

## Collateral Consequences Reduction Act (Annual Meeting 2019 Amendments)

A bill for an act relating to occupational regulations; establishing a process to review criminal record to reduce offenders' disqualifications from state recognition; and proposing coding for new law as \_\_\_\_\_, chapter \_\_\_\_.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF \_\_\_\_\_:

**Summary:** This bill allows an ex-offender the right to petition a licensing board for review of their criminal record at any time for a determination of whether the individual's criminal record will prevent them from obtaining a license. It also outlines the circumstances for which a licensing board can deny an ex-offender from obtaining a license.

### 100.01 Definitions.

Subdivision 1. **Scope.** For the purposes of this chapter, the words defined in this section have the meaning given.

Subd. 2. **Government Certification.** "Certification" is a voluntary program in which the state government grants nontransferable recognition to an individual who meets personal qualifications established by the legislature. Upon [receiving initial and continuing approval from the government](#), the individual may use "[government certified](#)" or "[state certified](#)" as a designated title. A non-certified individual may also perform the lawful occupation for compensation but may not use the title "[government certified](#)" or "[state certified](#)." [In this chapter, the term "government certification" is not intended to be synonymous with "occupational license" or to reflect credentials, such as those used for medical board certification or held by a certified public accountant, which are prerequisites to working lawfully in an occupation.](#)

Subd. 3. **Lawful occupation.** "Lawful occupation" means a course of conduct, pursuit or profession that includes the sale of goods or services that are not themselves illegal to sell irrespective of whether the individual selling them is subject to an occupational regulation.

Subd. 4. **Occupational license.** "Occupational license" is a nontransferable authorization in law for an individual to perform exclusively a lawful occupation for compensation based on meeting personal qualifications established by the legislature. In an occupation for which a license is required, it is illegal for an individual who does not possess a valid occupational license to perform the occupation for compensation.

Subd. 5. **Personal qualifications.** "Personal qualifications" are criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral [standing character](#), criminal record and completion of continuing education.

~~Subd. 6. **Specialty occupational license for medical reimbursement.** “Specialty occupational license for medical reimbursement” means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a government agency for the non-exclusive provision of medical services based on meeting personal qualifications established by the legislature. A private company may recognize this credential. Notwithstanding this specialty license, it is legal for a person regulated under another occupational regulation to provide similar services as defined in that statute for compensation and reimbursement. It is also legal for an individual who does not possess this specialty license to provide the identified medical services for compensation but the non-licensed individual shall not qualify for payment or reimbursement from a government agency.~~

## **100.02 Petition for Review of Criminal Record**

Subdivision 1. The right of an individual to pursue an occupation is a fundamental right.

~~Subd. 2. The fundamental right of an individual to pursue an occupation includes (a) the right of an individual with a criminal record to petition the state to obtain a certification, occupational license, specialty occupational license for medical reimbursement or other state recognition of the individual's personal qualifications (hereafter “state recognition”) and (b) the state not using a criminal record as an automatic permanent bar to an individual's receiving state recognition.~~

Subd. 2. **Scope of right.** The fundamental right of an individual to pursue a lawful occupation includes the right of the individual with a criminal record to petition the state to obtain a government certification, occupational license, or other state recognition of the individual's personal qualifications (hereafter "state recognition").

Subd. 3. **No automatic bar.** A board, agency, department or other state agency (hereafter "board") will not automatically bar an individual from state recognition because of a criminal record but will offer a process to petition the board for individualized consideration.

Subd. 4 . An individual with a criminal record may petition a licensing board, agency, department or other state or local issuer of occupational licenses (hereafter “board”) at any time, including before obtaining any required education or training, for a determination of whether the individual's criminal record will disqualify the individual from obtaining state recognition.

Subd. 5. **Content.** The individual will include in the petition the individual's criminal record or authorize the board to obtain the individual's criminal record.

Subd. 6. **Additional content.** The individual may include additional information about the individual's current circumstances, including the (a) time since the offense, (b) completion of the criminal sentence, (c) a certificate of rehabilitation or good conduct, (d) completion of, or active participation in, rehabilitative drug or alcohol treatment, (e) testimonials and recommendations including a progress report from the individual's probation or parole officer, (f) other evidence of rehabilitation, (g) training,

(h) employment history, (i) employment aspirations, and (j) personal information including the age of the individual when the individual committed the offense and the individual's current family responsibilities.

