

2022 Regular Session

HOUSE BILL NO. 639

BY REPRESENTATIVE PRESSLY

LICENSING: Provides relative to occupational licensing for workers with criminal histories

1 AN ACT

2 To amend and reenact R.S. 37:33, 34 through 36, and 2950 and to repeal R.S. 37:32, relative
3 to occupational licensing; to provide for the issuance of occupational licensing in
4 conjunction with criminal history records; to provide for application requirements;
5 to provide for recordkeeping; to provide for reporting; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 37:33, 34 through 36, and 2950 are hereby amended and reenacted
9 to read as follows:

10 §33. License; ~~application by ex-offender~~ pre-application eligibility determination

11 A.(1) ~~An ex-offender may apply to any entity issuing licenses to engage in~~
12 ~~certain fields of work pursuant to state law for a license to engage in the particular~~
13 ~~field of work for which the entity issues licenses.~~ An individual convicted of a crime
14 may request at any time including before obtaining any required education or
15 training, that an entity issuing licenses to engage in certain fields of work pursuant
16 to state law determine whether the individual's criminal conviction disqualifies the
17 individual from obtaining a license issued or conferred by the licensing entity.

18 (2) An individual making such a request shall include any identifying
19 information required by the licensing entity and details of the individual's criminal

1 conviction, including any information relevant to the factors provided in R.S.
2 37:2950.

3 B.(1) The licensing entity shall issue the license for which the applicant
4 applied and is otherwise qualified to receive. Not later than forty-five days after
5 receiving a request in accordance with this Section, the licensing entity shall inform
6 the individual whether, based on the criminal record information submitted, the
7 individual is disqualified from receiving or holding the license about which the
8 individual inquired. Any suspension of legal deadlines by executive order shall
9 apply to this Subsection.

10 (2) An individual making such a request may seek a criminal background
11 check at the time of a pre-application eligibility determination. In such cases, the
12 licensing entity shall inform the individual of a disqualifying determination within
13 forty-five days of receipt of the criminal background check report.

14 (3) A determination made pursuant to this Section is binding upon a
15 licensing authority unless, at the time a full application for a license is submitted, the
16 applicant has been subsequently convicted of a crime, has pending criminal charges,
17 or has previously undisclosed criminal convictions.

18 C. Any decision made pursuant to this Section shall be made in accordance
19 with R.S. 37:2950.

20 §34. License; ~~revocation~~ notice; final denial

21 A. The licensing entity may revoke the license issued pursuant to this
22 Chapter if the holder commits any of the following Before an entity issuing licenses
23 to engage in certain fields of work pursuant to state law makes a final determination
24 that a criminal conviction will result in the denial of a license, the licensing entity
25 shall provide the individual who made the request with written notice of all of the
26 following:

27 (1) ~~A new felony for which he is convicted.~~ The specific conviction that is
28 the basis for the intended denial.

1 (2) ~~A violation of law or rules governing the practice of the field of work for~~
2 ~~which the license was issued. The reasons the conviction was determined to be~~
3 ~~directly related to the licensed activity, including findings for each of the factors~~
4 ~~provided in R.S. 37:2950 that the licensing authority deemed relevant to the~~
5 ~~determination.~~

6 (3) The right to submit additional evidence relevant to each of the factors
7 listed in R.S. 37:2950 within sixty days, which the licensing authority shall consider
8 before issuing a final determination.

9 B. ~~A court shall notify the licensing entity if the holder of the license is~~
10 ~~charged with a new offense A final determination that a criminal conviction will~~
11 ~~prevent a person from receiving a license shall be in writing and include notice of the~~
12 ~~right to appeal the determination and notice of the earliest date the application may~~
13 ~~reapply for a license.~~

14 C. ~~If a licensing entity revokes a license pursuant to this Section, each of the~~
15 ~~following apply:~~

16 (1) ~~The holder shall not be entitled to receive another license for which the~~
17 ~~applicant originally applied, even if otherwise qualified.~~

18 (2) ~~The ability of the holder to subsequently obtain another license from~~
19 ~~another licensing entity in the future is within the sole discretion of the issuing entity.~~

20 §35. ~~License; issuance; discretion of issuer~~ information for applicants

21 ~~Nothing in this Chapter shall be implicitly interpreted to preclude an entity~~
22 ~~from exercising its existing discretion to issue a license to individuals not covered~~
23 ~~pursuant to the provisions of this Chapter, except where precluded by another law.~~
24 Each entity issuing licenses to engage in certain fields of work pursuant to state law
25 shall include in its application for a license, and publish on its public website, all of
26 the following information:

27 (1) Whether the criminal convictions of applicants may be used as a basis for
28 denial.

1 (2) If criminal history may be used as a basis for denial, the factors listed in
2 R.S. 37:2950 that the licensing entity shall consider.

