

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1465

H.P. 1081

House of Representatives, April 12, 2021

An Act To Remove Barriers to Occupational Licensing Due to Criminal Records

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative O'NEIL of Saco.

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

2 **Sec. 1. 5 MRSA §5301**, as amended by PL 2011, c. 286, Pt. O, §1 and PL 2015, c.
3 429, §23, is further amended to read:

4 **§5301. Eligibility for occupational license, registration or permit**

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

14 **2. Criminal history record information ~~which that~~ may be considered.** A licensing
15 agency may not inquire into or consider the criminal history of an applicant until after the
16 applicant has been found to be otherwise qualified for the license, registration or permit.
17 A licensing agency ~~may use~~ shall consider only the following in connection with an
18 application for an occupational license, registration or permit criminal history record
19 information pertaining to the following:

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

22 B. Convictions for which incarceration for less than one year may be imposed and
23 ~~which that~~ that directly relate to the profession, trade or occupation for which the license or
24 permit is sought;

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

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

28 E. Convictions for which incarceration for less than one year may be imposed and that
29 involve sexual misconduct by an applicant for massage therapy licensure or a licensed
30 massage therapist or an applicant or licensee of the Board of Licensure in Medicine,
31 the Board of Osteopathic Licensure, the Board of Dental Practice, the State Board of
32 Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of
33 Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State
34 Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners,
35 the Board of Counseling Professionals Licensure, the Board of Occupational Therapy
36 Practice, the Board of Speech, Audiology and Hearing, the Radiologic Technology
37 Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of
38 Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers,
39 the Maine Board of Pharmacy, the Board of Trustees of the Maine Criminal Justice
40 Academy, the State Board of Nursing and the Emergency Medical Services' Board.

41 **3. Criminal history record information directly related to the profession, trade**
42 **or occupation.** In determining pursuant to subsection 2 whether criminal history record
43 information is directly related to the profession, trade or occupation for which the license,

1 registration or permit is being sought, the licensing agency must consider the following
2 factors:

3 A. Whether the conviction is directly related to the duties and responsibilities of that
4 position or profession, trade or occupation;

5 B. Whether the position or profession, trade or occupation offers the opportunity for
6 the same or a similar offense to occur;

7 C. Whether circumstances leading to the conduct for which the person was convicted
8 will recur in the position or profession, trade or occupation; and

9 D. The length of time since the offense occurred.

10 **4. Criminal convictions prohibited by statute.** Notwithstanding subsection 2, a
11 licensing agency may consider criminal convictions that are explicitly prohibited by statute
12 for the license, registration or permit sought.

13 **Sec. 2. 5 MRSA §5302**, as amended by PL 1989, c. 84, §2, is further amended to
14 read:

15 **§5302. Denial, suspension, revocation or other discipline of licensees because of**
16 **criminal record**

17 **1. Reasons for denial or disciplinary action; process.** Licensing agencies may
18 refuse to grant or renew, or may suspend, revoke or take other disciplinary action against
19 any occupational license, registration or permit based in whole or in part on the basis of the
20 criminal history record information relating to convictions denominated in section 5301;
21 ~~subsection 2~~, but only if the licensing agency ~~determines~~ has complied with the notice
22 requirements of this section and after the licensing agency has properly considered a timely
23 appeal of its preliminary determination, if any, and has determined that the applicant,
24 licensee, registrant or permit holder so convicted has not been sufficiently rehabilitated to
25 warrant the public trust as described in subsection 3. The applicant, licensee, registrant or
26 permit holder ~~shall bear~~ bears the burden of proof that there exists sufficient rehabilitation
27 to warrant the public trust.

28 **~~2. Reasons to be stated in writing~~ Preliminary determination.** ~~The~~ Before a
29 licensing agency may make a final decision, the licensing agency shall explicitly state in
30 writing the reasons for a decision which prohibits preliminary determination that the
31 applicant, licensee, registrant or permit holder should be prohibited from practicing the
32 profession, trade or occupation if that decision is based in whole or in part on conviction
33 of any crime described in that may be considered pursuant to section 5301, ~~subsection 2.~~
34 The licensing agency shall issue a notice containing the written preliminary determination
35 to the applicant, licensee, registrant or permit holder. The written notice required by this
36 subsection must include the following information:

37 A. The criminal conviction or convictions that are the basis for the preliminary denial;

38 B. A copy of the criminal history record information, if any;

39 C. Information about the applicant's, licensee's, registrant's or permit holder's right to
40 appeal the preliminary determination; and

41 D. Any examples of mitigation or rehabilitation evidence that the applicant, licensee,
42 registrant or permit holder may voluntarily provide.