Subd. 7. Excluded information. The board will not consider:

1. Non-conviction information including information related to a deferred adjudication, participation in a diversion program, or an arrest not followed by a conviction;
2. A conviction that has been sealed, dismissed, expunged or pardoned;
3. A juvenile adjudication;
4. A non-violent misdemeanor; or
5. A conviction that occurred more than three years before the date of the petition except for a conviction of:
  - a. A felony crime of violence as defined by statute section \_\_\_\_\_; or
  - b. A felony related to a criminal sexual act as defined by statute section \_\_\_\_\_

Subd. 8. Hearing. The board will hold a public hearing, should the individual request one, pursuant to section \_\_\_\_\_ of the state's administrative procedure act.

Subd. 9. Notwithstanding any other statute or rule, the board is authorized to determine whether the individual's criminal record disqualifies the individual from obtaining state recognition.

~~Subd. 6. The board may find the individual's criminal record disqualifies the individual from obtaining state recognition only if:~~

- ~~• the individual's criminal record includes a conviction for a felony or violent misdemeanor;~~
- ~~• the type of felony or violent misdemeanor for which the individual was convicted is expressly codified as a disqualifying offense in the relevant occupational license's statute; and~~
- ~~• the board concludes the state has an important interest in protecting public safety that is superior to the individual's right. The board may make this conclusion only if it determines, by clear and convincing evidence at the time of the petition, that:~~
- ~~• the specific offense for which the individual was convicted is substantially related to the state's interest;~~

- ~~the individual, based on the nature of the specific offense for which the individual was convicted and the individual's current circumstances, is more likely to reoffend by virtue of having the license than if the individual did not have the license; and~~

- ~~a re-offense will cause greater harm than it would if the individual did not have the license.~~

Subd. 10. Test. (a) In making its decision on the petition, the board will consider the individual's current circumstances in subdivision 6.

(b) The board will find the individual's criminal record disqualifies the individual from state recognition only if the board determines the state has an important interest in protecting public safety by denying the petition that is superior to the individual's fundamental right to pursue a lawful occupation.

(c) The board may deny the petition only if it establishes by clear and convincing evidence that:

1. The individual was convicted of a felony or violent misdemeanor, not excluded by subdivision 7, which is directly, substantially and adversely related to the state's interest in protecting public safety; and
2. The granting of state recognition will put the individual in a position where the individual is more likely than not to reoffend and cause harm.

Subd. 11. Rule of Lenity. (a) An ambiguity in an occupational regulation relating to a board's use of an individual's criminal record will be resolved in favor of the individual.

(b) The board will not use an undefined term in an occupational regulation relating to the individual's moral character, including (i) a crime of moral turpitude or (ii) character and fitness, to disqualify an individual from state recognition.

Subd. 12. The board shall issue its determination within 90 days after the board receives the petition. The determination shall be in writing and include the criminal record, a findings of facts and a conclusion of law.

~~Subd. 8. If the board determines the state's interest is superior to the individual's right, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual may submit a revised petition reflecting the completion of the remedies at any time after 90 days following the board's judgment.~~

Subd. 13. Alternative advisory decision. If the board decides the state's interest in protecting public safety is superior to the individual's fundamental right to pursue a lawful occupation, the board may advise the individual of actions the individual may take to remedy the disqualification. The individual

may submit a revised petition reflecting completion of the remedial actions before a deadline the board sets in its alternative advisory decision.

Subd. 14. The individual may appeal the board's determination in subdivision 12 as provided for in the state's administrative procedure act.

Subd. 15. The individual may submit a new petition to the board at any time after two years following a final judgment in the initial petition.

Subd. 16. The board may rescind its determination at any time if the individual is convicted of an additional offense that causes the Board ~~determines meets the elements to change its decision~~ in subdivision 9.

Subd. 17. The board may charge a fee to recoup its costs not to exceed \$100 for each petition.

Subd. 18. The Department of Public Safety will establish an annual reporting requirement of the (a) number of applicants petitioning each board, (b) the numbers of each board's approvals and denials, (c) the type of offenses for which each board approved or denied the petitions and (d) other data the Department determines. The Department will compile and publish annually a report on a searchable public website.

**100.03. Limitation. Nothing in the chapter shall be construed to require a private certification organization to grant or deny private certification to any individual.**

**100.04. Effective date.** This chapter is effective on \_\_\_\_\_.