3 (3) Notice of the right to petition for a determination pursuant to R.S. 37:33
4 prior to meeting the general qualifications for a license.

5 §36. ~~Exemptions; prohibitions; records;~~ Records; reports

6 ~~A. A licensing entity shall not be required to issue a license to any person~~
7 ~~convicted of any of the following:~~

8 ~~(1) Any grade of homicide enumerated in R.S. 14:29.~~

9 ~~(2) A "crime of violence" as enumerated in R.S. 14:2(B).~~

10 ~~(3) A "sex offense" as defined by R.S. 15:541.~~

11 ~~B. A licensing entity shall not be required to issue a license to any person~~
12 ~~convicted of an offense involving fraud if the licensed field of work is one in which~~
13 ~~the licensee owes a fiduciary duty to a client.~~

14 ~~C. A licensing entity shall not be required to issue a license to an applicant~~
15 ~~whose conviction directly relates to the position of employment sought, or to the~~
16 ~~specific field for which the license is required, or profession for which the license is~~
17 ~~sought.~~

18 ~~D. A license holder who supervises children or individuals who lack mental~~
19 ~~capacity shall not do so without another licensee in the room at all times.~~

20 ~~E.(1) This Chapter shall not apply to the following licensing entities:~~

21 ~~(a) Any law enforcement agency.~~

22 ~~(b) The Louisiana State Board of Medical Examiners.~~

23 ~~(c) The Louisiana State Board of Dentistry.~~

24 ~~(d) The Louisiana State Board of Nursing.~~

25 ~~(e) The Louisiana State Board of Practical Nurse Examiners.~~

26 ~~(f) The Louisiana State Racing Commission.~~

27 ~~(g) The State Boxing and Wrestling Commission.~~

28 ~~(h) The Louisiana Board of Pharmacy.~~

29 ~~(i) The Louisiana Supreme Court.~~

- 1 ~~(j) The Louisiana Professional Engineering and Land Surveying Board.~~
- 2 ~~(k) The Louisiana State Board of Architectural Examiners.~~
- 3 ~~(l) The Louisiana State Board of Private Investigator Examiners.~~
- 4 ~~(m) The Louisiana State Board of Embalmers and Funeral Directors.~~
- 5 ~~(n) The Louisiana State Board of Elementary and Secondary Education.~~
- 6 ~~(o) The Office of Financial Institutions.~~
- 7 ~~(p) The Louisiana Physical Therapy Board.~~
- 8 ~~(q) The Louisiana Board of Massage Therapy.~~
- 9 ~~(r) The office of alcohol and tobacco control of the Department of Revenue.~~
- 10 ~~(s) The health standards section of the Louisiana Department of Health.~~
- 11 ~~(t) The Department of Insurance.~~
- 12 ~~(u) The Louisiana State Board of Social Work Examiners.~~
- 13 ~~(v) The Louisiana State Board of Examiners of Psychologists.~~
- 14 ~~(w) The Louisiana Behavior Analyst Board.~~
- 15 ~~(x) All offices, boards, or commissions under the supervision of the deputy~~
- 16 ~~secretary of the Department of Public Safety and Corrections, public safety services,~~
- 17 ~~or the superintendent of the Louisiana State Police, which are not delineated in this~~
- 18 ~~Section.~~
- 19 ~~(y) The Louisiana Real Estate Commission.~~
- 20 ~~(z) The Louisiana Real Estate Appraisers Board.~~
- 21 ~~(aa) The Louisiana Licensed Professional Counselors Board of Examiners.~~
- 22 ~~(2) Nothing in this Subsection shall be construed to preclude the licensing~~
- 23 ~~entity, in its discretion, from adopting the provisions of this Chapter as policies or~~
- 24 ~~administrative rules.~~
- 25 ~~(3)(a)A. A licensing entity exempt from the provisions of this Chapter An~~
- 26 ~~entity issuing licenses to engage in certain fields of work pursuant to state law shall~~
- 27 ~~keep record and compile a report of the number of licenses denied by the entity,~~
- 28 ~~including all reasons for such denial, when the denial is of an otherwise qualified~~
- 29 ~~applicant who has been convicted of an offense or offenses.~~

1 ~~(b) Notwithstanding the exemption of licensing entities as provided in this~~
2 ~~Section, any licensing entity issuing licenses in accordance with this Chapter to~~
3 ~~people with criminal convictions shall keep record and compile a report of the~~
4 ~~number of licenses issued and denied by the entity, including all reasons for any such~~
5 ~~issuance or denial.~~

6 ~~(e)~~B. The entity shall provide the report annually to the House Committee
7 on Commerce no later than February first of each year.