1 **3. Appeal of preliminary determination.** An applicant, licensee, registrant or permit
2 holder may appeal a preliminary determination of a licensing agency made pursuant to
3 subsection 2 by challenging the accuracy of the criminal history record information or by
4 demonstrating that the applicant, licensee, registrant or permit holder is sufficiently
5 rehabilitated to warrant the public trust. An applicant, licensee, registrant or permit holder
6 may demonstrate sufficient rehabilitation to warrant the public trust by providing the
7 licensing agency:

8 A. Evidence demonstrating that at least one year has elapsed since the applicant's,
9 licensee's, registrant's or permit holder's release from any correctional institution
10 without criminal conviction or arrest; or

11 B. Any other information or evidence of mitigation or rehabilitation and present fitness
12 to practice the profession, trade or occupation for which the license, registration or
13 permit is being sought, including, but not limited to, letters of reference.

14 If the applicant, licensee, registrant or permit holder demonstrates sufficient rehabilitation
15 to warrant the public trust, the licensing agency may not deny the applicant, licensee,
16 registrant or permit holder the license, registration or permit based in whole or in part on
17 the applicant's, licensee's, registrant's or permit holder's prior criminal conviction.

18 After receiving notice of the preliminary denial issued pursuant to subsection 2, the
19 applicant, licensee, registrant or permit holder must send or hand deliver the appeal within
20 30 business days.

21 **4. Final determination.** If the licensing agency has made a final determination that
22 the applicant, licensee, registrant or permit holder should be prohibited from practicing the
23 profession, trade or occupation because the applicant, licensee, registrant or permit holder
24 has not been sufficiently rehabilitated to warrant the public trust as described in subsection
25 3, the licensing agency must notify the applicant, licensee, registrant or permit holder in
26 writing of the following:

27 A. The final determination;

28 B. Information about the right to appeal pursuant to section 5304 the licensing agency's
29 decision;

30 C. A statement that the applicant, licensee, registrant or permit holder may be eligible
31 for a different license, registration or permit; and

32 D. The earliest date on which the applicant, licensee, registrant or permit holder may
33 reapply with the licensing agency, if applicable.

34 **Sec. 3. 5 MRSA §5303**, as amended by PL 2017, c. 288, Pt. A, §12, is further
35 amended to read:

36 **§5303. Time limit on consideration of prior criminal conviction**

37 **1. Three-year limits.** ~~Except as set forth in this subsection and subsection 2, the~~
38 ~~procedures outlined in sections 5301 and 5302 for the consideration of prior criminal~~
39 ~~conviction as an element of fitness to practice a licensed profession, trade or occupation~~
40 ~~shall requiring a license, registration or permit apply within 3 years of the applicant's or~~
41 ~~licensee's final discharge, if any, from the correctional system, registrant's or permit~~
42 ~~holder's criminal conviction. Beyond the 3-year period, ex-offender applicants or~~
43 ~~licensees, registrants or permit holders with no additional convictions are to be considered~~

1 in the same manner as applicants or licensees, registrants or permit holders possessing no
2 prior criminal record for the purposes of licensing decisions. There is no time limitation
3 for consideration of an applicant's or licensee's, registrant's or permit holder's conduct
4 which that gave rise to the criminal conviction if that conduct is otherwise a ground for
5 disciplinary action against a licensee, registrant or permit holder.

6 **2. Ten-year limits.** For applicants to and licensees and registrants of the Board of
7 Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Practice,
8 the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure,
9 the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of
10 the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy,
11 the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care
12 Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational
13 Therapy Practice, the Board of Speech, Audiology and Hearing, the Radiologic
14 Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the
15 Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care
16 Providers, the Maine Board of Pharmacy, and the Emergency Medical Services' Board and
17 applicants for massage therapy licensure or licensed massage therapists, the following
18 apply:

19 A. The procedures outlined in sections 5301 and 5302 for the consideration of prior
20 criminal conviction as an element of fitness to practice a licensed profession, trade or
21 occupation apply within 10 years of the applicant's or licensee's final discharge, if any,
22 from the correctional system.

23 B. Beyond the 10-year period, ex-offender applicants or licensees with no additional
24 convictions must be considered in the same manner as applicants or licensees
25 possessing no prior criminal record for the purposes of licensing decisions.

26 C. There is no time limitation for consideration of a registrant's, an applicant's or
27 licensee's conduct that gave rise to the criminal conviction if that conduct is otherwise
28 a ground for disciplinary action.

29 **Sec. 4. 5 MRSA §5305** is enacted to read:

30 **§5305. Confidential**

31 Criminal history record information, and any other information pertaining to an
32 applicant's, licensee's, registrant's or permit holder's background check obtained in
33 conjunction with a screening, in the possession of a licensing agency is confidential and
34 may not be disclosed if the information is being requested for use in connection with any
35 application for employment or a license, registration or permit.

36 **Sec. 5. 5 MRSA §5306** is enacted to read:

37 **§5306. Application**

38 The provisions of this chapter apply notwithstanding any provision of law to the
39 contrary, except to the extent the provision of law contains additional limitations on the
40 consideration of criminal history record information by licensing agencies.

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SUMMARY

This bill adds restrictions to the use of criminal history record information in the context of licensing decisions by licensing agencies. It also makes certain criminal history record information in the possession of a licensing agency confidential.