocation or suspension. Licensing agencies may refuse to grant or renew, or may suspend or revoke any occupational license or permit for any one or combination of the following causes:

A. When the applicant has been convicted of a felony, or a misdemeanor involving moral turpitude or for which a jail sentence may be imposed, and such criminal conviction directly relates to the trade or occupation for which the license or permit is sought; but only

B. If the licensing agency determines, after complete investigation, that the applicant so convicted has not been sufficiently rehabilitated to warrant the public trust.

2. Reasons to be stated in writing. The licensing agency shall explicitly state in writing the reasons for a decision which prohibits the applicant from practicing the trade or occupation if such decision is based in whole or in part on conviction of any crime described in subsection 1, paragraph A. For purposes of subsection 1, paragraph B, successful completion of probation or parole supervision, or final discharge from any term of imprisonment without any subsequent conviction, shall constitute a rebuttable presumption of sufficient rehabilitation.

§ 5303. Denial or revocation of licenses because of noncriminal standards

When considering noncriminal standards such as good moral character, unethical conduct or habitual intemperance in the use of intoxicants, in the granting, renewal, suspension or revocation of occupational licenses or permits, the licensing agency may not take into consideration conviction of any crime. Nothing in this chapter shall be construed to otherwise affect proceedings before the licensing agency involving standards of good moral character which do not involve conviction of a crime.

§ 5304. Time limit on consideration of prior criminal conviction

The procedures outlined in sections 5301 and 5302 for the consideration of prior criminal conviction as an element of fitness to practice a licensed trade or occupation shall apply within 3 years of the applicant's final discharge, if any, from the correctional system. Beyond the 3-year period, ex-offender applicants with no additional convictions are to be considered in the same manner as applicants possessing no prior criminal record for the purposes of licensing decisions.

§ 5305. Appeals

Any person who is aggrieved by the decision of any licensing agency in possible violation of this chapter may file a statement of complaint with the Administrative Court Judge designated in chapters 301 to 307 of this Title.

STATEMENT OF FACT

Presently there are no uniform standards for the consideration of prior criminal records as an element in the certification process for trades and occupations licensed by the State. This legislation sets up such uniform standards, and establishes the general principle that while the prior conviction of any applicant may be considered fully and within reasonable time limits by an occupational licensing agency, in no case shall prior conviction in itself constitute an automatic or arbitrary bar in perpetuity to obtaining a license to work.

This legislation effects recommendation #71 of the report of the Governor's Task Force on Corrections, and is drawn from model legislation recommended by the American Bar Association.