8 ~~F. If a licensing entity believes that another exemption not provided in this~~
9 ~~Section is necessary in a specific case to protect the public from a clear and~~
10 ~~imminent danger, the entity may seek declaratory relief in district court through a~~
11 ~~judicial order finding that the applicant shall not be issued a license because it would~~
12 ~~pose such a danger.~~

13 * * *

14 §2950. Criminal record effect on trade, occupational, and professional licensing

15 A.(1) Notwithstanding any other provisions of law to the contrary, a person
16 shall not be disqualified, or held ineligible to practice or engage in any trade,
17 occupation, or profession for which a license, permit, or certificate is required to be
18 issued by the state of Louisiana or any of its agencies or political subdivisions, solely
19 or partly because of a prior criminal record, except in cases in which a conviction
20 directly relates to the position of employment sought, or to the specific occupation,
21 trade, or profession for which the license, permit, or certificate is sought.

22 (2) In determining whether a conviction directly relates to the position of
23 employment sought, or to the specific occupation, trade, or profession for which the
24 license, permit, or certificate is sought, a licensing entity shall consider all of the
25 following:

26 (a) The nature and seriousness of the offense.

27 (b) The nature of the specific duties and responsibilities for which the
28 license, permit, or certificate is required.

29 (3) The amount of time that has passed since the conviction.

1 (4) Facts relevant to the circumstances of the offense, including any
2 aggravating or mitigating circumstances or social conditions surrounding the
3 commission of the offense.

4 (5) Evidence of rehabilitation or treatment undertaken by the person since
5 the conviction.

6 ~~B. Any decision which prohibits an applicant from engaging in the~~
7 ~~occupation, trade, or profession for which the license, permit, or certificate is sought,~~
8 ~~which is based in whole or in part on conviction of any crime, as described in~~
9 ~~Subsection A of this Section, shall explicitly state in writing the reasons for the~~
10 ~~decision.~~

11 ~~C.B.~~ Any complaints concerning violations of this Section shall be
12 adjudicated in accordance with procedures set forth for administrative and judicial
13 review, contained in Title 49 of the Louisiana Revised Statutes of 1950.

14 ~~D.(1)(a) This Section shall not be applicable to:~~

- 15 ~~(i) Any law enforcement agency.~~
- 16 ~~(ii) The Louisiana State Board of Medical Examiners.~~
- 17 ~~(iii) The Louisiana State Board of Dentistry.~~
- 18 ~~(iv) The Louisiana State Board of Nursing.~~
- 19 ~~(v) The Louisiana State Board of Practical Nurse Examiners.~~
- 20 ~~(vi) The State Racing Commission.~~
- 21 ~~(vii) The State Athletic Commission.~~
- 22 ~~(viii) The Louisiana Board of Pharmacy.~~
- 23 ~~(ix) The Louisiana State Bar Association.~~
- 24 ~~(x) The Louisiana Professional Engineering and Land Surveying Board.~~
- 25 ~~(xi) Louisiana State Board of Architectural Examiners.~~
- 26 ~~(xii) The Louisiana State Board of Private Investigator Examiners.~~
- 27 ~~(xiii) The Louisiana State Board of Embalmers and Funeral Directors.~~
- 28 ~~(xiv) The Louisiana State Board of Elementary and Secondary Education.~~
- 29 ~~(xv) The Office of Financial Institutions.~~

- 1 ~~(xvi) The Louisiana Physical Therapy Board.~~
- 2 ~~(xvii) The Louisiana Board of Massage Therapy.~~
- 3 ~~(xviii) The Louisiana Department of Insurance.~~
- 4 ~~(b) Nothing herein shall be construed to preclude the agency, in its~~
- 5 ~~discretion, from adopting the policy set forth in this Section.~~
- 6 ~~(2) This Section shall not be applicable to the office of alcohol and tobacco~~
- 7 ~~control of the Department of Revenue.~~
- 8 Section 2. R.S. 37:32 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 639 Engrossed

2022 Regular Session

Pressly

Abstract: Provides relative to occupational licensing for workers with criminal histories.

Present law provides that an ex-offender may apply to any entity issuing licenses to engage in certain fields of work pursuant to state law for a license to engage in the particular field of work for which the entity issues licenses.

Proposed law repeals present law.

Proposed law provides that an individual convicted of a crime may request at any time, including before obtaining any required education or training, that an entity issuing licenses to engage in certain fields of work pursuant to state law determine whether the individual's criminal conviction disqualifies the individual from obtaining a license issued or conferred by the licensing entity.

Proposed law provides that an individual making such a request shall include any identifying information required by the licensing entity and details of the individual's criminal conviction, including any information relevant to the factors provided in proposed law.

Present law provides that the licensing entity shall issue the license for which the applicant applied and is otherwise qualified to receive.

Proposed law repeals present law.

