

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 563

S.P. 233

In Senate, March 6, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KANY of Kennebec.

Cosponsored by Representative JOSEPH of Waterville, Senator BALDACCI of Penobscot and Senator GAUVREAU of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Occupational License Disqualification Law.



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

3 **Sec. 1. 5 MRSA §5301**, as repealed and replaced by PL 1977, c.
287, §1, is amended to read:

5

7 **§5301. Eligibility for occupational license, registration or permit**

9 1. **Effect of criminal history record information respecting**
11 **certain convictions.** Subject to subsection 2 and sections 5302
13 and 5303, in determining eligibility for the granting of any
15 occupational license, registration or permit issued by the State,
17 the appropriate State licensing agency may take into
19 consideration criminal history record information from Maine or
elsewhere relating to certain convictions which have not been set
aside or for which a full and free pardon has not been granted,
but the existence of such information shall not operate as an
automatic bar to being licensed, registered or permitted to
practice any profession, trade or occupation.

21 2. **Criminal history record information which may be**
23 **considered.** A licensing agency may use in connection with an
25 application for an occupational license, registration or permit
criminal history record information pertaining to the following:

27 A. Convictions for which incarceration for less than one
year may be imposed and which involve dishonesty or false
statement;

29

31 B. Convictions for which incarceration for less than one
year may be imposed and which directly relate to the trade
or occupation for which the license or permit is sought;

33

35 C. Convictions for which no incarceration can be imposed
and which directly relate to the trade or occupation for
which the license or permit is sought; and

37

39 D. Convictions for which incarceration for one year or more
may be imposed; or

41 E. Convictions for which incarceration for less than one
43 year may be imposed and which involve sexual misconduct by
45 an applicant or licensee of the Board of Registration in
47 Medicine, the Board of Osteopathic Examination and
49 Registration, the Board of Dental Examiners, the State Board
of Examiners of Psychologists, the State Board of Social
Worker Licensure, the Board of Chiropractic Examination and
Registration, the State Board of Examiners in Physical
Therapy and the State Board of Nursing.

51 **Sec. 2. 5 MRSA §5302**, as amended by PL 1977, c. 287, §§2 and
3, is further amended to read:

1
3 **§5302. Denial, suspension, revocation or other discipline of
licensees because of criminal record**

5 1. **Reasons for disciplinary action.** Licensing agencies may
7 refuse to grant or renew, or may suspend, revoke or take other
9 disciplinary action against any occupational license,
11 registration or permit on the basis of the criminal history
13 record information relating to convictions denominated in section
15 5301, subsection 2, but only if the licensing agency determines
that the applicant, licensee, registrant or permit holder so
convicted has not been sufficiently rehabilitated to warrant the
public trust. The applicant, licensee, registrant or permit
holder shall bear the burden of proof that there exists
sufficient rehabilitation to warrant the public trust.

17 2. **Reasons to be stated in writing.** The licensing agency
19 shall explicitly state in writing the reasons for a decision
21 which prohibits the applicant, licensee, registrant or permit
23 holder from practicing the profession, trade or occupation if
25 such that decision is based in whole or in part on conviction of
any crime described in section 5301, subsection 2. ~~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.~~

27 **Sec. 3. 5 MRSA §5303**, as enacted by PL 1975, c. 150, is
29 repealed and the following enacted in its place:

31 **§5303. Time limit on consideration of prior criminal conviction**

33 1. Except as set forth in this subsection and subsection 2,
35 the procedures outlined in sections 5301 and 5302 for the
37 consideration of prior criminal conviction as an element of
39 fitness to practice a licensed profession, trade or occupation
41 shall apply within 3 years of the applicant's or licensee's final
43 discharge, if any, from the correctional system. Beyond the
45 3-year period, ex-offender applicants or licensees with no
additional convictions are to be considered in the same manner as
applicants or licensees possessing no prior criminal record for
the purposes of licensing decisions. There is no time limitation
for consideration of an applicant's or licensee's conduct which
gave rise to the criminal conviction if that conduct is otherwise
a ground for disciplinary action against a licensee.

47 2. For licensees and registrants of the Board of
49 Registration in Medicine, the Board of Osteopathic Examination
51 and Registration, the Board of Dental Examiners, the State Board
of Examiners of Psychologists, the State Board of Social Worker
Licensure, the State Board of Nursing, the Board of Chiropractic

1 Examination and Registration, and the State Board of Examiners in
2 Physical Therapy, the following shall apply.

3
4 A. The procedures outlined in sections 5301 and 5302 for
5 the consideration of prior criminal conviction as an element
6 of fitness to practice a licensed profession, trade or
7 occupation shall apply within 10 years of the applicant's or
8 licensee's final discharge, if any, from the correctional
9 system.

10
11 B. Beyond the 10-year period, ex-offender applicants or
12 licensees with no additional convictions shall be considered
13 in the same manner as applicants or licensees possessing no
14 prior criminal record for the purposes of licensing
15 decisions.

16
17 C. There is no time limitation for consideration of an
18 applicant's or licensee's conduct which gave rise to the
19 criminal conviction if that conduct is otherwise a ground
20 for disciplinary action against a licensee.

21
22
23 STATEMENT OF FACT

24
25 This bill amends the occupational license disqualification
26 law by:

27
28 1. Allowing the appropriate licensing agency to consider
29 criminal history information not only from Maine but from other
30 states in determining eligibility for granting a license,
31 registration or permit;

32
33 2. Allowing a licensing agency to use criminal history
34 record information on convictions which involve sexual misconduct
35 by an applicant or licensee of certain boards in connection with
36 an application for license;

37
38 3. Placing the burden of proof on the applicant, licensee,
39 registrant or permit holder to show that there exists sufficient
40 rehabilitation to warrant the public trust; and

41
42 4. Extending for licensees and registrants of certain
43 boards the period of time for consideration of prior criminal
44 conviction as an element of fitness to practice a licensed
45 profession, trade or occupation. Presently, that period of time
46 is 3 years. This bill would extend the period of time to 10
47 years.