Proposed law provides that not later than 45 days after receiving a request, the licensing entity shall inform the individual whether, based on the criminal record information submitted, the individual is disqualified from receiving or holding the license which the individual inquired about.

Proposed law allows an individual to request a criminal background check at the time of a pre-application eligibility determination and requires the board to make a determination and notify the individual within 45 days.

Proposed law provides that a determination made pursuant to proposed law is binding upon a licensing authority unless, at the time a full application for a license is submitted, the applicant has been subsequently convicted of a crime, has pending criminal charges, or has previously undisclosed criminal convictions.

Present law provides that the licensing entity may revoke the license issued if the holder commits a new felony for which he is convicted or violates laws or rules governing the practice of the field of work for which the licensed was issued.

Proposed law repeals present law and instead provides that before an entity issuing licenses to engage in certain fields of work pursuant to state law makes a final determination that a criminal conviction will result in the denial of a license, the licensing entity shall provide written notice of:

- (1) The specific conviction that is the basis for the intended denial.
- (2) The reasons the conviction was determined to be directly related to the licensed activity, including findings for each of the factors provided in proposed law that the licensing authority deemed relevant to the determination.
- (3) The right to submit additional evidence relevant to each of the factors listed in proposed law within 60 days, which the licensing authority shall consider before issuing a final determination.

Present law provides that nothing in present law shall be implicitly interpreted to preclude an entity from exercising its existing discretion to issue a license to individuals not covered pursuant to present law.

Proposed law repeals present law.

Proposed law provides that each entity issuing licenses to engage in certain fields of work pursuant to state law licensing shall include in its application for a license, and publish on its public website, all of the following information:

- (1) Whether the criminal convictions of applicants may be used as a basis for denial.
- (2) If criminal history may be used as a basis for denial, the factors listed in proposed law that the licensing entity shall consider.
- (3) Notice of the right to petition for a determination pursuant to proposed law prior to meeting the general qualification for a license.

Present law provides that a licensing entity shall not be required to issue a license to any person convicted of any of the following:

- (1) Any grade of homicide.
- (2) A "crime of violence".
- (3) A "sex offense".

Present law provides a licensing entity shall not be required to issue a license to any person convicted of an offense involving fraud if the licensed field of work is one in which the licensee owes a fiduciary duty to a client.

Present law provides that a licensing entity shall not be required to issue a license to an applicant whose conviction directly relates to the position of employment sought, or to the specific field for which the license is required, or profession for which the license is sought.

Proposed law repeals present law.

Proposed law provides that an entity issuing licenses to engage in certain field of work pursuant to state law shall keep record and compile a report of the number of licenses denied by the entity, including all reasons for such denial, when the denial is of an otherwise qualified applicant who has been convicted of an offense or offenses.

Present law provides that notwithstanding the exemption of licensing entities as provided in present law, any licensing entity issuing licenses in accordance with present law to people with criminal convictions shall keep record and compile a report of the number of licenses issued and denied by the entity, including all reasons for any such issuance or denial.

Proposed law repeals present law.

Present law provides that a person shall not be disqualified, or held ineligible to practice or engage in any trade, occupation, or profession for which a license, permit, or certificate is required to be issued by the state of La. or any of its agencies or political subdivisions, solely because of a prior criminal record, except in cases in which a conviction directly relates to the position of employment sought, or to the specific occupation, trade, or profession for which the license, permit, or certificate is sought.

Proposed law retains present law.

Proposed law provides that in determining whether a conviction directly relates to the position of employment sought, or to the specific occupation, trade, or profession for which the license, permit, or certificate is sought, a licensing entity shall consider all of the following:

- (1) The nature and seriousness of the offense.
- (2) The nature of the specific duties and responsibilities for which the license, permit, or certificate is required.
- (3) The amount of time that has passed since the conviction.
- (4) Facts relevant to the circumstances of the offense, including any aggravating or mitigating circumstances or social conditions surrounding the commission of the offense.
- (5) Evidence of rehabilitation or treatment undertaken by the person since the conviction.

Present law provides that notwithstanding any provision of law or rule adopted and promulgated by any state department, agency, board, commission, or authority to the contrary, an entity issuing licenses, except for those provided in present law, for persons to engage in certain fields of work pursuant to state law shall issue to an otherwise qualified applicant who has been convicted of an offense or offenses, except those described in present law, the license for which the applicant applied if the applicant meets all other requirements of the licensing qualifications, except those pertaining to form offenses.

Proposed law repeals present law.

(Amends R.S. 37:33, 34-36, and 2950; Repeals R.S. 37:32)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Require an individual making a request pursuant to proposed law to include in the request any identifying information required by the licensing entity.
2. Extend the time period by which the board is required to inform an individual of the board's decision from 30 days to 45 days.
3. Allow an individual to seek a criminal background check at the time of a pre-application eligibility determination.
4. Make technical changes.